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Subject: Comments on August 19, 2026, Draft Bay-Delta Plan and Staff Report
Date: Friday, September 18, 2026 5:48:07 PM
Attachments: image002.png
SWC Comments on August 19 2026 Draft Bay-Delta Plan and Staff Report.pdf

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Good afternoon,

On behalf of the State Water Contractors, attached are comments on the August 19, 2026, Draft Bay-Delta Plan and Staff Report.

Kind regards,

Linda

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September 18, 2026

Delivered Via Email: SacDeltaComments@waterboards.ca.gov

Chairman E. Joaquin Esquivel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Comment Letter: Final Draft Bay-Delta Plan

Dear Chair Esquivel, Board Members and staff:

The State Water Contractors (SWC) appreciate the State Water Resources Control Board's (Water Board) ongoing efforts to address the concerns of the water rights holders and operators of our systems and to seek solutions for an updated Water Quality Control Plan (Bay-Delta Plan) that appropriately balances protection of all beneficial uses. We all understand that the water supply reliability of our system is directly tied to its ecosystem health, and we are dedicated to actions, research, and decision-making that effectuate the improvement of both.

The Bay Delta Plan will directly affect the water supply available for nearly every Californian, affecting the millions of acres of farmland that feed the state and the nation, and the State's future livability and affordability. As drafted, the Bay Delta Plan could halt future water supply development, even when there are clearly opportunities to develop water under very wet conditions, and discourage regulatory updates to SWP and CVP operations that reflect advances in the best available science. The old top-down regulatory approach has been shown to be ineffective, causing water costs to escalate without generating measurable returns on those investments. The State needs partners, and the water community stepped up by creating the Healthy Rivers and Landscapes Program (HRL).

As you know, the SWCs have been a collaborative and productive partner in the development of the HRL since 2017. We worked with nearly all other water rights holders and operators in the system, along with Water Board staff, to develop an HRL that was ultimately endorsed by the HRL parties, CalEPA, California Natural Resources Agency, California Department of Fish and Wildlife, and California Department of Water Resources resulting in the March 2022 MOU. HRL as proposed is based on how the water system is and can be operated, best available science, and water availability. HRL includes significant new water dedicated to the environment, thousands of acres of new habitat designed to maximize the ecosystem benefits of environmental water, and funding to make it all happen. We proposed scientific investigation and adaptive management that would be jointly pursued and implemented in a transparent way that allows all interested parties to participate and learn together.



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September 18, 2026

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Unfortunately, the HRL included in the current Bay Delta Plan is not what was proposed. It has been turned into a regulatory program with many new layers of bureaucracy that unnecessarily hinder implementation and drive-up costs, and we are concerned will result in confusion and conflict. We have repeatedly objected to the re-writing of HRL.

In summary, the HRL has been fundamentally changed in the following ways:

- **New Regulation:** The regulatory scope has increased, layering new obligations over existing regulatory frameworks, specifically the ESA and CESA consultations. There is also a new and expansive list of Executive Director decisions that largely re-visit previously approved Board actions adding regulatory uncertainty.
- **No Comprehensive Science Program:** The robust science program that has been collaboratively developed to implement a meaningful research and monitoring program in the Delta has been limited to the HRL rather than the Bay Delta Plan as a whole as intended, creating confusion and potential inefficiencies in developing and implementing a Delta comprehensive science and research program.
- **Lost Governance Structure:** The governance structure meant to promote watershed-wide collaboration and transparency is largely removed from the HRL, causing significant uncertainties for HRL parties due to lack of clarity on enforcement agreements among other changes, such as early termination.

Even in light of the serious issues we and others have raised, there is still a path to recover HRL and get back on track. We stand ready to work with the Water Board to ensure that the HRL that is ultimately adopted provides meaningful contributions to improve fish and wildlife conditions through the Bay Delta Plan implementation, while balancing all other beneficial uses. We hope that this will not be a missed opportunity.

The SWC are providing the attached comments on the major components of HRL description in the Draft Bay Delta Plan that undermine the fundamental concepts of the program, as well as other implementation issues that concern other components of the plan. We continue to be hopeful that our concerns and the concerns of the water community will be addressed so the HRL is included in the Bay Delta Plan, adopted and implemented to the benefit of all uses. The future of California depends on it.

Sincerely,



Jennifer Pierre
General Manager

Attachment 1

Specific Comments

2026 Draft Bay Delta Plan

I. Introduction

The SWC are providing comments on the major changes in the Draft Bay Delta Plan to the HRL that undermine its success. The SWC have comments about other aspects of the Draft Bay Delta Plan as well, including UIF implementation by regulation, the definition of new water supply projects, UIF accounting, and south Delta salinity.

