



September 18, 2026

By email to:

SacDeltaComments@waterboards.ca.gov

RE: SACRAMENTO-DELTA UPDATE OF BAY-DELTA WATER QUALITY CONTROL PLAN

Chair Esquivel,

San Francisco Baykeeper, Friends of the River, California Sportfishing Protection Alliance, Golden State Salmon Association, Save California Salmon, California Indian Environmental Alliance, Yosemite Rivers Alliance, Resource Renewal Institute, and Communities United for Water Protection submit this letter and comments regarding the August 2026 Draft Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed and supporting documents.¹ On behalf of our members throughout the state of California, we write to urge the State Water Resources Control Board (“Water Board”) to reject the Final Draft Plan because it will almost certainly fail to achieve the Water Board’s own goals or meet its legal requirements. It will also harm the interests of Californians in a healthy San

¹ We refer to the August 2026 version of the plan as the “Final Draft Plan,” and to the plan generally as the “Bay-Delta Plan.” We also provide selected comments regarding the August 2026 Final Staff Report/Substitute Environmental Document in Support of Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the Sacramento River and Its Tributaries, Delta Eastside Tributaries, and Delta, and note that the Water Board is in error in deciding to not accept public comment before adopting this Staff Report.

Francisco Bay-Delta ecosystem and watershed, reliable and sustainable water supply, and thriving fisheries and communities. The Final Draft Plan also fails to ensure California's water management systems include and support California Tribes, despite the State's recognition of the irreparable harm that system has caused.

For over 20 years, the Water Board has recognized what the best available science and monitoring data show: fish and wildlife beneficial uses are not reasonably protected, largely due to large-scale hydrologic alteration that results in volumes, timing, duration and frequency of instream flows which are inadequate to support viable populations of fish and other aquatic species, fisheries, and the habitats and ecological processes they depend on. Ongoing degradation of aquatic ecosystems, fish and wildlife, and related beneficial uses negatively affects the California public through loss of a wide range of ecosystem services, including commercial, recreational, Tribal, and subsistence fisheries, recreational opportunities, and aesthetic enjoyment of clean waterways. The Water Board's analyses and statements have repeatedly confirmed this reality at numerous milestones during the process to update the Bay-Delta Plan. Indeed, the Water Board has repeatedly warned that the San Francisco Bay-Delta Estuary and its watershed are in a state of ecological crisis. As a result, not only are fish and wildlife beneficial uses not "reasonably" protected—many are at risk of being lost forever, meaning that they are not protected at all. Expanding numbers of endangered species, increasing risks of extinction, closed fisheries, and degraded water quality and instream flows that pose public health risks do not represent "reasonable protection" of beneficial uses of water.

The Water Board has an ongoing obligation under Porter-Cologne and the Clean Water Act to periodically review and update the Bay-Delta Plan as necessary. Despite this, it has been more than thirty years since the last substantive update for the protection of fish and wildlife. In updating the Bay-Delta Plan, the Water Board has the obligation and authority to require additional freshwater flows into, through and from the Delta to San Francisco Bay as well as complementary non-flow actions that will achieve Plan objectives for fish and wildlife and ensure all beneficial uses of water are reasonably protected.

In updating the Bay-Delta Plan, the Water Board must adopt water quality objectives that will reasonably protect all beneficial uses of water and a Program of Implementation ("POI") that will achieve those objectives. These objectives must contain defined "levels or limits," and must be numeric where they can be quantified.

The Final Draft Plan fails to meet each part of this requirement. The "Voluntary Agreements" ("VAs", also known as "Healthy Rivers and Landscapes") do not contain numeric water quality objectives, do not contain a POI that will achieve their own objectives, and, even if fully implemented as intended, will not result in the reasonable protection of fish and wildlife or related beneficial uses (e.g. COMM; T-CUL). The VAs will preserve the status quo under a new name, maintaining anemic and inadequate flows at an exorbitant cost that is highly unlikely to attain instream water quality objectives. But even full implementation of these inadequate regimes is unlikely, due to the lack of accountability, measurable standards and outcomes, and a lack of certain or guaranteed funding. They rely on unenforceable commitments from unreliable participants like the United States Bureau of Reclamation ("BOR") and Westlands Water

District, who threatened to renounce the VAs less than two and a half weeks after the Water Board identified them as part of the Final Draft Plan.

The process that produced the VAs is no better than the results. The VAs were developed in closed room deals with water users, which excluded Tribes, conservation groups, fishing groups, and environmental justice communities and their representatives. Politically influential and wealthy water rights holders and water contractors leveraged their power into an “agreement” that will allow those entities to sue the Water Board despite getting what they wanted. This will derail regulation and progress, and it will preserve an unsustainable and inequitable status quo.

The Board’s alternative, a regulatory pathway or backstop, is also unlawful. The Water Board’s decision to eliminate numeric water quality objectives, its reductions in the amount of instream flow that will be required by the “Water Supply Adjustments” (“WSAs”) under the regulatory approach, and its failure to adopt objectives and a POI that are consistent with its own record, evidence, and best available science, all make the Final Draft Plan inconsistent with California law. More, the Final Draft Plan remains unlawfully vague and unclear, with the Board relying on future processes, unsettled and unstated regulatory approaches, and arbitrary determinations in a manner that is unlawful.

In short, three decades after the last major change to the Bay-Delta Plan, and seventeen years after announcing its intent to update the plan for the benefit of fish and wildlife, the Water Board is poised to maintain a status quo that violates California law, relying on an exclusionary, inequitable, and insufficient process that is inconsistent with informed decision-making. The Water Board’s stated intent to adopt the Final Draft Plan in October 2026 is both bad policy and unlawful.

In addition to the matters identified in our detailed comments, we note two additional ongoing failures by the Water Board that remain in the Final Draft Plan. First, the failure to adopt a numeric water quality objective that is protective of recreational beneficial uses, tribal cultural uses, human health, and fish and wildlife regarding Harmful Algal Blooms (HABs). For a detailed discussion of HABs, see the September 18, 2026 comments of the Delta Tribal Environmental Coalition, with which we concur. Second, the failure to address redirected impacts to the Trinity River system. For more detailed discussion, see the September 18, 2026 comments of Communities United for Water Protection on the Final Draft Plan, with which we concur.

We urge the Water Board to reverse course and adopt a Bay-Delta Plan based in science and Traditional Ecological Knowledge that reasonably protects all beneficial uses, not a backroom deal that sacrifices fish, wildlife, Tribes, and communities to placate wealthy and powerful water interests.

We provide more detailed comments and analysis regarding the Final Draft Plan and the Final Staff Report below and in Appendix 1.

Thank you for the opportunity to comment on issues relating to the Sacramento-Delta update of the Bay-Delta Plan.

Respectfully submitted,



Eric Buescher
Jonathan Rosenfield, Ph.D.
Christie Ralston
San Francisco Baykeeper



Gary Bobker
Devon Pearce, Ph.D.
Friends of the River



Michael Frost
Golden State Salmon Association



Chris Shutes
California Sportfishing Protection Alliance


9/18/2026

Brook Thompson
Save California Salmon



Peter Drekmeier
Yosemite Rivers Alliance



Sherri Norris
California Indian Environmental Alliance



Scott Webb
Resources Renewal Institute



Regina Chichizola
Communities United for Water Protection

cc (via e-mail):

Board Chair Joaquin Esquivel
Board Vice Chair Dorene D'Adamo
Board Member Sean McGuire
Board Member Nichole Morgan
Board Member Jared Blumenfeld

DETAILED COMMENTS AND ANALYSIS

I. The Board’s Final Draft Plan violates the federal Clean Water Act and the state Porter-Cologne Water Quality Control Act	7
A. The Final Draft Plan’s Vague Narrative Water Quality Objectives Remain Unlawful Under Porter-Cologne	8
1. Fish Viability	8
2. Salmon Protection	9
3. Sacramento River/Delta Cold Water Habitat.....	10
4. Narrative Delta Flow Objectives	11
B. The Final Draft Plan’s Water Quality Objectives Do Not Reasonably Protect Beneficial Uses	12
1. Fish and Wildlife Beneficial Uses	12
2. Fisheries Beneficial Uses	13
3. Tribal Beneficial Uses.....	15
C. The POI Will Not Achieve the Final Draft Plan’s Water Quality Objectives	15
1. The VA Pathway Will Not Achieve Water Quality Objectives	16
a. The Final Draft Plan will not Achieve the Viability or Salmon Protection Objectives	16
b. The VA Parties Are Not Required to Achieve the Coldwater Habitat Objective and Will Not Voluntarily Do So	16
2. The VA Actions Are Not Assured to be Implemented as Described	17
3. The Water Supply Adjustments and Existing Regulatory Approach Will Not Achieve the Water Quality Objectives	20
a. The Water Supply Adjustments Do Not Provide Sufficient Flow to Achieve the Plan’s Water Quality Objectives.....	20
b. The Final Draft Plan Fails to Require Enforceable Carryover Storage Values and the Achievement of the Cold Water Habitat Objective	20
D. Additional Comments on Specific Changes in the Final Draft Plan	22

1. The August Draft Plan Has Inconsistent Responses to Reduction of the “Base Flows” to which VA Flow Assets Purport to Add Water	22
2. The Final Draft Plan Would Allow Reduction of the “Base Flows” When New Water Supply Projects Cause the Reduction	23
3. The “Base Flow Balancing” Requirement for the CVP and SWP Eliminates a Loophole by Requiring Beneficiaries to Backfill Base Flows in Addition to Releasing Proposed “Flow Assets,” but also Establishes the VA Flow Assets as a Flow Ceiling	27
II. The Water Board’s Final Draft Plan is Inconsistent with a Host of Other California Laws ..	28
A. The Public Trust Doctrine.....	28
B. State and Federal Endangered Species Acts	30
C. Fish and Game Code.....	30
D. Delta Protection Act.....	31
E. CEQA.....	31
F. The Administrative Procedures Act.....	33
III. Additional Comments on Changes within the Final Staff Report	33

I. The Board's Final Draft Plan violates the federal Clean Water Act and the state Porter-Cologne Water Quality Control Act

The Clean Water Act was passed to ensure that the nation's waters are swimmable, fishable, and drinkable. The law requires states to implement programs for water quality control to achieve this overarching goal. California implements the Clean Water Act through the Porter-Cologne Water Quality Control Act. (See Wat. Code § 13000 *et seq.*). Porter-Cologne “establishes a comprehensive statewide program for water quality control administered by nine regional boards and coordinated by the state Board.” (*United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 109.)

Porter-Cologne aims “to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.” (*City of Arcadia v. State Water Res. Control Bd.* (2006) 135 Cal.App.4th 1392, 1405.) The Water Board has a “duty to provide water quality protection to the fish and wildlife that make up the delicate ecosystem within the Delta.” (*United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 98.)

The Water Board is responsible for the formulation of regional water quality control plans. Pursuant to Porter-Cologne, each water quality control plan is defined by three essential components: “(1) [b]eneficial uses to be protected[,] (2) [w]ater quality objectives[, and] (3) [a] program of implementation needed for achieving water quality objectives.” (Wat. Code § 13050, subd. (j).)

