

December 16, 2022

Delivered by email: deltaconveyancecomments@water.ca.gov



Ms. Carolyn Buckman
Department of Water Resources
Attention Delta Conveyance Office
P.O. Box 942836
Sacramento, CA 94236-0001

DIRECTORS

Craig Wallace
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Santa Clarita Valley Water
Agency

Peter Thompson, Jr.
Palmdale Water District

Jacob Westra
Tulare Lake Basin Water
Storage District

General Manager
Jennifer Pierre

Re: Delta Conveyance Project Draft Environmental Impact Report (DEIR).

Dear Ms. Buckman:

On behalf of the 18¹ State Water Contractors (SWC) members, we are writing to support the Delta Conveyance Project (DCP) – a project that is essential to modernizing California's water transport infrastructure. California's new reality represents extreme weather events and climate trends—including intense but unpredictable storms, extended and more frequent droughts, rising sea levels, increasing temperatures, and an earlier winter runoff – making water management in California much more challenging, and requiring modernization of our infrastructure to meet these challenges. We must invest in our Delta infrastructure to ensure the State Water Project (SWP) can capture, move, and store water when it is available.

The SWP is California's primary water distribution system. It captures and transports water to communities throughout the state—providing an affordable source of high-quality, clean water for more than 27 million Californians from the Bay Area to San Diego and 750,000 acres of farmland. In fact, more than 1 in 12 Americans receive some portion of their water from the SWP. But the infrastructure that protects, collects, and moves water through the Delta to California homes, farms, and businesses was constructed more than 50 years ago and is at an ever-increasing risk of failure from climate change, sea level rise, and seismic events. The proposed DCP is the right project at the right time to help ensure the SWP can continue to meet California's water needs into the future. For many of our agencies, it is also one of the most cost-effective climate resiliency measures they can invest in. This is why they continue to pursue this extremely important project even as they make investments in local and regional projects, conservation efforts, and storage. In fact, the delivery of clean, affordable water from the SWP does projects like water recycling, storage, groundwater recharge, and water quality blending work.

¹ The 18 SWC members currently provide funding for planning costs and include: Alameda County Flood Control & Water Conservation District, Zone 7; Alameda County Water District; Antelope Valley East Kern Water Agency; Coachella Valley Water District; Crestline-Lake Arrowhead Water Agency; Desert Water Agency; Dudley Ridge Water District; Kern County Water Agency; Metropolitan Water District of Southern California; Mojave Water Agency; Palmdale Water District; San Bernardino Valley Municipal Water District; San Gabriel Valley Municipal Water District; San Geronio Pass Water Agency; San Luis Obispo County Flood Control & Water Conservation District; Santa Clara Valley Water District; Santa Clarita Valley Water Agency; and, Ventura County Watershed Protection District.

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The DCP DEIR addresses impacts on the Delta communities. Having worked hard to avoid and reduce environmental and community impacts, today's proposed project is very different from the State's previous proposals. An extensive amount of design refinements has helped avoid or minimize local impacts. The project includes a Community Benefits Program to ensure the communities most affected by the construction of the project are provided with the means and resources to achieve local benefits.

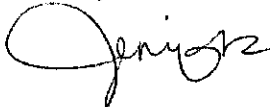
The DEIR is comprehensive and relies on the best available science to define the proposed operations criteria, analyze environmental impacts and identify mitigation measures. In addition to the fisheries and water quality, the DEIR includes a comprehensive analysis of potential impacts on the Delta communities and tribal cultural resources. While the proposed operations criteria are designed to minimize the impacts to the listed species based on the current and best scientific understanding, it is encouraging to see the DEIR includes a robust Adaptive Management and Monitoring Program to address any uncertainties before and after the DCP is constructed and operated.

It is prudent and responsible to pursue the DCP now. We cannot afford to delay modernizing the SWP's Delta infrastructure—the cost of doing nothing could disrupt our State's primary water supply. Moreover, with increasingly erratic hydrologic conditions, the ability to capture water when high flows are present makes DCP a critical climate change adaptation measure.

California needs the SWP, and the SWP needs the DCP. Therefore, we encourage state certification of the Final Environmental Impact Report and the advancement of this essential project.

If you have any questions, please do not hesitate to contact Chandra Chilmakuri at 916-562-2583.

Sincerely,



Jennifer Pierre
General Manager

DELTA PROTECTION COMMISSION

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Don Nottoli, Chair
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 Cities of Contra Costa and
 Solano Counties

Paul Steele
 Cities of Sacramento and
 Yolo Counties

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Jim Paroli
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 California State Senate

Honorable Carlos Villapudua
 California State Assembly



December 14, 2022

Department of Water Resources
 Attn: Delta Conveyance Office
 P.O. Box 942836
 Sacramento, CA 94236-0001
 VIA EMAIL deltaconveyancecomments@water.ca.gov

Re: Delta Conveyance Project Draft EIR (SCH # 20200115)

Delta Conveyance Office:

Thank you for providing the Delta Protection Commission (Commission) the opportunity to comment on the Delta Conveyance Project Draft Environmental Impact Report (Tunnel Project DEIR or Project). The proposed Project, known as Alternative 5, consists of a 6,000 cfs conveyance facility (tunnel) constructed through the Delta on an eastern alignment in a corridor roughly parallel to and west of Interstate 5 to a site south of the Byron Highway and Clifton Court Forebay adjacent to Bethany Reservoir. Project alternatives are distinguished by tunnel alignment (i.e., central or eastern), size (tunnel diameter and length), capacity (ranging from 3,000 cfs to 7,500 cfs), and method of delivery to the State Water Project and potentially Central Valley Project facilities (i.e., through Southern Forebay Complex or Bethany Reservoir Complex).

The following comments reflect the concerns of the Commission, except for members representing State agencies, which do not necessarily share these concerns. This letter in no way implies a recommendation or position of the Governor or his administration.

The Commission previously submitted comments on environmental review documents for predecessors to the current Tunnel Project DEIR in 2014, 2015, 2018 and most recently on the Notice of Preparation for this DEIR in 2020. As in these letters and elsewhere, we must once again point to the unacceptable significant, irreversible, and permanent environmental effects of the proposed Delta conveyance projects on Delta communities, the cultural qualities that define "Delta as Place," and the pillars of the Delta economy, agriculture, and recreation. The current proposed tunnel is fundamentally no different in key structural elements such as the intakes, alteration of the Delta landscape with double launch shaft and tunnel muck storage complexes, and overall disruption of much of the northeastern and southern Delta during at least a projected decade and a half of construction. The DEIR fails to adequately document, analyze and mitigate for impacts that will damage the unique character of the Delta that makes it the "Delta as Place" that is protected by the Delta Reform Act.