II. Unresolved Problems with HRL Program Description

Through multiple State administrations, it was agreed that the HRL would be developed in cooperation with the State with a goal to:

...negotiate durable and enforceable Voluntary Agreements that will be approved by applicable regulatory agencies, will represent the program of implementation for the water quality objectives for the lower San Joaquin and Sacramento Rivers and Delta, and will forego an adjudicatory proceeding related to water rights, and will resolve disputes among the parties regarding water management in the Sacramento- San Joaquin Delta Watershed.¹

The Public Water Agency HRL Parties agreed to this approach and developed significant contributions of new flow and new physical habitat with funding for a comprehensive science program and governance structure in exchange for regulatory commitments. Contrary to the cooperation highlighted in the 2022 MOU, there have been changes to HRL that did not originate from or supported by the HRL parties. We ask that the most significant of those changes be reconsidered.

A. Protection of Baseline Flow

Draft Bay-Delta Plan, Section 4.4.9, Protection of Base Flows requires review of SWP and/or CVP operations every time there is a change in long-term operations regardless of whether it has an impact on the new contributions of flow under HRL. This section is inconsistent with the MOU that states:

4.1 The VA flows described in Appendix 1 will be additive to the Delta outflows required by Revised Water Rights Decision 1641 (revised D-1641) and resulting from the 2019 Biological Opinions, although the 2019 Biological Opinions may be modified, including to resolve litigation concerning those opinions.²

Rather than interpret this MOU section as stating that HRL flows are new as measured by the defined regulatory condition, the Draft Bay-Delta Plan effectively prohibits all future changes in SWP and Central Valley Project (CVP) operations through a new requirement that imposes a “commensurate increase in HRL flow commitments to address any such reduction in Delta

¹ Memorandum of Understanding Advancing Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions, p. 1, Recital G.

² *Id.* at Term Sheet, p. 5, Section 4.1.

outflow” every time the SWP and CVP receive a new Endangered Species Act (ESA) permit.³ Even when establishing this baseline, the MOU acknowledged that SWP and CVP operations “may be modified,” but this new language is contrary to that acknowledgement. This new flow obligation would also apply to adaptive management and real time operations within the 2024 ESA permits as the Draft Bay-Delta Plan extends the baseline requirement to “...other operational changes that result in a substantial reduction in Delta outflow.”⁴

In our February 2026 comments we explained the following fundamental problem with the Protection of Baseline approach stating:

It seems that the concern about the SWP and CVP Endangered Species Act permitting is being intensified by recent changes to the state and federal Long-Term Operations Plans (LTO). The recent changes in the CVP’s LTO adopting Action 5 are reasonable and protective of endangered species. Action 5 only changed a small subset of CVP operations. It removed Fall X2 based on the published findings of the Delta Smelt Life Cycle Model that concluded that Fall X2 is not meaningfully contributing to species abundance. Fall X2 is a high-water cost action with very low potential benefits, so it’s removal was reasonable. In fact, since 2008, we, DWR, Reclamation and others have spent millions of dollars studying the Fall X2 Adaptive Management Action, and there have been numerous publications that support its ultimate offramping. This is how adaptive management should work. Action 5 has the potential to change Old and Middle River (OMR) export operations, adopting a real-time risk assessment approach rather than the prior prescriptive requirements that cannot be adjusted to consider real-time conditions. Ultimately requires the CVP to operate to meet -5,000 cfs OMR flow requirement for majority of the winter-spring season, which is also a reasonable and protective approach, similar to what has been implemented in the past, including under the 2008-2009 biological opinions. These types of science-based changes to the state and federal LTO should be supported by the Water Board, and not hampered by the inclusion of these provision in the WQCP.

We are perplexed by the Water Board’s response to this comment. The Response to Comment generally referred us to Common Response 1.3 and to the “Scientific Knowledge” section of Chapter 3. This Response to Comment misunderstands our point which is that changes in long term SWP and CVP operations are based on adaptive management and updated science, so there should not be an assumed impact to beneficial uses merely because a SWP operation changed. We would further point out that the science discussion in Chapter 3 is outdated, which also supports our point that the pace of scientific research is quick, but the Water Board processes are comparatively slow, making the Water Board a sub-optimal forum for adaptive management and real-time operational decisions. The language in the Draft Bay Delta Plan goes further than earlier proposals as the Protection of Baseline provisions would potentially be triggered by any adaptive action, falling under “other operational changes”, a change that heightens our previously stated concerns rather than reduce them.

Requested edit: This section should be revised to ensure that adaptive management actions already approved by the state and/or federal fishery agencies are not further burdened by process, and that

³ Draft Bay-Delta Plan. p. 66.

