

Table 4-1. Responses to Comments

Letter No.	Comment No.	Comment	Response
437	1	My name is Ivan Senock. I'm the THPO and Cultural Resources Director for Buena Vista Rancheria Miwok Indians whose ancestral homeland is along the Mokelumne River, as well as the Lower San Joaquin River, as well as the Central and Southern Delta regions. I'm glad to be here and thank you for the opportunity. I will be building off of what the other two tribal representatives have spoken about today. And particularly, as discussed by my colleagues and fellow representatives here, the Bay-Delta Plan needs to continue the discussion of tribal engagement. Tribal engagement written into the Staff Report is minimal at best. Our panel are representatives from three tribal governments, each with their own sovereignty and responsibilities to their people. I'm a representative of a sovereign nation. I am responsible to its members and to the government to which gives me the authority to speak. Tribal sovereignty means that each individual tribe has an inherent right and authority to govern themselves. Tribal sovereignty is cited in the United States constitution Article I, Section 8, that determines tribes are separate from the federal government and separate from state governments. Each tribe holds its own sovereignty and authority. Thus, proper engagements with tribes means to seek an amicable relationship based on the respect of their status, meaningful discussions and solutions as well as addressing the tribal concerns. The Bay-Delta Plan will affect over 100 tribes in the state of California. That's a very, very big number. California is a unique place on the west coast, as cited by my two fellow representatives here. They are one of the most packed states with tribal nations, both federally recognized and non-federally recognized, as well as individual allotments. In the Staff Report, it is stated that you reached out to over 90 tribes. However, only six engaged through the process. True	The State Water Board has conducted extensive public and tribal related outreach and appreciates the significant input from tribes and environmental justice communities related to the Sacramento/Delta Update to the Bay-Delta Plan. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to tribal outreach and engagement, and CEQA and Assembly Bill 52. Also see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board's efforts to engage more robustly with California Native American Tribes and integrate Traditional Ecological Knowledge/tribal knowledge into the State Water Board's Bay-Delta Plan update and implementation processes. The revised proposed Plan amendments incorporate Tribal Beneficial Uses, would designate Tribal Tradition and Culture (CUL) beneficial use, and include provisions for tribal outreach and engagement and incorporation of tribal feedback and Traditional Ecological Knowledge into the Bay-Delta Plan update and implementation processes. As discussed in more detail in Section 13.3.7, Designation of Tribal Tradition and Culture (CUL) and Incorporation of Tribal and Subsistence Fishing Beneficial Uses, the revised proposed Plan amendments designate CUL specifically due to the cultural and spiritual importance of native fish and wildlife, particularly salmon, to tribes.

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		tribal engagement requires more. The laws that require consultation are the bare minimum requirements for your agency. We all know CEQA, we all know AB 52 and the word soup, alphabet soup that we all have to deal with on a daily basis. But these are the minimum requirements set for the Board and for the state. To engage with the government is more than just send one email, one physical letter, and one phone call. Your own policies indicate that you will communicate and engage, consider potential impacts, and recognize and respect the tribal cultural resources of California Native American tribes regardless of where they are located or how they are defined. In the absence of legal consultation requirements, the best practice is to consult with tribes out of respect for their status of sovereign governments and based on their unique tribal interests that may be affected by your proposed action policy or set of implementation actions. Again, a single phone call, letter or email does not meet the requirement for a good faith effort to engage in government to government. The Board must consider enhancing the engagement with tribes and the concerns for safe, protected, and properly managed waters held by each tribe.	
437	2	One of our major concerns and one of the reasons I am speaking with you today is the definitions and considerations of tribal cultural resources. Tribal cultural resources are defined in California State Law, AB 52, as sites, features, places, cultural landscapes and objects with cultural value to California Native Americans. That is a baseline. And that is not the definition that Buena Vista holds. It is not the definition almost any tribe holds. Those are more. Buena Vista defines tribal cultural resources, I'm going to call them TCRs and that way I'm not repeating the same thing, as spiritual and cultural landscapes, sacred places and objects, animals, plants and water, habitats, sites, features and places with spiritual, cultural and historic value to Buena Vista Rancheria's past, present and future generations. Water is a tribal cultural resource. Tribal cultural resources are	Please see the response to comment 437-1 for response to the State Water Board's tribal related outreach efforts, and response related to Tribal Beneficial Uses.

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		often non-renewable and irreplaceable and they can be destroyed if they are mismanaged and not properly cared for and not just mitigated for. As a sovereign nation, you must respect and acknowledge our definition of tribal cultural resources.	
437	3	The Bay-Delta is a tribal cultural landscape to Buena Vista Rancheria and the hundred other tribes that exist in this place since time immemorial. You guys actually happen to cite Buena Vista Rancheria's water program coordinator in your definitions and documentations of TEK and you cited her incorrectly. You said that Mokelumne is Miwok for people, but Mokelumne actually has a more intimate name to the river and the places and the spirits that inhabit that place. Mokelumne means People of the Fish Net. It is the name of a village site along that ancestral river. Next time you guys engage in documenting TEK, please do it correctly, which is engaging with tribes, having a discussion. And if you seek to quote our members, if you seek to quote our government staff, please reach out appropriately. That should have been a phone call to me before even writing it and placing it into the Staff Report. I hope to hold you to a higher standard so that we can have an amicable relationship, so that we can manage waters appropriately and we can manage all resources appropriately. This touches on the topic of traditional ecological knowledge, or TEK, and it's interweaving into your policies, as referenced in the Staff Report, as an ongoing effort to be documented. This is somewhat problematic and, I would argue, highly problematic.	The misquote referenced in this comment related to the translation of "Mokelumne" has been corrected in final Staff Report Section 11.4.4.1, Importance of Flow and Water Quality to Tribal Uses of Water. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Traditional Ecological Knowledge/tribal knowledge. Please see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board's efforts to engage more robustly with California Native American Tribes and integrate tribal and Traditional Ecological Knowledge into the State Water Board's Bay-Delta Plan update and implementation processes.
437	4	TEK and the larger indigenous knowledge is part of life ways. It's part of someone's life. It's part of someone's family knowledge. It's part of a place's knowledge. You cannot download and document someone's life perspective, culture, religion, and simple existence and squirrel it away. That is not how you properly implement TEK. TEK would be implementing by having a tribal seat on this Board to bring a tribal perspective when you guys are ruling and making decision-making. It would also have tribal peoples discussing with your staff, working in tandem with scientists and	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Traditional Ecological Knowledge/tribal knowledge. Please see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board's efforts to engage more robustly with California Native American Tribes and integrate Traditional Ecological Knowledge/tribal

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		other knowledge holders. TEK does not espouse itself to be the one and only knowledge. It is one of many areas that humans hold knowledge. And TEK requires the subject matter experts, and the only subject matter experts that exist for TEK are the tribes. The only subject matters experts that exist for tribal cultural resources are the tribes. This is Buena Vista's view and we share it with the other two representatives here at the table, as well as many other tribes in the state of California whose resources you are determining.	knowledge into the State Water Board's Bay-Delta Plan update and implementation processes.
437	5	I have two main considerations for you for TEK. First, TEK will only be shared when there is a continual engagement through discussions, meetings, consultations, technical meetings, and tribal representatives in decision-making places. That is the only true way to implement TEK. TEK cannot be extracted by requesting information in letters or phone calls or simply asking for input. TEK is learned by working with, listening to tribal concerns and implementing tribal ideas in your management. These kinds of requirements should be set forth in this Plan.	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Traditional Ecological Knowledge/tribal knowledge and tribal engagement and outreach. Please see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board's efforts to engage more robustly with California Native American Tribes and integrate Traditional Ecological Knowledge/tribal knowledge into the State Water Board's Bay-Delta Plan update and implementation processes.
437	6	Second, TEK must be respected. It is not something to be extracted from tribal communities. It is not supposed to be a continuation of ethnocide and genocide that has been committed throughout California. If you seek to take a people's knowledge and use it for your own, that is extraction and that is not what the government, the governor or current policies dictate for. Acknowledge the historic removal of tribes from decision-making places of power. Open those decision- making, open the people who write these reports up to tribes and have tribal representatives and people who hold tribal perspectives there. That is how you implement TEK. I will give you a snippet of TEK, and you will hear from other experts in the fields on the later panels talking about TEK and the importance of TBUs. Buena Vista Rancheria asserts that the Delta, the Delta in the tribal sense, the watersheds regions, the different areas, all of the tributaries and all of the waters that	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Traditional Ecological Knowledge/tribal knowledge. Please see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board's efforts to engage more robustly with California Native American Tribes and integrate Traditional Ecological Knowledge/tribal knowledge into the State Water Board's Bay-Delta Plan update and implementation processes.

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		flow is a tribal cultural landscape made up of numerous and almost infinite water, native plants and animals, and locations specific to each tribe as a tribal cultural resources.	
437	7	I see I'm running out of time here, but in order to move quicker, Buena Vista Rancheria supports what the other representatives here have said and share in the idea that the Vas should not be pushed forward or voted on. It has excluded tribal voices until this year. It has excluded tribal representation. It has excluded tribal thoughts. It has disrespected the sovereignty of the hundred tribes that this plan will oversee. And on that basis alone, the VA should not be voted on and implemented.	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for a discussion of tribal concerns with the VA pathway.
437	8	Beyond that, we request that the public -- public funds have been spent by state and federal agencies on these VAs -- the public must be brought in as well. Tribes acknowledge that we are not the only people who live on this landscape and who live in this world. These are shared resources that we seek to have better relations, better management and truly an amicable relationship with everybody. These resources need to be managed properly with everyone at the table. And that is a TEK concept.	Please see Common Response 1.1, General Comments, for a response to comments about the process to develop the VA pathway.
437	9	I hinted to this in my presentation and I'm ad-libbing at this point, laws and federal regulations and state regulations are good. They can always be improved, as we all know, and regulations are regulations and the headache that they are. I like to consider them because I span the gamut for tribal cultural resource laws. Consider them as baselines. You can always do better. You can always do better in policies. You can always do better in procedures. The Board has their own tribal consultation policy. The Regional Boards have their own consultation policy. I believe almost every agency, commission and board in the state of California has their own consultation policy. And that is where the flexibility comes from. And imagining laws as baselines, and the goal is to do better than the baseline, is a good way to start.	Please see the response to comment 437-1 for response to the State Water Board's tribal related outreach efforts.
438	1	I'm Krystal Moreno, the Program Manager for Traditional Ecological Knowledge for the Shingle Springs Band of Miwok Indians. We thank you for accommodating us today and providing the space for tribal perspective and response.	The State Water Board has conducted extensive public and tribal related outreach and appreciates the significant input from tribes and environmental justice communities related to the Sacramento/Delta Update to the Bay-Delta Plan. Please see Common Response 11.1, Tribal Engagement and Tribal

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		As you heard earlier from our tribal engagement panel, there is no sufficient substitute for direct tribal involvement in these crucial interactions. If outcomes are to address tribal concerns, then tribal engagement with sovereign tribal nations is necessary. This includes discussions on Tribal Beneficial Uses, which I would like to address today.	Beneficial Uses, for responses to comments related to outreach and engagement and Tribal Beneficial Uses. Also see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board's efforts to engage more robustly with California Native American Tribes and integrate Traditional Ecological Knowledge/tribal knowledge into the State Water Board's Bay-Delta Plan update and implementation processes.
438	2	We are well aware that the Water Board previously punted the designation and implementation of TBUs to the Regional Boards. The Regional Board staff is lovely. We like working with them. However, to plainly state it, the process is not working. The Regional Board process has lacked guidance from the State Board, has had no clear timeframe for designations or implementation, lacks consistency and has shown us that TBUs simply have not been prioritized. Meanwhile, tribal communities remain at risk for elevated levels of exposure to toxins throughout the watershed. We're disappointed that the draft Staff Report to the Bay-Delta Plan did not contain a firm recommendation to include TBUs in the plan. After several conversations with the Board and staff prior to the draft Reports release, we view this as another missed opportunity to turn words into actionable items.	As discussed in Chapter 13, Revised Proposed Plan Amendments, the revised proposed Plan amendments incorporate Tribal Beneficial Uses (TBUs), would designate Tribal Tradition and Culture (CUL) beneficial use, and include provisions for tribal outreach and engagement and incorporation of tribal feedback and Traditional Ecological Knowledge (TEK) into the Bay-Delta Plan update and implementation processes. Please see Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on incorporation and designation of Tribal Beneficial Uses. The State Water Board appreciates these comments by the Shingle Springs Band of Miwok Indians, and for the tribe's overall engagement and willingness to facilitate outreach efforts during the planning process. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses.
438	3	The various ways that tribes utilize the waterways is specific and unique. Whether it's ceremonial, traditional food sources or for a myriad of cultural uses, poor water quality should not be an impediment to continuing our cultural and spiritual practices and life ways. As indigenous people, we have a responsibility to pass down our indigenous knowledge to the next generation and to ensure our cultures are protected and preserved. If TBUs and the water quality standards we need to protect them are not designated and implemented, then we are essentially risking cultural genocide.	The State Water Board shares tribes' concern regarding the poor water quality conditions created by HABs. Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to harmful algal blooms and California Native American Tribes.

