

Responses to Comments on the August 2026 Final Draft Sacramento/Delta Updates to the Bay-Delta Plan

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Introduction

On August 19, 2026, the State Water Resources Control Board (State Water Board or Board) released for public review and comment final draft amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed (Bay-Delta Plan or Plan). The Plan amendments are focused on the portions of the Plan relevant to the Sacramento River watershed, Delta eastside tributaries (including the Calaveras, Cosumnes, and Mokelumne Rivers), and Delta (Sacramento/Delta) for the reasonable protection of fish and wildlife beneficial uses. In addition, the State Water Board released the final Staff Report/Substitute Environmental Document (Staff Report) in support of the Sacramento/Delta updates to the Bay-Delta Plan, which includes written responses to previously submitted comments.

As explained in the August 19, 2026, notice, the State Water Board made revisions to the Plan amendments following the public comment period on the December 2025 draft Bay-Delta Plan and partially recirculated draft Staff Report. The August 19, 2026 notice provided an opportunity to submit written comments on the August 2026 final draft Bay-Delta Plan limited to the revisions that were not included in the December 2025 draft Plan. The notice specified that the State Water Board is not accepting additional written comments on the final Staff Report.

This document provides responses to the written comments received in accordance with the August 19, 2026 notice requirements. Many of the written comments received raised issues beyond the scope of those noticed for additional public comments. Many of the comments are substantially similar or identical to comments previously submitted on the December 2025 draft Bay-Delta Plan and partially recirculated draft Staff Report, or prior drafts of each document. The State Water Board has reviewed and considered all of the comments previously received on the Staff Report and drafts of the Plan and provided written responses to comments received on the 2023 draft Staff Report, July and December 2025 draft Plans, and the 2025 partially recirculated draft Staff Report. These responses to comments are available in Volume 3, *Responses to Comments*, of the final Staff Report.¹ Generally, repeat comments that were previously addressed in the final Staff Report and comments not specifically related to a new revision to the final draft Plan are not addressed in this document given that they are outside of this noticed comment process. Similarly, comments received after the comment deadline may not be addressed in this document. Some non-substantive changes were made to the Plan in order to correct typographical errors and address comments on minor wording issues. Those changes are provided in the change sheet but otherwise are not discussed further in this document.

The update to the Bay-Delta Plan has been an extensive and involved public process due to the large size and complexity of the watershed and the array of issues that must be considered when providing for the reasonable protection of beneficial uses in this watershed that is integral to the ecosystem, tribal ways of life, the State's water supplies, fishing, recreation, and other uses. Development of the final draft Bay-Delta Plan and final Staff Report were informed by numerous opportunities for public comment over many years. The State Water Board appreciates the active engagement of interested and affected parties, including California Native American Tribes; federal, state, and local agencies; water users; environmental and fishing organizations; and members of the general public. The State Water Board looks forward to continuing that engagement

¹ Available at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/staff_report.html

during the next critical step of implementation and during annual and periodic reviews to assess the effectiveness of the Bay-Delta Plan and make any needed course corrections to the Plan or its implementation.

Regulatory Pathway

Tributary Inflows

A comment was received on an existing provision of the December 2025 draft Plan allowing for incremental implementation of the inflow objective for which the August 2026 final draft Plan added a minor clarification that this implementation could be done incrementally by *tributary or reach*. The comment argued that this provision is not consistent with water right priorities. The addition only clarifies the original intent of this provision. Further, allowing for incremental implementation by tributary or reach is not inconsistent with water right priorities because doing so would not affect any other water right holder's obligations and no other water right holder would be required to bypass more flow due to the incremental implementation. Any incremental implementation would only delay full implementation actions by the water rights subject to the incremental implementation.

To the degree this comment is arguing that the provision in the Plan amendments for implementing the regulatory pathway inflow requirements by tributary or reach is not consistent with the rule of water right priority, this provision has been a central aspect of the updates to the Plan. As described in the Scientific Basis Report and Staff Report, the regulatory pathway inflow requirements apply at the tributary and reach level in order to provide for the reasonable protection of fish and wildlife within the tributaries and their reaches, and to provide for continuity of flows from those upstream watersheds through the Delta. This provision is integral to the purpose of the updates to the Bay-Delta Plan to provide for the reasonable protection of fish and wildlife throughout the watershed and to avoid flows only being provided from a subset of tributaries and reaches and not from others, which could result in no flows on some tributaries and draining of reservoirs on other tributaries or reaches to the detriment of cold water protections.

A commenter requested that existing water rights have the ability to petition for tributary-specific water supply adjustments (WSAs) if, due to climate change or other reasons, the watershed transitions from snowmelt-dominated to rainfall-dominated, or for other reasons. The commenter also contended that no justification was provided for treating rainfall-dominated tributaries differently from snowmelt-dominated tributaries. As explained in Common Response 1.3, *Revised Proposed Plan Amendments*, the tributary-specific WSAs were included as an initial implementation action for tributaries that are rainfall and municipal supply dominated to support the transition to the regulatory pathway by reducing water supply impacts, particularly for municipal uses, upon initial implementation. Tributary-specific WSAs were provided for the Mokelumne and Calaveras Rivers and Putah Creek because modeling and other information indicates that achieving new inflow requirements and providing cold water habitat protections on these tributaries without tributary-specific WSAs could have relatively large water supply impacts to municipal uses and storage and thus could require more time to implement due to the unique circumstances of those tributaries.

Comments also specifically requested applicability of WSAs to the lower San Joaquin River (LSJR) watershed. The LSJR portions of the Plan were adopted in 2018 and are outside of the scope of this Plan amendment process and its associated scientific and environmental documentation. The LSJR

flow objectives are also already lower and apply for a shorter duration than the Sacramento/Delta numeric flow requirements in the regulatory pathway. The LSJR flow objectives apply for 5 months, while the Sacramento/Delta regulatory pathway flow requirements apply for the entire year. The LSJR flow objectives also have an adaptive flow range of 30 to 50 percent of unimpaired flow, which includes a lower flow boundary than Sacramento/Delta regulatory pathway flow requirements that range from 45 to 65 percent, and 35 percent with watershed-wide WSAs during the driest third of conditions. While the tributary-specific WSAs can be even lower, those lower requirements were developed based on tributary-specific considerations and could be removed in the future along with the watershed-wide WSAs. In addition, the Board can consider any further appropriate updates to the Bay-Delta Plan during the annual and periodic review processes, including consideration of new or revised WSAs supported by any necessary scientific and environmental documentation.

A comment was received raising questions about the possibility that existing water rights in a tributary have WSAs, while new water supply projects in that same tributary do not have WSAs. The inflow requirements will be implemented by the implementation methodology, which can accommodate a combination of water rights with WSAs and others without WSAs. Thus, there is no conflict in having watershed-scale flow requirements, but applicability of different variations of those requirements to individual water rights or portions of rights. The commenter further requested eliminating any implication that the Plan is assigning responsibility to water right holders because they allege it violates their due process. These provisions do not violate due process as previously responded to in Common Response 1.2, *Water Quality Control Planning Process*.

Inflow-Based Delta Outflows

A commenter expressed concerns about the addition of a clarifying sentence to Section 4.4.2.6 of the program of implementation for the inflow-based Delta outflow objective identifying that any water rights in the Delta that are not subject to an exemption will be subject to applicable curtailments. The commenter asserted that this provision suggests that in-Delta water rights would be subject to curtailments as a default assumption. This sentence was added in response to prior comments from the Department of Water Resources (DWR) and some water contractors and does not change any requirements. This sentence only clarifies that Delta users could be subject to curtailment if they do not have an approved exemption. In addition, the commenter expressed concern that an exemption to curtailment based on land elevation is not consistent with the water right priority system or the 1981 water quality contract between DWR and North Delta Water Agency (NDWA). The possible exemption is not in conflict with the water right priority system because it would only be applied if it can be demonstrated that net consumptive water use is not significantly affected by agricultural water use in the applicable areas of the Delta. Any decision on this matter would be subject to further public review and opportunity for public comment through the development of the implementation methodology. Related to NDWA's contract with DWR, the State Water Board is not a party to that contract and is not in a position to arbitrate the provisions of the contract at this time. To the extent that a diverter has a contract for water supplies, as well as underlying water rights, it is possible that diverter may rely on that contract when their underlying water rights are curtailed, provided the contract rights are provided from a source not also subject to curtailment, including previously stored water, and the diversion is consistent with other provisions of the contract. However, it is unclear whether the contract referenced by the commenter would serve that purpose or not. During the development and implementation of the implementation methodology and associated regulation, the Board will evaluate these issues as needed and appropriate.

Adaptive Implementation

Some comments on the December 2025 draft Plan expressed concern with a provision that would prohibit the use of flow shaping from reducing the total volume of water provided within a water year below that which would have been provided by tracking unimpaired flows on a 7-day running average. In response to these concerns, a provision was added to the August 2026 final draft Plan allowing flow shaping to reduce the overall flow level if uncontrolled flows were documented to provide for the purpose of protecting fish and wildlife and Delta outflow. Several commenters objected to this change, arguing that it would reduce benefits, that sufficient monitoring should be required, that the flow shaping approach should be adjusted if the expected benefits do not appear, that this should only be allowed if the flows are not credited for another purpose, and that there should be a required demonstration that the flow shaping will be expected to provide equivalent fish and wildlife and Delta outflow protection as providing flows on a 7-day running average. Other commenters continued to request the ability to use flow shaping to reduce required flows. Uncontrolled flows will only be allowed to reduce required flows if doing so is supported by clear and robust documentation subject to public comment and in conformance with all the requirements for local cooperative solutions described in Section 4.4.2.4 of the Plan amendments, which include monitoring and other requirements.

Several commenters misinterpreted clarifying edits to the provisions for local cooperative solutions as imposing new limits on the flows allowed to be proposed through local cooperative solutions. These commenters opposed the limitation on local cooperative solutions to providing flows within the flow range of 45 to 65 percent of unimpaired flow or applicable WSAs. These commenters misinterpreted language in the December 2025 draft Plan as allowing local cooperative solutions to provide less than 45 percent of unimpaired flow and requested the ability to provide flows below these levels. These were not new requirements in the August 2026 final draft Plan. Local cooperative solutions have always been limited to the flexibility in the applicable regulatory pathway flow and cold water habitat requirements. The regulatory pathway inflow requirements have always been described as limited to the range of 45 to 65 percent of unimpaired flow. When WSAs were introduced, it was stated that adaptive implementation could not reduce flows below the WSAs or 45 percent unimpaired flow, whichever is lower. The August 2026 final draft Plan only included revisions to increase clarity consistent with the Staff Report modeling and analyses. Allowing regulatory pathway flows below 45 percent of unimpaired flow or below applicable WSAs would not be consistent with the Staff Report modeling and analyses.

Cache Creek Requirements

Yolo County Flood Control and Water Conservation District (YCFCWCD) requested removal of Cache Creek from the regulatory pathway inflow and cold water habitat requirements because of mercury impacts, alleged lack of support for benefits to fish, and lack of control over cold water.

YCFCWCD commented that requiring Cache Creek to contribute to the regulatory pathway inflow requirements would harm salmonids due to the amount of mercury in the Cache Creek Settling Basin. Increased outflows from Cache and Putah Creeks associated with the Plan amendments would increase flow in the lower half of the Yolo Bypass, providing water quality and wildlife habitat benefits; however, increased flows could also result in increased deposition of mercury-laden sediment in the bypass and contribute to the transformation to methylmercury that occurs in large freshwater wetlands and floodplains. The State Water Board has recognized that the environmental benefits from floodplain inundation should not be disincentivized due to mercury concerns. In

addition, the environmental analysis in the Staff Report found that increased flows in Cache Creek would likely not affect the sediment and mercury trapping efficiency of the Cache Creek Settling Basin. Under mitigation measure MM-SW-a,f: 2.iii identified in the Staff Report, the State Water Board will coordinate with the United States Army Corps of Engineers, DWR, and other appropriate agencies to ensure that implementation of flow requirements does not interfere with the functioning of the Cache Creek Settling Basin in reducing mercury inputs to the Sacramento/Delta. Furthermore, the Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board) has adopted and is implementing the Cache Creek, Bear Creek, and Harley Gulch Mercury Total Maximum Daily Load (TMDL); the Clear Lake Mercury TMDL; and Sacramento-San Joaquin Delta Methylmercury TMDL that are designed to reduce mercury loading and impacts to Cache Creek and the Delta.

YCFCWCD contended that Cache Creek should not be subject to the inflow and cold water habitat requirements because the creek does not support salmonids or other anadromous fishes. Tributary flows in Cache Creek support a number of ecological processes and species, which are not limited to salmonids or anadromous fishes, but also include other native species within the creek and downstream through the estuary throughout the year. Staff Report Chapter 3, *Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations*; Common Response 1.3, *Revised Proposed Plan Amendments*; and Common Response 3.1, *Fish Protection*, provide further discussion of the importance of tributary inflows. Cache Creek has been included in the drafts of the inflow and cold water habitat objectives and implementation actions since the release of the 2017 Scientific Basis Report for the Sacramento/Delta update to the Bay-Delta Plan. The Yolo County Integrated Regional Water Management Plan (Yolo County Water Resources Association 2005) states that the portion of Cache Creek above Capay Dam likely supports a healthy fish assemblage of native fishes, including California roach, Sacramento pikeminnow, hardhead, dace, hitch, Sacramento sucker, and rainbow trout. These species, except for California roach, generally prefer cool water temperatures, which warrants cold water habitat protection. Yolo County Water Resources Association (2005) states that “the native fish assemblage upstream of Capay Dam on Cache Creek, for example, is one of the most diverse and healthy of any native fish assemblages in California (Peter Moyle, personal communication).” The 2017 Scientific Basis Report acknowledged that Cache Creek does not currently support anadromous fish; however, historically, anadromous fishes, including fall-run Chinook salmon, steelhead, Pacific lamprey, and river lamprey, were found in Cache Creek (Yolo County Water Resources Association 2005). The 2007 Yolo County Integrated Regional Water Management Plan (Yolo County Water Resources Association 2007) includes proposed actions to assess a Cache Creek-Yolo Bypass anadromous fish passage project and Cache Creek anadromous fish reintroduction study.