⁴ Draft Bay-Delta Plan, p. 66 [The definition of a “Relevant Change” includes, “other operational changes that result in a substantial reduction in Delta outflow.”]

Water Board actions are only taken when necessary to provide reasonable protection of beneficial uses of water based on the written record.

B. Implementation of Interior Flow Narrative Objective

The SWC objects to the implementation of the new Interior Flow Narrative Objective being the sole responsibility of the SWP and CVP.⁵ While we appreciate certain edits that were made to Section 4.4.4.1 in the current Draft Bay-Delta Plan as compared to the prior version, the fact that only the SWP and CVP are responsible for meeting this objective has not changed.

We have commented on this previously, saying that there is no administrative record to support imposing yet another Bay-Delta Plan implementation responsibility on the SWP and CVP. We explained that the published literature estimated that SWP and CVP existing regulatory compliance is in the range of 4 MAF and 10 MAF, and the Water Board has never provided a rationale to explain why it is in the public interest or how Water Code §13241(d) (economic considerations) were considered to justify the imposition of new implementation obligations on the SWP and CVP that are higher than the existing millions of acre-feet already provided to support the Delta ecosystem.

In response to our prior comment, the Water Board seemed to quibble with the estimate of compliance, saying it is more like 5 MAF, but did not directly address our comment.⁶ As it relates to our Public Trust comments, the Response to Comment said, “to the extent this commenter believes that four pages are intended to satisfy the State Water Board’s obligations under the Porter-Cologne Act and Public Trust Doctrine, they are mistaken,”⁷ but it did not direct us to where we could find documentation of the balancing of the public interest. Apparently to justify the new requirement, the Response to Comment simply repeated a broad summary of the types of impacts the SWP and CVP may have and made no effort to consider the large regulatory commitment the SWP and CVP are already providing and whether it was in the public interest to further regulate the SWP and CVP.⁸

We have also previously explained that managing fish salvage and determining whether SWP and CVP operations are “consistent” is in excess of the Water Board’s water quality authority.⁹ The Water Board does not have the authority under its water quality authority to require that the SWP and CVP operate “consistently” with each other or to manage fish salvage, which is unrelated to water quality because it is not a “chemical, physical, biological, bacteriological, radiological, and other properties of water that affects its use.”¹⁰ The Response to Comment did not directly respond to our comment, instead referencing general descriptions of law.

Revised Edit: We request that the implementation obligation be broadened to include the entire watershed and that this narrative objective be implemented by: (1) actions required under the HRL

⁵ In Response to our comment on this issue (Comment Letter 1087, Comment Number 12), the Water Board was confused as to why we thought we were solely responsible for the Stockton dissolved oxygen (DO) requirement. We did not mention anything about the Stockton DO requirement.

⁶ Response to Comment, Letter 1087, Comment 31.

⁷ Response to Comment, Letter 1097, Comment 32.

⁸ Response to Comment, Letter 1087, Comment 36.

⁹ Comment Letter 1087.

¹⁰ Wat. Code §13050(g).

or by bypassing a percent of unimpaired flow, and (2) other complementary actions or measures, which are: (a) actions required to implement all other fish and wildlife objectives set forth in Table 3 of the Bay-Delta Plan, and (b) other measures that state, federal, and local agencies and other entities must take to protect fish and wildlife, such as addressing invasive species, predation, harvest, and angling. We further request that references to “consistent” SWP and CVP operations and “implementation measures...required pursuant to the State and federal Endangered Species Act requirements for the operations of the CVP and SWP export facilities,” be struck.

C. Enforcement Agreement

The Draft Bay Delta Plan changes the core component of the HRL. This is important because it is a deviation from the foundational collaborative concept of the program being implementation by Enforcement Agreement containing mutual commitments between the Water Board and all of the major diverters in the watershed. That commitment is missing from the Draft Bay-Delta Plan.

The HRL described in the MOU relies on a framework of agreements that obligate HRL parties to the Water Board and obligate the HRL parties to each other. In relevant part, the MOU Term Sheet states:

- **7.1** The VAs will become effective on the date the Government Code section 11415.60 Agreements are executed. The VAs will remain in effect for a term of 8 years after the effective date...¹¹
- **7.2** The State Water Board will have authority to enforce the flow and non-flow measures relying on Water Code authorities, as provided in the Government Code Section 11415.60 Agreements. The agreements will specify responsible parties and conditions precedent for implementation and related liability for enforcement...¹²
- **7.3** Through the Government Code Section 11415.60 Agreements, the State Water Board will provide assurances that the VAs state the total obligations of the VA Parties to implement [the narrative objectives]...¹³

Contrary to this language, the Draft Bay Delta Plan at p. 65 states that:

The State Water Board may issue Government Code section 11415.60 decisions by settlement or other decisions, orders, or regulations to enforce HRL commitments in accordance with the below provisions. The holders of the HRL water rights are referred to throughout this section as HRL participants for ease of reference; however, the VA pathway is only applicable to the HRL water rights identified in Appendix B.1, as they are being exercised at the time of Plan adoption by the State Water Board. Inclusion in the VA pathway for the HRL water rights listed in Appendix B.1 is contingent on the HRL commitments being met for that source. HRL participants may also hold water rights that are not included in the VA pathway.