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		There have already been instances where we have not been able to practice cultural activities due to poor water quality and toxins such as HABs, high levels of E. coli and other contaminants. This has prevented us from gathering our plants, teaching our youth traditional fishing, and even simply getting in the water to cleanse ourselves after certain cultural practices and ceremony. We call upon the Water Board to act expeditiously so that our Tribal Beneficial Uses and tribal communities are adequately protected, just as other mainstream designated beneficial uses have been.	
438	4	Additionally, and most importantly, the State Board and Regional Boards should not create an unrealistic, unattainable inequitable process for TBU designations and protections that essentially would put the burden on tribes to monitor each diversion or discharge permit submitted to you to ensure TBUs are protected. It is your job just as it is with any other beneficial use to know and to learn which water bodies are TBU designated and then move to appropriately uphold the water quality standards required to protect us. The Water Board should not put undue burdens on tribes to prove tribal beneficial uses of waterways but should accept what tribes feel comfortable sharing. We've been told that what we share through the TBU process, whether at the State or Regional Board level is subject to public records requests, so we should not have to disclose sensitive cultural information we don't want revealed. Again, we believe the State Water Resources Control Board should and could designate TBUs in the Phase 2 proceedings for the entire watershed and then move to implement TBUs through ensuing implementation plans and actions the Board takes, for example, through adequate temperature and flow management.	As discussed in Chapter 13, Revised Proposed Plan Amendments, the revised proposed Plan amendments incorporate Tribal Beneficial Uses (TBUs), would designate Tribal Tradition and Culture (CUL) beneficial use, and include provisions for tribal outreach and engagement and incorporation of tribal feedback and Traditional Ecological Knowledge (TEK) into the Bay-Delta Plan update and implementation processes. Please see Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on incorporation and designation of Tribal Beneficial Uses. The State Water Board understands the sensitivity of sharing cultural information in a public process and is actively working on approaches that would provide sufficient information needed to support designations while protecting confidential information in the larger statewide Tribal Beneficial Use designation efforts. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses.
438	5	Beyond Phase 2 of the Bay-Delta Plan, we urge the Board to make Tribal Beneficial Uses a statewide policy. As with other beneficial uses, you do not need the science and data immediately to designate. You can work with tribes to gather the information, to refine the data and to better understand our	Please see the response to comment 438-4.

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		various tribal exposure scenarios. Tribes are well positioned to conduct water quality monitoring and to help fill scientific study gaps such as native plant toxin uptake, fish tissue monitoring and HABs monitoring. Some of us are already doing this and others would like to, but simply lack the resource. We need funding that does not restrict us to tribal trust land, but that can be used to test water quality, fish and plant species throughout our ancestral homelands. You have the authority and the resources to designate TBUs in the Bay-Delta Plan, and statewide, if you wanted to. What you might be lacking is the political will and maybe a little courage. We're here to help you how we can because for us status quo is not an option. We need to protect our tribal communities now and we need your help to do that.	
439	1	I'm the Water Program Coordinator for Buena Vista Rancheria of Miwok Indians, a federally recognized tribe with ancestral ties to the Mokelumne River, Lower San Joaquin River, Central and Southern Delta. Thank you for this opportunity to address the Board. And I'm here to provide a statement regarding the Tribal Beneficial Uses discussion in Chapter 11. The widespread use of riparian corridors, springs, streams, rivers and wetlands has been a fact of Native American lifeways within the Sacramento, San Joaquin River, Delta and its tributaries since time immemorial. Despite massive changes in indigenous lifeways, these practices continue to this day. Long after the public land survey system developed in 1785 to survey, sell and settle land acquired by the United States, well after the Swamp Lands Act of 1855 led to the draining of wetlands for conversion to agricultural land in the Delta, cultural practices have continued long after the removal of indigenous people from their lands, after the creation of reservations, termination of reservations and restoration of some reservation lands. Tribal cultural uses of water have continued long after the urbanization of watersheds and construction of large-scale dams	The revised proposed Plan amendments incorporate Tribal Beneficial Uses (TBUs), would designate Tribal Tradition and Culture (CUL) beneficial use, and include provisions for tribal outreach and engagement and incorporation of tribal feedback and Traditional Ecological Knowledge into the Bay-Delta Plan update and implementation processes. Please see Section 13.7.2, Environmental Analysis of CUL Tribal Beneficial Use Designation, of the Staff Report for more discussion. See also Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses. The Staff Report discusses and acknowledges existing water quality concerns in Section 4.3, Water Quality. Discussion on past hydrological modifications and alteration of the natural flow regime can be found in Section 3.2, Flow and the Ecosystem. The Staff Report describes the overallocation of water in the Bay-Delta watershed in Section 5.3, Reason for the Proposed Plan Amendments. Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to harmful algal blooms and California Native American Tribes. Please see Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on incorporation and designation of Tribal Beneficial Uses.

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		and water diversion infrastructure and canals. And although tribal cultural uses of water continue today, these uses have been highly altered and modified due to this long history, a steady decline in water quality and altered hydrology due to the overallocation of water, human hydro modification of water and climate change. The idea of beneficial uses is a concept that comes from the Clean Water Act where beneficial uses are the means for identifying goals for various uses of a water body, such as recreation, drinking water, fish and wildlife. The designations then trigger the creation of water quality objectives or standards to protect the physical, chemical, and biological integrity of waters for those uses. In other words, the state designates waters for use, sets water quality standards and then issues discharge permits to limit pollutants to a level that retains adequate water quality. Though indigenous uses of water have existed since time immemorial, they have not been recognized as a use by the state until recently. And still we are arguing for their inclusion into your planning documents.	
439	2	The two Tribal Beneficial Uses definitions, one being tribal cultural use and the other being tribal subsistence fishing, have recently been approved by your agency and adopted into plans such as the Central Valley Regional Water Board's recent Basin Plan Amendments to the Sacramento, San Joaquin and Tulare Lake basins. However, no designations have been formally made to date. Tribal cultural uses are diverse and cannot be fully expressed here today. But these uses include tangible and intangible elements of water -- of ways and relating to the waterways, meaning their value is intrinsically and particular, and a particular location may not be used for a physical resource, but for an intangible use like a prayer or spiritual medicine. Other more physical uses would include the gathering and use of water itself, the gathering of willow, tules, basket sedge and other aquatic vegetation, the gathering of aquatic fish and	Please see the response to comment 439-1.

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		wildlife, the use of waterways for a cultural ceremony, a rite of passage, and perhaps a fishing location or a village site. The natural flow regimes inherent to rivers give rise to aquatic plant communities. Fish and wildlife that live in these waterways or are dependent on water directly affect whether a tribal cultural use can be practiced in a good way, meaning there is flow to support the cultural use, that there is a natural flow regime that supports native fish, wildlife, vegetation populations for fishing and gathering purposes, meaning there is safe water quality for tribal immersion, waiting or boating for hunting and gathering, ceremonial and other purposes, meaning that there is safe water quality so that the flora and fauna, fish, shellfish and water itself when consumed are not unfit for subsistence level consumption or cultural and ceremonial consumption due to pollutants such as bacteria, bioaccumulation of toxins such as mercury, PFAS or cyanotoxins. In many instances, flow is the fundamental variable that sets the stage for cultural uses to be properly exercised. If you go -- you can go back and reference my June 2023 TBU presentation to the Board where I talked about this extensively. Today, we have highly modified flow regimes that do not support wild fish populations and instead support invasive and non-native predator fishes, predatory to salmon. We have water infrastructure that has flooded cultural sites and entire tribal villages. Today, we have low flow regimes that lead to harmful algae blooms and contribute to poor water quality, thus impairing beneficial uses, including undesignated Tribal Beneficial Uses. Flow is crucial for the beneficial use attainment, including TBUs within the Bay-Delta watersheds and the State Water Board is responsible for upholding its duty to protect flow-based Tribal Beneficial Uses.	
439	3	The draft Staff Report states that it seeks to adopt two Tribal Beneficial Uses definitions into the Bay-Delta Plan update. Buena Vista Rancheria urges the State Water Board to do its part to protect Tribal Beneficial Uses of water by adopting the two TBU definitions into the plan.	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses. Please see Staff Report Chapter 13, Revised Proposed Plan

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		Buena Vista also urges the State Water Board to go further and designate waters within the Bay-Delta watershed with TBUs where TBUs relate to flow. If TBU designations are not made, as the Staff Report suggests, then a process must be outlined for how indigenous community members and tribal governments can assert their TBU and ensure it is protected when there is a water diversion petition, a water right request, a water right transfer change, or a change in a point of diversion, et cetera. These processes should also ensure that a water diversion or water right change will not impair the TBU or other beneficial use that is linked to a TBU, such as fish and wildlife. That said, the Bay-Delta Staff Report must create guidance for integrating or linking tribal beneficial uses to other beneficial uses related to flow, such as fish and wildlife, cold, spawn, aquatic life, recreation, municipal. Additionally, because the Bay-Delta Plan is intended to overlay and work in conjunction with the Central Valley Regional Water Board's Water Quality Control Plan for the Sacramento, San Joaquin River Basins, and the San Francisco Regional Water Board's Water Quality Control California Reporting, LLC (510) 224-4476 Plan for the San Francisco Bay, the State Water Board must provide guidance to the Regional Water Boards to inform them of their responsibility for upholding water quality for the tribal beneficial uses that occur within their region, whether designated or not, through, again, linking the tribal beneficial use to a similar preexisting designated use, such as aquatic life or recreation.	Amendments, for additional information on incorporation and designation of Tribal Beneficial Uses.
439	4	However, to be clear, this is not Buena Vista Rancheria's preferred method. Buena Vista Rancheria urges a full designation of Tribal Beneficial Uses for the Bay-Delta watershed for flow and water quality by the State and Regional Water Boards respectively, and expects the State and Regional Water Boards to link flow and water quality in their decision-making processes for water diversion decisions and discharges authorized through the Clean Water Act, Section 402, NPDES Permitting Procedures. The 2018 Bay-Delta Water Quality Control Plan, Resolution	Please refer to the response to comment 439-3.

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		Number 2018-0059, states on page one, Section 5 that, quote, "The State Water Board has authority over both water quality and water diversion and use." On page one of Chapter 1 of the 2018 Bay-Delta Water Quality Control Plan for the San Francisco, Sacramento, San Joaquin, Delta Estuary says, quote, "The State Water Board's measures to implement this plan will consist of the regulation of existing water rights, regulatory measures to protect water quality and recommendations to other entities," end quote, yet Water Board staff and legal council Board members continue to state that the Water Board only has authority over water diversions and water rights. Buena Vista Rancheria urges the State Water Board to consider how flows relate to water quality and develop guidance on how flows and water quality relate.	
439	5	In closing, I just want to remind you how pervasive tribal cultural uses are. So please imagine yourself on a body of water, say the Mokelumne River. You're looking at the plants, birds, the water itself. You can hear the sound of the river flowing. You hear the sound of the birds and the plants rustling in the wind. You step into the water and you walk toward a patch of tule, your feet touching the sandy bottom of the river. You give thanks, and with your family and your friends, you gather that tule to make a tule boat for the upcoming tule boat races, say taking place on Clear Lake. You smile because you think of your buddies who are not with you today because they're out across the valley in Stone Lakes with their feet in that water, collecting tule for their tule boat that you're going to be racing on Clear Lake. So I have you imagine this because this is what is happening in indigenous communities throughout the Bay-Delta watershed. Collectively, people are using water and the aquatic resources in their area for a similar use. This is a Tribal Beneficial Use and it's the watershed-wide use, meaning the Tribal Beneficial Uses need to be integrated or designated, need to be protective on a watershed wide scale and included into the Bay-Delta Plan.	The State Water Board appreciates these comments and the overall active participation and engagement by the Buena Vista Rancheria of Me-Wuk Indians in the State Water Board's Bay-Delta Plan update and implementation processes. The State Water Board and its staff appreciate this tribal engagement and recognize the unique connection the Tribe has with water and how it does align to a large extent with the purposes and goals of the Bay-Delta. The State Water Board looks forward to continued tribal participation in the implementation of the Bay-Delta Plan. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses. Please see Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on incorporation and designation of Tribal Beneficial Uses.
440	1	I'm with the California Indian Environmental Alliance and I echo the sentiments that my colleagues have said. Everything they've	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to