YCFCWCD argued that Cache Creek should be excluded because it is only intermittently connected to the Yolo Bypass and Sacramento River and because there is a fish migration barrier at the creek mouth preventing entry by anadromous fishes. However, the migration barrier would not block flows from reaching Yolo Bypass and providing benefits in Yolo Bypass and downstream. Any flows remaining at the creek mouth would enter Yolo Bypass. Increased flows from Cache Creek would thus contribute to localized floodplain inundation in the Yolo Bypass (CDFG and Yolo Basin Foundation 2008), increasing the acreage of floodplain inundation, and enhancing spawning and rearing opportunities for Sacramento splittail and rearing habitat for juvenile Chinook salmon in winter and spring while also contributing to Delta outflow. In addition, evidence indicates that the migration barrier at the creek mouth is not fully impassible, since scientists have observed Chinook

salmon in Cache Creek (Yolo County Water Resources Association 2005) and, as described above, Yolo County Water Resources Association (2007) has proposed actions to improve fish passage.

YCFCWCD requested removal from the cold water habitat objective implementation requirements based on arguments that there is no method for anadromous fishes to migrate into Cache Creek and Cache Creek does not have a cold water source to support such fish because it is largely fed by flow from Clear Lake, which is warm. The reservoirs subject to initial cold water habitat implementation actions include all rim reservoirs with some potential to release water that can support native cold water fisheries. As described above, Cache Creek does include a healthy native fish assemblage downstream of Indian Valley Reservoir, including many cold water species. Thus, year-round flows and, potentially, temperature management actions are supported. The Plan amendments' cold water habitat provisions have significant flexibility, including the ability of reservoir owners and operators to propose a long-term temperature management plan. While the Plan amendments include associated carryover storage requirements for many reservoirs, the Plan amendments do not currently include carryover storage requirements for Indian Valley Reservoir in recognition of the circumstances of Cache Creek. This flexibility in the cold water habitat provisions would allow for implementation to be tailored to the needs of each tributary, including the ability to propose non-flow actions, which could include projects similar to the fish passage improvement projects proposed in Yolo County Water Resources Association (2007). If a reservoir owner or operator believes they have no ability to improve or protect cold water for native species, they would be able to submit such documentation as a component of their long-term temperature management strategy. If they believe they have limited ability to control cold water, they could propose more limited actions than would be expected from a reservoir with better access to cold water.

YCFCWCD expressed concern about the water supply impacts of the regulatory pathway and contended that Cache Creek fits the purpose of the tributary-specific WSAs because it is rainfall-dominated. To resolve these concerns, YCFCWCD requested that Cache Creek be provided with tributary-specific WSAs if the Board does not remove Cache Creek from being subject to the regulatory pathway inflow and cold water habitat requirements. The Staff Report acknowledges that Cache Creek is rainfall-dominated (Table 2.1-1, p. 2-16). However, Cache Creek is not municipal supply dominated and also would not be expected to have significant water supply impacts without tributary-specific WSAs (watershed-wide WSAs are already provided for existing water supply projects on Cache Creek and throughout the Sacramento/Delta watershed), which were also criteria that determined the need for tributary-specific WSAs at the outset of Plan implementation. The tributaries with tributary-specific WSAs were expected to have large impacts to municipal water supply, in some cases nearing 50 percent, under 55 percent of unimpaired flow requirements. Cache Creek is expected to have much lower reductions in water supplies of 9 percent with watershed-wide WSAs similar to the magnitude of reductions on tributaries with tributary-specific WSAs, and water supply reductions are not expected to adversely impact minimum human health and safety supplies. The primary demand for water in Cache Creek is irrigated agriculture, although there are a large number of domestic and stock watering diversions. However, water rights under 10 acre-feet per year would be classified as de minimis and exempted from the inflow requirements. Further, the Plan includes provisions for minimum health and safety exceptions to curtailments.

YCFCWCD also argued that applying the regulatory pathway to Cache Creek would inhibit their groundwater recharge efforts. As detailed in the 2017 Scientific Basis Report, Cache Creek has large stream-groundwater interactions, so it is expected that an increase in streamflow would also contribute toward groundwater recharge. Based on the predicted long-term annual average water supply reductions to Cache Creek users, 15 thousand acre-feet (TAF) with watershed-wide WSAs

and 27 TAF for 55 percent of unimpaired flow, and Cache Creek's predicted average stream losses to groundwater (22.3 percent), it is expected that between 3.8 and 6.0 TAF of groundwater recharge would occur annually on average with the implementation of the regulatory pathway. This ranges between 100 and 158 percent of the winter groundwater recharge that YCFCWCD has implemented pursuant to 11 temporary permits approved by the Board.

The Plan amendments also include provisions for regular annual and periodic review to determine if changes should be made to the Plan or its implementation. During those processes, the Board could consider modifying the Plan's provisions related to Cache Creek if scientific information indicates that changes are warranted.

Implementation Methodology

Redirected Impacts

Some commenters expressed concern with a revision in the August 2026 final draft Plan that states that “[a]s part of the development of the implementation methodology, the Board will develop methods to avoid redirected impacts to water right holders in the event of non-compliance by other water right holders.” A commenter was concerned that this leaves the issue of redirected impacts to tribes, communities, and the environment unaddressed. Other commenters requested that the language be broadened to specifically refer to possible redirected impacts from flow shaping, adaptive implementation, WSAs, and reservoir reoperation, and that more details be provided on how these provisions would be implemented. This provision was added to the Plan amendments based on concerns from other commenters on the December 2025 draft Plan and is meant to clarify that non-compliance by some water right holders would not cause other water right holders to be curtailed more, consistent with water right priorities. The details for these provisions will be formulated during the development of the implementation methodology through a public process with opportunity for public comment. While non-compliance with curtailments could result in reduced environmental flows, it is not the obligation of other water right holders to address those compliance issues. Rather, it would be a compliance issue for the Board to address with any water right holders that are not complying with curtailments. Common Response 1.2, *Water Quality Control Planning Process*, and Common Response 1.3, *Revised Proposed Plan Amendments*, include discussions on the compliance and enforcement mechanisms to provide for regulatory requirements to be met.

Operational Considerations

Commenters requested additional clarification regarding the statement in the Plan amendments that the implementation methodology will include any needed operational rules for reservoir management (e.g., ramping rates) and integration of adaptive implementation provisions. This statement is meant to clarify that the implementation methodology will consider the need for ramping rates and any measures needed to integrate the methodology with the adaptive implementation provisions of the Plan. These issues will be evaluated and considered through a public process to develop the implementation methodology with additional opportunity for public comment.

A commenter expressed concern with the use of a 7-day running average to determine the unimpaired flow requirements. Similar comments were previously submitted and responded to, including within Common Response 1.3, *Revised Proposed Plan Amendments*. Edits were previously added to the Plan amendments to provide flexibility to allow for refinement of provisions for determining curtailments to meet the inflow requirement as a 7-day running average as part of the process to develop the implementation methodology. Additionally, the Plan amendments include provisions to allow the numeric inflows to be managed as a total volume of water on a water year basis and released on an adaptive schedule. As stated above, specific implementation provisions will be formulated through the process to develop the implementation methodology, with opportunities for additional public input.

Curtailment Exceptions

Some commenters questioned the legal basis for language in the Plan amendments providing for possible exceptions to curtailment for human health and safety and wildlife refuge supplies. All water rights in California, including riparian and appropriative rights, are subject to overarching principles that may serve to limit their exercise, including: (1) the rule that all water use must be reasonable; and (2) the public trust doctrine. (*Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976, 994; *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82, 100.) Article X, section 2 of the California Constitution and Water Code section 100 establish the state policy that the water resources of the state are to be put to beneficial use to the fullest extent possible, and establish that rights to the use of water are limited to such water as is reasonably required for the beneficial use served, and do not extend to the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of the water.

The reasonable use doctrine applies to the diversion and use of both surface water and groundwater, and it applies irrespective of the type of water right held by the diverter or user. (*Peabody v. Vallejo* (1935) 2 Cal.2d 351, 366-367.) What constitutes an unreasonable use, method of use, or method of diversion depends on the facts and circumstances of each case and is subject to change. (*People ex rel. State Water Resources Control Board v. Forni* (1976) 54 Cal.App.3d 743, 750.) Under the reasonable use doctrine, water right holders and claimants may be required to endure some inconvenience or to incur reasonable expenses. (*Id.* at pp. 751-752.) Water Code section 275 directs the State Water Board to take all appropriate actions before executive, legislative, or judicial agencies to implement the reasonable use doctrine. Existing law allows for a departure from the priority system to the extent necessary to prevent the unreasonable diversion or use of water. (Cal. Const., art. X, § 2; *El Dorado Irrigation Dist. v. State Water Resources Control Bd.* (2006) 142 Cal.App.4th 937, 965-966.)

With respect to human health and safety exceptions, Water Code section 106 states that it “is hereby established policy of this State that the use of water for domestic purposes is the highest use of water and the next highest use is for irrigation.” Water Code section 106.3, known as the “Human Right to Water,” establishes a state policy “that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes” (i.e., water for human health and safety) and that all relevant state agencies, including the Board, should consider this when revising, adopting, or establishing policies, regulations, and grant criteria. As the California Supreme Court has observed: the “primary function” of section 106 “is to establish priorities between competing appropriators” and while section 106 also declares water policy, it “must be read in conjunction with later enactments requiring consideration of in-stream uses.”

(*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 448 fn. 30.) “Thus, neither domestic and municipal uses nor in-stream uses can claim an absolute priority.” (*Ibid.*) Please see Common Response 1.2, *Water Quality Control Planning Process*, for additional information on authorities related to the Plan amendments.

Plan provisions for consideration of maintaining water supplies for wildlife refuges are included in part due to the requirements of the Central Valley Project Improvement Act (CVPIA), which requires the watering of CVPIA-identified wetland habitat areas (via the Refuge Water Supply Program). This provision would provide for consistency with the requirements of the CVPIA in times of limited supplies. This provision is also included in the Plan because refuge water supply is directly tied to fish and wildlife beneficial uses, and the fish viability objective identifies that flows provided to meet the objective shall be managed in a manner to avoid causing significant adverse impacts to fish and wildlife beneficial uses at other times of the year. Thus, this Plan provision helps serve that objective.

Under its authority to prevent waste and unreasonable use and ensure that the water resources of the state be put to beneficial use to the full extent they are capable, the State Water Board may decide to authorize various curtailment exceptions, including for minimum human health and safety needs and to protect wildlife refuge supplies, notwithstanding the effect of such diversions on more senior water rights. Additional information regarding the authorities related to the water quality control planning process and water rights can be found in Common Response 1.2, *Water Quality Control Planning Process*, and 1.3, *Revised Proposed Plan Amendments*. The curtailment process, including exceptions to curtailment, will be further evaluated during the development of the implementation methodology and regulation, which will include additional opportunities for public input and due process.

Delta Cross Channel Gate Requirements

Some commenters expressed concern that the August 2026 final draft Plan did not include the previously proposed changes to the Delta Cross Channel gates closure objective. The previously proposed changes were intended to provide consistency with the closure periods required by the 2019 National Marine Fisheries Service (NMFS) Biological Opinion (BiOp) for the long-term operations of the State Water Project (SWP) and Central Valley Project (CVP) (collectively Projects). These changes to the closure periods for the Delta Cross Channel gates objective were removed in the August 2026 final draft Plan in response to comments received on the December 2025 draft Plan. However, updates were retained to the Delta Cross Channel gates decision-making process. These changes were explained in Staff Report Section 13.3.2.4, *Interior Delta Flows*, and Common Response 1.3, *Revised Proposed Plan Amendments*.

The Plan amendments revert to the existing gate closure requirements that have existed since the 1995 Bay-Delta Plan with minor updates to outdated processes referenced in the Plan. The 2024 NMFS BiOp continues to require that the gate closure period extend into October. If there are changes to the long-term operations of the Projects in the future, the Plan amendments provide for reviewing and considering additional actions by the State Water Board to address those changes and consider other measures to implement the objective, including any provisions needed to provide for consistent operations between the SWP and CVP.

CVP and SWP Coordinated Operations Agreement

A commenter requested that the program of implementation directly address the coordinated operations agreement (COA) between the SWP and CVP. The commenter expressed concern that implementation of the Plan amendments will trigger provisions for review and termination of the COA per the 2018 addendum to the agreement. The commenter also expressed concern that the U.S. Bureau of Reclamation (Reclamation) will not comply with the terms of the COA or the Bay-Delta Plan due to their comment letter to the Board on the August 2026 final draft Bay-Delta Plan. In the context of the Voluntary Agreement (VA) pathway, Appendix B.1 identifies that the COA affects operations on the Project tributaries and in the Delta and is therefore a component of the base flows (also referred to as reference conditions) that Healthy Rivers and Landscapes (HRL) flows should be additive to. Appendix B.1 specifies that if the COA is amended in a manner that affects reference operations, the flow accounting protocols will be updated as needed through a public process with opportunity for public comment.