Beneficial uses that require protection under Porter-Cologne include “domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.” (*Id.*, subd. (f).) Water quality objectives, in turn, are the “limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.” (Wat. Code § 13050, subd. (h).) While water quality objectives may be either numeric or narrative, those that are narrative must include sufficient information to constitute a measurable “limit or level” for enforcement. Moreover, under the Clean Water Act, narrative objectives are only allowable where “numerical [objectives] cannot be established or to supplement numerical [objectives].” (40 C.F.R. § 131.11(b)(2).)

Once water quality objectives have been determined, a program of implementation (“POI”) is then established to “achiev[e] water quality objectives.” (Wat. Code § 13242.) A POI must include: (1) “a description of the nature of actions which are necessary to achieve the [water quality] objectives,” (2) “a time schedule for the actions to be taken,” and (3) “a description of surveillance to be undertaken to determine compliance with [water quality] objectives.” (*Id.*) Notably, determinations for the POI do not rely on the same factors considered when establishing water quality objectives. (See *San Joaquin River Exchange Contractors Water Authority v. State Water Resources Control Bd.* (2010) 183 Cal.App.4th 1110, 1119-1120.) There is no more balancing among beneficial uses—the Board must achieve the objectives it sets.

Porter-Cologne also implements the federal Clean Water Act of 1977, 33 U.S.C. § 1251 *et seq.*, which prioritizes protection of fish and wildlife, see 33 U.S.C. § 1251(a)(2), and requires states with water quality control plans to have standards in place for fish and wildlife protection. (See 33 U.S.C. § 1313.)

Both laws require public participation in the review and update of a water quality control plan. (See Wat. Code § 13244; 33 U.S.C. § 1313(c)(1).)

A. The Final Draft Plan’s Vague Narrative Water Quality Objectives Remain Unlawful Under Porter-Cologne

The Final Draft Plan does not meaningfully update the narrative water quality objectives from the narrative objectives in the previous updated draft Plan. The narrative fish viability, salmon protection (or “salmon doubling”), coldwater habitat, and Delta inflow, interior flow, and outflow objectives lack any language establishing a “limit or level” against which progress toward attainment can be measured. Moreover, because the narrative fish viability objective, salmon doubling objective, coldwater habitat objective, and flow objectives are all capable of quantification, they must be numeric, not narrative.

1. Fish Viability

As contained in the updated Final Draft Plan, the fish viability objective reads:

Maintain water quality conditions, including flow conditions in and from tributaries and into and out of the Delta, together with other measures in the watershed, sufficient to support and maintain the natural production of viable native fish populations. Conditions and measures that reasonably contribute toward maintaining viable native fish populations include, but may not be limited to: (1) flows that support native fish species, including the relative magnitude, duration, timing, temperature, and spatial extent of flows; and (2) conditions within water bodies that enhance spawning, rearing, growth, and migration in order to contribute to improved viability. Indicators of viability include population abundance, spatial extent, distribution, structure, genetic and life history diversity, and productivity. Flows provided to meet this objective shall be managed in a manner to avoid causing significant adverse impacts to fish and wildlife beneficial uses at other times of the year.

(Final Draft Plan at 22.)

Key terms remain undefined. “Viability” itself lacks clarity—the Board provides no explanation as to what defines the viability of any native fish population other than a non-exhaustive list of conditions and measures that may reasonably contribute to it. As our organizations have noted in previous comments, fields including ecology and conservation biology define “viability” as a specific (low) probability of extinction (or quasi-extinction) over a specific time period (long relative to the organism’s life span). Viability definitions that include quantifiable metrics enable planners, managers, and the public to determine the likelihood of a plan succeeding in achieving

such an objective and make progress toward that objective transparent, which in turn allows for modification and adaptation of plans that are not succeeding (i.e., “adaptive management”). Without numeric parameterization, the narrative fish viability objective remains vague and capable of multiple interpretations, and therefore unlawful under Porter-Cologne.

The Board demonstrated the feasibility of defining Plan objectives with specific, measurable, time bound criteria when it developed and published biological goals for Phase I of this plan update (regarding objectives for the San Joaquin River’s three main tributaries). The draft final initial biological goals for the lower San Joaquin River (ICF 2023) describe “...quantitative metrics that the State Water Board will use to assess if the actions it is taking under the Bay-Delta Plan, and in coordination with state agencies and other entities to implement the plan, are making sufficient progress towards the Plan’s objectives of achieving and maintaining the natural production of viable native fish and aquatic species populations.” Some of our organizations participated in the technical development of these quantifiable metrics, although we did not agree that the process should have been delayed until after the adoption of the Phase I update and POI. Given that these specific criteria were developed three years ago, there is no reason why analogous criteria should not be developed before adoption of updates in this phase of the planning process.

What is clear today, above all, is that numerous Bay-Delta native fish populations are not currently viable because of water quality conditions, including inadequate freshwater flow rates and high water temperatures. (See Appendix 1 for relevant new references.) Thus, plan updates such as the VAs that maintain the status quo, at best, and fail to prevent further degradation of conditions in the Bay-Delta’s aquatic environment are not at all likely to achieve the plan’s narrative viability objective, however that term is defined.

2. Salmon Protection

The Final Draft Plan provides that “[w]ater quality conditions shall be maintained, together with other measures in the watershed, sufficient to achieve a doubling of natural production of Chinook salmon from the average production of 1967–1991, consistent with the provisions of State and federal law.” (Final Draft Plan at 22.) The Final Draft Plan materially changes this objective from its prior use in the Bay-Delta Plan, including by delaying the time frame for accomplishing the objective and targeting only one-quarter of the “habitat” presumed to be necessary to accomplish the objective.

Moreover, this objective lacks specified water quality conditions to be maintained, the values to be maintained for such specified water quality conditions, what biological outcomes indicate attainment of this salmon protection objective, and any timeframe by which the doubling of natural production of Chinook salmon must be achieved. As stated in previous comments, the inter-agency Anadromous Fish Restoration Program has defined numeric objectives for the nearly identical “doubling” target of the federal Central Valley Project Implementation Act. Despite this, the Board has failed to incorporate these numeric targets or any others to parameterize this objective. Lacking this critical information, the Salmon Protection Objective is too vague to constitute a lawful narrative water quality objective under Porter-Cologne.

3. *Sacramento River/Delta Cold Water Habitat*

The updated Final Draft Plan requires the following for its cold water objective:

Maintain streamflows and reservoir storage conditions on Sacramento River/Delta tributaries to protect cold water habitat for sensitive native fish species, including Chinook salmon, steelhead, and other native cold water fish species. Cold water habitat conditions to be protected include maintaining sufficient quantities of habitat with suitable temperatures on streams to support passage, holding, spawning, incubation, and rearing while preventing stranding and dewatering due to flow fluctuations.

(Final Draft Plan at 19.)

This language again lacks any clear description of what streamflows and reservoir storage conditions indicate attainment of this objective. The objective fails to indicate what temperatures must be achieved when, and where to “protect cold water habitat for sensitive native fish species.” In failing to provide any measurable “limit or level” that would indicate attainment of the objective, it remains unlawful as a narrative objective under Porter-Cologne. Numeric temperature standards for native fish, including endangered ones, are well known and well supported by the record and the best available science, despite existing temperature standards in the Basin Plan being inadequate to reasonably protect salmonids and other species that depend on cold water. Yet the Final Draft Plan ignores this body of evidence and relies solely on vague references to “storage conditions” and “suitable temperatures.”

Furthermore, the Water Board frames its Cold Water Habitat objective as “...intended to minimize potential temperature-related impacts of the flow objectives and to address other existing and potential future temperature management concerns....” (Chapter 13 redline at 13.3-3) without identifying the existing severe temperature management problems that already exist in the Bay-Delta watershed and the well-documented inadequacy of the Water Board’s existing water temperature standards. (See Appendix 1.) Maintaining or allowing further degradation of status quo water quality conditions is not consistent with attainment of Plan objectives and reasonable protection of Bay-Delta fish and wildlife beneficial uses or the Public Trust.

Moreover, VA parties are absolved of implementing the new Cold Water Habitat objective in any meaningful fashion. The subsection of Section 4.4.9.2 (“HRL Flow Commitments”) entitled “Cold Water Habitat” merely requires a voluntary effort and reporting:

The HRL commitments are required to be implemented in a manner to improve temperatures to the extent possible and avoid redirected impacts to water temperatures. As part of the annual and periodic review processes, the HRL participants will be required to report on measures they have undertaken to address temperature impairments in their stream systems in coordination with HRL implementation measures.

(Final Draft Plan at 70.)

The VAs offer the Water Board no recourse under the Bay-Delta Plan for failing to achieve a cold water habitat objective that as structured does not even apply to VA reservoir operators. Instead, the Water Board relies on a provision requiring VA parties to implement existing laws that protect and mitigate fisheries impacts from dams and diversions. This means, for example, that the largest dam owner/operator in the Bay-Delta watershed, the BOR, is required to protect coldwater habitat only to the extent required under ESA biological opinions and the Water Board's own Basin Plan requirements which are well-known to be outdated and inadequate. The Water Board has recently made clear that it disagrees with BOR's interpretation of both sets of requirements and finds BOR's current implementation of existing laws to be inadequately protective of native fish and wildlife. (See Appendix 1.) Thus, the Water Board's reliance on implementation of existing laws to protect coldwater habitat in the Bay-Delta Watershed is arbitrary and unreasonable.²

4. Narrative Delta Flow Objectives

The narrative Delta Outflow is described by the Final Draft Plan as:

Maintain water quality conditions, including Delta outflows, together with other measures in the watershed, sufficient to support and maintain the natural production of viable native fish populations. Conditions and measures that reasonably contribute toward maintaining viable native fish populations include, but may not be limited to, flows that support fish species, including the relative magnitude, duration, timing, quality and spatial extent of flows.

² To illustrate how the Final Draft Plan's lack of specific, measurable requirements can and will lead to failure to reasonably protect fish and wildlife beneficial uses, this year, the Water Board rejected the BOR's final Temperature Management Plan ("TMP") for Shasta Dam, which is required under Water Rights Order 90-5. Among other reasons, the Water Board identified BOR's failure to plan operations for carryover storage levels required by the 2024 NMFS Biological Opinion for Long-Term Operation of the State Water Project ("SWP") and Central Valley Project ("CVP") ("2024 NMFS Biological Opinion"). Yet, though BOR is not even implementing this unacceptably weak TMP, the Water Board has taken no corrective actions. BOR has delivered more water to contractors than assumed in TMP modelling, and consistently violated the 53.5°F degree lethal temperature threshold at Clear Creek this fall. This will lead to population level impacts for endangered winter-run Chinook Salmon, threatened spring-run Chinook Salmon, and the commercially valuable Sacramento River spawning population of fall-run Chinook Salmon. In recent weeks, it has become clear that these population impacts are likely to be severe, perhaps even precipitating a closure of California's ocean fishery for Chinook Salmon, in years to come. BOR's failure to comply with the Water Board's interpretation of requirements in the 2024 NMFS Biological Opinion illustrates why the Water Board needs to adopt its own clear and enforceable regulatory criteria for reasonable protection of coldwater habitat and fish and wildlife beneficial uses.