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		said is spot on and hopefully what I have will supplement. So regarding the Bay-Delta Plan update, there's three things that I'm going to talk about. The first has to do with the designation. The second is the voluntary agreements. And the third is just the accessing the materials that we're all reviewing together. The first piece is that in order to set water quality objectives, of course, the responsibility of the Water Boards and the Regional Boards is to adopt appropriate designated uses. Tribal Beneficial Uses were, as you've heard before, were the first uses of water in the state and these uses are continuing. And I bring this up to provide a little context. These, the tribal beneficial uses, were left out in the '70s when the other uses were being adopted. At this time, tribes were fighting for basic human rights, the right to vote, their recognition, many tribes had been terminated. So when we moved through to the ISWEBE and added the provisions of the Tribal Beneficial Uses, these were created to rectify the oversight. And this was just the beginning because now, of course, the Regional Boards are going through their long process and the tribes haven't been engaged in that process until very recently and in some regions have not yet been engaged at all. This process is taking much longer than we ever thought it would need to take. And a lot of what's taking so long are the internal conversations that don't include tribes where the Regional Board staff are trying to figure out what to do and what this means, but without the tribes at the table to have those conversations with tribes. And this has been going on now for multiple years and it's way longer than it ever needed to take. So I strongly encouraged the State Water Board to provide Regional Water Boards with guidance to do this and to help them to move through by having conversations with the tribes to help to move through some of the questions that are before them. So that's the first piece.	Tribal Beneficial Uses. As discussed in Chapter 13, Revised Proposed Plan Amendments, the revised proposed Plan amendments incorporate Tribal Beneficial Uses (TBUs), would designate Tribal Tradition and Culture (CUL) beneficial use, and include provisions for tribal outreach and engagement and incorporation of tribal feedback and Traditional Ecological Knowledge (TEK) into the Bay-Delta Plan update and implementation processes. Please see Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on incorporation and designation of Tribal Beneficial Uses.
440	2	But I wanted to remind everybody that in order to implement the Clean Water Act, we need all of the available information to be	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to

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		before the Regional Boards and before all of you. And by going through a process that appears to, in some of the regions, to be different than the process that beneficial uses goes through generally, meaning that generally what happens is, is the water bodies designated with the use and then you go through the water bodies to find out what those water quality objectives will be, we talk to the users, then we balance all those uses, you know, and come up with a numerical value that's attainable and that's fair given all of the uses on the table. But if tribes are being asked to put forward our objectives, our numerical information first, that's backwards. And it seems like the Regional Boards are essentially asking for that because they're afraid to acknowledge the use rather than, and then go through the process. They want the numbers first to identify if they're even going to entertain the idea of having Tribal Beneficial Uses on the table, the first use of water in the state. This is backwards and we're truly asking for the State Water Board to provide guidance to the Regional Boards. So it's that guidance is really important.	Tribal Beneficial Uses. As discussed in Chapter 13, Revised Proposed Plan Amendments, the revised proposed Plan amendments incorporate Tribal Beneficial Uses (TBUs), would designate Tribal Tradition and Culture (CUL) beneficial use, and include provisions for tribal outreach and engagement and incorporation of tribal feedback and Traditional Ecological Knowledge (TEK) into the Bay-Delta Plan update and implementation processes. Please see Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on incorporation and designation of Tribal Beneficial Uses.
440	3	So from there, I'll move into voluntary agreements. So the voluntary agreements are a new idea and we would need to pilot such a program before locking them in throughout the state. It's premature to look at it, have an eight-year program where we're going to just see what the voluntary agreements do. Eight years will go by and during that time period we may lose all of the species that we're trying to protect. We would like to show some success in a region before moving them throughout the state. And in particular, the Bay-Delta Plan update, it encompasses so many water bodies. It's such a pivotal point. This is not the place to put something new and untried in.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
440	4	The voluntary agreement processes have been exclusionary. They've kept tribes out and it's not been transparent to tribes what's happening. And so for that other reason, I also urge you to not include voluntary agreements in the Bay-Delta Plan update at this time.	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to tribal comments on the VAs.
440	5	And thirdly, for voluntary agreements, we really need to make sure that we are looking, we have monitoring in place, and some sort of a backstop for the process to start -- or to end before eight	Please see Staff Report Chapter 13, Revised Proposed Plan Amendments, and Common Response 1.3, Revised Proposed

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		years goes by. There's not enough protections in there from the regional or State Water Board in order to move these through.	Plan Amendments, for information on the VA pathway, including monitoring and enforceability.
440	7	And then to add to that, that we do have some examples already. For example, in the Region 1 where Tribal Beneficial Uses were designated, it was successfully used. And you guys all remember that story about the pesticide that was going to be sprayed up river from the ceremony that was going to take place. And so by being able to have that beneficial use on the book, it didn't even have a numerical objective, it was able to be protected. So there's that piece. And then also, when it comes to what is subsistence, there's the state definition of subsistence, which happens to be very similar to the meals per week that the Fraser Shilling study showed. It's 4.5 meals per week. Of course, in the Fraser Shilling study, it's a mix between salmon and other fish, but there's something there for subsistence already. Which does bring me to the ISWEBE, which is where the reason why that happened is a statewide water quality objective goal was because it was for every area, of course, as you remember, that does not have a TMDL, so it was a blanket kind of a moment. And so there's another example of that.	Please refer to Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses. Please see Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on incorporation and designation of Tribal Beneficial Uses.
441	1	Today I will talk about what we've learned from studies in Stockton, Discovery Bay, and Antioch, so the Board can apply what we've learned for evaluating the Staff Report for Phase 2. While Stockton and San Joaquin County are more impacted by flow standards set in Phase 1, the mixing of waters from the Sacramento River and tributaries also impact our local waterways. Next -- or this slide's fine [no slides included]. Harmful algal blooms were first spotted in the Delta in 1999 and have since plagued Stockton waterways during the summer months of May through September. The toxins these blooms release impact the communities near these waterways. And on	Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to instream flow and cyanobacteria harmful algal bloom formation.

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		top of the HABs concerns for these waterways, the 303(d) list of impaired water bodies lists the Stockton Deepwater Shipping Channel and its tributaries as impaired water bodies under the Clean Water Act. Restore the Delta has addressed the concerns of water quality inequities by developing a HABs Monitoring Program. So in 2022, RTD established a testing routine around Stockton to gather toxin data on harmful algal blooms, focusing on microcystis, the most common cyanobacteria in Stockton's waterways. With limited funding, we could only test around Stockton, but HABs monitoring needs to become a Delta-wide practice. And between 2022 and 2023, the years that we've been able to test, Stockton only has experienced bloom activity in 2022. Next slide, please. From 2022 to 2023, it would appear that all conditions to formulate harmful algal blooms were the same except for the flows. And over the next few slides, I'm going to summarize a few, a snapshot of five flow charts. Next slide, please. So you'll see in 2019, the state recorded its first HABs event in 2019 in August once flows started to become negative. Next slide, please. And that red line indicates when the first report was. And you'll continue to see that 2020 and 2021 and 2022, it will kind of speed through here with the next few slides. Negative flow is hit and low flow is hit. If you could, next slide. And next slide. You'll see that flow was low and that the negative flows were starting to be met by early June or May, around the timeframe when bloom started to appear in these years.	

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		Next slide. Now, compared with this year, with 2023, we had positive flows on the San Joaquin system until the end of July. And we did not experience harmful algal blooms in the Stockton general area, even though our waterways are still impaired.	
441	2	Next slide, please. The Staff Report's incomplete HABs analysis, if implemented, will lead to disparate impacts on disadvantaged communities. The Staff Report acknowledges that nutrients are generally high in the Delta and other factors such as low flows, in part by increasing residence time and high temperatures, are thought to be more important in driving HABs. Staff Report focuses on HABs problems related to reservoir storage and water exports rather than the estuary. The report lists that reservoir HABs concerns are potentially significant, but then lists that HAB impacts on recreation are less than significant. This is discriminatory and continues to put water exports over communities. The decrease in instream flows through the Delta will increase stressors for harmful algal blooms as seen along the San Joaquin River system through 2022.	Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to economically disadvantaged communities and cyanobacteria harmful algal blooms (HABs) (including recreation), instream flow and other environmental variables that contribute to HAB formation, and the assertion that the HABs analysis in the 2023 draft Staff Report prioritizes water exports. Staff Report Section 7.12.1.2, Environmental Setting (specifically the “Delta” subsection), discusses HABs within the context of the Delta. In addition, Section 7.12.1.3, Impact Analysis (“Delta” subsection) discusses the potential impacts of the flow scenarios on HABs in the Delta. The 2023 draft Staff Report Sections 7.18, Recreation, and 9.7.18, Recreation, identified less-than-significant impacts on recreation from increased HAB production in reservoirs and Delta channels. Increased HABs can interfere with water contact recreation, including causing temporary closures to recreation in some waterbodies; however, potential increased frequency of closures is not expected to result in a substantial number of recreationists moving to alternate recreational locations to the extent that it would substantially physically deteriorate those alternate locations. In response to a substantial number of public comments received from tribal and environmental justice communities stating that HABs cause significant impacts to recreational users of water, the impact conclusion in Section 13.7.18, Recreation, was revised to potentially significant and mitigation measures identified (Mitigation Measure MM-REC-a: 3, Protect Water Quality and Avoid or Reduce Harmful Algal Blooms and Invasive Aquatic Weeds).
441	3	It's also noted -- it's also quoted in the report that HABs closures are only temporary and that other recreation sites are available to travel to. So in this example, Stockton youth were scheduled for recreational activities at the Big Break shoreline due to HAB	Section 7.18, Recreation, includes an analysis on recreational activities using methods and criteria consistent with the State Water Board's environmental checklist (Cal. Code Regs, tit. 23, §§ 3720-3781, Appendix A) and other State Water Board CEQA

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		outbreaks in Stockton. However, the Big Break shoreline had to close down public access to the water for most of that summer due to presence of HABs toxins, as well, which is quite ironic. A closure that lasts an entire summer is not temporary. Delta residents have a constitutional right to recreate and use local public trust resources. With impacts from heat, cool-water recreation is necessary and recreation impacts should be classified as significant. And expecting Delta community residents to recreate elsewhere further pushes disparate impacts on disadvantaged communities.	requirements, as described in Section 7.1, Introduction, Project Description, and Approach to Environmental Analysis. Per this criteria, Section 7.18 adequately identifies the potential impacts on recreation, including potential impacts from increased HABs, that could occur as a result of changes in hydrology. Section 7.18 states that an incremental increase in potential HABs from changes in reservoir levels could cause closures to recreation in some waterbodies, but the potential increased frequency of closures is not expected to result in a substantial number of recreationists moving to alternate recreational locations to the extent that it would physically deteriorate those alternate locations. The threshold of significance under Section 7.18 is whether changes in hydrology would sufficiently alter the distribution of recreationists among recreational locations to substantially degrade facilities at other recreational locations. Therefore, this impact was determined to be less than significant. Please refer to Common Response 4.1, Harmful Algal Blooms, regarding HABs-related effects on recreation. Also, please refer to Common Response 10.1, Economically Disadvantaged Communities, regarding economically disadvantaged communities. The 2023 draft Staff Report Section 7.18, Recreation, and Section 9.7.18, Recreation, identified less-than-significant impacts on recreation from increased HAB production in reservoirs and Delta channels. Increased HABs can interfere with contact recreation, including causing temporary closures to recreation in some waterbodies; however, potential increased frequency of closures is not expected to result in a substantial number of recreationists moving to alternate recreational locations to the extent that it would substantially physically deteriorate those alternate locations. In response to a substantial number of public comments received from tribal and environmental justice communities stating that HABs cause significant impacts to recreational users of water, this impact conclusion has been conservatively revised in Chapter 13, Revised Proposed Plan Amendments, to potentially significant. To reduce or avoid these potentially significant impacts, Section 13.7.18, Recreation, identifies mitigation measures. Please refer to Mitigation Measure MM-REC-a: 3, Protect Water Quality and Avoid or Reduce Harmful Algal Blooms and Invasive Aquatic Weeds.