¹¹ *Id.* at Term Sheet, p. 7, Section 7.1.

¹² *Id.* at Term Sheet, p. 7, Section 7.2.

¹³ *Id.* at Term Sheet, p. 8, Section 7.3.

This Bay-Delta Plan language is inconsistent with the MOU because it does not state that the only implementation approach is through agreements under Government Code section 11415.6, rather it indicates that enforcement could occur through “other decisions, orders, or regulations to enforce HRL commitments.” We object to any other implementation pathway other than through an Enforcement Agreement. A related problem is that because the Draft Bay-Delta Plan fails to indicate that HRL parties commit to the program by signing an Enforcement Agreement, it is unclear how a HRL party would opt-in. As written, a regulation could be passed that commits every water right in Appendix B.1 to HRL without their affirmative consent, which would undermine the foundation of HRL.

Requested Edit: Modify Section 4.4.9 to state that HRL will be implemented through Enforcement Agreements and that the signing of the Enforcement Agreement is how diverters in the watershed enter the HRL.

D. Shift From Collaborative Implementation

The changes to HRL include a significant increase in number of decisions to be made by the Executive Director related to implementation. The MOU focused on collaboration and regular reporting to the Water Board as it relates to implementation. The dramatic increase in Executive Director decisions in the Draft Bay Delta Plan removes the collaboration dynamic between the HRL participants and the Water Board, while also substantially increasing costs and uncertainty as it relates to implementation. The MOU discussions in 2022 focused on permitting streamlining to ensure timely implementation, but the HRL in the Draft Bay Delta Plan is the other extreme representing a heavy bureaucratic burden to the extent that implementation success could be seriously impacted for reasons beyond control of the HRL parties. When we made this comment in previous letters, the Response to Comment was simply that the Water Board considered all comments.¹⁴ This is not responsive to our comment.

There are multiple examples of this shift away from collaboration to heavy regulation and necessarily burdensome Executive Director review, as follows:

- Review of HRL Water Rights: This process requires:
 - “HRL participants must demonstrate that the water purchase would provide benefits to native fish and wildlife.”¹⁵
 - If HRL is being implemented, the Water Board has already determined that the flows benefit fish and wildlife. This requirement appears to revisit the Water Board decision to adopt HRL.
 - “Within 6 months of adoption of the current Plan amendments, HRL participants will provide a list of the specific water rights for each HRL water source, including water rights proposed for purchases, and any substantiating information requested by the Executive Director, that could be dedicated instream.”¹⁶

¹⁴ Response to Comment, Letter 1087, Comment Number 17.

¹⁵ Draft Bay-Delta Plan, p. 68.

¹⁶ *Id.*

- If HRL is being implemented, the Water Board has already approved all of the water right contained in Appendix B.1 as being part of the program. This requirement appears to revisit this Water Board decision regarding participation in HRL.
- “The State Water Board will notify the public and provide a 30-day comment period for comments on whether the dedication will injure other legal users of water, unreasonably affect fish and wildlife or other instream uses, or increase instream uses, or increase the amount of water that would have otherwise been used under that right.”¹⁷
- There is an existing Water Board process for water transfers that already addresses these issues, and there should be no additional process for water rights that are already listed in Appendix B.1.

Section 4.4.9.5, Non-Flow Habitat Restoration Commitments, is another example. There are countless Executive Director approvals for every aspect of habitat restoration, including but not limited to design criteria regulating the size of the substrate, stones, trees, bushes, logs and grass, and the length of water inundation. There is a process for design approval and modifications to design approval. There is a process for when habitat designs are rejected. There is even a new requirement that, “HRL habitat restoration projects must be maintained to provide for no reduction in habitat quality for at minimum the duration of the VA pathway.”¹⁸ While we certainly understand the need to maintain restored habitat, a “no reduction” standard seems to include aspects of a project that are beyond the HRL parties’ control, like natural variations in the maturation and performance of projects over time.