In the context of the regulatory pathway and other portions of the Plan amendments, it is possible that modification of the COA could redistribute the Projects' respective responsibilities for meeting water quality objectives, but Reclamation and DWR would maintain their joint responsibility for meeting water quality objectives implemented by Revised State Water Board Decision 1641 (D-1641). If either party to the COA fails to meet its individual responsibilities in a manner that results in a failure to meet joint responsibilities, this would be a compliance issue and could also inform changes to the Plan or its implementation through the periodic review process.

New Water Supply Projects

Multiple comments were received on revisions included in the August 2026 final draft Bay-Delta Plan clarifying that WSAs and the VA pathway would not apply to new water supply projects, including new water rights and changes to water rights that would substantially reduce Delta outflows, unless subsequently approved by the Board in the annual or periodic review processes supported by any necessary supporting environmental and scientific documentation. Some commenters expressed support for these provisions, others expressed opposition, and many requested revisions. In response to several of these comments, some edits were made to the Plan amendments that would allow for WSAs for new water supply projects (new water rights and expanded water rights authorized after December 2025) to be considered as part of a future water right proceeding (in addition to allowing for WSAs to be considered during annual and periodic review processes) supported by any necessary environmental and scientific documentation that would otherwise be required in an annual or periodic review process. This and other changes were made to these provisions that do not substantively change the provisions in the Plan amendments.

Some commenters asserted that new water supply projects should be automatically eligible for WSAs and the VA pathway without the need to consider their inclusion during the annual and periodic review processes or other processes to update the Plan. In contrast, other commenters supported these limitations on new water supply projects to avoid reductions in tributary flows and Delta outflows when unimpaired flows are lower, and associated impacts to fish and wildlife beneficial uses. However, they commented that new water supply projects should never be eligible to be included in the VA pathway or to receive WSAs because doing so could further reduce tributary flows and Delta outflows, which could eliminate the additive effect of HRL flows under the

VA pathway and reduce flows below existing conditions resulting in insufficient flows for the reasonable protection of fish and wildlife beneficial uses.

While some changes are proposed to the provisions of the Plan amendments related to new water supply projects as described above, these provisions do not provide for new water supply projects to automatically receive WSAs or to automatically be placed on the VA pathway because such provisions have not been evaluated and would require further analysis before being considered. As explained in the Staff Report, WSAs were included for existing water rights at the outset of Plan implementation to avoid abrupt water supply related impacts to existing water rights and allow some time for adjustment. WSAs were not proposed and considered for the purpose of allowing for greater diversions under new water supply projects. In addition, including new water supply projects on the VA pathway has not been analyzed or considered, including consideration of the effects of new water supply projects on the additive effects of HRL flows combined with any other actions that new water supply projects may propose as part of a future HRL, and whether these actions would be expected to contribute to the narrative objectives and the reasonable protection of fish and wildlife.

While the Plan amendments do not automatically apply WSAs or the VA pathway to new water supply projects, the Plan amendments specifically indicate that the Board could do so in the future based on supporting scientific and environmental documentation. The provisions of the Plan amendments indicating that WSAs or the VA pathway could be considered in the future consistent with legal requirements are not proposed to be removed because the Board does have the option to consider changes to the Plan in the future consistent with periodic/triennial review requirements, regardless of whether this is specifically stated in the Plan or not. Allowing for WSAs to be considered during a water right proceeding restores provisions that were included in the December 2025 draft Plan that commenters indicated could provide for administrative efficiency. However, these changes do not change the substantive requirements that any consideration of WSAs be supported by scientific documentation consistent with what would be considered in a water quality control planning process and environmental documentation, including related to reductions in tributary flows and Delta outflows, and that any decisions be consistent with the Plan, including the narrative objectives.

Commenters requested that in any consideration of WSAs or the VA pathway for new water supply projects that the Board require a separate public record, environmental analysis, tribal consultation, public comment, and findings that new water supply projects will not reduce Delta outflow for fish and wildlife protection. The State Water Board will meet all legal requirements when considering future changes to the Plan and future water right actions, including any consideration of WSAs or inclusion in the VA pathway for new water supply projects. Such decisions will specifically be supported by any necessary environmental documentation pursuant to the California Environmental Quality Act (CEQA) and any necessary supporting scientific documentation supported by peer review pursuant to Health and Safety Code section 57004 with associated opportunities for public comments and tribal input.

Some commenters requested clarification or definition of the types of petitions included in the definition of new water supply projects. Some commenters claimed that the definition of new water supply projects is too broad, should exclude all petitions or specific types of petitions (e.g., wastewater change petitions or groundwater storage petitions), should exclude applications or some types of applications, or other changes. However, other commenters supported the definition of new water supply projects and the associated limitations on those projects. In response to

comments requesting clarification, the Plan amendments were updated to identify that the starting point for the inflow requirement for any water rights approved on or before December 31, 2025, includes WSAs for the level of diversions *authorized* under that right as of December 31, 2025, versus identifying that WSAs apply for the level of diversion *occurring* under that right as of December 31, 2025. This change provides for administrative and regulatory clarity needed to implement this provision effectively and consistently. In addition to this change, other minor changes were made to the provisions related to new water supply projects, including removal of a footnote defining new water supply projects. However, these changes were not substantive.

Further changes to modify the applicability of these provisions are not needed, as the Plan already adequately describes the provisions for applying WSAs or the VA pathway to new water supply projects and the Staff Report describes the rationale for these provisions and alternate proposed provisions were not evaluated as part of the current processes to update the Bay-Delta Plan and would require further analysis and consideration by the Board through a public process.

Some commenters argued that the initial lack of applicability of WSAs and the VA pathway to new water supply projects could prevent the legal expansion of existing water rights. This argument is not supported for several reasons. First, the regulatory pathway and the associated inclusions or lack of inclusion of WSAs do not constrain the maximum level of diversion under any water right. Instead, it places bypass flow and reservoir storage management requirements on those diversions. At times, these requirements may limit diversions during lower flow conditions, but they do not place an illegal limit on the exercise or expansion of those rights or necessarily prevent those rights from being fully exercised during higher flow periods. Further, participation in the VA pathway is a voluntary commitment by HRL participants to provide habitat and flows in lieu of meeting the requirements of the regulatory pathway. HRL participants may request that their water rights be removed from the VA pathway at any time and become subject to the regulatory pathway. HRL flows were proposed by the HRL participants to be additive to base flows, including required flows and other flows in the system under specified regulatory conditions. The VA pathway was analyzed consistent with this proposal, and the analysis did not include evaluation of significant new diversions from the system that could reduce base flows and the additive effect of the HRL flows. However, as described above, this could be considered in the future with necessary supporting scientific and environmental documentation through a public process.

Some commenters claimed that preventing WSAs or the VA pathway from applying to changes to water rights would bifurcate the water right, which would cause confusion and be difficult to administer because some diversions under that water right would be on the VA pathway or receive WSAs, while other diversions authorized under the same water right would be subject to the regulatory pathway without WSAs. These issues can be addressed during the water right petition process and Bay-Delta Plan implementation process and would not result in confusion or unreasonable administrative complexity. It is standard practice to include additional terms and conditions in approvals of water right change petitions. As needed, those approvals can include conditions that apply to expansion of use differently than the developed use and those differences can be reflected in the Board's Bay-Delta Plan implementation processes.

Some commenters requested allowing for the applicability of WSAs and the VA pathway to new water supply projects to be decided during water right proceedings. In response to these comments, the Plan amendments were revised to allow application of WSAs to new water supply projects to be decided during water right proceedings, as well as processes to update the Bay-Delta Plan. The scientific basis report in support of the regulatory pathway evaluated flows within the range of the

WSAs. However, any decision to apply WSAs to new water supply projects would still need to be supported by necessary environmental and scientific documentation and consistent with the Bay-Delta Plan. As discussed in Chapter 3 of the Staff Report, *Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations*, 10-percent increments of unimpaired flows between 35 and 75 percent (referred to as *scenarios*) were evaluated. Those evaluations show that inflows of 55 percent of unimpaired flow (and corresponding Delta outflows) would be expected to provide marked improvements in protection of fish and wildlife beneficial uses, including achievement of the flow thresholds associated with protection of various aquatic species and achievement of floodplain inundation acreage. The Staff Report analysis shows that 45 to 65 percent of unimpaired flow would provide reasonable protection of fish and wildlife beneficial uses. However, because the water supply impacts to existing rights are significant and may be difficult to implement immediately, the WSAs help moderate the impacts to cold water supply and water supply for agriculture, drinking water, and other uses and allow water users time to adapt during initial implementation. A proposal to apply WSAs for new diversions that would reduce Delta outflows compared to conditions existing as of December 31, 2025 would need to be evaluated in light of the science supporting the current Plan amendments and additional evaluation of the proposed effect on overall reasonable protection of fish and wildlife beneficial uses. No changes were made to the Plan amendments to allow for decisions related to application of the VA pathway to new water supply projects to be made during the water right proceeding because doing so could have a substantial effect on the scientific analyses supporting the VA pathway within the Plan. As stated above, these analyses could be completed in the future to support adding new water supply projects to the VA pathway.

Some commenters asserted that the application of the regulatory pathway without WSAs to new water supply projects bypasses water right proceedings and improperly constrains the availability of water for diversion by new water supply projects. The Plan amendments do not improperly constrain water rights or the Board's water right processes. The State Water Board has the authority and obligation to provide for the reasonable protection of beneficial uses of water, including establishing and implementing provisions within the Board's authorities, including its water rights and water quality authorities in doing so. The primary purpose of water quality planning is to establish objectives to inform and guide subsequent individual permitting decisions, which the application of the regulatory pathway does. The Plan amendments would not otherwise alter or impact the statutory or common law features of any water rights. The State Water Board has broad authority under article X, section 2, of the California Constitution and the Public Trust Doctrine to implement the flow requirements within the Plan amendments through water right actions. A water right application to appropriate water by permit with the State Water Board is required for new water rights. Consideration of such an application is a discretionary action that requires a determination that unappropriated water is available, a review of potential impacts on public trust resources, and a determination that the appropriation of water is in the public interest. Conditions could include measures to protect and maintain water quality and prevent impacts on instream flows. Similarly, a change petition to increase diversions under an existing water right permit would be conditioned to meet similar criteria.

The regulatory pathway without WSAs for new water supply projects does not limit future water supply development or improperly impact water right application and petition proceedings. New water supply projects would proceed through the water right processes for new applications and change petitions conditioned on compliance with the Bay-Delta Plan. Additional terms and conditions for new water supply projects would be developed in water right proceedings based on the evidentiary record to avoid unreasonable impacts from diversions by the new water supply

project and as needed to contribute to achieving narrative and numeric objectives in water quality control plans, such as the Bay-Delta Plan, which are established to provide reasonable protection of fish and wildlife beneficial uses at the watershed scale.

Multiple commenters either supported or opposed text in Section 4.4.9.1 of the Plan amendments stating that HRL participants would not be required to replace increased diversions from new water supply projects that are subject to the regulatory pathway. Some supporting commenters requested edits to clarify and strengthen this provision. Some opposing commenters argued that it does not make sense for the Plan to require HRL participants to replace reductions in flows caused by changes in Project operations (as required in the base flow balancing provision discussed below) but to not require replacing reductions in flows caused by new water supply projects. These commenters asserted that all reductions in base flows should be replaced regardless of whether base flows are reduced by a new water supply project or from a change in the operation of CVP and SWP.

To address comments that the provision in Section 4.4.9.1 of the Plan amendments is not clear, this text has been revised to largely accept edits suggested by the Sites Project Authority to clarify that HRL participants are not responsible for replacing increased diversions from new water supply projects that are subject to the regulatory pathway. Some commenters also suggested adding this provision to Appendix B.1, so the text has also been added to Appendix B.1.

Related to comments about not requiring the replacement of flow losses from increased diversions by new water supply projects that are on the regulatory pathway, the State Water Board cannot require HRL participants to make up for diversions by non-HRL water rights. Further, the State Water Board cannot constrain any additional consideration of approval of water rights that are not voluntarily participating in the VA pathway because the VA pathway exists for HRL water rights unless and until such time as the State Water Board undertakes a proceeding to expand the fully appropriated streams season for the Bay-Delta watershed. However, consistent with Section 4.4.9.1 of the Plan amendments, the Board will consider imposing requirements on diversions by new water supply projects, based on the record established during the administrative proceeding, including any hearing, to ensure that the use of water is consistent with and supports the salmon protection, fish viability, inflow, inflow-based Delta outflow, and interior Delta flow objectives. The regulatory pathway, particularly without WSAs, plus other terms and conditions developed in the water right proceeding, are expected to limit any approved additional diversions from new water supply projects to higher flow periods, including wet years when conditions are expected to be favorable for fish and wildlife even with additional diversions. While WSAs and the VA pathway could be considered for new water supply projects in the future, any such decision must be supported by environmental and scientific documentation as discussed above.