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441	4	Increased instream flows through June will minimize formation of harmful algal blooms later in the season, as we saw this year, both on the Sacramento and San Joaquin River systems. Seventy-five percent unimpaired flows is preferred for overall estuary health with 65 percent unimpaired flow as the absolute minimum during drought years to stop the proliferation of HABS in the Sacramento River system.	Please see Common Response 4.1, Harmful Algal Blooms.
441	5	A numeric HABS standard must also be developed for both recreational and drinking water impacts following the US EPA's 2019 standards. The Staff Report mentions the same standard stating that the US EPA has developed water quality criteria for some harmful algal bloom toxins and draft aquatic life criteria for some chemicals of emerging concern, but there are not yet recommended water quality criteria for most chemicals of emerging concerns. The US EPA 2019 HABS standards should be the baseline for formulating a protective HABS standard for this document. And delaying implementation of a HABS standard for managing water and flow in Phase 2 document creates disparate impacts.	Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to water quality standards for cyanotoxins, and responses to comments related to economically disadvantaged communities and cyanobacteria harmful algal blooms.
441	6	BOARD MEMBER FIRESTONE: You know, HABS is obviously a huge issue for, particularly, that disproportionately impacts communities of color, and particularly Stockton and Delta areas. But it's also an issue, as we've heard from tribes and in other parts of our state and throughout. And I know it's something that this Board's really concerned with. There's been a lot of efforts and processes, some mandated by the legislature that I know this Board has taken in terms of trying to develop recommendations on statewide program to address HABS. And there's a process that I know we've been coordinating with and increasingly coordinating with and including in our thoughts on how to include a HABS science agenda in that the Delta Science Program has been convening. And I guess I'm interested if this panel has -- I don't know as much on the air quality science gaps, but I know there's a lot of science gaps that were -- that that more -- what's intended to be a more collaborative one- science approach on HABS and the Delta that the Delta Science Program is developing is trying to	Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to water quality standards for cyanotoxins, cyanobacteria harmful algal blooms (HABS) and air quality; and HABS and economically disadvantaged communities and California Native American tribes. A portion of this comment is from a member of the State Water Board or State Water Board staff. Please also see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		look at what are the gaps. And I know we're trying to fund and I think are funding some work on developing more predictive modeling or understanding to be able to untangle some of the major variables there so that we can do better planning. I'm curious if this group thinks that that's the right place for and process for collaborative science program for the Delta and does it address the gaps on the air quality issues adequately thus far? Have those been adequately identified within that process? I know a lot's focused on the water quality and drivers and monitoring, but wanted to hear more about that. Fern: Yeah, so at least in terms of where it is, it's the study that was done by UNC is like cutting edge. It's like it's so very recent that it's like there's not enough understanding of what those HABs concerns were. And having worked with Haley Plaas who was the one who was under doing the search or the research, she mentioned that there would need to be further studies. And at this point, I don't think there have been, but I believe at least in terms of making in policy. And I also kind of want to just echo something Ivan said from the first panel, which is that even though we want to set a baseline, we can always improve on that. And at least having a HAB standard would be able to set a baseline to be able to improve water quality standards in a way that was meaningful to helping the disadvantaged communities, people of color, tribal beneficial uses and cultural practices. But as of right now, from what I understand with the Delta Science Program is it's much more just focused on water quality. And, obviously, a standard isn't going to just be a comprehensive thing for all awful or all problems that come from HABs, but at least getting something started to get framework for every aspect of it, I think is important.	
441	7	BOARD MEMBER FIRESTONE: Just to make sure I'm -- just for, maybe, for myself, but on this question of how we integrate this into what we're doing now in this process. So would you all envision that, I know you've talked about numeric objectives, but in the implementation plan that the	A portion of this comment is from a member of the State Water Board. Please refer to Common Response 1.1, General Comments, for the approach to responding to comments. Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to water quality standards for

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		science and that monitoring science and model development and sort of that continuing development be explicitly part of the implementation plan? Fern: I would think so, at least for implementation for phase standards or even in any other kind of project to have HABs as a standard in order to be able to implement these types of concerns that we have with it. And just to like circle back to what Chair Esquivel was saying about how we get to that point, I do think it's important to take the standards that have already been set by EPA or EPA's 2019 HAB standard as just a baseline for how to set those standards, but also working with the different communities that have HABs concerns, because what might work for community A, Stockton, which might be increased flow, may not work for another location in the Delta. So just being able to understand all of the factors in nutrient loading, and whether that's nitrogen, phosphorus, whatever happens to be the limiting source or to limit the incidence of HABs would be the best course of action. And I think being able to implement that into decision-making process is important.	cyanotoxins and nutrient discharge and cyanobacteria harmful algal blooms in the Delta and Bay.
442	1	Today, I am providing comments on my concerns with the Staff Reports analysis of impacts to environmental justice communities as it pertains to fisheries for recreation, culture, and subsistence. The Staff Reports analysis of impacts to environmental justice communities fall short and is incomplete. Next slide, please [slides not included herein]. The Staff Report has greenwash low flow and high flow to convey lesser than actual impact. The preferred 55 percent unimpaired flow alternative merely delays fish extinction, and the high 65 percent unimpaired flow is only the bare minimum for fish recovery and HABs mitigation. Referring to it as high flow would suggest that it is greater than the average or greater than what is required for recovery. I urge the Board to adopt flow standards that exceed 65 percent unimpaired flow. Anything less than 65 percent will not get us to	Please see Staff Report Chapter 10 and Common Response 10.1, Economically Disadvantaged Communities. The impacts of the low and high flow alternatives are analyzed in Chapters 6, 7, and 8 of the Staff Report, the benefits of the flow scenarios are analyzed in Chapter 3 of the Staff Report, and the benefits of the VAs are analyzed in Chapter 9 of the Staff Report. The benefits and impacts of the revised proposed Plan amendments are analyzed in Chapter 13 of the Staff Report. See Common Response 1.2, Water Quality Control Planning Process, for information on the reasonable protection of fish and wildlife beneficial uses and Common Response 4.1, Harmful Algal Blooms, for more information on harmful algal blooms.

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		recovery. They will not meet the Board salmon doubling objective and will worsen disparate impacts. Replacing flow standards with narrative objectives as proposed by the VAs would expedite the extinction of native fish.	
442	2	Next slide, please [no slides attached]. In the Your Delta, Your Voice report prepared by the Department of Water Resources, 90 percent of Delta environmental justice respondents disclose that they rely on Delta fish to feed their families on a nearly costless basis. The Delta is home to a large population of tribes, Southeast Asian and Latino communities, who traditionally rely on fisheries for cultural ceremonies, cultural preservation, conception, sports and leisure. Migrant families have found a piece of home within the Delta waterways that allow them to nurture cultural practices from their country of origin. However, mismanagement of California water, the lack of regulations of water diversions and outdated water quality standards have resulted in declining fish populations causing a cultural ethnocide.	Protecting the Bay-Delta watershed and its many beneficial uses of water is one of the State Water Board's primary responsibilities and top priorities. In response to declines of several native aquatic species since the Bay-Delta Plan was last comprehensively updated, the State Water Board is in the process of updating and implementing the Bay-Delta Plan to provide for the reasonable protection of native fish and wildlife. Please refer to Common Response 10.1, Economically Disadvantaged Communities, for responses to comments related to benefits of increased flows and DACs. Please refer to Section 13.7.2, Environmental Analysis of CUL Tribal Beneficial Use Designation, and Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses including a discussion on the Subsistence Fishing (SUB) beneficial use.
442	3	Additionally, the Staff Report has lumped all ethnic groups into a single economically-disadvantaged communities category and has no analysis of impacts to significantly represented communities that reside within the Sacramento/Delta watershed.	The analysis provided in the Staff Report is appropriately detailed for the scope of the project. Please see Common Response 7.1, General CEQA and Approach to the Analysis, for a discussion of the level and scope of the analysis. Environmental impacts relevant to economically disadvantaged communities are discussed in multiple sections and chapters of the Staff Report. Chapter 10, Economically Disadvantaged Communities, provides an overview of DACs and their water supplies and incorporates information from several other sections and chapters to summarize potential effects of the Sacramento/Delta update to the Bay-Delta Plan on DACs. For example, Section 7.12.1, Surface Water, discusses several surface water quality issues relevant to DACs, such as harmful algal blooms, and potential environmental impacts related to changes in municipal water supplies, as well as several mitigation measures relevant to DACs. In addition, Section 7.20, Utilities and Service Systems, discusses that DACs that rely solely on groundwater often disproportionately experience impacts on

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			their drinking water supplies, and discusses relevant mitigation measures and that the State Water Board will continue its commitment to the human right to water through financial assistance, technical assistance, consolidations, and other means; including for communities that may be affected by reduced groundwater supplies or groundwater quality concerns. The commenter does not request additional specific details or analyses of particular ethnic groups or explain how any additional details would change the analyses or conclusions in the Staff Report.
442	4	Next slide, please [no slides attached]. The Staff Reports analysis of impacts to environmental justice communities is insufficient and there needs to be additional analysis. In Chapter 8, the draft Staff Report acknowledges that, I quote, "Disadvantaged communities are more susceptible to water quality issues, and the public water systems serving these communities are less likely to have resources to respond adequately to water quality emergencies compared to neighboring affluent communities," end quote. There are nearly 80 drinking water systems in the Delta region, yet there was no analysis of them in the Staff Reports, despite the vulnerability of the disadvantaged communities to which they serve. The argument commonly made is that increasing instream flows will cause an increased dependence on groundwater to continue to meet water export demand and can cause an increased risk of exposure to groundwater contaminants. However, this argument is made on the basis of continuing business as usual. You all have created and are continuing to support an unsustainable reliance on Delta water that is having devastating impacts to California ecology, public health, and honestly distrust in government agencies to prioritize the wellbeing of disadvantaged communities. We cannot afford to continue business as usual.	The Staff Report adequately evaluates the environmental impacts of the Sacramento/Delta update to the Bay-Delta Plan in the analysis presented in Chapter 7, Environmental Analysis, Chapter 9, Proposed Voluntary Agreements, and Chapter 13, Revised Proposed Plan Amendments, including impacts to groundwater and other impacts relevant to DACs. Chapter 10, Economically Disadvantaged Communities, contains a summary of the other sections and chapters in the Staff Report that discuss issues of concern for DACs. Please see Common Response 10.1, Economically Disadvantaged Communities, for responses to comments related to analysis of small drinking water systems in the Delta. Also see Common Response 10.1 for more information on the State Water Board's Racial Equity Resolution and Racial Equity Action Plan. Please see Common Response 1.2, Water Quality Control Planning Process, for information on the reasonable protection of fish and wildlife and consideration of other beneficial uses.

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442	5	Next slide, please [no slides attached]. In closing, we are asking that the Board: one, meaningfully engage tribes as partners in the process of adopting true Tribal Beneficial Uses and in addressing and quantifying tribal water rights;	The State Water Board has conducted extensive public and tribal related outreach and appreciates the significant input from tribes and environmental justice communities related to the Sacramento/Delta Update to the Bay-Delta Plan. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to tribal outreach and engagement, Tribal Beneficial Uses, and tribal reserved water rights. Also see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board's efforts to engage more robustly with California Native American Tribes and integrate Traditional Ecological Knowledge/tribal knowledge into the State Water Board's Bay-Delta Plan update and implementation processes.
442	6	Two, adopt a HAB standard that is protective of cultural and recreational uses for tribes and environmental justice communities, integrate new and emerging air quality HAB science in the next iteration of the Staff Report.	Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to water quality standards for cyanotoxins, cyanobacteria harmful algal blooms and environmental justice communities, economically disadvantaged communities and California Native American tribes, and potential effects on air quality and human health.
442	7	Three, we urge the Board to adopt a 75 percent unimpaired flow standard to support the Board salmon doubling objective and protect Delta communities in times of drought.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
442	8	Lastly, four, we set -- set aside political agendas. Dismiss the proposed voluntary agreements that turn water quality standard setting and attainment over to water agencies and irrigation districts who are driving an unsustainable use of Delta flow.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
442	9	The Staff Report as written is for the benefit of water explorers and protecting the status quo. Whether it is with a 55 percent flow, voluntary agreements or the never ending TUCPs, you did not write a report that, accounts for disparate impacts to tribes and environmental justice communities. The Board's action or lack thereof within the past five-plus years has exacerbated the disparate impacts felt by these communities.	Please see Common Response 10.1, Economically Disadvantaged Communities, for responses to comments on existing environmental conditions and the CEQA analysis. Please see Common Response 1.2, Water Quality Control Planning Process, for information on the reasonable protection of fish and wildlife and consideration of other beneficial uses,

