

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2024-XXXX3-0028

**REAPPROVING THE FINAL INITIAL BIOLOGICAL GOALS FOR LOWER SAN
JOAQUIN RIVER FLOW OBJECTIVES**

WHEREAS:

1. The State Water Resources Control Board (State Water Board or Board) and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) (Porter-Cologne Act) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state. (Wat. Code, §§ 13000, 13001.)
2. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable. (Wat. Code, § 13170.)
3. The State Water Board adopted amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan or Plan) for Lower San Joaquin River (LSJR) flows for the protection of fish and wildlife, as well **as** updates for southern Delta salinity for the protection of agriculture, under its water quality authority on December 12, 2018. The Bay-Delta Plan establishes water quality objectives for the reasonable protection of beneficial uses in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta) and a program of implementation to achieve the objectives. Diversions of water within and upstream of the Bay-Delta are a driver of water quality in the Bay-Delta. As a result, much of the implementation for the Bay-Delta Plan relies upon the combined water rights and water quality authorities of the State Water Board.
4. The 2018 LSJR flow amendments to the Bay-Delta Plan Program of Implementation requires that biological goals be developed and used to: inform adaptive methods for the LSJR flows; evaluate the effectiveness of the program of implementation; inform the San Joaquin River Monitoring and Evaluation Program (SJRMEP); and inform future changes to the Bay-Delta Plan. Biological goals are quantitative metrics that the State Water Board will use to assess if the actions it is taking under the Bay-Delta Plan, and in coordination with state agencies and other entities to implement the Plan, are making sufficient progress towards the Bay-Delta Plan's narrative LSJR flow and salmon protection objectives calling for the maintenance of viable native fish and aquatic species populations and the doubling of salmon populations.

The biological goals are developed for LSJR salmonids: abundance; productivity as measured by population growth rate; genetic and life history diversity; and population spatial extent, distribution, and structure. The biological goals are expressed in terms that are specific, measurable, achievable, result-focused, and time bound.

5. The initial biological goals were developed with recommendations from an Independent Science Advisory Panel convened by the Delta Science Program, Stanislaus, Tuolumne, and Merced River (STM) Working Group members, and the public. The Draft Final Biological Goals for the Lower San Joaquin River report is the fourth iteration of the report which incorporates input and recommendations in the form of written comments and a March 2019 Independent Science Advisory Panel Workshop, an August 2019 Staff Technical Workshop, four STM Working Group technical meetings (November and December 2019 and March and April 2023), and a May 2023 Board Public Workshop.
6. The initial biological goals were developed using the best available science as indicators for measuring progress toward the doubling of salmon populations and maintaining viable native fish populations. The biological goals were developed as benchmarks to measure responses in multiple salmonid life stages, spatial reaches, and temporal scales. Biological goals will be used for measuring biological responses to both flow and non-flow changes to habitat quality and quantity.
7. The Bay-Delta Plan LSJR flow objectives focus on improvements to the salmonid life stages that occur in the tributaries, for example, spawning, egg viability, and juvenile survival; however, many out-of-basin factors also impact salmonid population survival and abundance. The achievement of some biological goals will require a combination of tributary flow management and other out-of-basin actions, such as LSJR and Delta water rights and water quality actions, fisheries management, hatchery management reform, and habitat restoration.
8. The State Water Board will use the biological goals to inform the development of the SJRMEP. Many of the components of the biological goals are currently measured and reported; however, a comprehensive monitoring program to measure and assess all components of the biological goals has not yet been established. Pursuant to its authorities, including Water Code section 13165, the Bay-Delta Plan requires comprehensive monitoring to address both the individual and cumulative impacts of diversions and discharges to fish and wildlife beneficial uses. The Bay-Delta Plan, at a minimum, requires the following:

- a. Monitoring, special studies, and evaluations of the effects of flow and other factors on viability of native LSJR watershed fish populations throughout the year, including assessment of abundance, spatial extent (or distribution), diversity (both genetic and life history), and productivity.
 - b. The consideration of monitoring recommendations from entities with relevant Central Valley monitoring plans to improve standardization of methods, including the quantification of confidence, bias, and precision of population estimates.
 - c. Regular external scientific review of monitoring, evaluation, reporting, and special studies.
9. **When the State Water Board adopted amendments to the Bay-Delta Plan on December 12, 2018, it also adopted a Substitute Environmental Document (2018 SED), which is recognized under the California Environmental Quality Act (CEQA) as providing, in lieu of an environmental impact report, the environmental analysis for an activity of a regulatory program that includes protection of the environment among its principal purposes. The SED fully analyzed the potentially significant environmental impacts of amending the Bay-Delta Plan to revise LSJR water quality objectives for fish and wildlife to require that 40 percent of unimpaired flows are maintained instream within an allowed adaptive range of 30 percent to 50 percent, inclusive.**

Failure to achieve the Final Initial Biological Goals, or progress on the Final Initial Biological Goals, does not compel any specified State Water Board action. Rather, the goals provide one tool for the State Water Board to measure progress toward achieving the water quality objectives for LSJR flows. To the extent the Final Initial Biological Goals, together with any other relevant information, are used to inform a future State Water Board decision to move within the adaptive range, the 2018 SED analyzed any potentially significant impacts from the Board requiring unimpaired flows in the range of 30 to 50 percent. While a future evaluation of whether the Final Initial Biological Goals were met could inform a future revision to the LSJR flow objective, any change to the water quality objective would require a proceeding to amend the Bay-Delta Plan, including new or supplemental environmental review.