Indicators of viability include population abundance, spatial extent, distribution, structure, genetic and life history diversity, and productivity.

(Final Draft Plan at 19.)

The narrative Delta Interior Flows objective reads the same, substituting “including flow conditions in the interior Delta” for “including Delta outflows.” (Final Draft Plan at 20.)

Neither of these objectives contains specific language regarding the “limits or levels” necessary to “support and maintain the natural production of viable native fish populations.” Neither details any specific flow rates to be achieved at specific locations or times to attain the objective. As such, both fail as narrative water quality objectives under Porter-Cologne.

Furthermore, the narrative Interior Delta Flow objective relies on faithful implementation of federal ESA requirements for operations of the SWP and CVP, as detailed in the 2024 ROD. But the Water Board has determined that the existing ESA requirements for interior Delta flows, as understood by BOR (“Action 5”) are inadequate to protect fish and wildlife. (See Appendix 1 for references.) Moreover, BOR has failed to comply with Interior Delta Flow requirements specified in the 2024 ROD. (See Appendix 1 for references.) The requirement to “backfill” flow reductions that result from changes to Project operations (e.g., Action 5) is non-specific as to the timing and location of those “backfilled” flows, and it is not necessarily true that, even if the correct volume of water was provided to make up for changes in Project operations, that this would correct or mitigate for changes in interior Delta flows (e.g., Old and Middle River flows) that have a negative effect on fish and wildlife and related beneficial uses. The Water Board’s Interior Delta Flow Objective is consequently inadequate to reasonably protect fish and wildlife and related beneficial uses.

B. The Final Draft Plan’s Water Quality Objectives Do Not Reasonably Protect Beneficial Uses

Over the last three and a half years, our organizations have submitted extensive comments regarding the failure of the draft Plan’s water quality objectives to reasonably protect fish and wildlife beneficial uses. The Final Draft Plan does not improve these water quality objectives in any meaningful way. Lacking any substantial revision, the Final Draft Plan’s water quality objectives do not offer reasonable protection of fish and wildlife, fisheries, or Tribal beneficial uses, and therefore fail to comply with Porter-Cologne.

1. Fish and Wildlife Beneficial Uses

The current status quo for numerous fish and wildlife species in the Bay-Delta is declining populations that are approaching extinction. Simply put, the status quo is already failing to provide reasonable protection to fish and wildlife beneficial uses. Rather than adopt more protective water quality objectives, though, the Final Draft Plan will likely result in a degradation of the status quo.

In addition to failing to establish any numeric water quality objectives for the protection of fish and wildlife beneficial uses, the Final Draft Plan does not account for future probable uses of water, including future new water supply and groundwater recharge projects, that are likely to reduce flows into, through, and out of the Delta below baseline conditions. The Board cannot assume that currently unregulated, environmentally beneficial flows will remain unchanged in the future, or that future increased diversions will not adversely affect sensitive native species and broader ecosystem functions. Without setting clear standards for flows and other objectives intended to benefit native aquatic species, the Board has failed to produce water quality objectives that reasonably protect beneficial uses, including: estuarine habitat; wildlife habitat; rare, threatened, or endangered species; cold freshwater habitat; migration of aquatic organisms; and spawning, reproduction, or early development.

Relatedly, the Water Board is also not permitted to balance beneficial uses of water against each other in such a way that it strips one beneficial use of its legally required reasonable protection. While it is within the Water Board's discretion to make determinations that result in the prioritization of water supply for certain beneficial uses, the Water Board cannot abandon its obligation under Porter-Cologne to ensure that all designated beneficial uses are reasonably protected.

2. Fisheries Beneficial Uses

The Final Draft Plan's water quality objectives fail to protect fisheries beneficial uses. The objectives contained in the Final Draft Plan merely speak to the viability of populations. "Viable," however, is not synonymous with "thriving." One definition of a "viable" population from the field of ecology is one that has "...a negligible risk of extinction due to threats from demographic variation, local environmental variation, and genetic diversity changes over a 100-year time frame." (McElhaney et al. 2000 at 2.) While attainment of truly viable populations of native aquatic organisms is an essential goal that any update of the Plan must achieve, it is a floor for the protection of species, not a ceiling. A merely "viable" fish species cannot support a fishery; and the Final Draft Plan seeks only to achieve 25% of the salmon protection objective, delays ultimate achievement to (at least) 2050, and it only applies to salmon, not other fish that support fisheries. There is no water quality objective in the Final Draft Plan that would reasonably protect fisheries and the related beneficial uses. As a result, the Final Draft Plan fails to reasonably protect the commercial, sport, and subsistence fishing beneficial uses.

The Final Staff Report's analysis of the economic benefits of fishing beneficial uses as discussed in Section 8.6 is inadequate to support a finding that the uses will be reasonably protected. It fails to adequately describe the economic and other values of recreational, commercial, and subsistence fishing beneficial uses.

First, the discussion of the economic analysis of fisheries in the Final Staff Report begins by stating that "[n]on-market benefits are values for goods and services (e.g., recreational and subsistence fishing) that cannot be bought or sold directly and thus do not have observable market values." (Final Staff Report at 8-107.) This inappropriately dismisses the additional, market value of recreational fishing. Recreational fishers pay to fish on charter boats, buy boats and fishing gear, eat at restaurants during fishing trips, book lodging for fishing-related travel,

and more. All of these are measurable market transactions. Recreational fishing is an important part of the economic value of the salmon fishing industry and businesses that support fishing for other native fishes.

Second, Section 8.6 of the Final Staff Report appropriately reports that a wide range of fish species have declined over the past 50 years. (See *id.* at 8-108.) However, it fails to state that virtually all these fish species supported recreational, commercial, Tribal and/or subsistence fisheries in the past. For example, until recently, White Sturgeon supported an important and valuable recreational fishery in the Bay-Delta; with the listing of this population as a candidate for California Endangered Species Act protection, the harvest of White Sturgeon has been banned, negatively impacting party boat businesses, tackle shops, and other businesses associated with this fishery. Given that water management is among the most impactful reasons for the decline of native fishes and fisheries, this is an important part of the overall economic impact of poor water management. This section thus does not capture the full impact.

Section 8.6 states that the decline in commercial salmon landings over the past 50 years is “partly due to loss of flow and physical habitat in the Bay-Delta watershed.” (*Id.* at 8-109, emphasis added.) This is inaccurate. The primary cause of the decline in salmon over the past 50 years is water management, including inadequate flows and high water temperatures. The Board fails to document a significant loss of fish habitat over the past 50 years, beyond that related to modification of river flows. Indeed, during this period, there has been substantial restoration of spawning gravel, side channels, floodplains and wetland habitat. (See *e.g.*, Chapple et al 2025.) Furthermore, the Board acknowledges that the potential for habitat restoration to contribute measurably to attainment of the Viability Objective and Salmon Protection Objective is undocumented and highly uncertain. (See *e.g.*, Final Staff Report Chapter 3 redline at 3-44; Common Response to Comments 3-1 at 29-30.) The best available science clearly demonstrates that increased river flows during juvenile migrations and reduced temperatures during incubation and migration are the keys to restoring salmon downstream of impassable dams in the Central Valley. (See, most recently, Burford et al. 2025; Arai et al. 2026.) The Final Draft Plan does not provide significant, reliable, verifiable water management improvements. Thus, Final Staff Report both understates the impacts of poor water management and overstates the potential benefits of the proposed Plan update.

Third, the document discusses the decline in salmon landings in Oregon (see Final Staff Report at 8-109) but does not include the fact that up to 60% of the salmon caught off the Oregon coast come from the Bay-Delta system.

Fourth, the Final Staff Report misleadingly states that there are “plentiful substitute fish products.” (*Id.* at 8-118.). Salmon occupy a unique position among California seafood products. Salmon are uniquely valued by the fishing community – a community that did not simply continue fishing for other species in equivalent numbers during the fishing closures in 2023 through 2025. Indeed, the salmon fishery widely supports the economic viability of commercial fishing, including for other species, and its closure threatens the long-term survival of the commercial fleet, as well as the party-boat recreational fleet. Salmon are also uniquely valued by consumers, restaurants, and others.

The document presents several studies measuring the public's willingness to pay for river and fish restoration. (*Id.* at 8-127 through 8-128, table 8.6-4.) Even a cursory review of the conclusions of these studies reveals that the public places a very high value on healthy rivers and salmon runs. However, the document fails to draw such conclusions from these studies.

Overall, the Final Staff Report dramatically understates the economic value of a restored salmon fishery. The 2012 Southwick Report, which has been submitted previously, concluded that even at the reduced level that existed in 2004-2006, the California salmon fishery supported \$1.4 billion in economic activity and 23,000 jobs. It also concluded that a restored salmon fishery could support \$5.7 billion in economic activity and 94,000 jobs. Those figures would be significantly higher today, if adjusted for inflation.

3. Tribal Beneficial Uses

The Final Draft Plan fails to offer reasonable protections for Tribal tradition and culture and Tribal subsistence fishing beneficial uses. We join the comments from the Delta Tribal Environmental Coalition on this subject. The Final Draft Plan states that it “incorporates the tribal . . . beneficial uses defined by the State Water Board in 2017 as they relate to the reasonable protection of fish and wildlife; however, these uses are not designated by this Plan for any waterbodies in the Bay-Delta watershed.” In failing to designate Tribal beneficial uses anywhere in the Bay-Delta watershed and to establish specific water quality objectives to reasonably protect those beneficial uses, the Water Board ignores evidence presented by the Tribes as to why adoption and implementation of Tribal beneficial uses is essential for their own uses of water. And in the updated Final Draft Plan, the Board again fails to offer any explanation of its claim that reasonable protection of fish and wildlife beneficial uses should represent reasonable protection of Tribal beneficial uses. Fish and wildlife beneficial uses overlap, but are not synonymous, with Tribal Cultural Beneficial Uses of water. We note that Tribal Cultural uses of water extend beyond the cultural importance of fish. Our organizations support current and previous comments made by the Delta Tribal Environmental Coalition on this matter. We also emphasize that the use of the best available scientific evidence on which to base reasonable protection of tribal, fish and wildlife, and other beneficial uses should incorporate contributions from traditional ecological knowledge of Tribes.

C. The POI Will Not Achieve the Final Draft Plan's Water Quality Objectives

The POI contains few meaningful improvements since the last iteration published in December 2025. The POI continues to rely on dual pathways for implementation: the Voluntary Agreement (VA) pathway for VA signatories and a regulatory pathway for non-VA signatories and as a backstop, in case the VA pathway fails. The Water Board fails to demonstrate that the POI will achieve the plan's Viability or Salmon Protection objectives, or that either the VA pathway or the WSA regulatory pathway is capable of independently achieving these objectives.