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		Lastly, we are seeing bad policy allow for the inappropriate streamlining of bad projects. Not dealing with a policy that causes disparate impacts is an act of discrimination and continued racism built into California's water rights system.	and for information on State Water Board authorities related to the water quality control planning process.
443	1	We've got a panel of myself and colleagues. The items that we'll talk about today is really kind of focused on habitat in working California rice lands; right? An item that we think is going to be important to you as you make decisions about flows, obviously, in the Sacramento River. So with that, if we could go to the next slide [No slides included herein]? There we go. So my job today is to give you an overview of -- slide after that -- giving you an overview of rice in the Sacramento Valley. So in our Valley, we're 500,000 acres, 2,500 family farmers, truly folks that farm with their brother, their sister, probably their folks at some point. Obviously, the water sources that are important to rice in the Sac Valley are surface water. We're almost, or I would say predominantly surface water, Sacramento River, Feather, and Yuba. In addition to the habitat on the 500,000 acres of rice that we grow during the growing season, we also annually flood winter rice. 320,000 acres of rice fields are flooded after harvest; right? We grow the rice, we dry the fields and harvest it, and then we reflood purposefully 320,000 acres annually. In addition, programs that my growers can sign up for to provide enhanced habitat benefit on those lands, either during the growing season or during the winter flooding season, we deploy about \$6 million a year in programs specifically to enhance habitat. And you'll hear about some of those species that we're impacting. State and federal dollars sometimes, like in the drought the last two years, DWR dollars were in excess of \$8 million a year specifically to pump water in the winter time to those rice fields that wouldn't have otherwise been flooded. Next slide.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		To give you an idea of the species, and we'll drill down into some more of these here in a minute, the species that we impact, during that 365-day cycle of working rice lands, 230 species are known to live in our fields. 30 of those are what we call special status; right? State or federal threatened, endangered or special status. Often folks will say, well, rice is great, but, you know, what would that look like if we tried to equate it to a wetland? To replace the 500,000 acres of rice with an equivalent habitat benefit in wetlands, it would be 300,000 acres that you would have to convert, \$2.8 billion. And then, of course, you would have that maintenance, right, that farmers do annually. You'd have to maintain it, those wetlands, even after you converted them. And importantly, and you'll hear about this from some of my colleagues, but the proximity of rice to the remaining wetlands, right, about 75,000 acres of managed wetlands, those would be state or federal refuges, it may be private wetlands as well. Rice in proximity to those managed wetlands is hugely important; right? It's not just the Sacramento National Wildlife Refuge, it's the Sacramento National Wildlife Refuge and the rice fields that are around it, Pacific Flyway, of course, which you're, I think, all familiar with. But I always like to bring up the fact that our rice fields and the wetlands in the Sacramento Valley have been internationally recognized as a shorebird site of international significance. We're going to talk about big birds today, but the little birds that come earlier and leave a little bit later, those shorebirds, you wouldn't think about it, but rice is hugely important to their migration, which is actually oftentimes further or longer than our waterfowl. So with that, that's an overview of working rice lands in the Sacramento Valley. I'll turn it over to my colleague, Jeff McCreary from Ducks Unlimited.	
443	2	For 86 years, Ducks Unlimited has known that in order to support wildlife populations, habitat is the key. If you're going to be -- we're not -- we're a wetland conservation organization,	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not

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		we're not a waterfowl conservation organization, because to really promote wildlife, it all comes down to habitat. I'd make an argument that we've been very successful at doing this. The recent State of the Birds report indicated that 3 billion birds have declined in North America over the last 50 years, except notably for one group, waterfowl. Waterfowl have been on the increase, and that's not due to any surprise to me because of the work that we've been doing for over 86 years to promote both wetland restoration and conservation, as well as productive, wildlife-friendly, waterfowl-friendly working lands. And I'd make an argument that the conservation era that we're in now and that we've been in for some decades is not the set-aside era of Teddy Roosevelt where we established our national wildlife refuges and our state wildlife areas, but we're in an era of private working land conservation. And in fact, if we're going to be successful in making this world a little bit better place today than it was yesterday, working lands are key to that. And in the Sacramento Valley, that means rice agriculture. Sacramento Valley and the Central Valley in particular are one of the most significant waterfowl areas in the entire world. We have the largest concentrations of wintering ducks and geese here than anywhere else. Sacramento Valley is the heart of that because of this interaction that Tim mentioned of wetlands and rice agriculture. Rice is a wetland plant, and it serves as somewhat of a surrogate for the wetlands that used to be there historically. The birds don't really know the difference. They know that there's water, they know that there's food, and they know that there's a place to land. And in fact, why this is important and why we talk about this synergy between wetlands and rice is because what we're trying to do is support these birds in the winter. So when they migrate, and this is all the birds, it's the songbirds, the shorebirds, the waterbirds, all the migratory birds that come down and use the valley and use these rice fields, one great example is the Northern Pintail, which is an iconic California duck. Our pintails winter in the Yukon Delta of Western Alaska. And so	raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		from this place, from the Sacramento Valley, they make a 2,000 mile nonstop over the open ocean without stopping migration to the breeding grounds in Western Alaska. And how they're successful in doing that is by eating the food that's available in our rice fields and our wetlands. And in fact, rice in the Sacramento Valley provides half of the food resources for waterfowl that they need to make this epic migration.	
443	3	I would argue that flow is not habitat. Habitat is habitat. And what that means is for a duck, you have to have water to have that habitat. So having rice on the landscape, having wetlands on the landscape and having these two interchange and support the birds that they need is critically important. Our estimates -- and I guess to kind of back up just a little bit, is Ducks Unlimited prides ourselves on being a science-based organization. We're an implementer. We put habitat conservation on the ground, restoration, enhancement, management, protection. And to invest these dollars, we have to know that those investments are going to be placed correctly. And so we're science-based. And what we've determined from our scientists is that when we look at the restrictions on setting aside unimpaired flows, it's potentially coming at the risk of a significant acreage of important rice habitat. In fact, some of the proposals show that 144,000 of this 500,000 that Tim talked about would be fallowed because of that. And we can determine what the energetic impact of waterfowl will be on that. Many of those areas are going to be winter flooded. And there's a direct connection with the decrease in food productivity for our feathered friends. Where would these birds go? That's hard to know. One of the things that birds can do is they can fly. Fish, on the other hand, as we'll learn in a little bit, can't do that. But there's not too many other places in the Central Valley where these birds can go. In fact, south of here, there's even more challenging landscape where we don't have wildlife-friendly agriculture on the landscape.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. The 2023 draft Staff Report identified and disclosed potentially significant impacts on habitat for waterfowl related to decreases in water supply and proposed mitigation in Section 7.6.1.4, Impact Analysis, and Section 7.6.1.5, Mitigation Measures, respectively. The 2023 Staff Report evaluated impacts to irrigated agriculture in the Sacramento/Delta and the San Joaquin Valley using the SWAP model, which is a regional agricultural and economic optimization model that estimates growers' responses to changes in water supply by determining the cropping pattern that maximizes the net returns to agricultural production. A conservative threshold of significance for conversion is used that captures the importance of agriculture as a resource in California. As shown in Table 7.4-17 and Figure 7.4-11, during an average year, if groundwater is not used to offset Sacramento/Delta surface water supply reductions, crop acres primarily decline in alfalfa and pasture and rice. Under a 55 scenario, rice acreage could decrease from 567,700 acres to 533,900 acres for a total of 33,800 acre reduction, 6.0 percent from baseline. Table 7.4-18 and Figure 7.4-12 show that during a dry year, if groundwater is not used to offset surface water supply reductions, rice acres in the 55 scenario could be reduced by 13.2 percent from baseline. Effects on crop acreage would be less with maximum replacement groundwater pumping. The commenter references impacts to 144,000 acres of riceland habitat from proposed flows, although it is not clear how this

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			number was derived. SWAP estimates a potential loss up to 144,000 total crop acres under the most conservative assumptions (Table 7.4-18 [estimated changes in irrigated crop acreage in Sacramento/Delta for a dry year with no groundwater replacement under a 55 scenario], which is a decline of 6.4 percent from baseline). Because rice is a comparatively lower revenue crop, does not tolerate deficit irrigation, and occupies a large proportion of the crop category acreage, changes in water supply would likely affect a larger proportion of the rice acreage. However, even under the worst-case assumptions, reduction in rice acres would not approach 144,000 acres. In addition, the project is revised as described in Common Response 1.3, Revised Proposed Plan Amendments. The proposed Plan amendments remain part of the project as the regulatory pathway; however, the regulatory pathway includes new water supply adjustments at the outset of Plan implementation that lower flow requirements under certain conditions to reduce water supply impacts and allow more water to be stored in reservoirs. The revised proposed Plan amendments also provide for a VA pathway for an eight-year term with the possibility of extension that reduces the required flow contributions for VA water rights. Also see Section 13.7.6.1, Terrestrial Biological Resources, of the final Staff Report for a discussion of terrestrial species impacts for both the regulatory and VA pathways.
443	4	I would say, for the next slide, please -- birds are unique. Birds are special. But when we look at the valley, it's been designed with birds in mind. But really what we need to do is adapt this place to accommodate fish. We're looking for working land conservation that has multiple benefits, not just for our fine feathered friends and our farmers, but for our fins as well.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
443	5	Paul Buttner with the California Rice Commission. And it's my pleasure to be here to talk about a project that I've worked on for over five years and that is our salmon Project. What we're doing is developing a new practice. And by the way, if we could go next slide [there are no slides included], please?	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		We're developing a new practice primarily for the bypass fields in rice. However, I also will talk about another practice that works well for the dry side fields as well. This practice would optimize the rice fields for salmon rearing habitat in the bypass. And the reason I say optimize is because we all know that these fields, the salmon are coming to these fields every time the bypass is run, but we do not have a practice yet to recommend to our growers that's been proven and demonstrated to all the agencies that we can implement and, much like the bird programs, maximize that habitat value year over year. Next slide, please. Wanted to just give you a few scenes from the field. UC Davis is managing all of the science project that are incredibly devoted to this project. Upper left, for example, you see fish surgery. That's a very small fish having a acoustic tag put into it, about a \$300 tag. It allows us to confirm whether that fish made it out to the ocean. That's a very important feature that we're trying to demonstrate of this practice is that not only can we grow them very fast because of the food-rich water that they're in when they're in the rice fields, but we want to make sure that they get out to the ocean at a higher rate as well. And so in there, you see tagging of hatchery fish. We've been using hatchery fish as surrogates. However, our main goal is to help the fish that come in naturally when the bypass does run. They're measuring growth rates and really doing all this work in the field day after day during the intensive field season. Next slide. Here is an illustration of what the practice would look like. Here's a typical rice field, four checks. Normally these rice fields have solid boards in what we call the rice boxes. With this practice, we're going to raise the depth of the water from about six to seven inches to 10 to 12 inches. You see the height of those boxes. The box on the lower right has a two-inch hole in it, about two thirds from the bottom, and a notch allowing for volitional passage of the salmon through that feature. They can move anywhere in the field they want to, including out the field.	

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		Our tests with this practice over the years with hatchery fish have demonstrated that when you put the hatchery fish in, again as surrogates, a percentage of them leave right away, the rest of them stay. And it's likely because the food in that rice field is evolutionarily exactly what they ate when they naturally would use the floodplain hundreds of years ago. Next slide, please. If you were a juvenile salmon, this is what it would look like right here. You swim up to this box and you sort of have a choice of going through that hole or over the notch. We believe most of them go through the hole. The notch is a very convenient from a compliance perspective. We want those fields to be 10 to 12 inches. That stack of boards is 12 inches and the notch is 2 inches deep. So if you're conferring compliance with this practice in the field, if there's any water flowing through the notch then you are in compliance. And the idea would be to maintain this condition after the bypass floods, because before then there are no fish in the rice fields, after the bypass floods, under several feet of water, and then it recedes and now you've got the bypass water and the fish between the four corners of the rice field and that's when the magic happens. We keep that situation in play until March 1 and then we drain the fields and we've demonstrated that all the fish do leave when we drain the fields. Next slide, please. Just wanted to show you the habitat areas that we focus on for this practice. These fields are in the Sutter Bypass, upper left, and the Yolo Bypass, lower right. The rice fields in the bypass are in red and the rice fields on the dry side are in green. And of course, to the left of the bypass is that thin blue line, which is the Sacramento River which there are a lot of fish, right, juvenile fish in the Sacramento River, as well, both in bypass flood years and of course when the bypass doesn't flood.	