Requested edit: In addition to a general recognition that the layers of Executive Director decision-making and reporting need to be streamlined during implementation, we request a specific edit to the new habitat language at Draft Bay Delta Plan p. 86 as follows:

HRL habitat restoration projects will ~~must~~ be maintained as needed based on assessments to provide for no reduction in habitat quality for at minimum the duration of the VA pathway following potential functionality-altering events over the duration of the VA.

E. Protection of Implementation Flows and No Redirected Impacts

The MOU contained commitments in Sections 8.1 and 8.2 that the Water Board would protect all HRL flows from unlawful diversion and committed to no redirected impacts, particularly as it relates to no backstopping of flows by the SWP and CVP. We appreciate the Draft Bay-Delta Plan statement regarding no redirected impacts at p. 69 that:

...that HRL participants, including the CVP and SWP, will not be expected to backstop the commitments of other HRL parties or parties subject to the unimpaired flow regulatory requirements in Sections 4.4.2.2 and 4.4.2.6.

Unfortunately, there is no mechanism for meaningful enforcement. An enforcement methodology is only effective to the extent that actual diversions and water rights are known. In response to our

¹⁷ *Id.*

¹⁸ Draft Bay Delta Plan, p. 86.

prior comments on this issue, the Water Board acknowledged that it requires more complete water right reporting; and while the Water Board was confident that reporting will improve, we are less confident based on how the existing reporting regulations are being implemented, particularly in the Delta. The lack of water right reporting has been a long-time issue for the Water Board. If the Water Board is unable to effectively enforce, the SWP and CVP would end up unintentionally backstopping the regulatory commitments of other water users. It is for this reason that we made the following comment in an earlier letter that:

the Delta Accounting Procedures described at page B.1-3 should describe how the water supply of the CVP and SWP (the “Projects”) will be protected if the required HRL flows do not materialize; the Projects have not agreed to any additional water supply impacts beyond the term of the HRL Program. Language should be added stating that the avoidance of redirected impacts is addressed through monthly reporting of whether anticipated regulatory outflow was present when the Projects made a flow bypass (“foregone exports”), with a provision that includes Project recovery of lost water supplies. New language should also allow an updated calculation of salinity offsets and system losses, as new information is available.¹⁹

Water Board’s response to this comment stated:

The implementation methodology will protect the VA flows from diversion by other water users. If the VA flows are not provided, the VA pathway could be subject to termination or modification for lack of compliance.²⁰

We find this Response to Comment confusing since we provided a recommendation for how to implement prevention of backstopping and were not suggesting that the HRL would not be fully implemented. We assume our comment was misunderstood. We were outlining a method for ensuring that if the SWP and CVP end up unintentionally backstopping the missing water contribution from another implementing entity, there would be a process for making the SWP and CVP whole. Since the SWP and CVP have to assume regulatory flows are present when operating, unintentional backstopping of non-SWP and non-CVP commitments can occur. Through an accounting and meet-and-confer process, the SWP and CVP could have a process for recovering lost water supplies.

Requested edit: Add the requested language to flow accounting as requested in our prior comment.

F. Process for Off-Ramping HRL

We continue to be concerned that the process for off-ramping HRL prior to year 8 is unclear. We asked for clarification in our prior letters, but the only response was the Response to Comment boilerplate language stating that all comments were considered.²¹ This is an insufficient response. The Water Board is aware that the public water agencies continue to object to UIF even though they intend to participate in HRL. However, if this language is not clarified, legal challenges to UIF may need to be brought immediately after the adoption of the Bay Delta Plan because it is not

¹⁹ Response to individual comments, Letter 1132, Comment 9.

²⁰ Response to Comment, Letter 1132, Comment 9.

²¹ Response to Comment, Letter 1087, Comment 22.

clear that legal challenges can be brought later, even acknowledging that the regulation to implement UIF has not been adopted.

Requested edit: Revise language to clarify that the language on Draft Bay Delta Plan p. 101 (Red Light) applies to any Water Board decision to off-ramp HRL parties or terminate HRL.

G. SWP and CVP HRL Commitment Shortage Tracking and Making Up of the Shortages

The revised Chapter 13 p. 13.3-18 includes new language that requires SWP and CVP to track any shortages in HRL commitments because of health and safety exports, request approval by the Executive Director for incurring shortages, and it requires that the SWP and CVP provide flow equivalent to the shortages in a future year.

This is inconsistent with the footnote 10 in Table 1a of 2022 MOU.²² The MOU never contemplated tracking shortages and providing equivalent flow in the future years. Also, based on the Water Board's modeling, the HRL volumes offered by SWP and CVP are expected to vary from year to year (sometimes more, sometime less than the volumes in the Table 1a of 2022 MOU) because of operational limitations related to: (1) relying only on curtailment of exports of unstored water to meet SWP and CVP HRL commitment, (2) maintaining 1,500 cfs health and safety pumping, and (3) changing water year type forecast from March through May during implementation. It is reasonable that implementation would vary because it is not possible for the SWP and CVP to exactly hit the flow target every year.