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The Commission's legislative mandate, authorities and role in the Delta were detailed in our previous letters.

The project alternatives analyzed in the DEIR do not avoid or mitigate the most damaging impacts to Delta communities, economic well-being, and cohesiveness of the cultural landscape, despite some efforts to redesign certain project elements, improve public outreach, and improve the readability, graphics, and navigability of the document. The proposed Bethany Alternative (Alternative 5) generally focuses on reducing the impacts of the project by reducing footprint size and location in specific areas, with the overall effect of reducing activities in wetlands and other waters of the United States, rather than protecting Delta as Place values.

Reduction of the previous massive footprint in Hood by relocating the launch shafts and tunnel muck permanent storage to a 500-acre site at the Twin Cities complex will not reduce the effects of intake construction on Hood and the surrounding area. Tunnel muck cannot be referred to as "reusable" if it is not, in fact reused but instead become a permanent topographic feature. It is not acceptable to conclude that the loss of 71 structures including 15 homes is not a significant impact. Providing cursory analysis of recreation and cultural resource impacts by simply limiting the scope and time dedicated once again has resulted in inadequate assessment of human impacts.

The Commission continues to recommend that the Department of Water Resources (DWR) and the EIR should seriously analyze an alternative that promotes water reliability by strengthening Delta levees and dredging key Delta channels, rather than tunneling under the Delta, while also reducing other region's reliance on water from the Delta by investing in water use efficiency, water recycling, and other advanced technologies. The through-Delta conveyance components of this alternative should include all the features recommended in the Delta Plan (Delta Plan recommendation WR R1 2(a)(4) and (c)). This alternative's provisions to reduce reliance on the Delta should be informed by an analysis of water demand and promising alternative supplies in areas to be served by the project. The analysis should comply with the Delta Plan's regulatory policy WR P1.

In conclusion, despite some effort to address concerns that the Commission articulated most recently in our comments and suggestions to the NOP, the DEIR has fallen short of the Delta Protection Act's intent, and the Delta Reform Act's co-equal goals. Those goals are inseparable from, and unified by, the requirement that they shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

The Commission voted to approve this letter at its meeting on November 17, 2022 on a 6 - 0 vote with two abstentions.

We appreciate the opportunity to provide input and are open to continuing dialogue with

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DWR on how the co-equal goals can be achieved without sacrificing the Delta. Please contact the Commission office at (916) 375-4800 with any questions regarding the comments provided.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Nottoli". The signature is fluid and cursive, with a large initial "D" and a stylized "N".

Don Nottoli
Chair

Attachment 1 – Delta Protection Commission Comments on Delta Conveyance Draft
Environmental Impact Report

cc: Vice Chair Chuck Winn, and Commissioners
Executive Director Bruce Blodgett

Blank

V.

Maven
Breaking News

Comment Period open December 16, 2022 – February 14, 2023

From the US Army Corps of Engineers

SUBJECT: The public draft Environmental Impact Statement (Draft EIS) for the Delta Conveyance project is available for public review and comment. This notice is to inform interested parties of the availability of the document and to solicit comments on the project.

The Notice of Availability and the Draft EIS are available on our website at <https://www.spk.usace.army.mil/Missions/Regulatory/Delta-Conveyance/> (or see embedded document and links below). Electronic copies are also available on discs at the following local libraries, Franklin Community Library, 10055 Franklin High Rd, Elk Grove; Courtland Community Library, 170 Primasing Ave, Courtland; Walnut Grove Library, 14177 Market St, Walnut Grove; Isleton Library, 412 Union St., Isleton; Mountain House Branch Library, 201 E Main St, Mountain House; Thornton Branch Library, 26341 N. Thornton Rd, Thornton; Brentwood Library, 104 Oak St, Brentwood; and Oakley Library, 1050 Neroly Rd, Oakley.

The U.S. Army Corps of Engineers, Sacramento District, is the lead agency under the National Environmental Policy Act (NEPA). Cooperating Federal agencies include the U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Environmental Protection Agency, and U.S. Bureau of Reclamation.

AUTHORITY: The proposed action would require permission/authorization from the Corps to alter the Federal Project (levees) under Section 14 of the Rivers and Harbors Act (Section 408) (33 U.S.C. 408), to place structures and conduct work in or affecting navigable waters of the United States under Section 10 of the Rivers and Harbors Act (33 U.S.C. 403), and to discharge fill material into waters of the United States under Section 404 of the Clean Water Act (33 U.S.C. 1344). The proposed project would also require a real estate out grant from the Corps in order to construct the project under the Stockton Deep Water Ship Channel (a federal navigation project).

REQUESTER/APPLICANT: California Department of Water Resources, Attn: Ms. Carolyn Buckman, 901 P Street, Room 432, Sacramento, CA, 94236-0001

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LOCATION: The proposed project is located in the Sacramento-San Joaquin Delta within Sacramento, San Joaquin, Contra Costa, and Alameda Counties. The new intake facilities would be located along the east bank of the Sacramento River between the communities of Hood and Courtland. The new conveyance facilities would be located within a tunnel corridor east of the Delta that would extend 45 miles from the new intakes on the Sacramento River to the Bethany Reservoir pumping plant surge basin. An aqueduct would extend approximately 2.5 miles from the pumping plant to the new discharge structure at the Bethany Reservoir.

PROJECT DESCRIPTION: The applicant is proposing to construct new State Water Project water diversion and conveyance facilities in the Delta consisting of two intake facilities on the Sacramento River, a 45-mile-long tunnel section, a pumping plant and surge basin south of Clifton Court Forebay, and a 2.5-mile aqueduct to a new discharge facility at Bethany Reservoir. The proposed project would result in permanent impacts to approximately 12.61 acres of wetlands and 6.40 acres of other waters, and temporary impacts to approximately 15.55 acres of wetlands and 6.41 acres of other waters. Based on the available information, the overall project purpose is to improve diversion and conveyance facilities in the Delta to ensure the reliability of SWP water deliveries south of the Delta.