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443	6	Next slide, please [no slides in letter]. Here is a new graphic that we just developed to try to show sort of the two programs that I envisioned that we would be running in the Sacramento Valley. The program to your left is what we call fish food. I call it fish food export. Those fields in the upper left are on the dry side. And we can actually drain those, that water and the food, into the river to feed the fish in the river. And if we do it systematically, we can get two or three flushes of this food exported into the river where the fish are. This project has been led mostly by CalTrout and our water districts and they've done a great job to do in-field studies to confirm that the fish are actually in the river, are accessing the field and are experiencing enhanced growth. But then on the right side shows the practice I've been describing; right? When the bypass does flood, these fish can come out into the floodplain and their growth rate is -- per day growth rate is incredible. So then by the time those bypass waters recede and then we release those fish back into the broader bypass and they find their way back to the river, they're larger and presumably better equipped to out migrate to the ocean. Final slide. I just invite you to go to salmon.calrice.org. There's much more that I can talk about in five minutes and you can see it all there at salmon.calrice.org.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
443	7	And now I'll turn it over to Brian Halstead to talk about giant garter snakes. Halstead: Great. Next slide, please [no slides shown in letter]. Thank you, and thank you for the opportunity to speak here today. I'm a research wildlife biologist with US Geological Survey. And our role is to provide unbiased science that resource managers can use then to base their conservation decisions on. Next slide, please.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		And I'm sure most of you are less familiar with the giant garter snakes than you are with some of the other taxa we've been talking about, but giant garter snakes are uniquely Californian. They have ranged only in the Central Valley and they range throughout the Central Valley in wetlands and sloughs, you know, prior to our interventions in water management. Next slide, please. And with the loss of so many of our marshes in the Central Valley, giant garter snakes have been extirpated from the southern two thirds of their range. So the Tulare Basin used to be a stronghold for these snakes. They no longer occur there at all. There might still be a population in the San Joaquin Basin, not sure since the drought. And their stronghold now is in the Sacramento Valley. And that's largely because rice agriculture provides marsh-like habitats that the snakes can persist in, whereas in other areas, there was no marsh surrogate for them to continue to live in. Next slide, please. So in today's landscape, giant garter snakes have the highest densities and highest body condition in marshes, but rice is a close second. And rice is important, even though the snakes might not be quite as dense there, because of the sheer volume of habitat that it provides. If you took the rice off the landscape, then the snakes, there'd be far fewer populations. And you can see in the graph on the right that as you increase the amount of rice in an area, you increase the probability of occurrence of giant garter snakes. And when you map habitat suitability for giant garter snakes in the Sacramento Valley, as you see in the center there, it largely tracks where we grow rice. Next slide, please. So we've done some more detailed studies to look at what happens in the rice landscape when you go from rice fields that look like this -- next slide, please -- to rice fields that look like this because of drought, water transfers, or other water	

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		management decisions. Next slide, please. And what we found is that when snakes have less rice in and around their home ranges, they have a higher risk of mortality, and that results in measurable differences in survival of giant garter snakes. So in the top blue line and shaded area on the right, that's a snake that had -- an average snake that would have 86 percent rice in and around its home range has about a 73 percent probability of surviving through the year. And that was the 95th percentile of the observed proportion of rice that snakes had. In contrast, the red line in shading is at 18 percent rice, which is the fifth percentile. And that snake would be expected to only have 9 percent annual survival. So the amount of rice on the landscape is very closely tied to giant garter snake survival. Next slide, please. And whether it's wetlands or rice, water deliveries are essential to maintain this iconic species on our landscapes. Without surface water, they don't have habitat and they don't have prey. Next slide, please. And if you want further information on the snakes, most of the papers listed here are available online or you can email me. I'm happy to answer any questions. And that's all I have.	
443	8	Johnson: So we just today wanted to provide you an idea of what working rice lands can provide at a landscape level. The decisions that you make in regard to flow on the Sacramento River can directly impact the number of acres that are grown and directly the amount of habitat that our fields can provide as we know it today, but also the fruition of projects like my colleague, Paul Buttner has been working on for five years. We have giant garter snake. We have a number of other species that are close to or listed that really rely on rice fields. So it's not	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		just ducks, it's not just salmon. It's really cool stuff like giant garter snakes, Western pond turtles, and things like the greater Sandhill crane. A lot of species that you might not associate with rice, but the species certainly are dependent on working rice lands, right, that ability to grow food, farm, but also provide this really great habitat with growers who are, as I'm sure you'll hear in the next times that you meet, very excited to be able to do this work. So with that, we conclude our comments. Thank you.	
443	9	CHAIR ESQUIVEL: Thank you. I appreciate those comments and want to just acknowledge the work here reconnecting floodplains that we've disconnected, right, a lot of reconciling happening, but a real discussion and a lot of leadership, so I appreciate that. I guess my question is, you know, you talked about kind of really thinking differently about kind of the hydrology of the rice fields and how, you know, water moves down through them. You know, as we contemplate and we think how, you know, those flows then accrete into say the main stem of the Sacramento, which include, you know, really important to your point, you know, how do you get food production in not just quantity, but quality, the quality of water there even being the food that's being produced off of it? How do we get to that landscape level sort of timing where, you know, we are able to see how we leave more in by thinking of how water moves across properties, you know, various folks? It's a very disparate, we know, kind of localized way in which we manage water that way. But I can't help to think, especially as we look at this project of increasing flows in that main stem, both quantity and quality, how we really start doing timing and coordination of activities at a landscape level that maybe lets us start doing more sooner than not. I'm just kind of wondering. And, you know, because there already is that; right? There's that channel to all of your property owners and folks in the industry that they're attuned to this right now; right? They're listening, they're wanting to know how they're contributing because we -- yeah.	A portion of this comment is from a member of the State Water Board or State Water Board staff. Please also see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		Johnson: There is actually a wonderfully robust program in the Sacramento Valley that includes the science community, UC Davis, NGOs, CalTrout, Ducks Unlimited, government agencies that are really excited about this idea of what can we do. And so as we look at individual species and individual projects, you should think about that in the context of the overall objective. And you'll hear something called floodplains forward. And it's this idea that the water districts are really implementing, which is how can we reconnect the flows from the Sacramento River to those floodplains? And that then does become a question of when, what timing and what benefits each species. So over the course of your hearings and your workshops on this, you'll hear about that thing called floodplain forward. There are dozens of organizations that are working to maximize that benefit, reconnect. Everything from reds in the Sacramento Valley, that water districts are financing and putting in well beyond their intake, to notching weirs, right, so that we can get more water in the bypass areas, even when the water is not as high as it needs to be today, to salmon projects like Paul is talking about. And in the future working on things, like what are the specific species or habitat needs of things like giant garter snake? Where do those need to be? So I would say absolutely, Mr. Chair, there is a comprehensive, sometimes very difficult to understand all of the pieces that are going on, set of projects, both on the infrastructure side, the rice industry side and agency side with folks like NRCS, right, that are helping us not only fund the science that Paul talked about, but eventually a practice standard where our growers can go and sign up and say, hey, I'm in the bypass. I want to do the notched board thing, right, or I'm on the other side of the bypass. I can't get fish there, but I can flood and drain my fields three times and provide all that zooplankton. So absolutely. And importantly, it goes back to the kind of ethos that the rice industry, the water districts, the farmers have had. It goes back to the early days when we stopped burning rice straw and partnered with who? Ducks Unlimited, right, and others to say, well, what can we do on the habitat side? What are some things	

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		that we can do to provide great habitat, decompose that rice straw that we shouldn't be burning and make that benefit? So it really goes back to those formative days of over 30 years ago.	
443	10	Board member D'Adamo: And so my question, just a couple of quick questions, have to do with the salmon project, Mr. Buttner on tagging, the percentage of tagging that's going on, and a little bit more of a sense on the spatial extent of these projects, you know, how many acres, what are you aiming for? And how are you tying that back into, you know, maybe adaptive management and monitorings as the program grows? Buttner: Well, thank you for that. So I mentioned we've been at this for about five years. That includes four years of intensive field work. All of that thus far has been with hatchery fish as surrogates. And we thank the State of California and the US Fish and Wildlife Service for those fish. And we do two types of tagging with those fish. We do simple tagging to understand what in-field survival is within the fields. We've done a lot of calculations with that and we see that, roughly, in- field survival is about 70 percent, which is very good, 60 to 70 percent. Oftentimes you lose 20 percent of those fish just putting them in the field. And so that's great survival, in-field survival. And those acoustic tags that I mentioned, and by the way, you can actually see the surgery on the website, it's very expensive, so we've done a more limited amount of acoustic tagging. We've done that for three years with the bulk of about just under \$2 million spent on that effort as well. And so in the first year of the acoustic tagging where we had most control, we were actually working on the dry side so we wouldn't be flooded out, and we actually had great out migration, about four times. The fish that we raised in the rice fields about four times as many made it out to the ocean than the fish we kept at the lab; right? And so we had a group of fish that did not experience floodplain growth versus a group of fish that did. And we released an equal number of those. I say we -- all this work done by UC Davis. And in that year, which was a drought year, we	A portion of this comment is from a member of the State Water Board or State Water Board staff. Please also see Common Response 1.1, General Comments, for the approach to responding to comments and for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		had about four times as many of the rice field reared fish making it out. One year, one study, certainly more needs to be done; right? Last year, which was a big flood year where a lot of groups of salmon make it out well, right, we saw about 30 percent of both groups make it out to the ocean. But, you know, so outfield migration survival was good for pretty much any set of fish that you had tagged that year. So it's looking very promising this year. We're going to do no tagging of fish this year. We're simply going to put three fields into the program and we're going to count everything we can that comes out. Last year, we were not able to count all fish that came out of the fields. We found 389 wild salmon of three runs, including a winter run and spring run, endangered and threatened. They were both out there using the fields. That was great. But because of that March flood event, we were not able to count all the fish on the way out because we had another flood in March. This year, we're going to try to count all the fish in three fields. It's going to be a tremendous amount of work done by UC Davis. We did estimate that we believe that the number of wild fish that we had in the 125-acre field we did last year was probably around 5,000 or 6,000 fish had we been able to count them all, which we didn't. And you asked about the extent. So this is really important to me. We have about 20,000 acres of rice in the bypass; right? These fish historically had many, many more acres than that, right, before the system was plumbed for flood control and all that. So these are precious 20,000 acres and we're going to do everything that we can to develop this practice and to make it clear to all those rice growers that they do manage these critically important lands, just 20,000 acres of our 500,000. And then of course, we're going to expand that footprint significantly by pushing the Fish Food Program as well. And the Fish Food Program is quite a bit easier to do. And we're going to	

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		make sure that our industry understands the importance of these practices to help these fish.	
443	11	Board Member Firestone: One pressure is that rice is going to be an area that may be cut back; right? One of the first, because it has some of the most water. And if you shift out of rice, then you can still grow something for a lot less. And that creates a lot of economic pressure on the rice, the overall rice growth and the amount of acreage that we have in rice. I think we're going to see that. We already saw that in this last round of drought, you know, a lot of rice fields fallow. There's increasingly conversion of land. And whether it's instream flow alternatives, certainly we would expect rice acreage to fall in any of those scenarios or years. But even in a VA alternative, especially if we're buying -- if folks are trying to buy water, I think one of the areas that people tend to look to is rice. And so just given that pressure, regardless of our future, even, you know, the current climate change, VA, any of the alternatives that we have here, how can we be incorporating some kind of -- is there already, or it sounds like maybe this floodplains forward group, is there a way that we can incorporate in a program of implementation a more formal way to coordinate how that land, how the habitat and species, you know, all the work that you're doing, certainly in those particular areas? But which rice fields get converted matters and how they're managed through these critical years, that all matters. And yet, you know, this is private property and each person, each property owner is trying to manage things differently. But if it were coordinated in a really strategic way, we could mitigate some of the impacts on wildlife, on both fish and fowl and garter snakes and many others. And so I'm just -- is there already an effort that is coordinated to do that, that we could more formally and intentionally include in a plan of implementation, the recognition of the importance of that? You know, certainly don't like creating -- recreating the wheel, but it's also nice to be able to have everyone in this working together in a coordinated way in the same place.	A portion of this comment is from a member of the State Water Board or State Water Board staff. Please also see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		Johnson: Outstanding question. A year ago, we met as an industry with our NGO partners and posed that same question, which is, you know, what does the footprint of rice need to be in the Sacramento Valley, really to provide two things, right, both of which are important to this Board, first our communities; right? We are rural in the Sacramento Valley and places like Williams and Colusa; right? If you've ever been to Richvale and eaten at the café, it's about as Midwest as it gets; right? Those communities rely on rice, with either the crop duster or the café owner or the hardware store. And then the second piece of the question was, what is the footprint for rice? How many acres and where does that need to happen to provide this habitat? We actually are, I think in the next meeting we have will be the last meeting, working with a multidisciplinary group at UC Davis, right, people from the fish community, people from the waterfowl community, people from the agronomic community, economic professors as well, herpetologists, to try to answer that question of how many acres of rice, where does it need to be to be able to provide the habitat side of that equation? We know the Central Valley Joint Venture of which a number of my colleagues sit on, actually has already established that we need 350,000 acres of rice to meet the objectives of the Central Valley Joint Venture; right? That's just the waterfowl and water bird side, but it doesn't take into account these other species that are either currently known or emerging. I'll have an answer from UC Davis of what that initial rice footprint should look like about a year from now. They indicate that they'll be able to pull together the literature search, be able to talk about that importance of working rice lands. I think it will be a second phase for this Board that I would be able to stand up sometime after that and really be able to do a mapping overlay of where those acres need to be if you're focused on giant garter snake. What about a Western pond turtle or salmon? So while we don't have the answer to that question today, it is one that is absolutely in front of us and we are investing significant time and money. Because as you point out, there is	