Collectively, these provisions are expected to help to protect the additive effect of HRL flows by potentially allowing diversions in higher flow conditions while HRL flow commitments are focused on years with average to drier hydrology. Further, given the initial eight-year term of the VA pathway and the time that it takes for new water supply projects to be approved, constructed, and operational, it is expected that there would be limited overlap between new water supply projects and the VA pathway before the Board considers whether to continue, modify, or discontinue the VA pathway. During that consideration process, the Board will consider the effect of any approved new water supply projects on the continuation, modification, or termination of the VA pathway, including whether expected overall increases in tributary flows and Delta outflows are occurring and likely to

continue and the effectiveness of the HRL flow and habitat actions at achieving the narrative objectives of the Plan and the reasonable protection of fish and wildlife beneficial uses.

VA Pathway

Consistency with HRL Provisions

Some HRL participants commented that they believe the August 2026 final draft Plan is not consistent with the HRL proposal and that the Board should more fully incorporate HRL documents into the Plan amendments before moving forward. Other commenters, including the California Natural Resources Agency, urged the Board to move forward with adopting the Plan amendments at the October 2026 Board meeting.

The State Water Board received a letter from Reclamation and a subsequent letter from Westlands Water District indicating that they would withdraw from the HRL if certain changes were not made to the Plan amendments. While the Board has included the HRL commitments as proposed into the VA pathway in the Plan amendments and is committed to working with the HRL participants to effectively implement the VA pathway, HRL participants may still decide not to participate in the VA pathway. The Plan amendments were designed to offer two enforceable implementation pathways: participants may implement the package of additive HRL flows and habitat restoration actions or meet the Plan amendments' regulatory pathway requirements. That structure does not necessarily depend on any single participant. Comments related to the process for voluntarily withdrawing from the VA pathway are described below.

As described in further detail in Common Response 1.3, *Revised Proposed Plan Amendments*, the VA pathway in the Plan amendments is largely consistent with the HRL proposal and has been revised over multiple drafts in response to comments from HRL participants and other commenters. These revisions include necessary and appropriate changes to meet legal requirements, provide proper oversight, and develop language appropriate for the Bay-Delta Plan. Many of the components of the VA pathway to which the potentially withdrawing participants object are consistent with the HRL proposal, including their commitment to provide additive inflows and outflows, their request for the State Water Board to provide oversight and protection of HRL flow commitments, and a regulatory pathway for non-participants.

Further, the State Water Board is not a signatory to the HRL Memorandum of Understanding (MOU) and other HRL documents and has been clear during the planning process that it would not be possible to include the various HRL documents as written directly into the Bay-Delta Plan given that those documents are not written in regulatory terms and include significant additional non-regulatory language and other provisions that are not appropriate for inclusion in the Bay-Delta Plan. However, the substantive commitments of the HRL proposal have been included in the VA pathway in the various drafts of the Plan amendments (including the October 2024 draft, July 2025 draft, December 2025 draft, and August 2026 final draft), including the additive flow and habitat commitments above base conditions consistent with the Scientific Basis Report Supplement in support of the VA pathway (for which a draft was released for public review in January 2023 and followed by a final draft in September 2023 and the final in August 2026) and the Staff Report in support of the updates to the Plan (for which a draft was released in September 2023, a limited recirculation was conducted in December 2025, and a final draft was released in August 2026). The description and analysis of the VA pathway have been largely consistent over time, with the

exception of edits that were made to respond to changes and comments from HRL participants, including addition of new HRLs and changes to operations that affect the HRL base.

Regarding objections to the requirements for additive inflows and outflows, the HRL MOU states that the HRL flows in Appendix 1 of the MOU will be “additive to the Delta outflows required by Revised Water Rights Decision 1641 (Revised D-1641) and resulting from the 2019 Biological Opinions.” At the request of the HRL participants, including Reclamation, the HRL flow base was amended to replace the 2019 BiOps with the 2024 BiOps and Record of Decision (ROD). Table 1a of Appendix 1 of the HRL MOU further clarifies that all flows would be “new outflow above baseline.” After discussions with HRL participants during the development of flow accounting protocols, some flow commitments were clarified as not additive to Delta outflow contributions, and those clarifications are reflected in the final draft Plan and its Appendix B.1 and earlier drafts of those documents. Reclamation also objected to the export reduction commitments in the VA pathway, but it is not clear what specifically they are objecting to since those commitments are consistent with the HRL proposal and have been consistently described in the various drafts of the Plan and supporting documents.

Regarding State Water Board oversight over the VA pathway and protection of HRL flow commitments, the HRL MOU includes several references to State Water Board oversight, including the following statements: “The State Water Board will have authority to enforce the flow and non-flow measures relying on Water Code authorities” and “the State Water Board will use its legal authorities to protect all flows generated by actions identified in Appendix 1 against diversions for other purposes for the term of the VAs.” This language is consistent with the oversight role provided by the State Water Board.

With respect to Reclamation’s statement that the regulatory pathway is “unworkable” and inconsistent with the HRL proposal, the HRL MOU states: “The Parties understand that the State Water Board will include in the Program of Implementation an additional pathway to implement the Narrative Salmon Objective and Narrative Viability Objective. This pathway will apply to tributaries, or persons or entities, not covered by a VA.” While the details of the regulatory pathway have changed over time, including in response to comments from Reclamation and other HRL participants, the regulatory pathway has been identified for many years as the proposed “additional pathway” and Reclamation and other HRL participants have not proposed an alternative approach for a regulatory backstop.

With respect to Reclamation’s comments that “[n]either pathway contains a durable mechanism that protects CVP contract performance – water for families, farms, communities,” Reclamation’s contractual terms do not supersede laws of the State relating to the control, appropriation, use, or distribution of water. (43 U.S.C. § 383.) Reclamation holds water right permits and a license with the State Water Board, and the State Water Board is responsible for the administration of water rights in California. The State Water Board has carefully considered all comments and requirements under the Porter-Cologne Water Quality Control Act (Porter-Cologne Act) and Clean Water Act. In determining the highest water quality which is reasonable, the Board considers all demands being made and to be made on the waters of the Bay-Delta and the total values involved, beneficial and detrimental, economic and social, tangible and intangible (Wat. Code, § 13000) and recognizes that providing instream flows for the environment necessarily results in less water being available for other uses. The State Water Board is sensitive to those potential supply impacts and is giving them careful consideration. The Plan amendments were developed to improve flow and water quality conditions for fish and wildlife in the Sacramento/Delta, but implementation will affect a large

geographic area and a system that has been highly altered for decades. To accommodate for these issues, the Plan amendments provide for incremental implementation that would be expected to improve conditions for native fish and wildlife in the Sacramento/Delta watershed over time.

Prior commenters have made similar comments confusing the term “beneficial uses” as used in basin planning versus the water right context. These comments are responded to in Common Response 1.2 in the section titled *Beneficial Uses in Water Quality Process*. Other commenters have made similar comments implying that Water Code section 13241 requires each water quality objective to fully protect all beneficial uses. Water Code section 13241 does not require each water quality objective by itself to protect all beneficial uses. This concept is further explained in the *Board Consideration of Factors under Water Code Section 13241* section of Common Response 1.2.

Process for Voluntary Withdrawal from the VA Pathway

Various comments were received regarding Reclamation’s and Westlands Water District’s possible withdrawal from the VA pathway and their HRL commitments. Some commenters posed questions and requested changes to the process for withdrawing from the VA pathway. Reclamation questioned whether the 45-day comment period would impose a 45-day delay on voluntary exit from the VA pathway and Suisun-Solano Water Authority expressed concern about the need to request permission from the State Water Board to voluntarily exit the VA pathway. Other commenters expressed concern about the required public process and State Water Board approval for withdrawal. Commenters also asked for additional detail on the process to withdraw, including which commitments the remaining participants would be required to fulfill, and on the procedure for early termination or modification based on the withdrawal of an HRL participant that materially affects the ability of remaining HRL participants to fulfill their commitments. In response to these comments, the process for removing HRL water rights has been revised. The revised process clarifies that an HRL participant may submit a request to the Executive Director to withdraw their water rights from the VA pathway and those rights would then become subject to the regulatory pathway. In addition, the Executive Director may request information from HRL participants regarding how HRL commitments and associated accounting would need to be revised, if at all. A comment process is included for removal of HRL water rights to both allow the public and other HRL participants to comment on the request by an HRL participant to withdraw their own water rights, or the requested removal of HRL participants made by other HRL participants. Revisions to the early termination or modification provisions are unnecessary.

Some commenters expressed concern about the possible withdrawal of Reclamation and Westlands Water District and their stated intent to increase exports after withdrawal. These commenters contended that this is a direct challenge to the Board’s clear authority to ensure California’s water users comply with state law. They argued that the Board cannot adopt the Plan amendments with the assumption that those participants will remain and thus should return to the proposal in the 2018 Framework. It is not clear if Reclamation and Westlands Water District will withdraw from the VA pathway. However, with the new process described above for removal of HRL water rights, the Board is able to move forward with consideration of approval of the Plan amendments since contingency processes are in place to resolve issues that could arise from the withdrawal of HRL participants.

Some commenters also expressed concern about uncoordinated operations between the SWP and CVP that could result from the withdrawal of Reclamation from the VA pathway. The implementation provisions for the narrative interior Delta flows objective specifically identify that

the Board will consider the need for additional implementation actions to provide for consistent operations of the CVP and SWP export facilities for the reasonable protection of fish and wildlife as part of the annual and periodic review processes or other water right process as necessary.

Some HRL participants expressed concern about the ability of HRL participants to request removal of other HRL water rights or to be involved in the decision making process for inclusion of new HRL water rights, including new water supply projects. These provisions were added in response to comments from HRL participants requesting that any additions of water rights or new water supply projects to the VA pathway be coordinated with the existing HRL participants and requests that there be the ability to remove HRL water rights. These provisions were included in recognition that the HRL was proposed as a coordinated set of flow, habitat, and science actions within a common governance framework that will require all participants to work in close collaboration with each other to meet these commitments.

With respect to removal of HRL water rights, once included in the VA pathway, it is not expected that there would be the need for any HRL participant to request the removal of another HRL participant. However, this provision was included in the event that any HRL participants are not cooperating in implementing the VA pathway, and as such, should not be included in the VA pathway. Any consideration of removal of HRL participants would be subject to a public comment process allowing for comments from all HRL participants and other interested parties. During this process, if one HRL participant requests to remove another, that other HRL participant would be able to object to their removal before any decision is made.

Related to these provisions, Yuba Water Agency repeated prior comments about the Nevada Irrigation District (NID) HRL commitments. Yuba Water Agency expressed concern that they would be required to provide additional flows in order to fulfill the NID commitments. The State Water Board continues to encourage Yuba Water Agency and NID to work to resolve any remaining issues they may have. However, if they are unable to do so, the Plan provisions discussed above could be utilized as appropriate.

Yuba Water Agency also commented that the NID commitments were not sufficiently analyzed in the Scientific Basis Report Supplement. The Scientific Basis Report Supplement includes a robust and legally and scientifically sufficient analysis of the benefits of the VA pathway, including the commitments from NID, as well as those from the other newly added HRL participants—South Sutter Water District and YCFCWCD. Yuba Water Agency contended that because the NID commitments were not modeled in the Sacramento Water Allocation Model (SacWAM), the commitments were not analyzed. There is no requirement for every HRL commitment to be quantitatively analyzed in SacWAM. The NID commitments were sufficiently qualitatively analyzed in the Scientific Basis Report Supplement.

HRL Water Rights

Several HRL participants and others commented on the annual HRL water right identification and review requirements described in Section 4.4.9.2 of the Plan amendments. Several commenters asserted that it is not necessary to identify the specific water rights under which HRL flow commitments are to be provided for instream flow and Delta outflow purposes each year. Others asserted that the 30-day comment period is unnecessary and burdensome, and requested its removal from Section 4.4.9.2. Other commenters suggested a lengthier annual comment period or a public water rights hearing process to establish the validity of HRL flow commitments.

To dedicate flows instream under the VA pathway, water must be available under the right in which flows are dedicated while meeting senior demands for water. The HRL water right identification process in Section 4.4.9.2 would provide for verification that water is available to dedicate instream. The 30-day comment period would provide for comments on whether dedication instream would injure other legal users of water, similar to provisions for water transfers and instream flow dedications. The Executive Director would provide notification to HRL participants and the public if any issues are identified that must be resolved in order for a specific water right to be dedicated instream. The 30-day comment period provides a balance between providing time for HRL participants to determine which water rights they are dedicating instream and time for the public to comment on those dedications. The Plan amendments were updated to indicate that resubmittal of water rights lists is not required after initial submittal unless an HRL participant proposes to use different water rights to support its HRL flow commitments or change the timing of the flows provided. A public hearing process each year for all dedications is not necessary and would not be feasible given that water right hearings take significant time, frequently longer than a year.

Some commenters questioned the process used to develop the lists of water rights covered under the VA pathway in Appendix B.1 and additions to the water rights included in Appendix B.1 in the August 2026 final draft Plan. Some commented that the addition of substantive new HRL water rights should not be allowed in the future without an additional public review process. The HRL participants determined which water rights were intended to be covered by the HRL commitments. Any future consideration of modifications to the list of HRL water rights would include a public review and comment process. Inclusion of existing water rights less than 100 acre-feet could be approved by the Executive Director after a minimum 45-day comment period, and inclusion of rights larger than 100 acre-feet or rights on new tributaries could be considered for approval by the Board as part of the annual and periodic review process (which would include a public review and comment process). Inclusion of rights larger than 100 acre-feet would need to be supported by necessary environmental and scientific documentation, including evaluation of effects on inflows and Delta outflows, consistent with science supporting the Plan amendments, including the narrative objectives and other documentation.