Revised edit: Revise the existing text in Chapter 13 to acknowledge that the HRL flows from SWP and CVP exports can vary from year to year for the reasons stated above, and that compliance will be determined over multiple years. A consistent statement should be added to the Bay Delta Plan section B.1.5.

III. Concerns Related to Non-HRL Implementation

A. UIF Accounting

The Draft Bay Delta Plan is internally inconsistent. The flows provided through the UIF approach may contribute to meeting the requirements of D-1641, but the Draft Bay Delta Plan makes contrary statement at multiple locations. The Draft Bay Delta Plan Response to Comments states:

The SWP and CVP remain responsible for all requirements placed on their water rights, including those from D-1641. However, the SWP and CVP would only be responsible for meeting those requirements **if they are not incidentally met by flows provided pursuant to the regulatory pathway of the revised proposed Plan amendments.**²³

This description of UIF implementation is consistent with the Water Board's modeling of all UIF alternatives. However, the Draft Plan also includes language stating that UIF flows have to be

²² MOU Footnote 10 ["If, in any year, this level of Exporter contribution would reduce supplies that would otherwise be provided to Exporters to protect M&I Public Health and Safety, then the Exporter contribution will be reduced to avoid reduction of M&I Public Health and Safety water, consistent with operations contemplated in D-1641 and the biological opinions for the coordinated operations of the CVP and SWP to protect health and safety water supplies."]

²³ Response to Comment, Letter 264, Comment 26, emphasis add.

protected by the SWP and CVP. The Draft Bay-Delta Plan at p. 48 states in the UIF implementation section that:

Water that would otherwise be available under the water right's priority of right that is bypassed or released from storage to meet inflow requirements is not abandoned and is not available for diversion....

And, the Draft Bay-Delta Plan states at p. 74 that:

All diverters in the Delta watershed, including the SWP and CVP, must also bypass...Delta outflow commitments above base conditions, as well as other flows provided by non-HRL water rights, that are above base conditions, to meet Bay-Delta Plan regulatory requirements..."

And at p. 67 that:

HRL flow commitments are in addition to flows resulting from flows provided by non-HRL water rights pursuant to the Bay -Delta Plan...

And in Flow Accounting at p. B.1-3:

As provided in Bay-Delta Plan Section 4.4.9, HRL flow commitments are in addition to flows provided by water rights not covered under the VA pathway pursuant to the Bay-Delta Plan, including the lower San Joaquin River (LSJR) flow requirements and other flows required from Sacramento River, Delta, and tributaries that are not part of the VA pathway, as well as other instream flow dedications, including Water Code section 1707 instream flow dedications to the extent applicable. Provisions for protection of tributary and Delta outflows resulting from the non-VA pathway Sacramento/Delta inflow, cold water habitat, and inflow-based Delta outflow objectives and from the LSJR flow objectives will be developed with the implementation methodology. This accounting document will be updated as appropriate.

If the SWP and CVP were required to protect the UIF flows, the SWP and CVP would have to over-comply with D-1641 in quantities equivalent to UIF flows. This implementation of UIF would be inconsistent with the Water Board's own language in section 4.4.2.7, which states that contributions to the inflow-based Delta outflow objective will contribute to meeting the base Delta outflow objectives. Furthermore, this implementation will be inconsistent with the modeling of all UIF alternatives and therefore outside of the analysis in the Staff Report. The water supply impacts on all SWP and CVP service areas would be even more significant than reported in the Staff Report. This implementation would also be contrary to the Water Board's response to comment.

Revised edit: Strike above referenced sentences prohibiting contribution of UIF flows to meeting base Delta outflow objectives and SWP and CVP diversion of UIF flows, and indicate that the resolution of this issue will be part of the future decision regarding UIF implementation.

B. Bay Delta Plan Implementation

We continue to be concerned about the position taken in the Draft Bay Delta Plan at pp. 4-5 that, "Generally, if requirements contained in the Bay-Delta Plan differ from those contained in any

water right order or water quality certification, the more stringent requirement would control.” We believe that our prior comment on this topic was misunderstood as the Response to Comment stated:

The first excerpt is clarifying that more stringent requirements control and does not specify that the Bay-Delta Plan would override other State Water Board orders or decisions. The second excerpt makes no reference to other State Water Board orders or decisions.²⁴

This response does not make sense because, for example, if the Draft Bay Delta Plan is more restrictive than D-1641, the language in the Draft Bay Delta Plan would mean that the Draft Bay Delta Plan would control. However, in our example, to be consistent with law and prior Water Board orders, the SWP would have to comply with D-1641 and not the language in the Draft Bay Delta Plan, regardless of which is more restrictive. We are concerned that this language, unless modified, would cause legal risk.