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		not a scenario in front of us that doesn't look like more pressure on rice; right? And obviously, our focus is on, you know, how do we maintain and enhance that habitat value of the rice; right? It's not just are we going to grow rice and is it going to be on the shelf? In fact, it's almost not that at all from this Board's perspective. It's about those communities; right? And it's about that habitat that will be gone if we don't have a rice industry; right? If we don't, we saw it in the drought, 250,000 acres of rice, 253,000 acres of rice last year, the least number of acres since the early 1950s. Half of the Valley didn't grow rice. We almost didn't have an industry to come back to, right, the dryers, the crop dusters, right, all of the mills. The people that are in the business of agriculture, this is 70 percent of your community. And if there's no agriculture there, then there's no rice industry. And so that wholeness is important. That mass, can you have a rice industry? Well, I don't want to see us like the sugar beet industry in the Sacramento Valley. There is none, right, because there's none -- nobody to process it, so you can't have a sugar beet industry. So that is a question that we have coming up that we should be able to answer for you. But I think that the nugget of your question is the most important, which is that as we look as a future in the Sacramento Valley and the decisions that you make and the decisions that we all make, we have to include the very real, significant, scientifically documented benefits of rice lands that are working and provide habitat. It's not like you're just not going to grow safflower. I'm going to go find safflower somewhere else. You don't grow rice and you don't have the flyway. You don't grow rice, you don't have giant garter snake. So it's a big deal and it's a big question, so thank you for asking it. And we're doing our very best to answer that.	
444	1	Take a much closer look at all negative impacts that will happen due to diverting Bay Delta water.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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445	1	I have been following the Delta flow issues for decades now. We need much stronger commitments to science, implementation, and firm enforcement to save the Bay Delta and the San Francisco Bay. This is the opportunity to really step up for our children and grandchildren, and stop playing politics with our only planet, its fish, its waters, its wildlife, and our environment.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
446	1	Please especially note the problems with the Voluntary Agreements - both because of how they were created (without needed input) and because of the result they would create. Living in Palo Alto, I drink Tuolumne water, and I care how it is utilized from the Lyell glacier all the way to the Bay, to benefit ALL the beings and entities it serves.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
447	1	As stewards of the Earth, we must protect our environment and the health and safety of all who live here, including fish and wildlife that would be harmed by the Draft Staff Report and the 55% unimpaired flow standard proposed in the Voluntary Agreements.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
448	1	Please use sound science and common sense in the Delta Plan!!	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
449	1	Do not cave to the poorly informed water utilities. We have seen that the commissioners of SFPUC and the board members of BAWSCA cannot tell you any details of their proposed Voluntary Agreements. Their lawsuits are simply a message to state agencies that they should not dictate water usage to the utilities. Please stand for integrity: Stand by your original Bay Delta Plan Update.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
450	1	I have worked in/on habitat and species conservation in California for over 40 years and began my career working on Bay-Delta issues including flow requirements. Developing and implementing realistic solutions to protect and improve conditions in the Bay-Delta require a robust and focused science-based approach. It also cannot rely on voluntary agreements to carry out recommendations that are necessary to achieve those positive environmental results. Do not approve and rely on voluntary agreements.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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451	1	I have lived in the San Francisco Bay area for more than 60 years. The decline of fisheries has been terribly distressing. It is obvious to me that the standards established up until this point to preserve the bay environment have been inadequate. While I am not expert enough to know for sure whether, the new proposals will do the job, sources I trust, say that they will not. This is not simply an environmental matter. The bay area is losing its cachet and appeal all over the world, as I know from extensive travels and conversations with people abroad, and in other parts of our country. We need to act responsibly, not just from an environmental perspective, but also from an economic one.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
452	1	This is the largest estuary on the Western Coast of the Americas. Not just America. THE Americas. To not provide for the sustainable health of this system could lead to unforeseen , possibly catastrophic, consequences in connection with the effects of Climate Change and the future well-being of a system that is so intrinsic and necessary to a variety of species including the human species. Continuing to not address the balance of water flows, and diminishing the percentage of unimpaired water flow standards will only continue to contribute to an unsustainable watershed environment that will affect future generations. Immediate remedies that do not adequately address a living, breathing, evolving system that affects its environment and those living within that environment is irresponsible and near sighted. Water is a precious element that sustains everything on the planet. It only makes sense to create a sustainable solution based in science; embracing generational knowledge.	Please see Common Response 1.2, Water Quality Control Planning Process, for more information on the delays in processes for regulatory protections in updating the plan.
453	1	Protect our environment, advance environmental justice, support sustainable use of our water resources and follow peer reviewed science. Do not yield to political and industrial self-serving pressures.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
454	1	Without protection water quality is endangered along with the life it supports. Water organisms produce much the air we breathe and is base if the food change. I see the quality changing with my years of kayaking and doing bay biology with children at the Shorebird Center of Berkeley. Protect the Delta and the Bay!	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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455	1	As a lifelong (87 years) resident of the East Bay, I have personal knowledge of the transition of the Bay from a stinky cesspool that one had to hold one's breath while passing to a clean waterway on which people can enjoy kite surfing. I hope that cleanup of the Bay can be sustained by maintaining adequate flow.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
456	1	I write as a life-long resident of California and avid angler. I have fished most of the rivers in California over the past 30 years and I have been shocked at the disappearance of Steelhead and Salmon in almost all of California's major rivers. Native Trout will not be far behind as low water flows will make the rivers too warm to support them. The cause of this has been a lack of adequate control by the State, and diversion of water needed to support these rivers to support the growth of economically unsound crops in what is a natural desert. This lack of oversight represents an unconscionable use of public resources. Today you have an opportunity to represent the residents of our state and protect our shared resources. The VAs were developed without the input of Tribes, Delta communities, river recreation users, environmental or fishing groups. They came about through a self-serving, deficient process that lacked public transparency and allows Big Ag to essential steal water that belongs to all residents. The VAs will ensure the continued poisoning and eventual death of the entire Bay Delta and all of the fish and people who depend on it for recreation and livelihood. It is time that the State take firm control of our shared precious water resources and distribute them in a more equitable way. If farmers were forced to pay market prices for water, they would quickly stop growing crops that are uneconomical and start using cutting-edge water-conservation techniques to grow crops that are economically and environmentally sustainable. Many science-based studies have concluded that these VAs will not "create more fish with less water;" but will result in dead fish and poisoned water.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		Thank you for your efforts to complete and implement the Bay Delta Plan update and for considering these comments. I understand it is difficult to stand up to wealthy special interests that prioritize profits over people and the environment. But this is what you have been appointed to do. Please stand up and do what is right for the entire state.	
458	1	INTRODUCTION Buena Vista Rancheria of Me-Wuk Indians, Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, Little Manila Rising, and Restore the Delta, collectively the Delta Tribal Environmental Coalition (“DTEC”), submit the following comments on the Board’s Draft Staff Report for the Phase II Update of the Bay-Delta Water Quality Control Plan (“Staff Report”). As the Board has acknowledged, current water quality standards for the Bay-Delta fail to protect beneficial and public trust uses, including, among others, Tribal Beneficial Uses; safe recreational access, subsistence fishing, and a healthy environment for disadvantaged Delta communities; and restoration of historically vibrant fisheries. For over a decade, the Board has promised to update outdated 1995 water quality standards to restore Delta waterways and improve the health and integrity of the ecosystem. Although DTEC applauds the Board for moving toward an update after years of delay, the current draft Staff Report neither proposes meaningful water quality protections nor meaningfully advances efforts toward updating the Bay-Delta Plan with the urgency and scope that the ecological crisis in the Delta demands.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
458	2	In addition, the Board continues to equivocate on designating Tribal Beneficial Uses despite ample documentation that California Native American Tribes, including members of DTEC, have depended on Delta waterways for sustenance, ceremony, culture, and a broad range of essential uses since time immemorial.	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses. Please see Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on incorporation and designation of Tribal Beneficial Uses.
458	3	With the Staff Report, the Board also continues its unwarranted delays in reviewing and updating Bay-Delta water quality standards to accommodate exclusionary negotiations of	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not

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		Voluntary Agreements (“VAs”). Despite widespread pushback and clear inconsistencies with legal requirements, the Board continues to advance the VAs as a substitute for minimum instream flow requirements. But the process leading to the creation of the VAs lacks fundamental legitimacy, and the VAs themselves ignore the best available science and are riddled with legal vulnerabilities. Ultimately, the VAs distract from the real work before the Board – updating water quality standards to protect public trust and beneficial uses. By endorsing the flawed VAs rather than updating the Bay-Delta Plan through a public and participatory process, the Board eschews its legal responsibilities and risks further injury to tribes, Delta communities, and Delta ecosystems.	raise specific economic effects of the project. Also see Common Response 3.1, Fish Protection, on the use of best available science.
458	4	COMMENTING PARTIES. Shingle Springs Band of Miwok Indians The Shingle Springs Band of Miwok Indians is an Indigenous tribe with ancestral homelands spanning seven counties in Northern California – Sacramento, El Dorado, Amador, Yolo, Placer, Sutter, and Yuba – and the watersheds of multiple Delta waterways, including the Sacramento River, American River, Feather River, Bear River, and Cosumnes River. The Tribe has stewarded and used resources from the Delta for sustenance, medicine, transportation, shelter, clothing, and ceremony, among other cultural, religious, and subsistence uses, since time immemorial. The 600 present-day members of the Shingle Springs Band of Miwok Indians are descendants of the Miwok and Nisenan Indians who thrived in California’s fertile Central Valley for thousands of years before contact with Europeans. The Tribe is also descended from ten native Hawaiians who were forcibly brought to Nisenan territory in 1839 by John Sutter, a Swiss land baron who enslaved hundreds of Indigenous people at his Sacramento Valley ranch. The Tribe’s deep connection to Delta waterways was severed when its members were forced from their ancestral villages through colonization, disease, state-sponsored violence, and privatization of tribal land. In 1920, the Secretary of the Interior purchased the 160-acre Shingle Springs	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		Rancheria east of Sacramento in El Dorado County and placed it into trust for the displaced Tribe. This landlocked Rancheria, disconnected from both waterways and roadways, was inaccessible to the Tribe for decades and is far from the waterways that traditionally sustained the Tribe and its way of life. The Tribe's removal from ancestral waterways eroded its identity, traditional knowledge, and cultural practices. In recent years, the Tribe has been returning to Delta waterways, reclaiming its culture, and healing the alienation of many tribal members from the water. In 2017, the Tribe founded a Traditional Ecological Knowledge program to restore connections to cultural resources, spiritual practices, and traditional ways of life. The program has reeducated tribal members about who they are and where they are from by teaching them how to make regalia, food, clothing, shelter, and modes of transportation from the natural resources found along Delta waterways. As part of the Traditional Ecological Knowledge program, the Tribe purchased a small tract of land in 2020 at its ancestral village site of Wallok, where the Feather River and the Sacramento River meet. The land is in present-day Verona, California, just north of Sacramento. Despite regaining this limited riparian access to ancestral waterways, the degraded condition of the Delta impedes the Tribe's long-sought reconnection and reeducation efforts. HABs increasingly prevent tribal members from accessing the water for fishing or ceremonial purposes. And traditional riparian resources like tule, a long grassy plant that tribal members use for everything from baskets to boats, either no longer exist or are unsuitable for use because of the polluted state of the water.	
458	5	COMMENTING PARTIES. B. Winnemem Wintu Tribe The Winnemem Wintu are an Indigenous tribe whose identity and existence are intertwined with the headwaters of the Bay-Delta. In the Winnemem language, "Winnemem Wintu" translates to "Middle Water People," reflecting the Tribe's identification with its ancestral homelands along the McCloud River lying between the Sacramento and Pit Rivers. Traditionally, the Winnemem Wintu's historical territory spanned the upper	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		Sacramento River and McCloud River watersheds, which provide freshwater flows into the Bay-Delta. These waters have sustained the life and spirituality of the Tribe since time immemorial. Winnemem Wintu culture and identity are inextricably connected with the Nur, or Chinook salmon, which once flourished in the Bay-Delta's waterways. In the Tribe's creation story, the Nur gave the Winnemem Wintu their voice, and the Tribe in turn promised to always speak for the Nur. The Winnemem Wintu and the Nur have depended on each other for thousands of years – the Winnemem speaking for, caring for, and protecting the salmon, and the salmon giving themselves to the Winnemem for sustenance. Ceremonies, songs, dances, and prayers about the relationship between the Nur and the Winnemem Wintu are the fabric of Winnemem Wintu culture, religion, and spirituality. Damming and diversion of Bay-Delta waters and poor water quality have contributed to the near extinction of Chinook salmon, thereby threatening the continued existence of the Winnemem Wintu as a People. This existential threat layers over centuries of state-supported campaigns and projects to remove the Winnemem Wintu from their historic homelands and divest them of their relationship to the water. These efforts culminated in construction of the Central Valley Project's Shasta Dam in the 1930s and 40s, which flooded over 90% of the Winnemem Wintu's historical village sites, sacred sites, burial sites, and cultural gathering sites while blocking the Nur from migrating into Bay-Delta headwaters to spawn. The continued reliance on Central Valley Project exports and degradation of Bay-Delta water quality impairs the ability of Chinook salmon to reestablish their natural migratory pathways into Winnemem Wintu homelands.	
458	6	COMMENTING PARTIES. C. Buena Vista Rancheria of Me-Wuk Indians The Buena Vista Rancheria of Me-Wuk Indians (BVR) is a federally recognized Indian tribe with ancestral homelands spanning six counties, including Sacramento, Amador, San	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. Please see Common Response 4.1, Harmful Algal Blooms, for

