



27 July 2018

Jeanine Townsend, Clerk to the Board  
 State Water Resources Control Board  
 1001 I Street, 24<sup>th</sup> Floor  
 Sacramento, CA 95814  
[LSJR-SD-Comments@waterboards.ca.gov](mailto:LSJR-SD-Comments@waterboards.ca.gov)  
 Via e-mail

Subject: Comment Letter – Consideration of Adoption of Proposed Amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and Final Substitute Environmental Document

Dear Ms. Townsend and the Members of the Board:

The California Sportfishing Protection Alliance, California Water Impact Network and AquAlliance (collectively, CSPA et al.) submit the following comments on the State Water Resources Control Board's (State Board) *Proposed Final Amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary* (Proposed Amendments or Revised Plan) that was released on 6 July 2018.

The State Board's notice explicitly limits comments to the double strikeout and double underline changes in the Proposed Amendments and clearly states that the State Board will not accept any comments on the *Final Substitute Environmental Document* (Final SED), despite changes in SED and inclusion of a lengthy *Response to Comments* that CSPA et al. finds to be incomplete, inaccurate and nonresponsive to our previous comments. The administrative record of this proceeding contains numerous extensive written and oral comments, exhibits and inclusions by reference submitted by CSPA et al. on the SED and Proposed Amendments since 2012. The latest revisions do not obviate our continuing grave concerns: including by not limited to; flows, public trust balancing and southern Delta salinity. However, given the perilous state of our fisheries and the fact that the current inadequate standards were implemented eighteen years ago, we believe the State Board should expeditiously move to implement the Revised Plan despite the inevitable litigation that will surely follow adoption.

The most significant substantive revision in the Revised Plan is on page 18, Table 3, San Joaquin River Flows, February through June. The revision states [minus deletions]: "Maintain 40% of unimpaired flow, with an allowed adaptive range between 30% - 50%, inclusive, from each of the Stanislaus, Tuolumne, and Merced Rivers February through June. [14]" Footnote 14 reads:

Unimpaired flow represents the natural water production of a river basin, unaltered by upstream diversions, storage, or by export or import of water to or from other watersheds. Compliance with the percent of unimpaired flow from February through June in each river is determined by dividing the 7-day average observed flow at the compliance stations by the 7-day average calculated Full-Natural-Flow (FNF) at the FNF stations. Refinements to methods and measurements used to estimate FNF can be used for compliance if refinements improve accuracy and precision of FNF estimates. The total unimpaired flow requirement may be managed using an averaging period consistent with approved adaptive methods outlined in the program of implementation.

Stating the objective as a defined percent of unimpaired flow is an improvement over the stating the objective as a range. We disagree with the choice of 40%, which is insufficient to protect public trust resources. CSPA et al. have advocated for 60% of February-June unimpaired flow throughout this process to develop the Plan. The science brought forward in the Delta Flow Criteria Report demonstrates that 60% would best protect fisheries and other public trust resources, not only in the San Joaquin River and its three major tributaries, but also in the Delta. CSPA et al. have also consistently advocated that any balancing against the needs of fish and other public trust resources needs to show its work, drawing a line between the information analyzed and the outcome. Notwithstanding the response to the previous comments of CSPA et al., we do not believe that the Final SED and Revised Plan meet this requirement.

The statement in footnote 14 of Table 3 of the Revised Plan represents an improvement over the previous iteration of the Plan in that it is more specific in defining compliance. However, CSPA et al. believes that a 7-day average is too long to achieve the variability that is one of the primary benefits of the percent-of-unimpaired approach to flow objectives. We recommend a 3-day average with a 7-day true-up.