1. The VA Pathway Will Not Achieve Water Quality Objectives

a. The Final Draft Plan will not Achieve the Viability or Salmon Protection Objectives

The Water Board fails to analyze or present credible evidence that the Final Draft Plan is likely to restore and maintain native fish viability. Our organizations have previously presented copious evidence that neither the VA pathway nor the regulatory WSA pathway is likely to result in restoration of viability for imperiled native fish populations, however the Water Board chooses to define “viability.” Simply put, extirpation or the continued high risk of extirpation of multiple native fish does not meet any reasonable definition of “viability,” and does not represent reasonable protection of fish and wildlife.

As discussed in our previous comments, the VA pathway does not even propose to attain the Salmon Protection Objective. Rather, the POI targets restoration of salmon spawning and rearing habitats to a level matching one-quarter of the anticipated needs of salmon populations that would meet the doubling standard described in the Salmon Protection Objective. The POI does not achieve its own habitat target in some watersheds, and one-quarter of the habitat believed to be necessary to support attainment of the objective is obviously less than what is needed to fully attain the objective³. Moreover, the Water Board acknowledges that the benefits of restored spawning and rearing habitat on future levels of salmon abundance are highly uncertain (see Appendix 1 for references)

Analysis of the previous Draft Staff Report by the California Department of Fish and Wildlife described some of the inadequacies in the VAs in protecting fish and wildlife and related beneficial uses. As described by CDFW employees, the analysis they performed was “heavily edited” during review by CNRA and the Governor’s Office. CDFW’s unvarnished view was provided to Water Board staff via email on February 12, 2026. (See CDFW 2026a; CDFW 2026b, enclosed.)

b. The VA Parties Are Not Required to Achieve the Coldwater Habitat Objective and Will Not Voluntarily Do So

The Final Draft Plan, like the previous versions, does not require VA parties to implement the Cold Water Habitat Objective. (See § I.A.3, *supra*.) As a result, the objective is not likely to be achieved.

³ The current version of the POI reduces the area of rearing habitat to be restored on Sacramento River floodplains by VA participants by 50% (20,000 acres) relative to previous versions of the VAs (Final Draft Staff Report Chapter 13, Table 13.3-1. VA Flow and Non-Flow Commitments (see also Table 13.3-2. HRL Habitat Restoration Commitments at 13.3-22)). The Water Board must describe how the loss of such a large fraction of the proposed floodplain restoration acreage will affect the benefits that the Water Board assumed would come from restored floodplain habitat.

2. The VA Actions Are Not Assured to be Implemented as Described

The Final Draft Plan not only fails to demonstrate that the VAs' reliance on physical habitat restoration in place of significant flow improvements will protect fish and wildlife beneficial uses or achieve Plan objectives, but it also fails to acknowledge that there are significant concerns as to whether the proposed VA actions (regardless of their merit) will occur in a timely fashion or be fully implemented.

For instance, Section 4.4.9.5 of the Final Draft Plan ("HRL Non-Flow Habitat Restoration Actions Commitments") includes a milestone that requires construction of 50 percent of the VA habitat commitments to be completed by year four. However, prior to that date, the Final Draft Plan includes no requirement for on-the-ground habitat restoration. The requirements for years one and two are an "initial habitat implementation schedule," "annual reports," and "a preliminary list of HRL habitat restoration projects." Because, as we note elsewhere, funding for the VA program is neither assured, adequate for full implementation, or already in hand, implementation of habitat projects and other non-flow actions is likely to be delayed significantly. Both implementation and funding milestones, based on a careful evaluation of estimated VA costs, would be needed for the Water Board to oversee and enforce VA implementation. These milestones are particularly important given BOR's planned withdrawal from the VA process and refusal to provide funding for VA implementation. Neither the Water Board nor the VA parties have explained how this anticipated federal funding will be replaced.

Another example is that VA environmental water purchases will almost certainly cost far more than estimated. Recently, the Department of Water Resources (DWR) announced that it had completed an agreement with BOR District (RD) 108 for the purchase of environmental water for VA implementation through the Fair Ranch Project - an agreement that raises important questions that the Water Board must consider before adopting a Bay-Delta Plan update that incorporates the VAs. DWR has described Fair Ranch as an important VA purchase, and it is the largest VA purchase to date by far. Therefore, Fair Ranch serves as a reasonable benchmark for VA water transfer costs.

The Fair Ranch Project agreement between DWR and RD 108 provides for the transfer of 5,000 acre-feet of water per year (AFY) to the environment at a one-time capital cost of \$36,000 per acre-foot. This appears to be far more than the estimated cost of water transfers in the VA Memorandum of Understanding ("MOU"). The below table analyzes the environmental water transfers and costs included in the VA MOU.⁴ The VA MOU projects the total cost of these water purchases to be \$1.133 billion. However, if all the proposed VA environmental water

⁴ The table includes three categories: fixed price, market price, and permanent state water purchases. The volume of environmental water for each category is presented by water year type. This analysis generated a weighted average by adjusting each year type by the frequency of that year type as indicated in the VA MOU. This resulted in an average annual volume of environmental water of 156,885 acre- feet, over all year types and from all three transfer programs. The VA MOU does not provide clear cost estimates for each of these transfer programs. However, the VA MOU does estimate costs by category.

transfers were purchased at the one-time capital cost DWR paid for the Fair Ranch Project, the likely cost would be \$5.64 billion. This estimate raises serious concerns regarding the feasibility of the VA program and the cost to the public, the overall true cost of the VA program, the likelihood of securing adequate funding, and the willingness of California taxpayers to subsidize an ever more expensive, multi-billion dollar program. As discussed below, it is no longer defensible for the Water Board to assume significant new federal funding for VA implementation will be forthcoming.

VA Water Purchases Compared to Fair Ranch Project	Environmental Water in Acre Feet	Water Year Type Distribution	Adjusted Average Acre Feet Per Year	Cost
Fair Ranch Env. Water - All Year Types	5,000			
One Time Capital Cost				\$ 180,000,000.00
Cost - Capital/AF				\$ 36,000.00
VA - Fixed Price Transfers (By year type)				
Critical	3,000	15%	450	
Dry	63,500	22%	13,970	
Below Normal	84,500	17%	14,365	
Above Normal	99,500	14%	13,930	
Wet	27,000	32%	8,640	
Average			51,355	
VA - Market Price Transfers** (By year type)				
Critical	-	15%	-	
Dry	45,000	22%	9,900	
Below Normal	45,000	17%	7,650	
Above Normal	45,000	14%	6,300	
Wet	-	32%	-	
Average			23,850	
VA - Permanent State Water Purchases (By year type)				
Critical	65,000	15%	9,750	
Dry	108,000	22%	23,760	
Below Normal	9,000	17%	1,530	
Above Normal	52,000	14%	7,280	
Wet	123,000	32%	39,360	
Average			81,680	
VA Water Purchase Costs Assigned to Categories Above***				
Following				\$ 268,000,000.00
Water purchases in various water years				\$ 125,000,000.00
American River recharge project				\$ 40,000,000.00
Additional water purchase with fixed price				\$ 208,000,000.00
Permanent State water purchases				\$ 490,000,000.00
Mokelumne AN water purchase				\$ 13,000,000.00
Total				\$ 1,144,000,000.00
Average Total Water Purchases AF/Y****			156,885	
VA Total Cost Estimate				\$ 1,144,000,000.00
Total Cost at Fair Ranch Prices				\$ 5,647,860,000.00
Notes				
* VA MOU Appendix 3.				
** VA MOU Appendix 1.				
***VA MOU Appendix 3 Table 4.				
****New storage and EBMUD refill not included because those categories are separate from the transfers above.				

Not only does the VA environmental water approach potentially cost far more than described in the MOU, but the huge expenditure of funds may also not actually result in securing real water. Intentional or unintentional manipulation of reference operations could lead to environmental water that provides little or no actual environmental benefit (a.k.a, “paper water”). The many issues that need to be clarified and assured for proposed VA water purchases include, but are not limited to, the legally enforceable amount of water to be produced by the project in all year types; the clear and verifiable baseline against which the purchase is measured; and whether the seller will seek to replace the purchased water by increasing diversions or extractions from other sources.

Even if real VA water is generated, there are also real concerns about accounting for this water. The Final Draft Plan encourages the use of Water Code section 1707 to protect instream environmental water. (Final Draft Plan at 140, § 4.4.10.3) It also states that the Water Board’s methodology for tracking VA contributions will ensure that VA flows are “in addition to” flows provided by other sources including under Section 1707. (*Id.* at 67, § 4.4.9.2). But is this actually feasible? For instance, the Water Board has not yet acted on a 2018 Water Code section 1707 petition by River Partners to dedicate 7,000 acre-feet of water from the Dos Rios Project to the environment. This raises doubts about the Water Board’s ability to track dozens or even hundreds of separate VA transfer agreements (which may be more complex and less verifiable than the Dos Rios example) and to thereby ensure that VA flows are truly additive to the baseline.

Finally, our organizations and many other parties have long expressed serious doubts that the federal government would serve as a reliable partner in implementing the VAs. On September 3, 2026, BOR announced that it would withdraw from the VA if the Water Board imposes any additional VA terms or adopts the proposed WSA as a regulatory backstop, and would instead maximize water deliveries to its contractors regardless of state law, and the following day its largest CVP contractor, Westlands Water District, also threatened to withdraw from the VA. Among other things, BOR’s rejection of Section 4.4.9.1 would result in erosion of the regulatory baseline and reduce the amount of additional environmental water from either pathway, and its rejection of the Water Board’s terms and conditions regarding operations to manage temperatures below CVP reservoirs is a direct challenge to the Board’s clear authority to ensure that California water users comply with state law. BOR’s withdrawal from the VA would also make coordinated and integrated operation of the federal and state water projects hugely problematic, with the SWP operating under one set of requirements and the CVP under an entirely different set. Moreover, BOR’s withdrawal would remove over \$700 million from the proposed VA implementation budget.

The other defects of the VAs notwithstanding, the Water Board cannot adopt a Final Bay-Delta Plan premised in large part on the fiction that BOR and Westlands will implement the VAs as described in the Final Draft Plan – or at all.

In summary, for all the foregoing reasons the Board should abandon the VAs and instead return – as its primary strategy – to the adoption and timely implementation of the science-based

percent of unimpaired-flow regulatory requirements the Water Board proposed in its 2018 Framework.