The Draft EIS analyzes the environmental effects of construction of the entire project and maintenance of the new portions of the levee system. Potentially significant issues analyzed in depth include aesthetics and visual resources; agricultural resources; air quality; biological resources (fisheries and aquatic organisms, vegetation and wildlife, and wetlands and waters); climate change, cultural resources; environmental justice; flood protection; geology, soils, and paleontological resources; groundwater; hazards and hazardous materials; land use; navigation; noise; recreation; socioeconomic s and public health; surface water; transportation; public services, utilities and energy; water quality; and water supply. The applicant's preferred alternative would result in up to approximately 19.01 acres of permanent impacts and approximately 21.96 acres of temporary impacts to waters of the U.S.

ADDITIONAL INFORMATION:

Public Meeting. Three public meetings to receive comments from the public on the project and the draft document will be held virtually on Tuesday, January 10, 2023, from 9 a.m. to 11 a.m., Thursday, January 12, 2023, from 5:30 p.m. to 7:30 p.m., and Wednesday, January 18, 2023, from 12 p.m. to 2 p.m. Affected Federal, State, regional, and local agencies, Native American Tribes, other interested private organizations, and the general public are invited to participate.

Environmental Setting. The proposed project is within the Sacramento-San Joaquin Delta, a state-wide resource for recreation, water supply, cultural and historical resources, agriculture, and fish and wildlife habitat. The Delta sustains distinctive geographical and cultural characteristics and is home to extensive infrastructure of statewide importance, such as aqueducts, natural gas pipelines, and electricity transmission lines; railroads, commercial navigation (ports and shipping channels);

recreational navigation (marinas, docks, launch ramps); agricultural production and distribution; wildlife refuges; public and private levee systems; and highways.

Alternatives. Six project alternatives, including the no action alternative and the Applicant's preferred alternative are described in Chapter 2 and evaluated in Chapter 3 of the Draft EIS in accordance with NEPA (33 CFR part 230 and 33 CFR part 325, Appendix B). See the attached figures for a depiction of the proposed alternatives.

OTHER GOVERNMENTAL AUTHORIZATIONS: Water quality certification or a waiver, as required under Section 401 of the Clean Water Act from the California State Water Resources Control Board is required for this project.

HISTORIC PROPERTIES: The Corps has initiated consultation with the State Historic Preservation Officer and with Native American Tribes under Section 106 of the National Historic Preservation Act. The current efforts to identify and analyze potential effects to cultural resources are identified in Chapter 3.7 of the Draft EIS.

ENDANGERED SPECIES: The proposed activity may affect Federally-listed endangered or threatened species and their critical habitat. The Corps is currently coordinating with the applicant, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service. Formal consultation will be initiated pursuant to Section 7 of the Endangered Species Act and completed prior to issuing a Record of Decision on the Final EIS.

ESSENTIAL FISH HABITAT: The proposed project may adversely affect Essential Fish Habitat. The Corps will initiate consultation with the National Marine Fisheries Service along with Section 7 consultation, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. Consultation will be completed prior to issuing a Record of Decision on the Final EIS.

The above determinations are based on information provided by the applicant and our preliminary review.

SUBMITTING COMMENTS: Written comments, referencing Public Notice SPK-2019-00899 must be submitted to the office listed below on or before **February 14, 2023**

Zachary Simmons, Project Manager

US Army Corps of Engineers, Sacramento District

Email: DLL-DCP-EIS@usace.army.mil

EIS Document Links

[DCP Draft EIS Cover – Chapter 5.pdf](#) (691 pp, 15,019 K)

DCP Draft EIS Appendix I – Appendix J.pdf (826 pp, 65,082 K)

DCP Draft EIS Appendix H Scoping Report.pdf (1140 pp, 50,845 K)

DCP Draft EIS Appendix A – Appendix G.pdf (733 pp, 27,732 K)



MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: November 7, 2022

RE: Update on Water Policy/Resources Activities

Background

This memorandum is provided to briefly summarize the current status of various agency processes regarding water policy activities, including but not limited to the (1) Reinitiation of Consultation on Long-Term Operations of the Central Valley Project and State Water Project, including environmental compliance; (2) State Water Resources Control Board action; (3) San Joaquin River Restoration Program; (4) Delta conveyance; (5) Reclamation action; (6) Delta Stewardship Council action; (7) San Joaquin Valley Water Blueprint and San Joaquin Valley Water Collaborative Action Plan.

Policy Items

Reinitiation of Consultation on Long-Term Operations of the Central Valley Project and State Water Project

In August 2016, the Bureau of Reclamation and California Department of Water Resources (DWR) requested reinitiation of consultation with NOAA Fisheries, also known as National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) due to multiple years of drought, low populations of listed species, and new information developed as a result of ongoing collaborative science efforts over the last 10 years.

On Jan. 31, 2019, Reclamation transmitted its Biological Assessment to the Services. The purpose of this action is to continue the coordinated long-term operation of the CVP and SWP to optimize water supply delivery and power generation consistent with applicable laws, contractual obligations, and agreements; and to increase operational flexibility by focusing on nonoperational measures to avoid significant adverse effects to species.

The biological opinions carefully evaluated the impact of the proposed CVP and SWP water operations on imperiled species such as salmon, steelhead and Delta smelt. FWS and NMFS documented impacts and worked closely with Reclamation to modify its proposed operations to minimize and offset those impacts, with the goals of providing water supply for project users and protecting the environment.

Both FWS and NMFS concluded that Reclamation's proposed operations will not jeopardize threatened or endangered species or adversely modify their critical habitat. These conclusions were reached for

several reasons – most notably because of significant investments by many partners in science, habitat restoration, conservation facilities including hatcheries, as well as protective measures built into Reclamation's and DWR's proposed operations.

On Oct. 21, 2019, FWS and NMFS released their biological opinions on Reclamation's and DWR's new proposed coordinated operations of the CVP and SWP.

On Dec. 19, 2019, Reclamation released the final Environmental Impact Statement analyzing potential effects associated with long-term water operations for the CVP and SWP.

On Feb. 18, 2020, Reclamation approved a Record of Decision that completes its environmental review for the long-term water operations for the CVP and SWP, which incorporates new science to optimize water deliveries and power production while protecting endangered species and their critical habitats.

On January 20, 2021, President Biden signed an Executive Order: "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis", with a fact sheet¹ attached that included a non-exclusive list of agency actions that heads of the relevant agencies will review in accordance with the Executive Order. Importantly, the NOAA Fisheries and U.S. Fish and Wildlife Service Biological Opinions on the Long-Term Operation of the Central Valley Project and State Water Project were both included in the list of agency actions for review.