A comment was received indicating that the new provision in Section 4.4.9.2 of the August 2026 final draft Plan stating that inclusion of HRL water rights is contingent on HRL commitments being met for that source is inconsistent with other language in the Plan amendments indicating that HRL participants would not be required to backstop the commitments of other parties. The new language in Section 4.4.9.2 referenced by the commenter provides clarification and does not substantively change the provisions of the Plan amendments. It is and has always been the case that to participate in the VA pathway, the HRL commitments for the associated water rights included in Appendix B.1 need to be met. The provisions related to not requiring HRL participants to backstop the commitments of other HRL participants pertains to commitments not associated with that participant. For example, water rights listed in Appendix B.1 for the Mokelumne River HRL would not be held responsible for backstopping Putah Creek HRL commitments, but would be collectively responsible for meeting the Mokelumne River HRL commitments even if some of the water rights on the Mokelumne River list are not taking any specific HRL actions. Some commenters also claimed that Plan language identifying that individual water rights will be assigned responsibility for implementing the Plan is a violation of due process protection for individual water right holders. This is incorrect and these comments are responded to generally in Common Response 1.2, *Water Quality Control Planning Process*.

Some commenters requested that the State Water Board add additional water rights to the lists of water rights covered under the VA pathway in Appendix B.1. Some commenters asserted that the lists of HRL water rights in Appendix B.1 are incomplete but did not identify specific water right identification numbers that should be added. A commenter requested the addition of more than 2,600 new water rights to Appendix B.1. Additional time and opportunity for Board staff review and public review would be needed to consider these additions. Accordingly, these changes are not being made at this time but could be considered in the future consistent with Section 4.4.9 of the Plan amendments, as discussed above.

Some commenters requested minor corrections to the water rights already included in Appendix B.1, including corrections to the water right status or primary owner. These minor changes have been made.

HRL Flow Commitments

Several commenters expressed concern about the reduction in the time period for requesting changes to the flow flexibility brackets from 90 days to 30 days and replacing the public comment period with a requirement for California Department of Fish and Wildlife (CDFW) approval. Commenters expressed concern about a lack of transparency and public review and requested opportunities for public participation and review. The time period was reduced in response to comments from HRL participants on the December 2025 draft Plan identifying that they would not always have enough information 90 days in advance to determine if they should request a change in the flexibility brackets, including for purposes of ensuring that all HRL flows are provided within that year. As such, no further changes are proposed to the time period for requesting changes to the flow flexibility brackets. In response to comments related to providing transparency, a new provision has been added to the Plan amendments stating that the State Water Board will publicly post documents it receives and responds to in compliance with the Bay-Delta Plan. This would provide for public posting of submitted flow schedules from HRL participants, as well as any response from the Executive Director. In addition, interested parties would have the opportunity to provide feedback on this process during annual and periodic reviews.

DWR requested minor changes to the flexibility brackets for the Feather River, American River, and export reductions. These changes were requested in response to flow accounting exercises that indicated that there could be times that it would not be possible to fully meet the HRL flow commitments on those tributaries with the prior flexibility brackets due to flood control operations and other issues. These minor changes were made to address those issues.

DWR identified that a provision described in Staff Report Section 13.3, *Revised Proposed Plan Amendments*, regarding HRL export reductions and minimum pumping levels was inadvertently omitted from the August 2026 final draft Plan. DWR and other HRL participants also commented that the provision was not sufficient and requested changes. In particular, they expressed concern about the requirement for any shortfall in the export reduction commitment to be made up in a future year. They requested amending the provision to allow for less than the full commitment to be provided if exports are no more than 1,500 cubic feet per second (cfs) during the time period identified in the flexibility brackets, removing the requirement to make up the shortfall in export reductions, and allowing for compliance with the commitment to be assessed over multiple years. The provision was modified to incorporate these requests.

YCFCWCD requested that the Board accept the recommendations of CDFW, UC Davis, and Solano County Water Agency in determining appropriate analyses for evaluating significant adverse water quality effects in Putah Creek for their flow commitment. While the State Water Board welcomes recommendations from these parties, the Plan amendments retain the Board's authority to approve the monitoring requirements. The State Water Board has responsibility for ensuring the effective implementation of the Plan and shares authority with the Regional Water Quality Control Boards (Regional Water Boards) to address water quality issues.

DWR requested amending the permanent water purchase commitment to allow for any volume not available in a year to be fulfilled through increased flow volumes resulting from other HRL sources, including additional market price water purchases. The requested edit was made.

Several commenters expressed concern about the provision stating that it is the State Water Board's intent that HRL participants will not be expected to backstop the commitments of other HRL participants or parties subject to the regulatory pathway. A commenter identified ambiguity in whether this provision would apply to Decision 1641 commitments. In response to this comment, the provision was revised to clarify that it is only referring to the VA pathway commitments or regulatory pathway implementation. The provision would not affect existing responsibilities for any requirements in Decision 1641. Some HRL participants commented that the provision was not sufficient and expressed concern about how the State Water Board will ensure the Projects do not backstop the commitments of other parties, including situations in which HRL flows do not materialize or other HRL participants divert water that the Projects could otherwise divert. The Plan amendments include adequate provisions to address these issues during the implementation processes, and the State Water Board expects that HRL participants will also coordinate to address any issues between each other. If HRL participants are unable to resolve any such issues, the Plan amendments include provisions for requesting removal of HRL water rights.

With respect to concerns that HRL participants may be required to backstop regulatory pathway commitments of other parties, as stated in the Plan amendments, the implementation methodology will include methods to avoid redirected impacts to water right holders in the event of non-compliance by other water right holders. All affected water right holders (and any other members of the public) will have the opportunity to comment or provide technical input on the implementation methodology during its development process. DWR requested clarification that the accounting procedures in Appendix B.1 only apply to HRL flows until the implementation methodology is finalized. Appendix B.1 already states that it will need to be revised to protect the flows resulting from the regulatory pathway. These revisions will be made through a public process with opportunity to comment. Another commenter misinterpreted requirements for the Projects to protect regulatory pathway flows during implementation of the VA pathway as requiring them to release more water and thus result in additional water supply impacts to the Projects. While the VA pathway is applicable to the Projects, the Projects would be required to protect regulatory pathway flows that are above base conditions. Since the requirement is only to protect regulatory pathway flows above base conditions, this provision would not result in additional water supply impacts.

With respect to concerns about other water users diverting HRL flow commitments, the Plan amendments specifically state that water that would otherwise be available under the priority of right that is bypassed or released from storage to provide flow commitments under the VA pathway is not abandoned and is not available for diversion downstream by other water right holders and claimants. The implementation methodology will include provisions for protecting HRL flows that are made available consistent with provisions for dedicating flows instream and water right

priorities. Before the implementation methodology is in place, it is not expected that other existing water right holders would divert more water because HRL flows are in the system because HRL flows represent a relatively small amount of water compared to base conditions and most current water right holders do not take more water due to relatively small changes in flows in the absence of curtailments. With respect to new diversions, as discussed in Section 4.4.9.1 of the Plan amendments, in future water right actions the Board will consider imposing requirements to ensure that diversions of water are consistent with the Bay-Delta Plan. HRL participants or other parties that believe they may be harmed by a water right action or believe that action may impact the environment also have the option of raising those concerns during the water right process, including through protests and participation in water right hearings on water right approvals.

VA Pathway Flow Accounting

Feather River

DWR and the Feather River Agencies requested a number of changes to the flow accounting provisions for the Feather River HRL commitments. A number of minor changes were made, including changes that address underlying concerns expressed by commenters without materially affecting the commitments or accounting. However, changes that would introduce references to third-party agreements, could lead to inconsistencies with other sections of the accounting provisions for other tributary sources, or would introduce new terminology, were not made. Commenters were primarily concerned with assignment of reporting and tracking responsibilities and stated that Board staff's attempts to clarify these responsibilities in the August 2026 final draft Plan did not fully resolve their concerns. Edits were made throughout Section B.1.11 to clarify responsibilities for accounting, reporting, and providing the HRL flows without introducing references to third-party agreements, inconsistencies with accounting for other tributary sources, and new unnecessary terminology. For example, the proposed edit to replace the language of Section B.1.11.5.ii with language that introduces new terminology and a reference to a third-party agreement, was simplified by inserting "DWR" in place of "Feather River HRL participants."

DWR and Feather River Agencies requested deletion of language within Section B.1.11.2 related to limitations on refill related to reservoir reoperations that was intended to protect the Projects' water supplies. Given that DWR is agreeable to these edits, they were made. Edits were made in Section B.1.11 to clarify that DWR alone is responsible for documenting and reporting on reservoir reoperations and ensuring that reservoir reoperations limitations are adhered to, that Project supplies are protected, and that the HRL flows replenished by reoperation flows are additive compared to reference conditions.

DWR and Feather River Agencies requested removing reference to upstream reservoirs from Section B.1.11 provisions related to reservoir reoperations to allow greater flexibility in the use of reservoir reoperation for providing additive flows. Edits were made consistent with the commenters' intent while retaining reference to upstream reservoirs as appropriate. Commenters also requested clarification as to whether references to Oroville Reservoir were intended to include the Thermalito Complex. Some edits were made in response to this comment to clarify that references to Oroville Reservoir include the Thermalito Complex. In most cases, text was edited to reference "Oroville Complex" instead of "Oroville Reservoir."

Land Fallowing

DWR requested changes in Section 4.4.9.4 of the Plan amendments related to the March 1 deadline to submit detailed parcel information for lands to be fallowed, stating that fallowing decisions will need to occur after a water year type determination has been made, which typically occurs after mid-March. DWR further stated that final assignment of water rights would have to “come at a later date either in March (after the 1st) or April.” In response to these comments, the deadline in question was changed to April 8, providing DWR sufficient time to adjust allocations and settle proposed fallowing after determination of March water supply estimates.

Some commenters requested that the Board restore previously deleted text from Section B.1.7.2 of Appendix B.1 that prevented changes to the default evapotranspiration of applied water (ETAW) and rice straw decomposition rates for the Feather and Sacramento River HRL sources during the initial eight-year term of the VA pathway. The text was restored as requested to specify that the default ETAW and rice straw decomposition rates for the Feather and Sacramento River HRL sources cannot be adjusted during the initial eight-year term of the VA pathway.

Minor Clarifications

Some commenters, including East Bay Municipal Utility District (EBMUD) and DWR, requested non-substantive clarifying edits and minor corrections to Appendix B.1 that have been applied. For example, EBMUD requested a revision in Section B.1.13.5 to change “Camanche Reservoir” to “Camanche Dam.” EBMUD also requested edits to Section 4.4.9.2 of the Plan amendments to include a reference to exceptions specific to the Mokelumne HRL commitments. This edit was not made because it was not necessary, as there are already similar exceptions in the definitions of reference conditions and base flows in the Plan and Appendix B.1.

Other Comments

San Joaquin Tributaries Authority recommended including potential HRL participants and accounting procedures for LSJR tributaries within the Plan. The current update to the Bay-Delta Plan is focused on the Sacramento/Delta watershed and not the LSJR watershed, for which updates to the Plan were made in 2018. Accordingly, this requested change is not appropriate as part of the current update process but could be considered in the future.

DWR commented related to HRL flow accounting that situations may arise where a monthly water quality offset for accounting purposes may not be the preferred timestep. No change was made at this time because Appendix B.1 includes a process to update accounting procedures in the future, if necessary.

There were several new comments on text that was not changed in the Plan amendments related to ETAW factors used in land fallowing and stream depletion factors used in groundwater substitution. These comments generally suggested the accounting procedures need to be adjusted to account for differences among HRL water sources and potential losses to percolation, and that the procedures lack sufficient State Water Board oversight. The comments further suggested that the Projects may benefit from the specified ETAW and stream depletion factors. The provisions in the Plan amendments related to accounting procedures already include a process for proposing changes and provide sufficient flexibility to address potential issues in the future as appropriate.

Base Flow Balancing Provision

Multiple commenters supported, opposed, or requested changes to the base flow balancing provision. While some edits to this provision were made, they do not change the operative requirements of the provision. Some commenters expressed support for the provision as an important safeguard needed to ensure HRL flows are additive to base flows and provide expected benefits to the environment. Commenters requested that implementation of the provision be timely, measurable, and transparent in order to ensure flows are additive. Some comments expressed concern that the provision is not protective enough of native species, particularly of critical habitat for Delta smelt during the fall, because the provision does not require flows to be replaced within the same season.

The base flow balancing provision includes requirements for timely submission and approval of plans to address any substantial reductions in Delta outflows that may result from changes in CVP and SWP operations. The provision also includes requirements for documenting the magnitude and timing of reductions in Delta outflow and the actions taken to address those reductions and their ecological effects. To ensure public transparency, revisions have been made to Section 4.1 of the Plan amendments stating that the Board will make documents it receives and responds to in compliance with the Bay-Delta Plan publicly available on its website or file transfer protocol site as appropriate.

Some commenters expressed concerns that the base flow balancing provision is inconsistent with the 2022 HRL MOU; that the provision is not based on the best available science and would not allow flexibility for changes in Project operations based on new science; that the provision is duplicative of existing federal Endangered Species Act (ESA) and California Endangered Species Act (CESA) permitting; that the HRL flow base should be the most current (2025) ROD and Incidental Take Permit (ITP) (collectively, 2025 ROD/ITP); and that the provision is an unlawful extension of the Board's authority because the Bay-Delta Plan cannot modify other legal requirements. Other comments suggested that any obligation to implement the provision should be based on ecological effects of the change in Project operations and not based on changes in the additive effect of HRL flows on Delta outflows. Commenters also requested that the provision bifurcate decisions on changes already made to Project operations from future changes in Project operations, as well as a number of other detailed suggestions.