3. *The Water Supply Adjustments and Existing Regulatory Approach Will Not Achieve the Water Quality Objectives*

a. *The Water Supply Adjustments Do Not Provide Sufficient Flow to Achieve the Plan's Water Quality Objectives*

Unfortunately, the alternative approach to the VAs contemplated in the regulatory pathway is also not likely to achieve the water quality objectives the Water Board plans to adopt or reasonably protect the beneficial uses it must preserve. As detailed in our February 2, 2026, comments on the December 2025 Revised Draft Plan and Recirculated Substitute Environmental Document, the so-called "Water Supply Adjustments" (WSAs) described under the regulatory pathway contribute virtually the same flows as those which would be delivered under the status quo and VAs. The Water Board's own record clearly demonstrates that such flows are far below those needed throughout the Bay-Delta ecosystem to reasonably protect beneficial uses (i.e., restore imperiled species to viability; restore fisheries and prevent future closures) and the Public Trust. The POI virtually ensures that flows on the higher end of the adaptive management range (45% - 65% of unimpaired flow) will rarely if ever occur, while flows on the lower end of, and even below, the range will occur most of the time. Given the lack of additional river flow and meaningful, enforceable requirements for cold water storage in Central Valley reservoirs, the regulatory WSA pathway, like the VA pathway, will not be able to achieve narrative viability, salmon protection, coldwater habitat, or Delta flows objectives.

b. *The Final Draft Plan Fails to Require Enforceable Carryover Storage Values and the Achievement of the Cold Water Habitat Objective*

The Final Draft Plan and supporting documents punt water temperature management for rivers downstream of major rim reservoirs to respective reservoir operators or to a future public process in the absence of an operator-developed proposal.

The Final Draft Plan describes the future process in Section 4.4.2.3 ("Sacramento/Delta Cold Water Habitat Objective") under Carryover Storage, in which a new paragraph states:

Carryover storage requirements proposed by water right holders and reservoir owners/operators within the ranges identified in Table 8 may be approved by the Executive Director after opportunity for public review and comment. The State Water Board may also approve or direct adjustments to the carryover storage requirement within or outside of the ranges identified in Table 8, after opportunity for public review and comment, including as part of the periodic review process described below, based on best available scientific and technical information.

(Final Draft Plan at 65.)

The primary function of the carryover storage values presented in Section 4.4.2.3, Table 8 thus appears to be to have numbers to deploy in modeling. However, because the carryover storage targets are not enforceable nor likely to be met, the value of the modeling and its accuracy in representing the proposed project is questionable at best.

The first two footnotes to Table 8 document the inadequacy of the proposed numeric storage ranges. Footnote 1 to Table 8 states that the ranges in Table 8 “provide some level of protection,” and adds: “In most cases, at the low end of ranges, additional actions would likely be needed to protect cold water habitat.”

Footnote 2 to Table 8 inserts an exception for droughts and a Governor-declared state of emergency into the Plan: “Under the most extreme drought circumstances, lower carryover storage levels could also apply on a temporary one-year basis as approved by the Executive Director.” Thus, even though the Plan has no enforceable carryover storage requirements, Temporary Urgency Change Petitions for reservoir operation that would violate the inadequate proposed initial numerical ranges are an explicit aspect of the Plan.

Common Response 7.6.2 further documents the malleability and resulting unenforceability of the narrative Cold Water Habitat Objective. In a section entitled the “Implementation of the Cold Water Habitat Objective,” Common Response 7.6.2 at 9 states:

Even with optimized reservoir operations and cold water management, some reductions in water supply deliveries would be necessary. Without reductions in water supply deliveries, reservoir storage would be lower and it would be more difficult to attain the inflow requirements without further impairments to temperatures. In recognition of these inherent tensions, the cold water habitat objective serves as a complementary measure to the inflow requirements to bolster existing legal protections to ensure comprehensive temperature protection over time.

There are no requirements or even guidelines on “reductions in water supply deliveries.” California Sportfishing Protection Alliance pointed out this need in January 19, 2024 comments on the Draft Staff Report, stating: “Since Chapter 5 suggests that each operator would develop the long-term strategy for each reservoir, it seems clear that the State Water Board would need to place sideboards and default expectations on how each strategy would balance water deliveries with flow releases and storage.” Response to Comments 203-237 at 188 dismisses this comment with the reply: “The revised proposed Plan amendments do not include required levels of water deliveries. Reservoir operators would be required to meet their Bay-Delta Plan and other regulatory requirements and then make deliveries with any water remaining for consumptive use.” (Emphasis added.)

The Final Draft Plan’s logic on balancing flows, storage, and water supply is completely circular. Water supply deliveries are dependent on compliance with a cold water habitat objective that is not numeric and not enforceable. Yet water supply deliveries are supposed to be limited to “water remaining for consumptive use” after flow requirements and the cold water habitat objective are met. (Response to Comments 203-237 at 188.) Even in the “regulatory pathway,”

the Cold Water Habitat objective depends on the voluntary reduction in water supply deliveries by each reservoir operator.

The reality of leaving deliveries at the sole discretion of operators is that fish and wildlife objectives become the water savings bank for water supply deliveries. Compliance with the Cold Water Habitat objective is left to the operator, with no consequences to the operator for failure to meet it. The limiting case of this is BOR, which in its comments (cited and linked *supra*) on the Final Draft Plan states that the Board has no authority to tell BOR how to operate Shasta or any other CVP reservoir.

D. Additional Comments on Specific Changes in the Final Draft Plan

1. The August Draft Plan Has Inconsistent Responses to Reduction of the “Base Flows” to which VA Flow Assets Purport to Add Water

The conceptual foundation of VA pathway flows is that VA “flow assets” will add flow, generally but not always Delta inflow and outflow, to what would otherwise have already been in a river and/or been Delta inflow and/or outflow. The Final Draft Plan labels the flow that would have already been present as “base flows.” (See Final Draft Plan at 66-67.)

Much of the commentary and response in this proceeding regarding VA flow assets has centered on the issue of recent and potential future reductions in the “base flows” to which VA flow assets purport to be “additive.” It is axiomatic that if one reduces the initial number to which one adds a specified amount, the resulting sum will be reduced. This is elementary school arithmetic.

The Final Draft Plan addresses the reduction of base flows in different ways, depending on the cause of the reduction. There is no requirement to backfill flow reductions that result from new water supply projects. But backfilling is required when reoperation of the CVP and/or SWP causes a reduction in base flows. From the point of view of protection of beneficial uses, this dichotomy in response to rollbacks in environmental protection is nonsensical. Fish and wildlife populations in the estuary respond strongly to changes in river flow and Delta inflow/outflow. Estuarine populations do not care which dam or diversion operators cause a reduction in flow volumes; population abundance and/or survival rates decline in response to such reductions, either way.

The Final Draft Plan also does not discuss how this backfilling provision would be applied if BOR and Westlands withdraw as VA participants. It is unclear whether the Water Board will require BOR or other parties to backfill environmental baseline water lost because of changes in operation of the federal CVP.

2. *The Final Draft Plan Would Allow Reduction of the “Base Flows” When New Water Supply Projects Cause the Reduction*

Footnote 5 of the Final Draft Plan defines “new water supply projects” as follows:

New water supply projects are defined as (1) water rights obtained after December 31, 2025, including any permits issued after that date pursuant to applications filed by the State under Water Code section 10500, and (2) approved water right change petitions that would increase diversions from the Delta watershed and decrease Delta outflows compared to conditions existing as of December 31, 2025.

(Final Draft Plan at 47, fn. 5.)

The structure of the Final Draft Plan requires water rights to be treated under the “regulatory pathway” as a default but excepts water rights identified in Appendix B.1. Section 4.4.2.2 states this obliquely: “The numeric inflow requirements apply to all water rights on the tributaries identified above, except those determined to have a de minimis effect on inflows or those listed in Appendix B.1.” (*Id.* at 46.) Appendix B.1, in turn, lists all the water rights covered under the VAs, including most water rights in the Bay-Delta watershed. Appendix B.1 does not, however, address new water supply projects.

Section 4.4.2.2 further explains that new water supply projects, defined in footnote 5, are not allowed to reduce their flow obligations with WSAs: “WSAs do not apply to new water supply projects; however, as part of the annual or periodic review process, the Board could consider whether to apply WSAs to new water supply projects based on any necessary supporting environmental and scientific documentation.” (*Id.* at 47.) However, the text itself of the Final Draft Plan does have an equally unequivocal and direct statement that the VA pathway does not apply to new water supply projects.

The Final Draft Staff Report, Common Response to Comments 6.2 at 29 clarifies the intent:

The Plan also specifies that new water supply projects would be on the regulatory pathway and would not receive WSAs, unless approved through a subsequent public periodic review process to update the Plan based on supporting scientific and environmental documentation, including compliance with CEQA and preparation of a supporting Scientific Basis Report as appropriate.

Common Response to Comments 1.3 adds at 103:

The Staff Report provides a reasonable representation and an adequate description and analysis of the cumulative impacts due to possible new water supply projects, including DCP [Delta Conveyance Project] and Sites. The State Water Board will determine whether it should approve, subject to terms and conditions, the DCP water right petitions and the Sites Reservoir water right

application. These projects would not be included in the VA pathway or include water supply adjustments unless the Bay-Delta Plan is updated as part of periodic review. Any update would need to be supported by appropriate scientific and environmental documentation evaluating effects on additive Delta inflows and outflows, consistency with the narrative objectives, and reasonable protection of fish and wildlife.

Within the flawed construct of the VA pathway, the decision in the Final Draft Plan to establish the default that new water supply projects follow the regulatory pathway is a partial improvement over the December 2025 Draft, which proposed to evaluate the relationship between new water supply projects on a case-by-case basis. It is also an acknowledgement by the Board that, in its judgment, 55% of unimpaired flows are necessary for reasonable protection of fish and wildlife and related beneficial uses; this is the reason to limit diversions by new water development projects when flows are not greater than 55% of unimpaired flows.

However, major problems remain.

First, no entity is required to backfill base flows to make up water removed by diversions under new water supply projects. Section 4.4.9.1 of the Final Draft Plan (“Protection of Base Flows”) clearly states: “Increased diversions from new water supply projects (as defined in footnote 5) that are subject to the inflow and inflow-based Delta outflow requirements in Sections 4.4.2.2 and 4.4.2.6 will not be included in determination of the base flows to which the HRL flow commitments are required to be additive.” (*Id.* at 66.)

Common Response 1.3 at 103 acknowledges this reduction with a partial justification:

If implemented, these projects would be expected to reduce the benefits shown for the 55w/WSAs scenario; the 45, 55, and 65 scenarios that could potentially be implemented; and the VA pathway. A higher proportion of Delta outflow is unprotected in wetter years, and these projects, as proposed, would generally reduce Delta outflow the most in wetter year types. However, benefits of the regulatory and VA pathway are generally higher in dryer and intermediate year types. Therefore, reductions in Delta outflows in wetter conditions would be expected to have less of an effect on the benefits than reductions in Delta outflow in intermediate or dryer conditions.

This analysis understates the impact. Modeling by project proponents in the Sites Reservoir water rights hearing estimated that annual diversions to Sites Reservoir in Above Normal water years, even with a 55% bypass flow requirement, would average between 150 TAF and 300 TAF, depending on the model used and the period of record. (See Appendices to May 22, 2026 Comment Letter of Sites Project Authority on Sites draft water right permit and decision.) Table 13.4-91 in Revised Chapter 13 of the Final Draft Staff Report shows that the average annual increase in Delta outflow in Above Normal years with the Voluntary Pathway in effect would be 170 TAF. Thus, diversions to the Sites project would severely reduce or even eliminate any net VA increase in Delta outflow on a water-year basis.