CSPA et al. attach two documents to these comments that demonstrate how a higher than 40% flow regime is feasible in real-world real-time operations. The larger document, Attachment 2, contains, on pp. 6-46, the flow proposal for the Tuolumne River that CSPA and nine other Conservation Groups submitted in January 2018 for the FERC relicensing of the Don Pedro Hydroelectric Project and the original licensing of the La Grange Hydroelectric Project. The Conservation Groups developed this flow proposal based on the percent-of-unimpaired approach of the State Water Board, but modified it based on water-year type. A summary explanation of just over a page is attached as Attachment 1. Using a water balance model developed for relicensing, the Conservation Groups showed that a regulatory agency could base a flow regime on 50% of unimpaired flow, scaling back the number of months this requirement would apply as years get drier and eliminating the requirement in Critically Dry years and in dry year sequences. CSPA et al. submit this proposal as a better, more explicit example of balancing and for consideration as the Board develops the Revised Plan's Program of Implementation. It does not imply an explicit recommendation for a specific target by CSPA et al. or others in the instant proceeding.

On pages 26-27 of the Revised Plan, there are revisions to the discussion of the Program of Implementation, as follows:

~~Under its water rights and water quality authority, the State Water Board will take actions to require implementation of ~~continue, as necessary and appropriate, to determine the contributions from water right permit and license holders needed to implement the objectives in this Plan. The State Water Board may implement the objectives by conducting water right proceedings, which may include adopting regulations, conducting adjudicative proceedings, or both, that Water right responsibilities may be assigned by conducting a water right proceeding at which the Board will take into consideration the requirements of the Public Trust Doctrine and the California Constitution, article X, section 2.~~~~

CSPA et al. have consistently maintained throughout this proceeding, and continue to maintain, that adjudicative water rights proceedings are the means of assigning responsibility to water rights holders for meeting the water quality objectives. Therefore, CSPA recommends that the following language replace the language shown above:

Under its water rights and water quality authority, the State Water Board will take actions to require implementation the objectives of this plan. The State Water Board shall implement the objectives by conducting water right proceedings, which shall include adjudicative water rights proceedings for the flows on each of the affected waterways. This includes those waterways on which voluntary agreements are proposed. These proceedings shall take into consideration the requirements of the Public Trust Doctrine and the California Constitution, article X, section 2.

On page 29 of the Revised Plan, the following sentence is stricken: “The required percentage of unimpaired flow is in addition to flows in the LSJR from sources other than the LSJR Tributaries.” CSPA et al. recommends that this flow be restored to the text. There is no legal or environmental reason to allow the tributary contributions to count other flow in the San Joaquin River. CSPA et al. have consistently stated that there must be a contribution to San Joaquin watershed flow objectives from the San Joaquin River upstream of confluence with the Merced River. Striking the statement shown from page 29 has the opposite effect, crediting other water users for water that flows from Friant Dam, effectively creating a Friant debit in place of a Friant contribution.

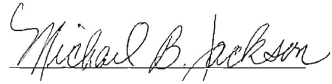
Thank you for the opportunity to comment on the Revisions of the Bay-Delta Water Quality Control Plan that address San Joaquin River flow and southern Delta salinity.



Bill Jennings  
Executive Director  
California Sportfishing Protection Alliance



Chris Shutes  
Water Rights Advocate  
FERC Project Director  
California Sportfishing Protection Alliance



Michael B. Jackson  
Attorney Representing CSPA et al.

Attachments: Attachment 1, Summary of Recommendations for Flow and Non-Flow Measures  
Attachment 2, Recommendations for Flow and Non-Flow Measures

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**From:** William Jennings <deltakeep@me.com>  
**Sent:** Friday, July 27, 2018 5:21 AM  
**To:** LSJR-SD-Comments@waterboards.ca.gov; WQCP1Comments  
**Cc:** Mike Jackson; Chris Shutes; Carolee Krieger; Barbara Vlamis  
**Subject:** CSPA et al. Comment Letter - Revisions to Proposed Bay-Delta Plan Amendments  
**Attachments:** CSPA et al. Phase I WQCP 27 July 2018.pdf; Att 1 Summary of NGO lower T flow proposal from 012918.pdf; Att 2 20180129-5200 CG comments and recs.pdf

**Categories:** Red Category

Dear Ms. Townsend,

Attached are comments respectfully submitted by the California Sportfishing Protection Alliance, California Water Impact Network and AquAlliance (CSPA et al.) regarding the Revisions to Proposed Bay-Delta Plan Amendments.

We would appreciate a receipt of timely submission. If you have questions, please don't hesitate to contact us. Thank you.

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