Revisions were made to Section 4.4.9.1 of the Plan amendments to address comments requesting the bifurcation of decisions on changes already made to Project operations from future changes in Project operations, and to include more details regarding decision making, judicial review, petitions for reconsideration, and other edits that do not substantively modify the base flow balancing provision.

Regarding concerns that the base flow balancing provision is inconsistent with the 2022 HRL MOU, as described in Common Response 1.3 of the Staff Report, the provision is intended to maintain consistency with the 2022 HRL MOU and existing analyses in support of the VA pathway in the Scientific Basis Report Supplement and the Staff Report. The HRL MOU states that the VA flows will be "additive to the Delta outflows required by Revised Water Rights Decision 1641 (Revised D-1641) and resulting from the 2019 Biological Opinions." At the request of the HRL participants, the HRL flow base was amended to replace the 2019 BiOps with the 2024 BiOps and ROD. The Scientific Basis Report Supplement and the Staff Report did not assume HRL flows would be additive to flow changes resulting from the 2025 ROD/ITP amendments. In addition, the base flow balancing

provision would not require greater flows than agreed to in the 2022 HRL MOU but would provide credit toward satisfying the HRL flow commitments if changes to operational requirements result in greater flows than base flows analyzed in the Scientific Basis Report Supplement and the Staff Report.

In response to comments that the base flow balancing provision is not based on best available science and would not allow for adjusting to changing conditions, a definition of best available science is already included in the Bay-Delta Plan, and annual and periodic reviews already provide opportunity for the Plan to adjust to new science. In addition, the base flow balancing provision includes flexibility, including the opportunity for HRL participants to submit a modified proposal to address new information or changing conditions. The provision allows for the timing and magnitude of flows to differ from what would have been provided under the 2024 BiOps/ITP provided that the supporting scientific and technical information demonstrates that the proposed outflows along with other measures are anticipated to provide ecological benefits comparable to what would have occurred absent the changes in Project operations subject to the provision (Relevant Change). In addition, the text of the provision states that as part of the periodic review process, HRL participants may submit, at any time, proposals for long-term changes that take into account changes in Project operations. Long-term changes approved by the Board would be incorporated into the Bay-Delta Plan and no longer subject to this provision.

Regarding comments that the base flow balancing provision is duplicative of existing ESA/CESA permitting or that it is an unlawful extension of the Board's authority, ESA and CESA issues are separate and distinct issues from those addressed in the base flow balancing provision. As stated above, the base flow balancing provision is included in the Plan amendments to provide for consistency with the HRL proposal that was submitted to the Board and the associated scientific and environmental analyses that were based on HRL flows being provided in addition to defined base flows reflecting the 2024 BiOps and ROD per the HRL participants' request. These analyses did not evaluate the effects of the 2025 ROD or ITP amendments or other possible future Relevant Changes on the expected benefits and other conclusions supporting the Plan amendments.

In addition, Common Response 1.1 and Common Response 1.2 include discussion of the Board's authorities and overlap between the Porter-Cologne Act and ESA and CESA. As described in Common Response 1.2, the Porter-Cologne Act requires the State Water Board to "establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance..." (Wat. Code, § 13241.). Reasonable protection of fish and wildlife beneficial uses of water can be broader than ESA and CESA, which both state that they establish a floor to avoid jeopardy to the continued existence of listed species which other regulatory actions may not go below but do not prohibit more protective regulatory actions under other laws. As such, the water quality objectives needed to reasonably protect fish and wildlife beneficial uses that are addressed by the objectives and program of implementation in the Bay-Delta Plan are neither duplicative nor inconsistent with ESA and CESA.

Some commenters requested clarification about how the base flow balancing provision would be implemented, how it would interact with different types of HRL commitments, including those relying on groundwater substitution, and which water users would be responsible for implementing the provision. Some comments suggested that the provision should apply to all water users and others suggested that it should not apply to HRL participants other than the CVP and SWP. The base flow balancing provision was developed to address changes in Project operations related to surface water and would not affect non-Project HRL provisions or groundwater diversions. The specific

details of how the base flow balancing provision will be implemented will depend on the changes and the proposed responses.

HRL Habitat Commitments

Incremental Implementation Milestones

Several commenters expressed support for the incremental implementation milestones for HRL habitat commitments. Some of these commenters requested revisions to include additional detail to the milestones and associated reports and impose additional requirements, including coordination with local governments. The milestones are sufficiently detailed and no changes are necessary. Any reports will be made publicly available, and comments may be provided to the State Water Board during the annual and periodic review processes. The State Water Board expects HRL participants to coordinate, as appropriate, with local governments in the development of restoration projects. Some commenters contended that the milestones were insufficient because they did not include funding milestones and expressed concern about the ability of the HRL participants to procure the funding necessary to provide their commitments. Since achieving adequate progress toward the milestones requires adequate funding, the milestones implicitly incorporate funding and need not include specific funding milestones. HRL participants expressed concern about the milestones and whether they could result in modification or termination of the VA pathway for factors outside the HRL participants' control. They also questioned where the milestone schedule originated. The incremental implementation milestones were developed in collaboration with DWR and CDFW. The provision already allows the Executive Director to approve extensions to these timelines for good cause shown.

Habitat Maintenance

Commenters expressed support or opposition to the new requirement in the final draft Plan that HRL habitat restoration projects be maintained over the duration of the VA pathway. Some commenters requested more detailed stewardship expectations for the restored lands and identification of the entity responsible for long-term operations and maintenance of each project. The specific stewardship requirements depend on the nature of a particular project and thus a specific definition is not appropriate. The entity responsible for maintenance would be the HRL water right holders responsible for providing that habitat commitment. Some HRL participants expressed concern that the maintenance requirement could prevent science-based adaptive management, degrade adjacent habitat, or result in expending unnecessary resources to maintain habitat suitability even if habitat quality is not degrading. These commenters suggested revisions to only require maintenance as needed based on assessments following functionality-altering events. If habitat sites are already providing their intended habitat value, then no maintenance would be needed. Maintenance would only be needed when habitat quality declines. However, to address these concerns, the provision was modified to require maintenance to the extent feasible to achieve the intended habitat benefits for the duration of the VA pathway, with the understanding that river systems are dynamic and assessments will be made on a case-by-case basis.

Fish Food Production

Commenters expressed support or opposition to the change of the fish food production commitment of 20,000 acres to an optional special study with associated monitoring requirements. Some commenters expressed confusion about the removal of the 20,000 acre fish food production commitment and questioned how the reduction in habitat would affect the VA pathway's expected benefits. The 20,000 acre fish food production commitment was never intended to be floodplain habitat. As was indicated in footnote 4 of Table 9 of the December 2025 draft Plan, this 20,000 acre commitment was for fish food production, which would not provide habitat for fish. As was described in Common Response 1.3 of the final Staff Report, the 20,000 acre commitment for fish food production was modified to an optional special study due to concerns from CDFW and others about possible water quality impacts relative to expected benefits of the action. Several commenters supported this change and the additional safeguards for contaminant impacts but questioned which contaminants will be tested for and how. The specific contaminants that will be tested for and the methods for the testing will be included in the HRL monitoring plan subject to approval by the Executive Director in consultation with the Central Valley Regional Water Board.

Some HRL participants expressed concern about changing the fish food project to a "pilot action" and stated that fish food projects have demonstrated success for salmonid rearing and out-migration survival. They also requested revisions to the monitoring requirements to remove detail regarding the contaminant monitoring that would be required and the requirements that would need to be met for the study to become a full HRL commitment. The Scientific Basis Report Supplement discusses the uncertainty regarding the effectiveness of the fish food production actions and possible water quality impacts of such actions. Specifically, there is a lack of available food web monitoring data and data on population-level effects of food subsidy efforts. While individual growth of juvenile salmon generally increases with access to habitats with higher densities of food resources, there is limited information on population-level effects.

Related to possible water quality concerns, both pesticides in water discharged from agriculture drainage and in sediment have been shown to affect macroinvertebrates and zooplankton. In the Yolo Bypass, current-use pesticides also affect juvenile Chinook salmon, which have been shown to have higher concentrations of current-use pesticides due to consumption of contaminated invertebrate prey species. There is also evidence of individual and population-level effects of pesticides from agricultural drainage on other native estuarine fish species, including Delta smelt, Longfin smelt, and Sacramento Splittail. The contaminant-related requirements for the fish food production study are included to further evaluate these issues to ensure that the action has overall expected benefit to native fish species before becoming a longer term HRL commitment.

Habitat Accounting

Yuba Water Agency provided comments similar to those received on the December 2025 draft Plan objecting to the use of flow-habitat relationships from the Scientific Basis Report Supplement and cover criteria in habitat accounting. A full response to the prior comments is provided in Common Response 1.3, *Revised Proposed Plan Amendments*, of the final Staff Report. Responses to new concerns and arguments are provided below.

Yuba Water Agency contended that the flow-habitat relationship they provided does not represent cover suitability. These issues have been discussed with Yuba Water Agency on several occasions over several years, including the importance of cover in providing suitable habitat for salmon as

assumed and documented in the peer reviewed Scientific Basis Report Supplement Report for the VA pathway. Cover is important for rearing habitat suitability and is often the most limiting factor when applied alongside velocity and depth; available literature suggests that cover features should constitute at least 20 to at least 75 percent of the habitat area or should be present within 1 meter of any point in the stream area to support rearing salmon. Thus, analyses in the Scientific Basis Report Supplement assume that suitable rearing habitat has suitable cover. In addition, Yuba Water Agency and other HRL participants have been given the opportunity to modify their habitat curves as appropriate to reflect their proposal. Yuba Water Agency references an email exchange with a contractor related to this matter that does not in any way reflect any changes in the requirements for cover. However, the habitat accounting protocol includes significant flexibility that could accommodate the concerns of Yuba Water Agency if they are constructing habitat in agreement with best available science, even if the definition of cover that they used is different from that required by the default accounting criteria.

Yuba Water Agency also identified some issues with a data file within the data publication for the final Scientific Basis Report Supplement. These issues have been corrected, and the data package has been updated.

Monitoring

Reclamation requested removal of a required special study on the possible use of barriers at the Head of Old River to protect outmigrating LSJR salmonids. The purpose of the Head of Old River Barrier is to prevent juvenile Chinook salmon and steelhead from the San Joaquin River from being entrained into the interior Delta and impinged at the SWP and CVP facilities, or otherwise being subject to poor habitat conditions and associated low survival in the interior Delta. Common Response 3.1, *Fish Protection*, of the final Staff Report and recent scientific literature describe that juvenile steelhead survival from the Head of Old River to Chipps Island increased when the barrier was installed and San Joaquin River inflows were higher. This special study would require investigation into the effects and causal mechanisms of different possible barrier designs and operations on salmonid survival to more fully determine if it can be an effective mechanism to protect native fish species from the impacts of export operations.

Reclamation also raised concerns around changes to monitoring and reporting in the Plan, alleging that the scope and duration of such activities had been expanded without explanation of the Board's authority to impose such requirements, but Reclamation did not describe the specific changes they objected to. The Board's authority is described in Common Response 1.2, *Water Quality Control Planning Process*, and without additional detail regarding the specific objections Reclamation may have, it is unclear how to address their concerns.

Tribal Comments

The State Water Board appreciates the input and feedback provided by tribes and tribally affiliated groups throughout the process for the Sacramento/Delta updates to the Bay-Delta Plan. Tribal representatives have shared traditional knowledge and unique perspectives that have been important in informing this process. During the 2023 State Water Board Informational Item on Tribal Beneficial Uses (TBUs), tribal representatives shared with the State Water Board an

understanding of what TBUs mean to tribes. That explanation of the intrinsic connection between salmon, the ecosystem, and tribal culture led to the State Water Board designating the Tribal Tradition and Culture (CUL) beneficial use watershed wide as part of the Sacramento/Delta updates to the Bay-Delta Plan. Tribal participation and comments also led to the State Water Board committing to form, in conjunction with tribes, a Bay-Delta Tribal Advisory Group which would provide input to the State Water Board on Bay-Delta Plan update and implementation issues and related matters. Additionally, tribal feedback highlighted the significance of Traditional Ecological Knowledge (TEK), which will be considered in a full and complementary way alongside non-Indigenous scientific approaches. The State Water Board looks forward to continuing tribal participation in efforts to implement the Bay-Delta Plan and in ongoing review of the Plan and its implementation.

Many commenters reiterated comments previously provided on the Staff Report and December 2025 draft Plan, including about: the Stanislaus, Tuolumne, and Merced (STM) Working Group included in the 2018 update to the Bay-Delta Plan related to Lower San Joaquin River/Southern Delta Salinity; possible impacts to the Trinity River; and the treatment of TEK in the Plan. Commenters also asked for clarification on why Tribal Subsistence Fishing (T-SUB) and Subsistence Fishing (SUB) beneficial uses were not designated as part of the Sacramento/Delta update to the Bay-Delta Plan, and how the designation of CUL will affect future regulatory actions by the State and Regional Water Boards (collectively Water Boards). Commenters also expressed that T-SUB is a necessary component of CUL. Commenters also expressed concern related to how the Board may handle tribal data submitted in support of protection of tribal cultural resources or other designation processes.