Second, the proponents of new water supply projects can and almost surely will seek to change how the Plan applies to their projects. The Final Draft Plan explicitly specifies a process by which new water supply projects could change their status under the Plan to either be included under the WSAs or to be covered under the VA pathway. Section 4.4.9 states:

Substantive modifications, including ... new water supply projects (as defined in footnote 5), or inclusion of water rights on new tributaries, to the water right list in Appendix B.1 could be considered for approval by the Board as part of the annual or periodic review process, along with any necessary supporting environmental and scientific documentation and any final other documentation determined to be needed by the Executive Director.

(*Id.* at 65.)

Revised Chapter 13 of the Final Staff Report also discusses the process for conversion:

However, any new water supply projects would be subject to the regulatory pathway without water supply adjustments unless future modifications to the Plan are approved as part of periodic review based on any necessary supporting environmental and scientific documentation. . . . Thus, if application of water supply adjustments or the VA pathway to new water supply projects could result in conditions outside of the bounds of the scientific and environmental analysis in this Staff Report, subsequent supplemental analysis would be provided.

(Final Staff Report at 13.5-22, emphasis added.)

The Final Draft Plan in Section 4.6 (“Annual and Periodic Review”) also explicitly identifies conversion of new water supply projects to WSAs and creation of new voluntary agreements as topics for periodic reviews. This has the effect of setting an agenda for backsliding.

In specifying the process for conversion, and putting it on a schedule, the Final Draft Plan calls into question the durability of the decision to apply the regulatory pathway to new water supply projects. Indeed, as the second draft water rights decision for the proposed Sites Reservoir project (September 3, 2026) states at 127 (clean version), the Sites Project Authority has already announced its intention to change the status of its water right to be covered by the VA pathway.

Third, related to the second issue above, the Final Draft Plan appears to preclude or at least limit inclusion of permit terms in water rights permits for new water supply projects to prevent reduction of the base flow. This indeed is the case in the second draft of the Sites water rights permit. (See Second Draft Sites Permit (September 3, 2026); see also Second Draft Sites Decision at 120-122 [clean version].)

While default application of a percent-of-unimpaired-flow requirement to new water supply projects is generally a positive development, the standards of review for changing the status of a

water right for a new water supply project within a water right permit in itself are notably more stringent than a status change under a water quality control plan.

A water rights hearing is an evidentiary process requiring testimony under oath and evaluation based on substantial evidence. At minimum, any proposal to change criteria that frequently control diversions under a major water right would require a petition for change and an evidentiary proceeding.

In contrast, Common Response to Comments 1.2 at 5 describes the Water Board's view of the standard of review for a water quality control plan:

In updating the Bay-Delta Plan, the Board is engaged in the quasi-legislative act of adopting a regulation. Legislative acts are presumed valid and the legislative body "need not make explicit findings to support its action." (*San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 509.) To overcome the presumption of validity, the burden is on a challenging party to establish the decision was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. (*American Coatings v. South Coast Air Quality Management Dist.* (2012) 54 Cal.4th 446, 460.) Importantly, the "entirely lacking" standard of review "is not the same as a substantial evidence test;" it "is more deferential to agency decision making than the substantial evidence standard." (*Id.* at 461.) In fact, review of "quasi-legislative acts are accorded the most deferential level of judicial scrutiny." (*Pulaski v. Occupational Safety & Health Stds. Bd.* (1999) 75 Cal.App.4th 1315, 1331.)

The Water Board now stands ready to adopt the Plan including the VA pathway for most water rights in the Bay-Delta watershed, despite overwhelming evidence that the VA pathway will not meet the water quality objectives that the Plan proposes to adopt. If the Water Board is going to draw conclusions regarding modification of the Plan in the same way it is drawing conclusions in adopting the VA pathway, the assurance of "supporting environmental and scientific documentation" is not persuasive.

Therefore, relegating decisions about changing the flow criteria for major new water rights such as Sites Reservoir exclusively to periodic updates under the Plan process does not protect the public trust resources that such new water rights will affect. This change of applicable review could allow Board discretion to unravel years of evidentiary process and thousands of hours of effort by advocates, experts, attorneys, and staff of the Water Board's administrative hearing office.

A default percent-of-unimpaired Delta outflow bypass requirement for new water rights is a step forward for the Water Board. It acknowledges the importance of unimpaired flow in protecting beneficial uses (and calls into question why other water diverters would be allowed to divert flows below this level). Inclusion of permit terms in water rights for new rights consistent with the default is also necessary to assure durability and reliability.

3. The “Base Flow Balancing” Requirement for the CVP and SWP Eliminates a Loophole by Requiring Beneficiaries to Backfill Base Flows in Addition to Releasing Proposed “Flow Assets,” but also Establishes the VA Flow Assets as a Flow Ceiling

To address the reduction of the base flows due to past or future changes in the operating rules for the CVP and SWP, the Final Draft Plan requires the VA parties⁵ to backfill the flow reduction as part of their VA flow commitments. (See § 4.4.9.1 “Protection of Base Flows,” and “Base Flow Balancing Provision for CVP and SWP Operations.”) The Final Draft Plan offers the rationale that the VA parties made commitments to add flows specifically to those required by the 2024 Biological Opinions for the Long-Term Operations (LTO) of the CVP and SWP.

Yet BOR’s September 3, 2026 letter (*supra*) objected to this provision, stating: “The Draft also treats later lawful federal operations as a deficit to be repaid in more HRL water.”

The flip side of the Final Draft Plan’s requirement to backfill base flows reduced by changes in CVP and/or SWP operations is the provision that affected VA parties can reduce their VA flow contributions if future LTO biological opinions or incidental take permits require the CVP and SWP to release more flow than current conditions under current LTO requirements.⁶ This effectively makes the VA flows plus existing flow requirements a ceiling above which the CVP and SWP, and their contractors, would not be obligated to release additional flows as long as the Voluntary Pathway applies to them, unless required to do so solely under a biological opinion or an incidental take permit.

Similarly, under the regulatory pathway, the Final Draft Plan now allows flood release and other unregulated flows to count towards the relevant percentage of unimpaired flow objective for a given year, if the unregulated flow can be shown to have an environmental benefit. The Final Draft Plan states at 51: “Flows in excess of the applicable unimpaired flow percentage that would have occurred absent flow shaping (including releases for water diversions, flood control purposes, hydropower releases, or other uncontrolled flows not documented to provide for the purpose of protecting fish and wildlife and Delta outflow do not reduce overall required inflow levels.” (Emphasis added.) Common Response 3.1 at 26 explains: “[T]hese provisions were

⁵ “It is the intent of the State Water Board that any additional HRL flows needed to make up for reductions of base Delta outflows caused by Relevant Changes will be provided by the water supply beneficiaries of those Relevant Changes, including BOR and its water contractors for any Relevant Changes in CVP operations and the Department and its contractors for any Relevant Changes in SWP operations.”

⁶ “It is also the intent of the Water Board that changes to the operational requirements of the Projects resulting from new incidental take statements or ITPs that result in Delta outflows for the protection of listed fish species that are greater than the base flows upon which the HRL flows were assumed to be additive, as analyzed in the 2026 Staff Report and 2023 Final Draft Scientific Basis Report Supplement in Support of Proposed Voluntary Agreements, be applicable toward satisfying HRL flow commitments.”

modified to allow these flows to reduce the required inflow levels if they were documented to have been provided for the purpose of protecting fish and wildlife and Delta outflow.”

Because most of the documented fish and wildlife population responses to freshwater flow are continuous (i.e., more flow in the right location and season produces better outcomes for fish and wildlife), this provision effectively makes the nominal unimpaired flow requirement a ceiling rather than a minimum flow requirement. It is important to note that the Final Draft Staff Report evaluated benefits of the WSA approach assuming that unregulated flows were *in addition* to the stated percentage of unimpaired flows. (See Final Staff Report, Chapter 13 (redline version) at 13.4-1 [modeling of regulatory pathway unchanged from previous Draft Staff Report].) Thus, the Final Staff Report did not model the expected outcomes of the WSA pathway that is actually proposed. As a result, modeling in the Final Staff Report would tend to overestimate the benefits of the WSA pathway because it incorporated the effects of unregulated flows on top of the required WSA flows.

II. The Water Board’s Final Draft Plan is Inconsistent with a Host of Other California Laws

Beyond Porter-Cologne, the Water Board’s legal failures and the Final Draft Plan’s inadequacy result in violation of a host of other California laws, including the public trust doctrine, the Delta Protection Act, the Fish and Game Code, the California Environmental Quality Act (“CEQA”), and the Administrative Procedure Act (“APA”).

As we have previously explained, the Water Board’s legal obligations are not limited to complying with Porter-Cologne and the Clean Water Act or reasonably protecting beneficial uses of water; it must also comply with other substantive California laws. The Final Draft Plan, as well as the Water Board’s process in reaching it, fail to do so.

A. The Public Trust Doctrine

The Water Board is a steward of public trust resources and must act to safeguard them. This includes “an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.” (*Nat’l Audubon Soc’y v. Superior Court* (1983) 33 Cal.3d 419, 446; see also Wat. Code § 1243.5.)

“Wild fish have always been recognized as a species of property the general right and ownership of which is in the people of the state” – they are quintessential public trust resources. (*Cal. Trout v. State Wat. Res. Control Bd.* (1989) 207 Cal.App.3d 585, 630.) “The title to and property in the fish within the waters of the state are vested in the state of California and held by it in trust for the people of the state.” (*Ibid.*, quoting *People v. Monterey Fish Products Co.* (1925) 195 Cal. 548, 563.)

The public trust also secures a host of other uses and values, including navigation, commerce, fishing, hunting, swimming, and the protection of waters, lands, and wildlife for ecological, aesthetic, and spiritual benefits. (See, e.g., *Marks v. Whitney* (1971) 6 Cal.3d 251, 259-60; *San Francisco Baykeeper v. State Lands Com.* (2015) 242 Cal.App.4th 202, 233.) Public trust

resources and the doctrine are particularly important and applicable to the Bay-Delta and its watershed. (See Wat. Code § 85023.)

The Water Board is obligated to perform a complete analysis of impacts on public trust resources, including fish, instream flows, water quality, public access to waters, and other resources that are impacted by the existing conditions and the update of the Bay-Delta Plan. In setting water quality objectives, it must also consider the availability of water supplies from wastewater recycling, improved water use efficiency, urban stormwater capture, and other sources as it relates to the public trust.

In 2010, pursuant to the Delta Reform Act, the Water Board determined that the Delta's ecosystem was in crisis and that instream flows needed to increase substantially to adequately protect public trust resources (i.e., 75% of unimpaired Sacramento River inflow and 75% of Delta outflow). In 2023, the Water Board indicated that flows starting at 55% of unimpaired flow would reasonably protect beneficial uses, within a range of 45% to 65% of unimpaired flows. A wealth of other evidence before the Board indicates that flows substantially greater than the status quo and above 55% of unimpaired flow are needed to support public trust resources, viable fish populations, fisheries, and reasonably protect related beneficial uses, including estuarine habitat.

The Water Board's only attempt at a public trust analysis (contained in "Chapter 13" in December 2025) was inadequate to meet the Water Board's legal obligations to conduct a complete analysis and to support the Water Board's discretionary choices of how to protect public trust resources where feasible.