On September 30, 2021, Reclamation Regional Director Ernest Conant sent a letter to U.S. FWS Regional Director Paul Souza and NMFS Regional Administrator Barry Thom requesting reinitiation of consultation on the Long-Term Operation of the CVP and SWP. Pursuant to 50 CFR § 402.16, Reclamation indicated that reinitiation is warranted based on anticipated modifications to the Proposed Action that may cause effects to listed species or designated critical habitats not analyzed in the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) Biological Opinions, dated October 21, 2019. To address the review of agency actions required by Executive Order 13990 and to voluntarily reconcile CVP operating criteria with operational requirements of the SWP under the California Endangered Species Act, Reclamation and DWR indicated that they anticipate a modified Proposed Action and associated biological effects analysis that would result in new Biological Opinions for the CVP and SWP.

Following this action, on October 20, 2021, the SLDMWA sent a letter to Reclamation Regional Director Ernest Conant requesting participation in the reinitiation of consultation pursuant to Section 4004 of the WIIN Act and in the NEPA process as either a Cooperating Agency or Participating Agency.

On February 26, 2022, the Department of the Interior released a Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Hold Public Scoping Meetings on the 2021 Endangered Species Act Reinitiation of Section 7 Consultation on the Long-Term Operation of the Central Valley Project and State Water Project². In response to this, on March 30, 2022, the SLDMWA submitted a comment letter highlighting actions for Reclamation to consider during preparation of the EIS.

¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>

² <https://www.govinfo.gov/content/pkg/FR-2022-02-28/pdf/2022-04160.pdf>

During May 2022, Reclamation issued draft copies of the Knowledge Base Papers for the following management topics and requested supplementary material review and comments, to which the Authority submitted comment letters in June:

1. Spring-run Juvenile Production Estimate- Spring-run Survival Knowledge Base Document, May 2022
2. Steelhead Juvenile Production Estimate-Steelhead Survival Knowledge Base Document, April 2022
3. Old and Middle River Reverse Flow Management – Smelt, Chinook Salmon, and Steelhead Migration and Survival Knowledge Base Document, May 2022
4. Central Valley Tributary Habitat Restoration Effects on Salmonid Growth and Survival Knowledge Based Paper, March 2022
5. Delta Spring Outflow Management Smelt Growth and Survival Knowledge Base Document, May 2022
6. Pulse Flow Effects on Salmonid Survival Knowledge Base Document, May 2022
7. Summer and Fall Habitat Management Actions – Smelt Growth and Survival Knowledge Base Document, May 2022
8. Shasta Cold Water Pool Management – End of September Storage Knowledge Base Document, May 2022

Subsequent to the Knowledge Base Paper review, a Scoping Meeting was held, to which Water Authority staff provided comments, resulting in the release of a Scoping Report³ by Reclamation in June 2022.

On October 14, 2022, Reclamation released an Initial Alternatives Report (IAR), which Authority staff is reviewing and coordinating with member agencies for potential engagement with Reclamation regarding the alternatives presented in the report. Currently, Reclamation is not anticipating accepting formal comments on the IAR, but instead will be accepting comments on the draft Environmental Impact Statement, which is anticipated to be released in December.

Current Milestones

- December 2022 – Proposed Action and Alternatives
- Early 2023 – Public Draft EIS/Biological Assessment
- February 2024 – Record of Decision

Exploratory Modeling

Concurrent with the development of the EIS and BA, Reclamation is conducting Exploratory Modeling to assist in the development of the Biological Assessment. The status of current modeling includes:

Modeled Variable Components

- Shasta Reservoir Coldwater Pool Management
- Folsom Flow and Temperature Management
- Old and Middle River Flow Management
- Head of Old River Barrier
- Summer and Fall Delta Outflow and Habitat

³ <https://www.usbr.gov/mp/bdo/docs/ito-scoping-report-2022.pdf>

Modeling in Progress

- Spring Pulses and Delta Outflow
- New Melones Stepped Release Plan

Not Modeled

- Tributary Habitat Restoration
- Delta Habitat Restoration
- Georgiana Slough Non-Physical Barrier

Upcoming Coordination

- Reclamation will distribute/post the Initial Alternatives Report (IAR) for Interested Party consideration
- Reclamation does not intend to seek comments nor revise the IAR
- Agencies and Interested Parties may use the IAR to inform formulation of alternatives
- The public draft EIS will be the avenue for comments to Reclamation
- Cooperating agencies will receive an administrative draft of the EIS

State Water Resources Control Board (State Water Board) Activity

Water Unavailability Methodology and Revised Draft Emergency Curtailment Regulation

Background

On August 3, 2021, the State Water Board adopted an emergency regulation authorizing the curtailment of diversions when water is determined to be unavailable at a water right holder's or claimant's priority of right. (Cal. Code Regs., tit. 23, §§ 876– 879.2.) The regulation was approved by the Office of Administrative Law and went into effect upon filing with the Secretary of State on August 19, 2021. The emergency regulation remains in effect for up to one year. The State Water Board plans to consider revision and re-adoption of this emergency regulation on July 20, 2022, in advance of the expiration date of the current regulation.

On April 19, 2022, the State Water Board released draft proposed revisions to the emergency regulation and methodology revisions and solicited public input on both in writing by May 19, 2022, and orally at a public workshop on May 12, 2022. Based on those comments, updates to the methodology and draft emergency regulation were developed.

On July 20, 2022, the State Water Resources Control Board (State Water Board) revised and readopted an emergency curtailment and reporting regulation for the Sacramento-San Joaquin Delta (Delta) watershed. The State Water Board has released a Notice of Proposed Emergency Rulemaking⁴ for the revised and readopted emergency regulation and has submitted the emergency regulation to the Office of Administrative Law (OAL) for review and approval.

The finding of emergency, informative digest, and fiscal impact statement associated with the proposed emergency regulation are available on the Delta Drought webpage.

⁴ Available at <https://www.waterboards.ca.gov/drought/delta/docs/2022/2022-proposed-rulemaking.pdf>

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Bay Delta Water Quality Control Plan Update

Background

The State Water Board is currently considering updates to its 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Bay Delta Plan") in two phases (Plan amendments). The first Plan amendment is focused on San Joaquin River flows and southern Delta salinity ("Phase I" or "San Joaquin River Flows and Southern Delta Salinity Plan Amendment"). The second Plan amendment is focused on the Sacramento River and its tributaries, Delta eastside tributaries (including the Calaveras, Cosumnes, and Mokelumne rivers), Delta outflows, and interior Delta flows ("Phase II" or "Sacramento/Delta Plan Amendment").