With respect to comments regarding T-SUB and SUB beneficial uses, as stated in Section 13.7.2 of the final Staff Report, to the extent that other tribal uses and activities encompassed within the CUL use may be directly supported by flow and other actions to protect fish and wildlife beneficial uses in the Plan, including for example, navigation, gathering and consumption of natural resources, and immersion ceremonies, the implementation actions may also incidentally support those cultural activities and lifeways. T-SUB and SUB are not currently proposed for designation as part of the Sacramento/Delta update to the Bay-Delta Plan due to the need to further evaluate these designations, including risks to human health from consumption of noncommercial fish or shellfish at higher rates. Individual stream segments could be designated for T-SUB and SUB beneficial uses as appropriate by the Central Valley and San Francisco Bay Regional Water Boards. The State Water Board will work with these Regional Water Boards to consider these designations in future planning efforts.

Additionally, commenters stated that there is little explanation of how the CUL designation will interact with other broad state water quality control policies and be considered in future permitting actions. Section 13.7.2 of the final Staff Report details that the reasonable protection of CUL as it relates to the tribes' cultural ceremonies and spiritual lifeways that are connected to salmon overlaps with the reasonable protection of the aquatic life beneficial uses identified in the Bay-Delta Plan or designated in the applicable Regional Water Board water quality control plans, including the fish and wildlife beneficial uses. The water quality objectives needed to protect fish and wildlife beneficial uses are addressed by the objectives and program of implementation in the Bay-Delta Plan. It is possible that additional site-specific water right or water quality permit requirements or additional flow or water quality objectives could be considered if it is determined that additional actions by the Water Boards are needed to reasonably protect other tribal uses and activities encompassed within the CUL use, such as tribal cultural ceremonies, swimming, and navigation.

Generally, CUL activities like navigation, swimming, and ceremonies are not expected to require more flow than already designated beneficial uses such as Water Contact Recreation (REC-1), although it is possible that a ceremony or other use could indicate the need for more flow at certain places and times.

New beneficial use designations do not necessarily require additional water quality objectives, restrictions on waste discharges, or other new or different actions. Other tribal uses and activities encompassed within the CUL use may be directly supported by water quality objectives and control measures in place for already designated beneficial uses such as REC-1 and Commercial and Sport Fishing (COMM). Although there are differences between recreational and commercial and sportfishing uses and tribal uses, a water quality objective designed for the protection of one beneficial use may be sufficiently protective of other beneficial uses. That said, there may be instances where REC-1, COMM and other beneficial uses may not be protective of tribal and cultural uses, or where REC-1 or COMM is not designated in a specific waterbody, resulting in the need to consider new water quality objectives or site-specific permit requirements for the reasonable protection of CUL uses in the watershed.

Commenters reiterated concerns regarding possible impacts to the Trinity River and supporting Plan language prohibiting redirected impacts to fish and wildlife, including temperature and instream flow impacts, on the Trinity River from implementation of the Bay-Delta Plan, including under the VA and regulatory pathways. Reclamation will be required to report at least annually to confirm there are no redirected impacts to the Trinity River from implementation of the current updates to the Bay-Delta Plan. As part of the annual and periodic review processes, and more often if needed, the State Water Board will evaluate whether any additional actions are needed to address any redirected impacts to the Trinity River or to ensure that beneficial uses are protected on the Trinity River, in consultation with the North Coast Regional Water Board.

Comments were also received that the tribal engagement provisions in the Plan should be expanded, specifically stating that tribal listening sessions should be held more frequently and the Tribal Advisory Group should be fully established. The State Water Board will hold tribal listening sessions with interested California Native American Tribes at least once per year in conjunction with annual and periodic reviews to hear feedback from tribes on the Bay-Delta Plan, its implementation, and any needed updates. Tribal listening sessions will follow previously held tribal listening session formats—open to all tribal representatives and tribally-affiliated groups who are interested in participating—and the tribal engagement provisions provide flexibility to hold listening sessions more than once per year if needed. In addition to tribal listening sessions, the Bay-Delta Tribal Advisory Group provides an opportunity for tribes to provide input to the State Water Board on the Bay-Delta Plan and its implementation. The input provided by the Bay-Delta Tribal Advisory Group could focus on the tribal-related provisions including TEK/tribal knowledge and tribal outreach and engagement and other implementation topics such as development of biological goals and input on VA pathway implementation and tribal engagement with HRL participants. To avoid infringing, upon tribal sovereignty, the Plan does not specify the composition of members, frequency of meetings, or topics discussed by the Bay-Delta Tribal Advisory Group and would instead appreciate a group formed and governed by tribes with support provided as needed by State Water Board staff.

Commenters expressed concern related to how information shared by tribes will be handled and requested that the Water Boards create guidelines for respecting tribal data sovereignty. Commenters also expressed concern that considering TEK in a complementary way alongside non-Indigenous scientific approaches overlooks essential components of TEK and represents the State

Water Board's lack of understanding surrounding TEK generally. The State Water Board recognizes the importance of TEK and Indigenous Knowledge as they relate to natural resource decisions. The State Water Board has learned through tribal engagement that appropriately incorporating TEK into the Bay-Delta Plan requires tribal participation in the process, tribal consent, relationship building, and ongoing dialogue with tribal representatives. The State Water Board's consideration and incorporation of TEK and any other tribal data will follow the CARE principles of Collective benefit, Authority to control, Responsibility, and Ethics. The CARE principles help ensure Indigenous People the collective benefit of their own data, authority to control their data, and that data holders engage respectfully so that the use of Indigenous data, including TEK, helps strengthen tribal communities. Indigenous Peoples' ethics will inform the use of Indigenous data in the Bay-Delta Plan and its implementation. To ensure adherence to the CARE principles and that TEK is treated appropriately, the State Water Board will request tribal review and input by the Bay-Delta Tribal Advisory Group of any Bay-Delta Plan related documents incorporating TEK.

Commenters argue that under AB 2108 (codified as Water Code sections 189.7 and 13149.2), the Board must conduct targeted outreach and issue explicit findings regarding environmental justice. Water Code section 13149.2 requires the Water Boards to make findings on (1) anticipated water quality impacts in disadvantaged or tribal communities as a result of a permitted activity or facility; (2) any environmental justice concerns within a Water Board's authority that are raised by interested persons regarding those water quality impacts; and (3) available measures within the Water Board's authority to address those water quality impacts when adopting water quality control plans. The Staff Report evaluates several potentially significant impacts that could occur under the Plan amendments that are relevant to tribal and disadvantaged communities. The main water quality impact concerns expressed by disadvantaged communities (DACs) and tribal communities are harmful algal blooms (HABs) and associated impacts to recreation and reduced municipal supply to DACs from reduced Sacramento/Delta supply and lower groundwater levels. Additional impacts and mitigation measures that may be relevant to DACs and tribal communities are described in the Staff Report and the CEQA findings. These potential environmental impacts should be viewed in light of the overall purpose and goals of the Sacramento/Delta update to the Bay-Delta Plan, which is intended to be an environmental restoration action. The Resolution adopting the updates to the Bay-Delta Plan contains a finding that summarizes the anticipated water quality and related impacts relevant to DACs and tribal communities arising from the adoption of the Sacramento/Delta update to the Bay-Delta Plan, and the mitigation measures identified that would avoid or reduce those impacts.

Commenters continued to express the importance of increased flows to help restore waterways to a more natural state, and object to Plan provisions that would provide lower flows, including provisions for WSAs for existing water supply projects at the outset of Plan implementation and the VA pathway that would allow for implementation of HRL flow and habitat commitments in lieu of the regulatory pathway. These changes made in the planning process that reduce water supply impacts of the Plan amendments compared to without these provisions do not trigger the findings required under Water Code section 13149.2, which requires findings on anticipated water quality impacts in DACs or tribal communities *as a result of a permitted activity or facility*. Similar to CEQA, the Water Code section 13149.2 findings relate to impacts of the proposed action, not the impacts already occurring that are associated with an existing impaired baseline condition. The State Water Board acknowledges that existing water quality impairments and other issues of concern can affect DACs and tribal communities and that many DACs and tribes have raised concerns about the need for greater environmental flow protections in the Delta. The Plan amendments would be expected to

improve water quality conditions over time but may not address all existing water quality impairments at all times and locations.

Water Code section 189.7 sets forth new requirements for the Water Boards to conduct equitable, culturally relevant outreach when considering proposed discharges of waste that may have disproportionate impacts on water quality in DACs or tribal communities. The outreach requirements apply to only “proposed discharges of waste that may have disproportionate impacts on water quality in disadvantaged communities or tribal communities.” (Wat. Code, § 189.7, subd. (a)(1).) The Bay-Delta Plan primarily addresses water diversions and use in the water quality planning context, including the federal Clean Water Act and state Porter-Cologne Act. The Bay-Delta Plan is complementary to other water quality control plans adopted by the State and Regional Water Boards and to state policies for water quality control adopted by the State Water Board. These other plans and policies establish water quality objectives and discharge requirements for parameters such as toxic chemicals, bacterial contamination, and other parameters, which have the potential to impair beneficial uses of water or cause nuisance. The Bay-Delta Plan updates do not consider proposed discharges of waste that may have disproportionate impacts on water quality in DACs or tribal communities and is therefore not subject to Water Code 189.7. Nevertheless, the State Water Board has actively engaged with interested parties throughout the planning process, including DACs and tribal communities consistent with Water Code section 189.7. The issues raised by commenters regarding the designation of T-SUB and SUB and the development of the HRLs are outside the scope of the findings required by Water Code section 13149.2 for the adoption of the Plan amendments. but are addressed elsewhere in the Staff Report.

The Delta Tribal Environmental Coalition (DTEC) again raised concerns that the State Water Board has not yet resolved the Title VI Complaint submitted to U.S. Environmental Protection Agency (USEPA) claiming disparate impact treatment in the State Water Board’s Bay-Delta Plan update and implementation process. USEPA commenced an investigation and parties agreed to seek informal resolution through months of facilitated negotiations. Although USEPA commenced an investigation in 2024, a court enjoined USEPA in Louisiana from imposing or enforcing Title VI disparate impact requirements. (*Louisiana v. U.S. Environmental Protection Agency* (W.D. La. 2024) 712 F.Supp.3d 820.) In an unpublished opinion, that injunction was later made permanent. Thereafter, the federal administration changed and, in 2025, issued Executive Order 14281, which included language stating various regulations related to Title VI and disparate impact analyses were revoked. This creates significant uncertainty regarding the status of DTEC’s complaint as USEPA is the agency with jurisdiction and not the Board, which has already stated unequivocally that it has not engaged in disparate impact treatment.

Moreover, in 2022 (prior to its complaint to USEPA), DTEC petitioned the State Water Board to (1) immediately undertake and timely complete review of water quality standards in the Bay-Delta Plan; (2) engage in meaningful government-to-government consultation with affected tribes and center opportunities for meaningful public participation by other impacted Delta communities in the review and revision process; (3) revise beneficial uses in the Bay-Delta Plan to incorporate TBUs and non-tribal subsistence fishing beneficial uses; (4) issue new and revised water quality standards adequate to protect the full range of beneficial uses and public trust interests; and (5) initiate a rulemaking to regulate all recognized rights to Bay-Delta water (including pre-1914 appropriative rights) and limit water diversions and exports to levels consistent with the revised water quality standards.

After careful consideration, on June 24, 2022, the Board denied the request, noting that “foundational aspects of [DTEC’s] request are part of the State Water Board’s quasi-legislative action to update the Bay Delta Plan,” and that the Board’s “engagement with Tribal Beneficial Use Designations is important and ongoing.” Thereafter, the Board offered opportunities for formal government-to-government consultation, met with tribal leaders, created a designated point of contact as a tribal liaison, and included tribal representatives on a dedicated panel during the Bay-Delta planning process. As demonstrated above, the State Water Board has worked diligently to address tribal concerns and move forward expeditiously to update the Bay-Delta Plan.

Annual and Periodic Review

The August 2026 final draft Plan included an expanded list of topics for consideration by the State Water Board during periodic reviews of the Bay-Delta Plan and its implementation measures. Some commenters suggested additional topics that the State Water Board should consider during annual and periodic review, including wildfire impacts and post-fire runoff effects, and groundwater recharge. The Plan amendments already allow for topics not currently listed to be considered in future reviews; therefore, no change is needed in response to these comments.

State Water Board Oversight and Authority

Executive Director Approvals

Some commenters expressed concern with the delegation of decision-making authority to the Executive Director for certain implementation provisions. Common Response 1.3, *Revised Proposed Plan Amendments*, has a section titled *State Water Board Oversight*, which responds to similar comments. The Executive Director keeps the Board apprised of significant decisions and the Board retains oversight over the Executive Director and their actions and the public has the ability to raise concerns to the Board during annual and periodic review and outside of those processes at any time as appropriate. To the extent the Plan incorporates flexible ranges or alternative actions evaluated in the Staff Report, and the Plan delegates authority to the Executive Director, the Executive Director may act within those bounds without additional environmental review or other statutory processes required by Porter-Cologne.

In annual and periodic review, the State Water Board may act on various approvals or adjustments provided for in the program of implementation and may provide direction on any delegated approvals or adjustments provided in the program of implementation. A provision was added to the Plan amendments in Section 4.4.9 of the Plan that explains that while some Executive Director decisions (specifically cited in Section 4.4.9.1 and 4.4.9.4) may be subject to reconsideration, the annual and periodic review process is the preferred process for dispute resolution and should be utilized to the extent possible.