As discussed at the September 6, 2023, State Water Board meeting approving the Final Initial Biological Goals,¹ twelve cases challenging the adoption of the 2018 Bay-Delta Plan update, including but not limited to sufficiency of the revised objectives under the Porter-Cologne Water Quality Control Act and sufficiency of the SED environmental analysis in accordance with CEQA, are coordinated in Sacramento Superior Court under the name “State Water Board Cases.” Following six months of merits briefing totaling well over 1,500 pages, and eleven days of oral argument, the State Water Board Cases concluded on October 24, 2023. As further discussed at the September 6, 2023, State Water Board meeting, letters commenting on the biological goals were submitted by parties to the State Water Board Cases who attempted to raise Porter-Cologne and CEQA arguments previously made in Sacramento County Superior Court. Many of these issues, therefore, are pending in ongoing litigation and could be resolved by the Sacramento County Superior Court.

Approval-Adoption of the Final Initial Biological Goals for the Lower San Joaquin River is not a “project” within the meaning of CEQA and is therefore not subject to CEQA because this action does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (Cal. Code Regs., tit. 14, § 15378, subd. (a).) ~~The State Water Board previously approved amendments to the Bay-Delta Plan in 2018 that included a program of implementation with provisions for the development of biological goals.~~ **Even if approval of the Final Initial Biological Goals for the Lower San Joaquin River were considered a “project” within the meaning of CEQA, that action would be categorically exempt pursuant to California Code of Regulations, title 14, sections 15307 (Actions by Regulatory Agencies for Protection of Natural Resources), 15308 (Actions by Regulatory Agencies for Protection of the Environment), and 15061, subdivision (b)(3). There is no reasonable possibility that this action will have a significant effect on the environment due to unusual circumstances (Cal. Code Regs., tit. 14, § 15300.2(c)). The Final Initial Biological Goals do not, in and of themselves, compel an action. As explained above, to the extent they could inform a future action to move within the adaptive range, that action was fully analyzed in the 2018 SED and is already the subject of ongoing litigation. To the extent they could be used to inform a future Bay-Delta Plan update, that action would require its own environmental review.**

10. The State Water Board recognizes that voluntary agreements can help inform and expedite implementation of the water quality objectives and can provide durable solutions in the Delta watershed. The implementation of flow or other

¹ See: <https://www.youtube.com/watch?v=pvP8MgshNhg>

commitments and the evaluation of the effectiveness of voluntary agreements would be subject to the specific provisions or terms of any voluntary agreement as may be approved in any future updates to the Bay-Delta Plan.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. **Reapproves ~~Approves~~** the Final Initial Biological Goals for the Lower San Joaquin River for abundance, productivity, diversity, and spatial structure as identified in the Final Initial Biological Goals for the Lower San Joaquin River Report and in Tables 3-1, 3-2, 3-3, 3-5, 3-9, 3-10, and 3-11 and Section 3.4.
2. Directs staff to review the approved biological goals at least every five years and, as appropriate, propose to the State Water Board revisions to biological goals to reflect updated scientific knowledge and to be consistent with best available scientific information, including: information developed from assessing approved biological goals, information regarding viable salmonid populations, recovery plans for listed salmonids, traditional ecological knowledge, or other appropriate and relevant information source.
3. Directs Board staff to seek recommendations from the STM Working Group regarding monitoring, evaluation, review and potential update of biological goals, and other procedures, plans, the SJRMEP, and special studies and reporting requirements consistent with the Bay-Delta Plan and in consultation with the Delta Science Program.
4. Directs staff to coordinate with the California Department of Fish and Wildlife, National Oceanic and Atmospheric Administration Fisheries, and the United States Fish and Wildlife Service to evaluate the impact of hatchery management on the viability of natural salmon production and identify potential hatchery management reform, including long-term funding options, that reduces the impact of hatchery origin spawner straying, prioritizes data availability of the contribution of hatchery origin spawners to escapement, and improves, as necessary, the certainty of the hatchery fish marking program.
5. **This resolution supersedes Resolution No. 2023-0028.**

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on ~~September 6, 2023~~ **February 6, 2024**.

AYE:

NAY:

ABSENT:

ABSTAIN:

Courtney Tyler
Clerk to the Board