During the December 12, 2018 Water Board Meeting, the Department of Water Resources ("DWR") and Department of Fish and Wildlife presented proposed "Voluntary Settlement Agreements" ("VSAs") on behalf of Reclamation, DWR, and the public water agencies they serve to resolve conflicts over proposed amendments to the Bay-Delta Plan update.⁵ The State Water Board did not adopt the proposed VSAs in lieu of the proposed Phase 1 amendments, but as explained below, directed staff to consider the proposals as part of a future Delta-wide proposal.

Phase 1 Status: The State Water Board adopted a resolution⁶ to adopt amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and adopt the Final Substitute Environmental Document during its December 12, 2018 public meeting.

Most recently, on July 18, 2022, the State Water Resources Control Board issued a Notice of Preparation (NOP)⁷ and California Environmental Quality Act (CEQA) Scoping Meeting for the Proposed Regulation to Implement Lower San Joaquin River Flows (LSJR) and Southern Delta Salinity Objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta Plan).

The purpose of the NOP is: (1) to advise responsible and trustee agencies, Tribes, and interested organizations and persons, that the State Water Board or Board will be the lead agency and will prepare a draft EIR for a proposed regulation implementing the LSJR flow and southern Delta salinity components of the 2018 Bay-Delta Plan, and (2) to seek input on significant environmental issues, reasonable alternatives, and mitigation measures that should be addressed in the EIR. For responsible and trustee agencies, the State Water Board requests the views of your agency as to the scope and content of the environmental information related to your agency's area of statutory responsibility that must be include in the draft EIR.

⁵ Available at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Blogs/Voluntary-Settlement-Agreement-Meeting-Materials-Dec-12-2018-DWR-CDFW-CNRA.pdf>.

⁶ Available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf.

⁷ Available at https://www.waterboards.ca.gov/public_notices/notices/20220715-implementation-nop-and-scoping-dwr-baydelta.pdf

In response to the release of the NOP, the Water Authority and member agencies provided scoping comments⁸.

Phase 2 Status: In the State Water Board's resolution adopting the Phase 1 amendments, the Water Board directed staff to assist the Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. Staff were directed to incorporate the Delta watershed-wide agreement as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments may be presented to the State Water Board for consideration as early as possible after December 1, 2019.

On March 1, 2019, the California Department of Water Resources and the Department of Fish and Wildlife submitted documents⁹ to the State Water Board that reflect progress since December to flesh-out the previously submitted framework to improve conditions for fish through targeted river flows and a suite of habitat-enhancing projects including floodplain inundation and physical improvement of spawning and rearing areas.

Since the March 1 submittal, work has taken place to develop the package into a form that is able to be analyzed by State Water Board staff for legal and technical adequacy. On June 30, 2019, a status update with additional details was submitted to the Board for review. Additionally, on February 4, 2020, the State team released a framework for the Voluntary Agreements to reach "adequacy", as defined by the State team.

Further work and analysis is needed to determine whether the agreements can meet environmental objectives required by law and identified in the State Water Board's update to the Bay-Delta Water Quality Control Plan.

Schedule

Biological Goals

Current Activities

- Completion of revisions based on public comment to produce a draft Final Biological Goals Report

Future Activities

- Winter/Spring 2022 – Release draft Final Biological Goals Report
- Winter/Spring 2022 – Public Workshop & comment
- Summer 2023 – Board consideration of adoption

⁸ See Appendix

⁹ Available at http://resources.ca.gov/docs/voluntary-agreements/2019/Complete_March_1_VA_Submission_to_SWRCB.pdf

LSJR Flow/SD Salinity Implementation Next Steps Assuming Regulation Path (Phase 1)

Spring 2022 – Spring 2023

- Initiate CEQA process
- Draft environmental document and public comment
- Notice of draft regulation
- Final environmental document

Summer 2023

- State Water Board consideration of approval
- Notice of final regulation
- Submission to Office of Administrative Law

Sac/Delta Update: Key Milestones

- Early 2022: expected submittal of proposed voluntary agreement
- Winter – Summer 2022: development of Scientific Basis Report for any voluntary agreement, including public review and comment
- Fall 2022: Draft Staff Report public review and comment
- Winter 2023: Public workshop on Draft Staff Report
- Early Fall 2023: Response to comments and development of proposed final changes to the Bay-Delta Plan
- Late Fall 2023: Board consideration of adoption

Voluntary Agreements

On March 29, 2022, members of the Newsom Administration joined federal and local water leaders in announcing the signing of a memorandum of understanding¹⁰ that advances integrated efforts to improve ecosystem and fisheries health within the Sacramento-San Joaquin Bay-Delta. State and federal agencies also announced an agreement¹¹ specifically with the Sacramento River Settlement Contractors on an approach for 2022 water operations on the Sacramento River.

Both announcements represent a potential revival of progress toward what has been known as “Voluntary Agreements,” an approach the Authority believes is superior to a regulatory approach to update the Bay-Delta Water Quality Control Plan.

The broader MOU outlines terms for an eight-year program that would provide substantial new flows for the environment to help recover salmon and other native fish. The terms also support the creation of new and restored habitat for fish and wildlife, and provide significant funding for environmental improvements and water purchases, according to a joint news release from the California Natural Resources Agency and the California Environmental Protection Agency (CalEPA). Local water agency managers signing the MOU

¹⁰ Available at <https://resources.ca.gov/-/media/CNRA-Website/Files/NewsRoom/Voluntary-Agreement-Package-March-29-2022.pdf>

¹¹ Available at <https://calepa.ca.gov/2022/03/29/informational-statement-state-federal-agencies-and-sacramento-river-settlement-contractors-agree-on-approach-for-2022-water-operations-on-the-sacramento-river/>

have committed to bringing the terms of the MOU to their boards of directors for their endorsement and to work to settle litigation over engaged species protections in the Delta.

On June 16, the SLDMWA, Friant Water Authority and Tehama Colusa Canal Authority signed onto the VA MOU.

Delta Conveyance

Draft Environmental Impact Report

On July 27, the California Department of Water Resources (DWR) released the Draft Environment Impact Report (Draft EIR) for the Delta Conveyance Project.