The Water Board has previously determined that the flows described as part of the regulatory pathway are feasible, documenting the water supply impacts of the 55% unimpaired flow requirement (and associated 45% to 65% range). Yet rather than adopt that approach and standard, the Water Board proposes to adopt a regulatory pathway that requires flows of just 35% of unimpaired in the driest third of years. And it also proposes to adopt the VAs, which provide for substantially less flow than the 55% unimpaired flow proposal would require. Yet the Water Board has never explained why the Final Draft Plan, which, as shown in Final Staff report Table 13.4-104, results in an approximately 1% "water cost" to existing water supplies, is the only feasible approach, why a greater water cost would be infeasible, or how the VA and WSA approaches (together or separately) will adequately protect public trust resources.

The Water Board's view that it has limitless discretion to allow the degradation of public trust resources is inconsistent with California law. The law demands a reasoned explanation, a complete analysis, and protection of the public's resources where feasible. The Final Draft Plan and Final Staff Report provide none of that.

Additionally, the Final Draft Plan's failure to include protective instream flow requirements, its change to the Salmon Protection Objective to meet it by 2050, and its delay in achieve viability until at least 2050 constitute an unlawful delay that is inconsistent with the Water Board's public trust obligations. Delaying implementation of protective flow standards for over 20 years while imperiled species are on the brink of extinction does not protect the public trust. And the Water

Board has failed to demonstrate why it would be infeasible to act sooner. The Water Board has chosen deferrals conditioned on future, voluntary measures, that will exacerbate and accelerate the collapse of trust resources.

Finally, the VAs unlawfully delegate the Water Board's obligations under the public trust doctrine to water users, including private parties. The Water Board's obligations under the public trust are non-delegable. (See *Nat'l Audubon Soc'y*, *supra*, 33 Cal.3d at 437, 441.)

B. State and Federal Endangered Species Acts

The California Endangered Species Act ("CESA"), Fish and Game Code sections 2050 et seq., and its federal counterpart, 16 U.S.C. section 1531, *et seq.*, exist to conserve, protect, restore, and enhance endangered species and their habitats. The Bay-Delta and its watershed are home to four state listed endangered species: winter-run Chinook Salmon, spring-run Chinook Salmon, Delta Smelt, and Longfin Smelt. White Sturgeon is currently listed as a candidate species under CESA, meaning it is entitled to protection under the state law. In addition to the state listed species, Green Sturgeon and Central Valley Steelhead are separately listed under the federal Endangered Species Act, and protection of White Sturgeon has been determined to be "warranted but precluded" under the federal law. The Water Board is legally required to ensure that its actions do not harm or jeopardize the continued existence of state or federally listed species.

The Bay-Delta Plan would exacerbate and worsen conditions for protected species under state and federal law and will jeopardize the continued existence of protected species. Inadequate or non-existent flow requirements and the deferral of water quality objectives to protect native fish for over two decades unlawfully risks the survival and recovery of listed species in contravention of CESA and the ESA.

The Final Draft Plan and VAs fail to comply with the Water Board's obligations under CESA and the federal ESA.

C. Fish and Game Code

The Fish and Game Code contains numerous provisions of California law designed to ensure adequate protection of natural resources and native fish in the context of water management and operations.

Fish and Game Code section 5937 is part of the statutory expression of public trust protections for wild fish. As early as 1914, the California Fish and Game Commission documented the impacts of dam operations on fish in California, leading the Legislature to pass the 1915 Flow Act, which required dam operators to release water to protect fish populations downstream. California Fish and Game Code section 5937 provides:

The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over,

around or through the dam, to keep in good condition any fish that may be planted or exist below the dam.

(Fish and Game Code § 5937.)

The Bay-Delta Plan and Draft Staff Report must explain how the flow requirements will ensure compliance with the Fish and Game Code by ensuring sufficient flows are provided to maintain fish in good condition. The Draft Staff Report fails to analyze or meet these standards.

D. Delta Protection Act

The Water Board's update to the Bay-Delta Plan is subject to the requirements of the Delta Protection Act. (Water Code §§ 12200-12205.) The Delta Protection Act gives the Board authority to consider water conservation, water recycling, and other alternative water supplies which are available to municipal, industrial, and agricultural water users in determining the feasibility of protecting public trust resources and the reasonability of water quality objectives that protect instream beneficial uses. (See Board Decision 1485 at 16-17.)

The Final Draft Plan and Final Staff Report fail to do so and do not meet the purposes of the Delta Protection Act. As the *State Water Res. Control Bd. Cases* explained:

...the Delta Protection Act recognizes the importance of providing salinity control and an adequate water supply in the Delta to serve dual goals: (1) maintaining and expanding agriculture, industry, urban, and recreational development in the Delta; and (2) providing fresh water for export to areas of water deficiency. As between these two goals, however, the Delta Protection Act gives preference to the first. Thus, no one may divert water from the Delta that is necessary for salinity control or to provide an adequate water supply for users within the Delta.

(*State Water Res. Control Bd. Cases* (2006) 136 Cal.App.4th 674, 768.)

Specifically, the legislative intent specifies that the Delta Protection Act addresses the need “for the protection, conservation, development, control and use of the waters in the Delta for the public good.” (Water Code §§ 12200.)

The Water Board has not addressed these issues, nor has it explained how the VAs or Water Supply Adjustments are necessary to meet the strictures of the Delta Protection Act.

E. CEQA

The purpose of CEQA is to ensure that agencies regulating activities “that may” affect the environment give primary consideration to preventing environmental damages. (*Ross v. California Coastal Com.* (2011) 199 Cal.App.4th 900. The Water Board also “must comply with all other requirements of CEQA.” (*Mountain Lion Found. v. Fish & Game Com.* (1997) 16 Cal.4th 105, 114; see also *Ross, supra*, 199 Cal.App.4th at 933.) Therefore, like an EIR, the SED

must (among a host of other requirements) include a stable and finite project description, analyze a reasonable range of alternatives to the project, avoid adverse impacts, and impose feasible mitigation measures to reduce a project's significant adverse impacts. (See Pub. Res. Code § 21080(c), 14 C.C.R. §§ 15126.6, 15370.)

The Final Staff Report does not meet these requirements. The Final Staff Report's project description remains incomplete and misleading, it biases analysis in support of the VAs, and it fails to include or describe the "whole of the action." It contains no model run that assumes the combination of the VA pathway and the regulatory pathway with the split of water rights covered under each pathway described in the Final Draft Plan. For example, the Final Staff Report does not explain or model how the Delta would be managed under the updated Bay Delta Plan and the Coordinated Operations Agreement if the SWP is subject to commitments under the VAs and the CVP is subject to the regulatory backstop, following BOR's planned withdrawal from the VA program. Despite repeated requests by commenters for the Board to analyze the entire actual proposal, the public can neither ascertain all potential benefits and impacts of the proposed project, nor assess the "whole of the action."

The Water Board has still not analyzed the updated plan as a combination of the VAs and regulatory approach. There is no analysis of what will happen if some VA parties fail to meet their obligations or decline to participate, while others attempt to do so. Moreover, the Water Board has indicated that the VAs control approximately 85% of the water subject to the Bay-Delta Plan's requirements. This means that the actual results from implementation of the Final Draft Plan are certain to be substantially different than the analyses provided by the Water Board to the public and relied on by Water Board in considering adoption of the Final Draft Plan.

The Water Board's treatment of impacts through the various drafts of the Staff Report has been heavily biased towards water supply impacts. Each successive iteration has moved farther away from protections of fish and wildlife beneficial uses in favor of seeking to reduce, and finally virtually eliminate, reductions to water supply.

Further, the Final Staff Report contains new information not previously circulated to the public and not made available for public comment. The Water Board stated in January 2026 it would make a "final draft Staff Report" available for public review. Yet, when the Water Board released the Final Staff Report in August, it explicitly stated it was not accepting public comments on that document. This is not "public review," and it does not comply with CEQA.

Ultimately, the entire process used by the Water Board in completing the Final Draft Plan was pre-decisional. CEQA is designed to provide information for decision-makers and the public. But the Water Board had already determined by (at least) July 2025 what its decision was going to be. After that determination had been made, the Water Board released an updated Draft Staff Report ("Chapter 13") in December 2025, and a "Final Staff Report" in August. These post-determination analyses prepared by the Water Board appear designed to provide a post-hoc justification for the Water Board's already made decisions. This is the opposite of what CEQA requires and is designed to ensure.

As a result, we object to adoption of the Final Staff Report and the Final Draft Plan under CEQA based on the failure to recirculate the Staff Report and Updated Plan for full comments, the failure to provide opportunities for meaningful engagement and inclusion throughout this process, and the host of other shortcomings we have previously identified that remain uncorrected.

F. The Administrative Procedures Act

Because the Bay-Delta Plan and its associated POI are a regulation, compliance with the California Administrative Procedures Act (“APA”) is required. (See *State Water Resources Control Board v. Office of Admin. Law* (1993) 12 Cal.App.4th 698.) The APA requires that regulations be clear and understandable. As the Office of Administrative Law describes, they must be “easily understood by those persons directly affected by them.” (Office of Administrative Law, Decision of Disapproval of Regulatory Action, *In re: State Water Resources Control Board*, OAL File No. 2018-0823-02S, Oct. 12, 2018)1; see also 1 C.C.R. § 14; Gov. Code § 11349.) A regulation is presumed to violate the APA’s clarity standard if “the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning.” (1 C.C.R. § 16(a)(1); see Gov. Code § 11349.) The APA also prohibits decisions that are “arbitrary, capricious, or lacking in evidentiary support.” (*United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 113.) This means that the Board must adequately consider all relevant factors, demonstrate a rational connection between those factors, the choice made, and the purposes of the enabling statute, and explain its reasoning. (See *id.*)

The Final Draft Plan continues to violate these requirements. Our organizations have previously identified a host of concerns about the lack of clarity, uncertainty, differing standards and compliance methods, and ambiguity built into the VAs and the Final Draft Plan. As our comments above explain, those concerns remain. Additionally, the Water Board’s proposed time schedules for VA implementation, the delay in achieving objectives to 2050, and the deferred definition of the coldwater habitat objective all also violate the APA.

Finally, the Water Board’s refusal to make findings and articulate its reasons also violate the APA. The Water Board appears to have reached a conclusion and has since been searching for evidence and information to justify it. This backward process is exactly the kind of motivated reasoning and arbitrary decision-making that the APA (and CEQA) prohibit. The Water Board must do more than just pick an outcome and wave its hands about how it got there—it must consider all the evidence, make findings, and demonstrate a connection between the evidence, factors, and outcomes that are consistent with the Clean Water Act, Porter-Cologne, the public trust doctrine, and California law more broadly, in order to meet its obligations under the APA.