Requested Edit: Strike the sentence, “Generally, if requirements contained in the Bay-Delta Plan differ from those contained in any water right order or water quality certification, the more stringent requirement would control.”

C. UIF Implementation Through Curtailments

We do not believe that the Water Board has the legal authority to implement UIF by regulation, including by exercising California Constitution Art. X, Section 2 authority with no individualized determination of “waste” or unreasonable method of diversion. Further, the Water Unavailability Methodology used in prior droughts contains significant assumptions that are particularly inappropriate in a non-emergency context, including the use of water diversion data that is not contemporaneous with implementation, being from years prior.

We have previously made this comment. In the Water Board’s response to our comment from 2023, it simply doubled down on the existing language and said that the “commenter provided no basis for the claim that calculations cannot be used in regulations.”²⁵ We made this comment again in February 2026, and the Response to Comment was boilerplate that is not responsive to our comment.²⁶

D. Definition of “New Water Supply Projects”

The definition of “new water supply projects” is overly broad because it includes diversions under existing water rights that use existing facilities.²⁷ This is particularly unreasonable because the result could be a diverter having two different implementation obligations under the same water rights and diversion facilities, resulting in an implementation quagmire. The default to 55% UIF is also problematic because the water supply impact is significant and will make it very difficult to develop new water supplies. The requirement where new projects default to 55% UIF and must stay at that level until the next annual or periodic review, seems punitive as new projects should

²⁴ Response to Comment, Comment 1087, Comment Number 16.

²⁵ Response to Comments, Letter 264, Comment 6.

²⁶ Response to Comment, Letter 1080, Comments 9-10.

²⁷ Draft Bay Delta Plan, p. 47, Footnote 5.

be able to work with the Water Board to secure the appropriate level of implementation responsibility immediately before operation rather than wait for the next review.

Requested edit: We support new diverters having an obligation to implement the Bay Delta Plan. However, the nature and extent of the obligation should be determined by the Water Board prior to the new diversions coming online rather than adopting a default. We also believe that Footnote 5, subsection 2 should be struck to narrow new project to actual new water rights.

E. Implementation of South Delta Salinity Standard

The Draft Bay Delta Plan continues to solely obligate the SWP and CVP to satisfy south Delta salinity standards and fails to acknowledge the most recent Monitoring Special Study report prepared at the Water Board's request that provides substantial evidence that the SWP and CVP have little impact on South Delta salinity and that the SWP and CVP cannot meet the South Delta Salinity objectives in all water year types.

On December 12, 2018, the Water Board amended the Bay Delta Plan. The amendments included revised salinity objectives for the southern Delta and instructed the Department of Water Resources (DWR) and the Bureau of Reclamation (Reclamation) to develop Monitoring Special Study (MSS). On May 21, 2026, DWR and Reclamation submitted the MSS to the Water Board. The MSS concludes that SWP and CVP "pumping facilities have relatively low impacts on flow and salinity" in the South Delta.²⁸ It further concluded that the SWP and CVP cannot provide sufficient flows to meet the South Delta salinity objectives at all times.²⁹ It further found that in-Delta sources of salinity dominate in summer and early fall.³⁰ Yet, the Draft Bay Delta Plan assigns no implementation responsibility to any other water user or discharger, and in fact specifically excludes imposing any additional implementation responsibility on local waste water dischargers, finding it "infeasible."

Requested edit: The Water Board has known since D-1641 was adopted that the SWP and CVP cannot meet the South Delta salinity objectives in all conditions. The Water Board should broaden the implementation responsibility for the South Delta salinity objectives.

F. Head of Old River (HORB) Special Study

The Draft Bay Delta Plan ignores existing scientific information related to the Head of Old River and continues to require a special study by the SWP and CVP.³¹ In our prior comments, we provided a discussion of the current science that shows that the HORB is not effective.³² The Response to comment said,

Buchanan et al. (2021) found that the through-Delta survival (head of Old River to Chipps Island) of juvenile steelhead was affected by year, barrier (Head of Old River Barrier [HORB]), and fork length at tagging. They found that survival from head of Old River to Chipps Island would be higher with higher San Joaquin River (SRJ) inflows, when the

²⁸ MSS, p. E-1.

²⁹ *Id.*

³⁰ *Id.*

³¹ Draft Bay-Delta Plan, p. 115.