The release of the Draft EIR gives the public an opportunity to formally weigh in on a proposed infrastructure project. The proposal follows Governor Newsom's direction in 2019 to downsize previous concepts for improving Delta conveyance.

The preliminary design of the proposed project and alternatives outlined in the Draft EIR reflect the work of the Delta Conveyance Design and Construction Authority (DCA), a joint powers authority of local public water agencies participating in the project.

The Draft EIR was prepared by DWR as the lead agency to comply with the requirements of the California Environmental Quality Act by evaluating a range of alternatives to the proposed project and disclosing potential environmental effects of the proposed project and alternatives, and associated mitigation measures for potentially significant impacts. No decisions will be made on whether to approve the project until the conclusion of the environmental review process, after consideration of public comments submitted on the Draft EIR and issuances of a Final EIR. At that time, DWR will determine whether to approve the proposed project an alternative or no project.

The documents are hosted on the Draft EIR website¹² along with accompanying informational materials that provide more information about the proposed project and the public review process, including public hearing details and commenting opportunities.

U.S. Bureau of Reclamation

Reclamation Manual

Documents out for Comment

Draft Policy

- There are currently no Draft Policies out for review.

Draft Directives and Standards

- CMP 07-01 Project Management (comments were due by 10/27/2022)

Draft Facilities Instructions, Standards, and Techniques (FIST)

- There are currently no Facilities Instructions, Standards, and Techniques out for review.

¹² <https://www.deltaconveyanceproject.com>

Draft Reclamation Safety and Health Standards (RSHS)

- There are currently no Safety and Health Standards out for review.

Draft Reclamation Design Standards

- There are currently no Design Standards out for review.

Delta Stewardship Council

Revised Draft Amendments to Administrative Procedures Governing Appeals

The Delta Stewardship Council announces the availability for public review and comment of revisions made after the Council's September 22, 2022 workshop to draft amendments to its Administrative Procedures Governing Appeals (Appeals Procedures). The revised draft amendments to the Appeals Procedures are available on the Council's website.

The Council's experience with appeals proceedings for covered actions in the past five years has identified areas where improvements, which were not foreseen when the Council first adopted the Appeals Procedures in 2010, could be made. The Council's 2019 Five-Year Review of the Delta Plan also highlighted the need for potential amendments to the procedures. These revised draft amendments were prepared in consideration of comments received on draft amendments circulated in December 2021 and subsequent comments received at a Council workshop on September 22, 2022.

On October 26, the Water Authority submitted comments on the draft amendments, which are included in the Appendix.

Water Blueprint for the San Joaquin Valley Activity

Background

The Water Blueprint for the San Joaquin Valley (Blueprint) is a non-profit group of stakeholders, working to better understand our shared goals for water solutions that support environmental stewardship with the needs of communities and industries throughout the San Joaquin Valley.

Strategic Priorities

The Blueprint's new board of 20 directors developed the following strategic priorities for 2022-2025, deliverables, actions, and timelines. The priorities focus on the following: Advocacy, Groundwater Quality and Disadvantaged Communities, Land Use Changes & Environmental Planning, Outreach & Communications, SGMA Implementation, Water Supply Goals, Governance, Operations & Finance.

The Blueprint Board has also identified quantifiable objectives, timelines for action and systems of accountability.

Mission Statement: *"Unifying the San Joaquin Valley's voice to advance an accessible, reliable solution for a balanced water future for all."*

Vision Statement: *"The Water Blueprint serves as the united voice to champion water resource policies and projects to maximize accessible, affordable, and reliable supplies for sustainable and productive farms and ranches, healthy communities, and thriving ecosystems in the San Joaquin Valley."*

Large Group Meetings

Large Group Meeting: Large Group met October 12th at the Madera County Farm Bureau, speakers included Congressman Jim Costa to review recent federal action on drought relief and Professor David

Sunding PhD, reviewing the Economic Impact Assessment and Phase II to address reduction of those impacts.

Committees

Technical Committee

Infrastructure Advisor Villaraigosa has requested a list of priorities/projects supported by a valley wide coalition like the Blueprint. The Blueprint is helping coordinate a submittal of the requested priorities/projects. Those being discussed and suggested including fundamental regulation reform, conveyance facility repair, GSP project funding, climate adaptive improvements in the Delta and Sites/SLR raise.

Executive/Budget/Personnel

An executive director application and job listing was circulated to solicit applicants; Search Committee and Board have closed the existing search process and will be reviewing next steps.

Advocacy

The Blueprint is producing a trifold for highlighting the Blueprint pursuits and asks. The board has produced a response letter to the Governor's California's Water Supply Strategy, the letter attempts to address the opportunities and areas of improvement in the plan and the Blueprint is following up for a response to the request to engage on its implementation consistent with current discussion with Advisor Villariagosa.

Drinking Water Feasibility Study

A draft drinking water feasibility study proposal has been prepared by Fresno State/California Water Institute covers 5 counties within the San Joaquin Valley to identify 20 spots that are technically and financially feasible for groundwater recharge that have multiple benefits and specifically DACs with no other options but groundwater. State Contractors and SLDMWA are working with the participants to expand the study area and assist with finding funding. Current sponsors are Fresno State, FWA, Self Help, Sustainable Conservation and Leadership Council and are discussing funding opportunities with Senator Feinstein's office and DWR. Friant Contractors/managers have shared projects they are pursuing and ability to identify tangible and/or direct benefits to drinking water supplies.

San Joaquin Valley Water Collaborative Action Program (SJVV CAP)

The CAP is focused on coming to an agreement on a term sheet with an initial list of desired outcomes and potential solutions to water issues in the San Joaquin Valley. The Plenary group could not come to an agreement on the previous Phase I framework and decision document that was produced and is now focused on trying to come to an agreement on the CAP Term Sheet to move the collaborative effort forward into Phase II. Authority staff is coordinating with member agencies on comments to the draft Term Sheet, which is under discussion.

APPENDIX

San Luis & Delta-Mendota Water Authority



P.O. Box 2157
Los Banos, CA 93635
Phone: (209) 826-9696
Fax: (209) 826-9698

October 26, 2022

VIA EMAIL

Delta Stewardship Council
715 P Street, Suite 15-300
Sacramento, CA 95814
Email: procedures@deltacouncil.ca.gov

Re: Comments – Revised Proposed Amendments to Administrative Procedures Governing Appeals

To Whom It May Concern:

The San Luis & Delta-Mendota Water Authority ("Water Authority") submits the following comments on the Delta Stewardship Council's revised proposed amendments to its Administrative Procedures Governing Appeals ("Appeals Procedures").