VA Pathway Oversight

Commenters suggested that the Plan amendments will limit the HRL participants’ ability to adapt and respond to real-time conditions, or that the Plan amendments impose limitations on science or industry/field standards. The Plan amendments do not limit the science or voluntary habitat

restoration actions that entities can take within the Bay-Delta watershed to improve or enhance fish and wildlife. On the contrary, the Plan amendments specifically encourage and recommend improved data collection and habitat restoration. The VA pathway is an alternative to the regulatory pathway that is voluntary. However, if water right holders choose to participate in the VA pathway, the Board must include accounting provisions to ensure that the HRL flow and non-flow commitments are implemented and effective.

Other Minor Changes to the Plan

Many commenters expressed support for inclusion of a variety of implementation actions in addition to flow-related actions in the Plan that could support water quality, a healthy ecosystem, and native fish species. Commenters specifically expressed support for inclusion of the HRL commitments of increased flows combined with habitat restoration, science and monitoring, and other measures, as a holistic approach to ecosystem protection. In recognition of these comments, minor revisions have been made to text in Chapter 1, *Introduction*, and Chapter 4, *Program of Implementation*, of the Plan amendments to reflect that implementation actions include a diversity of water quality and ecosystem protection measures in addition to flow-related actions, and to acknowledge that implementation of the Plan relies upon the Board's combined water rights and water quality authorities.

In response to some HRL participants' comments requesting more process for modification or termination of the VA pathway, the following provision has been added to Section 4.4.9.10 under Possible Modification or Termination of the VA Pathway as Part of Annual and Periodic Review Processes: "The Board may modify or terminate the Bay-Delta Plan's VA pathway through a Bay-Delta Plan amendment." This added provision provides an additional option for modification or termination of the VA pathway through a Plan amendment. It does not require a Plan amendment and is not intended to conflict with the existing subsequent provision which provides: The Board may modify or terminate the VA pathway without a Bay-Delta Plan amendment for the compliance issues stated above consistent with the annual and periodic review processes in Section 4.6. Both options may be utilized.

Repeat Comments

Many commenters reiterated comments previously provided on the Plan amendments and Staff Report, including comments on the VA pathway, regulatory pathway, and other provisions in the Plan generally described below. Responses to previously submitted comments are provided in Volume 3, *Responses to Comments*, of the final Staff Report and are not repeated in detail here. While many commenters appreciated the State Water Board's responses to their previous comments and associated changes to the Plan and Staff Report, some were not fully satisfied with the responses to their previous comments. These additional comments have been reviewed and considered.

Many commenters, including HRL participants and water users, continued to express support for the VA pathway as a collaborative approach to provide flow and non-flow actions to improve Bay-Delta ecosystem conditions. However, some supporters of the HRL proposal continued to disagree with certain aspects of the VA pathway included in the August 2026 final draft Plan. Some commenters disagreed with the early termination provisions described in the Plan amendments and

the potential for modification of the VA pathway as part of annual or periodic reviews, asserting that the VA pathway should not be modified or discontinued before the end of year eight. Some commenters expressed concern that the Plan amendments do not provide clear provisions confirming HRL participants' ability for judicial review of a wide range of State Water Board actions. Some supporters of the HRL proposal asserted that the HRL supplemental science and monitoring described in the Plan amendments is not consistent with the HRL Science Plan, and some disagreed with the HABs monitoring requirements. Some commenters requested specific changes to flow accounting described in the Plan amendments, including greater detail in accounting methods. Some commenters disagreed with the habitat accounting described in the Plan amendments, including use of flow-habitat curves and cover criteria. Some commenters expressed concern with the lack of specific stated provisions for the State Water Board to enter into enforcement agreements with the HRL participants under Government Code section 11415.60. Some commenters also expressed concern about Plan provisions that provide for delegations of authority to the Executive Director, which they asserted is inconsistent with the HRL MOU. All of these issues are responded to in detail in Common Response 1.3, *Revised Proposed Plan Amendments*.

Some commenters, including many water users, continued to express general opposition to the regulatory pathway, including opposition to flow requirements based on a percentage of unimpaired flow and other provisions in the Plan amendments. Some commenters suggested that the regulatory pathway prioritizes fish and wildlife beneficial uses over other beneficial uses, which they asserted is inconsistent with California law. They expressed concerns with water supply impacts under the regulatory pathway and impacts to reservoir storage levels. Commenters expressed concerns with the cold water habitat carryover storage requirements and ranges for certain reservoirs. Several commenters expressed concerns with inflow compliance locations and conformance with water right priority. Some commenters expressed concerns regarding the use of the implementation methodology described in the Plan amendments and questioned the State Water Board's authority to curtail water rights using the implementation methodology, or the authority to regulate federal water projects. Some commenters expressed concern regarding potential overlap between Plan provisions and ESA and CESA requirements. Some commenters provided input on the implementation methodology or regulation for which there will be subsequent full public processes with opportunities for public comment. Some commenters asserted that the Projects should not have full responsibility for meeting the narrative interior Delta flow objectives and for requirements in the initial Bay-Delta Monitoring and Evaluation Program (BDMEP). Several commenters disagreed with certain monitoring requirements included in the BDMEP, including HABs monitoring requirements and the Head of Old River barrier special study requirement described in the Plan amendments. Some commenters disagreed with changes to the footnotes in Tables 1 through 3, which they asserted could result in material changes to the objectives in Tables 1 through 3. All of these issues are responded to in detail in Common Response 1.2, *Water Quality Control Planning Process*; Common Response 1.3, *Revised Proposed Plan Amendments*; and Common Response 7.6.2, *Aquatic Biological Resources and Cold Water Habitat*.

Some commenters, including multiple environmental groups, tribal interests, and water users unaffiliated with the HRL proposal, continued to express general opposition to the VA pathway. Some commenters continued to raise concerns with the way in which the HRL proposal was developed, citing lack of inclusion of California Native American Tribes, environmental justice communities, environmental and fishing organizations, and the general public. Some commented that the total amount of flow contributed by HRL participants would be insufficient and would not reasonably protect fish and wildlife or adequately improve current ecosystem conditions. Some

commenters expressed concern that the HRL participants are not required to comply with the cold water habitat carryover storage requirements in the Plan amendments and asserted that temperature conditions will thus not be protective. Several commenters expressed concern that the Plan amendments do not provide clear limits or Board oversight of the adaptive management provisions under the VA pathway to achieve the Plan's water quality objectives. Commenters stated that the HRL proposal seeks to substitute physical habitat for flow and acknowledge that while habitat restoration is important, restoration of the ecosystem will require adequate flows. Multiple commenters commented on the Plan's provisions for continuation, modification, or termination of the VA pathway, and contended that the Board should evaluate the salmon protection objective when evaluating whether to continue the VA pathway. All of these issues are responded to in detail in Common Response 1.1, *General Comments*; Common Response 1.2, *Water Quality Control Planning Process*; Common Response 1.3, *Revised Proposed Plan Amendments*; and Common Response 3.1, *Fish Protection*.

Several commenters continued to express general support for the regulatory pathway, including flow requirements based on a percentage of unimpaired flow. However, some supporters of the regulatory pathway expressed concern that the proposed new objectives are not defined in sufficient detail in the Plan. Several commenters who generally supported the regulatory pathway asserted that the program of implementation may not achieve the objectives, including reasonable protection of fish and wildlife beneficial uses and TBUs. Some commenters asserted that there is a lack of clear enforceable cold water habitat requirements and disagreed with the delegation of carryover storage requirements to reservoir owners/operators. Commenters continued to express concern that the Sacramento/Delta updates to the Bay-Delta Plan could result in redirected impacts to the Trinity River. Some commenters expressed concern about the ability of the State Water Board to protect HRL flows and instream flow dedications given the lengthy timeline for other instream flow dedication efforts. Some commenters requested that the State Water Board adopt the USEPA's criteria related to HABs. All of these issues are responded to in detail in Common Response 1.1, *General Comments*; Common Response 1.2, *Water Quality Control Planning Process*; Common Response 1.5, *Trinity River*; Common Response 4.1, *Harmful Algal Blooms*; and Common Response 7.6.2, *Aquatic Biological Resources and Cold Water Habitat*.

While the State Water Board did not solicit comments on the Staff Report, some parties also provided comments on the Staff Report and its analyses, including comments asserting that the Staff Report is deficient for a variety of reasons. Some commenters asserted that additional CEQA analyses are necessary before the State Water Board can implement the regulatory pathway. Other commenters asserted that the Staff Report's modeling is inaccurate and that the Staff Report's analyses are, therefore, flawed. Several commenters claimed that the Board's environmental analysis was inadequate because it did not adequately analyze climate change scenarios. Several commenters asserted that the Staff Report should analyze and disclose the environmental impacts to individual water users. All of these issues are responded to in detail in Common Response 4.2, *Drought and Climate Change*; Common Response 6.1, *Sacramento Water Allocation Model and Changes in Hydrology and Water Supply*; and Common Response 7.1, *General CEQA and Approach to the Analysis*.

Staff Report Recirculation

Some commenters asserted that the State Water Board must recirculate its Staff Report for additional public comment before adopting the Plan amendments. CEQA Guidelines section 15088.5 requires recirculation of an environmental document when significant new information such as changes in the project or environmental setting is added to an EIR after public notice prior to certification of the document. Significant new information includes a disclosure showing that: (1) a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented; (2) a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance; (3) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it; or (4) the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. Recirculation of the Staff Report in support of the updates to the Bay-Delta Plan is not required because none of the above reasons for recirculation have occurred.

Some commenters identify the 2025 ROD/ITP as new information that was not analyzed in the Staff Report and thus requires recirculation. Impacts related to these changes are already evaluated and disclosed in the Staff Report, and therefore the 2025 ROD/ITP does not constitute significant new information that would trigger the need to recirculate. The Plan amendments are comprised of elements from the range of alternatives evaluated in the 2023 draft Staff Report, including the exclusion of new numeric components of the interior Delta flow objectives and fall Delta outflow requirements consistent with modular Alternative 4a under the regulatory pathway. Impacts of changes in ESA/CESA requirements were further disclosed in the cumulative impact analyses. As further explained in Common Response 1.3, *Revised Proposed Plan Amendments*, the final Staff Report includes supplemental modeling evaluating the 2025 ROD/ITP, new modeling results and analyses demonstrating possible changes that could occur under the Plan amendments in combination with the 2025 ROD/ITP, and descriptions of possible outcomes that could occur as a result of the 2025 ROD/ITP in its cumulative impact analysis. The supplemental analyses compare results without the new base flow balancing provision that would apply under the VA pathway to require an increase in HRL flow commitments to make up for any reductions in Delta outflows caused by changes in SWP and CVP operations compared to base conditions analyzed in the Staff Report and Scientific Basis Report Supplement in support of the VA pathway.

Other commenters asserted that inclusion of the base flow balancing provision to address the potential effects of the 2025 ROD/ITP is significant new information. As discussed above in response to comments on the base flow balancing provision, inclusion of the base flow balancing provision is intended to maintain consistency with the 2022 HRL MOU and existing analyses in support of the VA pathway in the Scientific Basis Report Supplement and the Staff Report in response to the 2025 ROD/ITP. Thus, contrary to claims that inclusion of the base flow balancing provision is a significant change requiring recirculation, the provision provides for consistency between the Staff Report's analysis and conclusions and the Plan.

Other commenters raised concerns about letters from HRL participants announcing potential withdrawals from the VA pathway, stating that such withdrawals would undermine the benefits of the VA pathway and urging the Board to recirculate to reevaluate what these commenters viewed as a fundamentally altered VA pathway. However, the potential withdrawal by some HRL participants

from the VA pathway neither changes the project nor alters its environmental impacts. Upon withdrawal from the VA pathway, a water right holder would be subject to the regulatory pathway, which is fully analyzed in the Staff Report.

Still other commenters asserted that Delta Conveyance Project (DCP) testimony, updated climate science, and a new policy framework titled *A Water Renaissance for California* linked to the DCP presented new significant information and a new alternative requiring analysis by the Board through a new, recirculated draft of the Staff Report. DCP is discussed in the Cumulative Impacts sections of the Staff Report. Common Response 7.23, *Cumulative Impact Analysis*, includes a discussion of cumulative impacts associated with DCP and other reasonably foreseeable probable future projects. As further discussed in Common Response 4.2, *Drought and Climate Change*, the Staff Report contains an extensive analysis and discussion of climate change, and the annual and periodic review processes provide an opportunity to assess current science as it relates to climate change in the Bay-Delta watershed. DCP hearing testimony and new climate science are not significant new information because they do not show that any new, previously unidentified environmental impact would result from the Plan amendments or that any previously analyzed impact would substantially increase in severity. Further, *A Water Renaissance* is not an effective alternative to the Plan amendments; it is a general framework for water management consisting of broad policy recommendations, many of which are already contemplated in the Staff Report, including water recycling, water conservation, efficiency upgrades, as further discussed in Common Response 6.3, *Water Supply and Other Water Management Actions*. Further, this proposal was submitted after the CEQA comment period for this project.

None of the information raised by commenters demonstrates that a new, previously unidentified environmental impact would result from the Plan amendments, that any previously analyzed impact would substantially increase in severity, that a feasible alternative considerably different from those considered in the Staff Report exists, or that the Staff Report is inadequate, conclusory, or precluded meaningful public review and comment. Thus, recirculation of the Staff Report is not necessary.

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