³² Response to Comments, Letter 264, Comment 33.

HORB was installed, and for larger fish. Further, survival was positively related to the SJR inflow, negatively related to temperature, positively related to I:E ratio, and negatively related to X2 when the effects of year, barrier, and fork length were accounted for.

The Response to Comment does not report that the Buchanan et al. also says that “survival was modeled to be lower in 2014 compared to 2016 for the same levels of SJR inflow when the barrier was in place”. Furthermore, as shown in Buchanan et al. 2023, Figure 7, when accounted for confidence intervals, there is a significant overlap in outmigrant steelhead survival between when the HORB is in or out. Buchanan et al. 2023 implies that HORB can help to offset non-inflow factors that may lower overall survival. Taking into account the uncertainty and limited non-inflow related benefits in Buchanan et al. 2023 because of HORB, the fact that FWS indicated in their 2008 Biological Opinion that HORB will potentially increase Delta Smelt entrainment and the empirical information that shows HORB can affect the water levels and salinity conditions in the south Delta, it is unreasonable to require yet another study of the HORB.

Requested Edit: Strike the required HORB study.

G. Changes to Existing Water Quality Requirements in Tables 1, 2, and 3

The Draft Bay Delta Plan includes several changes to the footnotes in Tables 1, 2 and 3, which are also included in Decision-1641. In some cases³³, these changes meaningfully alter the long-established implementation processes, remove flexibility, remove consultation requirements, and add new Executive Director decision-making authority. Moreover, these changes unnecessarily introduce inconsistencies between Decision-1641 and the Bay Delta Plan, and result in ambiguity for the SWP and CVP compliance. There is no record to support making any changes to the existing in-Delta quantitative objectives.

Revised edit: Remove changes to existing footnotes in Tables 1, 2 and 3. Work with DWR and Reclamation to identify any potential edits to the footnotes that would support clarity.

H. Proposed Bay Delta Monitoring Requirements and Special Studies

The Draft Bay Delta Plan continues to ignore numerous comments SWC made related to the monitoring requirements and special studies imposed on the SWP and CVP. The Draft Bay Delta Plan needs to include a clear record that demonstrates scientific nexus between monitoring/special studies obligations to SWP and CVP operational effects. Currently, as proposed, the draft substantially expands SWP and CVP monitoring and reporting responsibilities and Water Board oversight. Particularly for harmful algal blooms (HABs) this is unreasonable given the HAB presence and severity are driven largely by ambient water temperature, residence time, agricultural runoff, and nutrient loading—local factors generally beyond the direct control of SWP and CVP. HAB monitoring should therefore be addressed primarily through the regional water quality control boards and applicable point-source discharge permits, rather than through a broad regional obligation imposed on just the SWP and CVP.

On page 113, the requirement to “address” the individual and cumulative impacts of diversions, discharges, and HABs across all beneficial uses is ambiguous. Similarly, region-wide monitoring of invasive aquatic vegetation and lower-food-web life stages should be required of the SWP and

³³ REVISED Water Right Decision 1641 Tables 1, 2, and 3 footnotes: 4, 8, 15, 17, 18, 20, 21, 22, 23, March 15 2000

CVP only where the Water Board can establish both scientific feasibility and a direct, decision-relevant connection to SWP and CVP operations.

As proposed, the Bay Delta Plan includes two sets of monitoring requirements: (1) science and monitoring proposed by the HRL parties and (2) BDMEP requirements. We appreciate the Water Board proposal to adopt a Comprehensive BDMEP within two years adoption of the Bay Delta Plan. Comprehensive BDMEP should use the robust, hypothesis-driven framework developed through the HRL science program and should explain how the resulting data will be used to assess the effectiveness of the Bay Delta Plan, compliance or effects of multiple stressors, and not just SWP and CVP operations.

Requested edit: The Water Board should remove duplicate or ineffective monitoring requirements, and implement Comprehensive BDMEP. Future or revised monitoring protocols should be evaluated through qualified, independent scientific peer review—such as review coordinated through the Delta Science Program—rather than generalized public review of technical study designs.

The Water Board should also establish in advance the criteria the Executive Director will use to approve or reject monitoring data and management protocols, provide clear guidance for any incorporation of Traditional Ecological Knowledge, and periodically re-evaluate longstanding programs that do not materially inform effectiveness of the Bay Delta Plan. Further, the monitoring required must help distinguish ecosystem changes attributable to SWP/CVP operations from those caused by climate change, predation, invasive species, and other factors beyond SWP/CVP control. The proposed monitoring requirements should not shift disproportionate compliance burdens or water-supply reductions to SWP.