First, the Water Authority thanks the Council for incorporating several of its suggestions into the revised proposed amendments. Most significantly, the Water Authority appreciates the revisions made in response to the concern regarding the potential for repeated, successive appeals. The Water Authority fully supports the proposed revision to add Paragraph 15.1. If adopted, Paragraph 15.1 will help prevent abuse of the appeals procedure, promoting substantive appeals and efficient use of the Council's, certifying agencies', and others' resources. In addition, the Water Authority appreciates the clarification in the proposed revision that adds Paragraph 11, subdivision (f) that non-parties may make oral comment to the Council regarding an appeal in accordance with the Bagley-Keene Open Meeting Act.

Second, the Water Authority submitted suggestions in its March 2021 comment letter and again orally to the Council at its September 2022 meeting that have not been incorporated into the amendments and could further improve the amendments. The Water Authority suggests the adoption of the below, select revisions.

Revision to Paragraph 4, subdivision (c) as follows:

52

A certifying agency shall submit to the council, no later than ~~5~~ 10 calendar days after receiving notice of an appeal pursuant to Paragraph 8, the record....¹

The Water Authority respectfully submits that five calendar days is too short a time given agency staffing issues and limited agency resources during weekends and holidays.

A new Paragraph 10, subdivision (c) as follows:

The council shall give the certifying agency the opportunity to respond to any requests to supplement the record submitted pursuant to this paragraph before the council makes its determination regarding the request.

The staff's presentation regarding the proposed amendments during the September 2022 Council meeting suggested that a certifying agency would already have the opportunity to respond to requests to supplement the record under the proposed amendments as then drafted, but this opportunity is not clear in the revised proposed amendments. The Water Authority suggests that the Council adopt the above suggested provision to bring clarity to the topic.

Similarly, a new Paragraph 29, subdivision (c) as follows:

The council shall give the certifying agency the opportunity to respond to any request for official notice of additional information submitted pursuant to this paragraph before the council makes its determination regarding the request.

Paragraph 29 allows any party to an appeal to submit a request to the Council to take official notice of additional information. Because this information is information that may not have been before the certifying agency at the time of certification, it is important to give the certifying agency an opportunity to respond to the request before the Council makes a determination.

In addition, the Water Authority has reviewed and supports the comments being submitted by the State Water Contractors, which also focus on the fair and efficient resolution of appeals, and incorporates them by this reference.

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¹ This excerpt incorporates the other proposed revisions in Paragraph 4, subdivision (c).

Revised Proposed Amendments to Appeals Procedures

October 26, 2022

Page 3 of 3

The Water Authority appreciates this opportunity to comment on the revised proposed amendments to the Appeals Procedures. If you have questions about our comments or would like to discuss ways we can help support the process, please contact me at (209) 826-9696 or contact our General Counsel, Rebecca Akroyd, at rebecca.akroyd@sldmwa.org.

Regards,



Federico Barajas, Executive Director

San Luis & Delta-Mendota Water Authority

✓.

Feds consider reducing Klamath River flows by up to 40%

The federal Bureau of Reclamation is considering reducing the amount of water sent down the Klamath River by up to 40% over the coming winter months. A draft proposal released this month outlined the cuts ahead of another possible drought year.

According to a draft proposal released by Reclamation on Dec. 9, the Klamath Basin remains in “severe to extreme drought status” and dry weather is expected to continue for a fourth consecutive year. In response, the federal water management agency proposed reducing flows by up to 40% until April. Water is released from Upper Klamath Lake past a series of dams on its way to the Pacific Ocean.

The Klamath River will soon be the site of the nation’s largest dam removal and river restoration project. One of its key pillars involves restoring habitat for endangered coho salmon.

News of proposed reductions to the river’s flow was met with frustration by members of the Yurok Tribe, who just hours earlier had been joined by U.S. Secretary of the Interior Deb Haaland and the governors of Oregon and California at a celebration about the dam removal project. Reduced flows could further stress downriver coho and Chinook salmon populations.

“The Klamath salmon runs – the cohos – are down to their single digit percentages of their historical size. If we keep killing fish like this year after year after year, it just cuts away at the species’ ability to repopulate because then there’s not sufficient genetic diversity to repopulate the species,” said Amy Cordalis, a member of the Yurok Tribe, who is also an attorney for the tribe.

She said the last time river flows were as low as Reclamation’s current proposal was in 2002, the same year low water levels contributed to a massive fish die-off in the river. Cordalis said reducing flows could strand

migrating fish and dewater nests of salmon eggs, called redds, further imperiling the population.

The Bureau of Reclamation declined to comment for this story. The federal water manager is again in the impossible position of having to split an over-allocated water supply four ways. Water must be balanced between the needs of ESA-listed species both above and below the dams, for the basin's agricultural community, and for the nation's oldest National Wildlife Refugees created for waterfowl, which are an important stopover for birds on the Pacific Flyway.

"If drought conditions persist, the Bureau of Reclamation may not be able to meet Endangered Species Act requirements for coho salmon, Southern Resident Killer Whales (which rely on Chinook salmon as a prey species) and for Lost River (C'waam) and shortnose suckers (Koptu). Conditions would also be extremely difficult for farmers, ranchers, and the National Wildlife Refugees if drought conditions persist, as these water users have received record low water deliveries during these last three years," the agency wrote in a recent letter to stakeholders.

By limiting water flowing downriver, Reclamation hopes to refill Upper Klamath Lake to maintain water levels required for critically endangered sucker fish spawning habitat. The Lost River and shortnose suckers are culturally important to the Klamath Tribes.

The proposal from Reclamation was unusual in its brevity and the weekend-long window of time for comment. Moss Driscoll with the Klamath Water Users Association, a group that advocates for the Klamath Basin's farming community, said the agency should act to keep water in the lake early during the wetter winter months.

"We've really done everything to urge that timely and appropriate action be taken to avoid harder decisions and more severe conflict later on this water year," Driscoll said.

According to Reclamation, their staff will meet with tribes and Klamath Project farmers on Wednesday, Dec. 21 to discuss the water year ahead, and they will continue meeting until a plan is finalized.

V.

Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, Little Manila Rising, Restore the Delta, and Save California Salmon file a Title VI (Civil Rights) Complaint and a Petition for Rulemaking with the US Environmental Protection Agency

Department of Water Resources

Maven
Breaking News

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Press release from Restore the Delta:

Today, the Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, Little Manila Rising, Restore the Delta, and Save California Salmon filed a Title VI (Civil Rights) Complaint and a Petition for Rulemaking with the US Environmental Protection Agency. The coalition is represented by the Stanford Environmental Law Clinic.

The complaint and petition seek relief for California Tribal nations and disadvantaged Delta communities. In May 2022, this same coalition of groups petitioned the State Water Resources Control Board to update water quality standards for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (the "Bay-Delta") to improve instream flows to save fish species and address harmful algal blooms (HABs) that plague their communities. The State Board refused to act on these requests.

The actions taken today urge the US EPA to:

- Initiate a Title VI (Civil Rights) investigation into the State Water Board's discriminatory water management policies and practices in the Bay-Delta, and
- Initiate a rulemaking to adopt federal Clean Water Act-compliant, water quality standards for the Bay-Delta, including designating tribal beneficial uses and adopting flow-based, temperature, and HABs criteria that protect beneficial uses and tribal reserved rights.

"The State Water Board is required by law to review water quality standards every three years. But the Board has not done so for the Bay-Delta in over a decade, and it has not made updates since the nineties," explains Stanford Environmental Law Clinic student attorney Raul Quintana.

"The Board is failing to uphold both the Clean Water Act and federal civil rights law," adds Stanford Environmental Law Clinic student attorney Mark Raftrey. "It is allowing the Bay-Delta to descend into an ecological crisis that harms Native tribes and disadvantaged communities the most. The EPA has the authority to correct these violations, and we call on it to do so here."

Statements by the Parties:

Malissa Tayaba, Vice Chair, Shingle Springs Band of Miwok Indians

Our ancestral homelands span Sacramento, El Dorado, Amador, Sutter, Yolo, Placer, and Yuba counties. Since the beginning of time, we have taken care of the land, the

ivers, the streams, the plants, animals, and our traditional resources. The Sacramento Bay-Delta is the heart of my tribal community and holds vital resources that have sustained the many indigenous communities that are touched by its influence. Poor water quality now affects the plant and animal resources of the Delta region as well as the Tribe's cultural practices, and ability to carry on our cultural traditions.

Gary Mulcahy, Government Liaison, Winnemem Wintu Tribe

It's pretty bad when California Indians have to file a complaint with the Federal Government so that the State doesn't violate our civil rights.

Dillon Delvo, Executive Director, Little Manila

As long as the state upholds historic water rights, that we all know to be racist and unfair, we will continue to have first- and second-class California communities.

Artie Valencia, Community Organizer, Restore the Delta

Recreational users and fishermen who depend on the fish here are particularly affected by harmful algal blooms. A friend who got rashes from water skiing in the Delta this past summer will never go into the waterways again after learning about the Delta's harmful algal blooms. I see Stockton residents, mostly immigrants and people of color, fishing in Stockton waterways often for sustenance. For fishermen, the fish that once thrived in the Delta become fewer and fewer in number every year.

Morning Star Gali, Ajumawi band of the Pit River Tribe in Northeastern California, Save California Salmon

The State Water Board, which is tasked with protecting our water, has neglected its responsibilities to Tribes, communities of color, and environmental justice communities for too long. Moving forward with protecting California's clean water and designating Tribal Beneficial Uses would greatly help our salmon relatives who are vital to the culture, traditions, and health of my Tribe, along with the millions of Californians in cities that rely on the Delta watershed for their drinking water.

BACKGROUND

For well over a decade, the California State Water Resources Control Board has failed to uphold its statutory duty to review water quality standards in the Bay-Delta and ensure compliance with the federal Clean Water Act's objectives. Inadequate standards have allowed Bay-Delta waterways to descend into ecological crisis, with the resulting environmental burdens falling most heavily on Native tribes and other communities of color.

The waterways of the Bay-Delta are plagued by dangerously low flows, native fish die-offs, high water temperatures and encroaching salinity, and overgrowths of toxic algae or cyanobacteria known as harmful algal blooms ("HABs"). The State Water Board could restore the estuary by providing for water from the surrounding mountains to flow unimpeded into and through Bay-Delta waterways, but instead it allows more than half of that water to be diverted or exported elsewhere every year.

28

The ecological crisis in the Bay-Delta, like California's water rights regime, is rooted in white supremacy. Ignoring millennia of tribal use and stewardship, the State accorded rights to non-Natives to divert water from its natural course under the doctrine of prior appropriation, based on the colonial mantra of "first in time, first in right." At the same time, California law barred people of color from owning land, and accompanying water rights, well into the 20th century. The result was a system that favors the diversion and export of Bay-Delta waters for use in far flung locales over ecological health and human welfare in the Bay-Delta itself.

The impacts of these failures have fallen disproportionately on Native tribes and communities of color. For instance, the Shingle Springs Band of Miwok Indians cannot perform cultural, religious, and subsistence practices in the Bay-Delta's HABs-contaminated waters, nor can it access riparian resources essential to tribal identity. The collapse of the Delta's native fisheries impairs Winnemem Wintu's ability to exercise its religion and way of life, which depend on the once bountiful presence of Chinook salmon in the Delta's headwaters. Communities of color in South Stockton, where Little Manila Rising is based, cannot use and enjoy the longest river in the state because of HABs and chronically low flows. The health risks of HABs-related air pollution add to the environmental burdens already borne by these communities.

The State Water Board's violations of laws intended to restore the integrity of the waterways perpetuate this history of dispossession and environmental racism. The Clean Water Act requires the Board to review water quality standards every three years through a public process. It requires that water quality criteria protect beneficial uses of water bodies and tribal reserved rights. And it requires that standards to be grounded in sound scientific rationale. The Board last initiated comprehensive review of Bay-Delta water quality standards in the late 2000s. It has delayed review while the State engages in private negotiations over export allowances with powerful water rights claimants (Voluntary Agreements) which excluded tribes and communities of color that would be impacted by resulting standards from the decision-making process. Outdated water quality standards – last updated in 1995 – fail to protect beneficial uses in Bay-Delta waterways or account for tribes' reserved rights and interests.

A coalition of Stockton, California environmental, social, and economic justice groups have sent the EPA a letter urging it to act on the complaint and the petition.

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