III. Additional Comments on Changes within the Final Staff Report

Appendix 1, attached, contains additional specific comments related to changes made in the Final Staff Report. In many cases, we have offered additional scientific data, scientific publications, or agency documents to ensure that the Water Board is relying on the best available evidence. We appreciate Water Board staff’s efforts to update the scientific basis beyond the literature covered in the previous draft Staff Report, which dated almost entirely to the years

before 2017. However, there is additional recent scientific literature that should factor into the Water Board's determination regarding Plan updates. For example, we provide several citations regarding the current lack of viability of several native fish populations. Given that the Water Board proposes a Viability Objective for native fishes, it is important to understand how the conservation status of at-risk populations must change to achieve any reasonable definition of viability.

In other cases, we have identified instances or conduct which are relevant to the Water Board's decision-making. For example, we provide references that describe BOR's failure to implement terms of the 2024 Biological Opinion in ways that would be consistent with objectives or Mitigation Measures of the Final Draft Plan, or reasonable protection of fish and wildlife beneficial uses.

And we have also identified where the findings in the Final Draft Staff Report are inconsistent with or contrary to the determinations the Water Board has made in planning to adopt the Final Draft Plan. For example, we note numerous places in Chapter 3 and the Common Responses to Comments where the Water Board acknowledges the lack of evidence to support its assertions that floodplain "habitat" restoration proposed in the VA POI will mitigate for inadequate flow conditions.

Literature Cited

Arai, K. et al. 2026. Thermal bottlenecks constrain early-life survival of native fish in regulated rivers. *Sci. Adv.* 12, eaeg3586. DOI: 10.1126/sciadv.aeg3586

Baykeeper. New River Temperature Criteria for Central Valley Salmonids. Triennial Review Temperature Presentation.pdf

Baykeeper 2025. May 16 2025 Letter to State Board Chair re- Spring 2025 Endangered Species Act Noncompliance by Voluntary Agreement Parties.

Baykeeper et al. 2026a. Letter from NGOs and Tribes to SWRCB concerning Sacramento River Temperature Management Plan. Dated April 22, 2026

Baykeeper et al. 2026b. Presentation by environmental NGOs to Water Board concerning Sacramento River Temperature Management Plan. Dated May 5, 2026.

Baykeeper et al. 2026c. Letter from NGOs and Tribes to SWRCB re: Final Sacramento River Temperature Management Plan. Dated June 11, 2026.

Burford, Benjamin P., Jeremy J. Notch, William R. Poytress, and Cyril J. Michel. 2025. Facilitated Migration Could Bolster Migrant Passage through Anthropogenically Altered Ecosystems. *Ecological Applications* 35(5): e70070. <https://doi.org/10.1002/eap.70070>

CDFW 2023c. Chapter 4 Analysis of Delta Tunnel ITP with CDFW Comments at p. 4-93.

CDFW. 2026. California Department of Fish and Wildlife comments on Reclamation's Draft Sacramento River Temperature Management Plan.

CDFW 2026a. Letter from CDFW staff to Water Board Staff. Subject: Comment Letter – Revised Draft Sacramento/Delta Bay-Delta Plan Updates & Chapter 13 of Draft Staff Report. Dated February 3, 2026.

CDFW 2026b. Transmittal email of CDFW final Draft Comment Letter. Dated February 12, 2026.

CDFW 2026c. California Department of Fish and Wildlife comments on Reclamation's Draft Sacramento River Temperature Management Plan.

Chapple, D.; Moffat, J.; Melcer, R.; Mattson, M.; Griffith, K.; Anderson, K., et al. 2025. Restoring the Heart of a Healthy Estuary: A Review of Restoration in the Sacramento–San Joaquin Delta and Suisun Marsh. *San Francisco Estuary and Watershed Science*, 23(4). <http://dx.doi.org/10.15447/sfew.2025v23iss4art2> Retrieved from <https://escholarship.org/uc/item/6qm300mc>

Collins, E. E., T. Q. Thompson, P. Goertler, M. R. Baerwald, and M. H. Meek. 2026. Diversity Under Pressure: Long-Term Genetic Decline in California's Central Valley Chinook Salmon ESA Listed Runs. *Ecology and Evolution* 16, no. 8: e74176. <https://doi.org/10.1002/ece3.74176>.

Friends of the River et al. 2026. Letter from NGOs to Reclamation concerning Sacramento River Temperature Management Plan. Dated May 15, 2026.

Ferguson, J., Martz, M., Sawyer, E., Serup, B., Johnson, R., Opperman, J., et al. (2026). The Contribution of Managed Floodplains to the Recovery of Salmon in California: Challenges and Opportunities. *San Francisco Estuary and Watershed Science*, 24(1-2).
<http://dx.doi.org/10.15447/sfew.2026v24iss1/2/art2>

ICF. 2023. California Environmental Protection Agency Draft Final Initial Biological Goals for the Lower San Joaquin River. August. Prepared for the State Water Resources Control Board, California Environmental Protection Agency.

Kimmerer, W. J. 2002b. Effects of Freshwater Flow on Abundance of Estuarine Organisms: Physical Effects or Trophic Linkages? *Marine Ecology Progress Series* 243:39–55.

Lehman, B., Huff, D. D., Hayes, S. A., & Lindley, S. T. 2017. Relationships between Chinook Salmon Swimming Performance and Water Quality in the San Joaquin River, California. *Transactions of the American Fisheries Society*, 146(2), 349–358.
<https://doi.org/10.1080/00028487.2016.1271827>

McElhany, P., Ruckelshaus, M. H., Ford, M. J., Wainwright, T. C., and Bjorkstedt, E. P. 2000. Viable Salmonid Populations and the Conservation of Evolutionarily Significant Units. U.S. Department of Commerce. NOAA Technical Memorandum. NMFS-NWFSC-42. Seattle, WA. Available at: https://www.nwfsc.noaa.gov/assets/25/6190_06162004_143739_tm42.pdf.

Moyle et al. 2017. Moyle, P., R. Lusardi, P. Samuel, and J. Katz. 2017. State of the Salmonids: Status of California's Emblematic Fishes 2017. Center for Watershed Sciences, University of California, Davis and California Trout, San Francisco, CA. 579 pp.

Munsch S. H., C. M. Greene, R. C. Johnson, W. H. Satterthwaite, H. Imaki, and P. L. Brandes. 2019. Warm, dry winters truncate timing and size distribution of seaward-migrating salmon across a large, regulated watershed. *Ecological Applications* 29(4):e01880. 10.1002/eap.1880

Nobriga, M. and J. Rosenfield. 2016. Population Dynamics of an Estuarine Forage Fish: Disaggregating Forces Driving Long-Term Decline of Longfin Smelt in California's San Francisco Estuary. *Transactions of the American Fisheries Society* 145(1):44–58.

Polansky, L., Mitchell, L., & Nobriga, M. L. 2024. Identifying minimum freshwater habitat conditions for an endangered fish using life cycle analysis. *Conservation Science and Practice*, 6(5), e13124. <https://doi.org/10.1111/csp2.13124>

Polansky, L., K. B. Newman, and L. Mitchell. 2021. Improving Inference for Nonlinear State-Space Models of Animal Population Dynamics given Biased Sequential Life Stage Data. *Biometrics* 77(1): 352–61 and supporting material. <https://doi.org/10.1111/biom.13267>.

Reclamation 2025a. Salmon Monitoring Team Meeting March 25, 2025.pdf

Reclamation 2025b. Weekly Fish and Water Operations April 1-7, 2025.pdf

Reclamation 2025c. Salmon Monitoring Team Meeting April 8, 2025.pdf

Reclamation 2025d. Delta Monitoring Workgroup, April 8, 2025.pdf

Reclamation 2025e. Weekly Fish and Water Operations Outlook April 8-14, 2025.pdf

Reclamation 2025f. OMR and OMRI March, April, May 2025.pdf

Reclamation. 2026a. Assessment of CVP and SWP Delta Operations on Green Sturgeon. August 24, 2026

Reclamation 2026b. Draft Sacramento River Temperature Management Plan.

Reclamation 2026c. Final Sacramento River Temperature Management Plan.

Reclamation 2026d. Reclamation Letter to Water Board objecting to rejection of the Final Sacramento River Temperature Management Plan.

Roni, P., Pess, G., Beechie, T., and Morley, S. 2010. Estimating Changes in Coho Salmon and Steelhead Abundance from Watershed Restoration: How Much Restoration is Needed to Measurably Increase Smolt Production?, *North American Journal of Fisheries Management*, Volume 30, Issue 6, Pages 1469–1484, <https://doi.org/10.1577/M09-162.1>

Rosenfield, J. A. and R. D. Baxter. 2007. Population Dynamics and Distribution Patterns of Longfin Smelt in the San Francisco Estuary. *Transactions of the American Fisheries Society* 136(6):1577–1592.

Saffarinia, P., Hobbs, J.A., Carlson, S.M. and Ruhí, A., 2026. Time-varying Flow–Ecology Relationships for an Endangered Fish Population: Longfin Smelt in the San Francisco Estuary. *Ecological Applications*, 36(1), p.e70178.

Sturrock AM, Carlson SM, Wikert JD, et al. Unnatural selection of salmon life histories in a modified riverscape. *Glob Change Biol*. 2020; 26: 1235–1247. <https://doi.org/10.1111/gcb.14896>

SWFSC. 2026a. Southwest Fisheries Science Center, Summary of modeling of temperature-dependent mortality of winter-run Chinook Salmon under Reclamation coldwater management strategies. Dated August 25, 2026.

SWFSC. 2026b. Southwest Fisheries Science Center Comparison of modeling of temperature-dependent mortality of winter-run Chinook Salmon under Reclamation coldwater management strategies. Dated August 25, 2026.

U.S. Fish and Wildlife Service. 2024. Species Status Assessment for the San Francisco Bay-Delta Distinct Population Segment of the Longfin Smelt. Version 2.0. U.S. Fish and Wildlife Service. San Francisco Bay-Delta Fish and Wildlife Office, Sacramento, California. 105 pp. + Appendices A–E.

U.S. Fish and Wildlife Service. 2026. Species Status Assessment Report for the San Francisco Estuary White Sturgeon (*Acipenser transmontanus*). Version 1.0. May 2026. U.S. Fish and Wildlife Service. Pacific Southwest Region.

Water Board. 2025. State Water Resources Control Board Letter to Acting Regional Director California-Great Basin, United States Bureau of Reclamation; from Assistant Deputy Director, Division of Water Rights. Re: Action 5 Assumptions and Environmental Compliance. Dated: November 10, 2025

Water Board. 2026a. State Water Resources Control Board comments on Reclamation's 2026 Draft Temperature management Plan

Water Board 2026b. State Water Resources Control Board rejection of Reclamation's 2026 Final Temperature Management Plan

Water Board 2026c. Draft Decision 1653: Sites Decision Revised Draft. September 3, 2026.

Water Board 2026d. Draft Permit 21487: [Draft] Permit to Divert and Use Water for Sites Project Authority.

Zeug, S.C., Sellheim, K., Watry, C., Wikert, J.D. and Merz, J. (2014), Response of juvenile Chinook salmon to managed flow: lessons learned from a population at the southern extent of their range in North America. *Fish Manag Ecol*, 21: 155-168. <https://doi.org/10.1111/fme.12063>