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		Joaquin, El Dorado, Calaveras, as well as the northern part of Stanislaus County. The Tribe's ancestral lands stretch from the eastern bounds of the Sacramento and San Joaquin River Delta to the western slope of the northern Sierra Nevada mountains. Bay-Delta waters have sustained the Tribe since time immemorial. Significant tributaries and rivers that feed into the San Joaquin and Sacramento River Delta flow through Buena Vista Rancheria territory, including, among others, the Mokelumne, Consumnes, and San Joaquin Rivers. For the Buena Vista Rancheria of Me-Wuk Indians, Ki-ku (Me-Wuk for water) is the foundation of the world. Me-Wuk and Yokut creation stories describe water as a relation, and tribal members trace family lines through water. Water is understood as connected to all things and a life force of its own. In addition to supporting ecosystems and subsistence uses, water is revered for the pivotal role it plays in the Tribe's spiritual, cultural, and traditional lifeways and practices. The Tribe's traditional village sites were located near waterways, and family lines are still understood to be connected to BVR ancestral land through relations to water and spaces near water. Today, tribal members continue to rely on water for ceremonial practice and frequently access water from BVR's ancestral lands for ceremony. Water from the Sacred Springs of Buena Vista Peaks, for example, is used by tribal dancers who gather, bathe, and ingest water from the springs before ceremony. Water from these springs is also used for cleansing after tribal burials, in sweat lodges, as a disinfectant for illness, and for irrigating native plants as part of the Tribe's restoration projects. BVR culture, tradition, and ceremony express the sacred importance of water stewardship: water takes care of the BVR people, who must, in turn, take care of the water. Buena Vista Rancheria of Me-Wuk Indians has survived generations of abuse, neglect, and destructive policies that aimed to destroy tribal existence and forcibly assimilate tribal identity – including the termination era of the 1950s. Today, BVR continues to face ongoing ecological and political threats to its tribal cultural existence. Decades of industrialization across the Mokelumne River and the central Delta around Stockton, including mining, damming, and agricultural development, have contaminated streambeds,	responses to comments related to harmful algal blooms and California Native American Tribes.

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		disrupted natural flow regimes, and destroyed tribal villages and fishing sites. In recent years, the community has been particularly concerned about runoff from historic mine sites and Delta agricultural development, which continue to contaminate their waters. Between 201 and 2021, for example, tribal members were restricted from accessing ceremonial water from the Sacred Springs after e-coli was detected, most likely the result of upstream cattle grazing. In the larger system, Harmful Algal blooms (HABs), poor water quality, and restrictions have continually plagued the Tribe's ancestral waterways. Tribal Ceremonies in the Delta have been prevented due to low flows and HABs, which have, for example, exacerbated the health concerns about gathering and processing of Tule for the annual Tule Boat Races. Low flows have decimated populations of salmon, turtles, crayfish, and other species essential to tribal culture and identity and continue to threaten populations of tule, willow, cottonwood, and other riparian species necessary to the Tribe's cultural practices. Without access to safe, flowing water and all it sustains, the Tribe is severed from the very core of its identity as Me-Wuk and Yokut people.	
458	7	COMMENTING PARTIES. D. Little Manila Rising Little Manila Rising is a 501(c)(3) non-profit organization dedicated to bringing multifaceted equity to Stockton, California, a city of 320,000 residents on the eastern edge of the Delta along the San Joaquin River [Footnote 1: U.S. Census Bureau, Quickfacts: Stockton City, California, https://www.census.gov/quickfacts/stocktoncitycalifornia (last visited Nov. 17, 2022)]. Stockton is one of the most diverse cities in America, [Footnote 2: Gaby Galvin, America's Most Diverse City is Still Scarred by its Past, U.S. News & World Rep. (Jan. 22, 2020), https://www.usnews.com/news/cities/articles/2020-01-22/stockton-california-americas-most-diverse-city-is-stillscarred-by-its-past] with a population 44% Hispanic, 21% Asian, 12% Black, and 19% non-Hispanic white [Footnote 3: U.S. Census Bureau, supra note 1]. About a third of the city's residents live in South Stockton, a historically underserved and under-resourced area where many of the city's Black, Asian, and	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. Also see Common Response 10.1, Economically Disadvantaged Communities, for responses to comments on existing environmental conditions and the CEQA analysis.

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		Latine communities reside [Footnote 4: Galvin, supra note 2; see also Michelle Anderson, <i>The Fight to Save the Town: Reimagining Divided America</i> 40-41 (2022)]. Little Manila Rising was founded in 1999 to advocate for the historic preservation and revitalization of South Stockton's Little Manila community. Once home to the largest population of Filipinos in the world outside the Philippines, Little Manila was decimated in the 1970s when the California state government, supported by Stockton city officials, constructed the Crosstown Freeway directly through the community, demolishing homes, and displacing residents. Little Manila Rising continues to advocate for the interests of South Stockton residents through programs addressing education, environment, redevelopment, and public health [Footnote 5: See Little Manila Rising, Programs, https://littlemanila.org/all-programs (last visited Nov. 20, 2022)]. Little Manila Rising recognizes that the health and well-being of the communities it represents are tied to the health and resiliency of the Bay-Delta, and it has frequently engaged the State Water Board on the need to improve water quality standards. These improvements are a critical part of larger efforts to correct the effects of historical marginalization, institutionalized racism, and harmful public policy experienced by South Stockton residents.	
458	8	COMMENTING PARTIES. Restore the Delta Restore the Delta is a 501(c)(3) non-profit organization based in Stockton, whose mission is to ensure the health of the Bay-Delta so that fisheries, communities, and family farming can thrive there again. Restore the Delta works to protect water quality, improve access to clean waterways, and reduce flood and drought impacts resulting from climate change, particularly in communities of color. To achieve this mission, Restore the Delta advocates for the interests of local and marginalized Delta stakeholders to ensure that they have a meaningful voice in water management decisions affecting the well-being of their communities.	Please see Common Response 1.1, General Comments for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		Many of Restore the Delta's 75,000 members live in or near the Bay-Delta and have a strong personal interest in ensuring healthy freshwater flows to support a thriving ecosystem, safe recreation, safe and sustainable drinking water, and a clean environment. Restore the Delta has advocated before the State Water Board for improved Bay-Delta water quality standards and the restoration of instream flows for over fifteen years.	
458	9	BACKGROUND ON STATE WATER RIGHTS SYSTEM AND ITS ONGOING TRANSFORMATION OF BAY-DELTA HYDROLOGY The San Francisco Bay/Sacramento-San Joaquin Delta is a "critically important natural resource for California and the nation." [Footnote 6: Cal. Wat. Code § 85002]. Formed by the convergence of California's two largest rivers – the Sacramento and the San Joaquin – the 75,000 square-mile Delta encompasses the "most valuable wetland ecosystem and estuary on the west coast of North and South America." [Footnote 7: Id.]. Nearly half the surface water in the state starts as rain or snow within the Delta's vast watershed [Footnote 8: Env't Prot. Agency, San Francisco Bay Delta: About the Watershed, https://www.epa.gov/sfbay-delta/about-watershed (last visited January 17, 2024)]. When allowed to remain in the system, this water flows through the Delta into the Suisun Marsh and Suisun Bay, emptying into the San Francisco Bay and out into the Pacific Ocean. A diverse range of migratory and resident fish, birds, and other valued wildlife and plants depend on these flows. For instance, two-thirds of California's salmon pass through Delta waters, and at least half of the state's Pacific Flyway migratory birds rely on the Delta's wetlands [Footnote 9: Id.]. The State of California has transformed the ecology and human tapestry of the Bay- Delta. The Bay-Delta estuary was once a place of natural abundance, teeming with fish and sustaining a broad array of wildlife that Native tribes carefully stewarded for thousands of years. Decades of state-sponsored violence against Native tribes dispossessed tribes of their land and access to Bay-Delta waterways and headwaters. Excessive diversion and export of Bay-Delta waters has led to flows that are insufficient to sustain the fish, plant, and animal species that have adapted to the Bay-Delta's unique estuarine environment [Footnote 10: See	Please see Common Response 1.1, General Comments for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. See Common Response 10.1, Economically Disadvantaged Communities, for a discussion of the existing environmental conditions and CEQA analysis. See Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for more information on the State Water Board's tribal consultation and incorporation of tribal beneficial uses to the Bay-Delta Plan.

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		Cal. Water Res. Control Bd., Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and Its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitats, and Interior Delta Flows, at 1-5 (2017) (“The best available science . . . indicates that [existing legal requirements in Revised Water Rights Decision 1641 and biological opinions addressing Delta smelt and salmonids] are insufficient to protect fish and wildlife”). The result is a watershed in a state of ecological and human crisis. Waterways have grown stagnant, fish stocks are plummeting, and harmful algal blooms (HABs) are proliferating. Anadromous fish are particularly at risk, with multiple native species listed as endangered and on the brink of extinction. For the first time in fifteen years, federal regulators imposed a complete closure in summer 2023 of California’s commercial and recreational salmon fisheries off the California coast [Footnote 11: Cal. Dep’t of Fish and Wildlife, Recreational Ocean, In-River Salmon Fisheries in California to Close for Remainder of 2023, https://wildlife.ca.gov/News/Archive/recreational-ocean-in-river-salmon-fisheries-in-california-to-close-for-remainderof-2023#gsc.tab=0 (last visited Jan. 16, 2023)]. The California Fish and Game Commission followed suit and enacted a full closure of California’s recreational fishing season in the Klamath River Basin and Central Valley rivers [Footnote 12: Id.]. The closures directly respond to cratering populations of Chinook salmon, which have reached historic lows in abundance. White sturgeon have also experienced dramatic population declines in recent decades because of high levels of freshwater diversions, overharvesting, and persistent algal outbreaks [Footnote 13: Attachment 2, San Francisco Baykeeper, et al., Petition to the State of California Game Commission to List The California White Sturgeon (<i>Acipenser transmontanus</i>) as Threatened under the California Endangered Species Act (CESA) (Nov. 29, 2023) at 5 [hereinafter “Attachment 2”] [Attachment 2]. Low flows have also driven the increasing proliferation of HABs across the Bay-Delta, posing health risks to exposed humans and animals, including respiratory burdens when hazardous cyanotoxins aerosolize [Footnote 14: See U.S. Ctr. For Disease Control and Prevention, Facts about Cyanobacterial Blooms for	

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		Poison Center Professionals, https://www.cdc.gov/habs/materials/factsheet-cyanobacterial-habs.html (last updated Nov. 28, 2022)]. Native tribes and disadvantaged communities of color in the Bay-Delta and its headwaters bear the brunt of environmental, socioeconomic, and cultural burdens continuing a perpetual cycle of discrimination. As the State Water Board has itself recognized, “[t]he overall health of the estuary is in trouble, and expeditious action is needed on the watershed level to address the crisis, including actions by [the State Water Board].” [Footnote 15: Cal. State Water Res. Control Bd., July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan 4 (2018), https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/sed/sac_delta_framework_070618%20.pdf].	
458	10	The Unjust Foundations of California’s Current System of Water Rights and Management Indigenous Peoples have been inextricably linked to the health of the Bay-Delta watershed since time immemorial. For thousands of years, Native Californians have used and stewarded Bay- Delta waters, plants, fish species, and other wildlife [Footnote 16: Cal. Delta Stewardship Council, Amended Delta Plan Chapter 4: Protect, Restore, and Enhance the Delta Ecosystem, pp. 4-8 to 4-9 (2022)]. The Delta itself is estimated to have been home to over 10,000 Indigenous residents, comprising four distinct language groups and numerous tribes and communities [Footnote 17: Zedler & Stevens, Western and Traditional Ecological Knowledge in Ecocultural Restoration, 16(3) San Francisco Estuary & Watershed Science, p. 3 (Oct. 2018) (quoting Whipple et al., Sacramento-San Joaquin Delta historical ecology investigation: exploring pattern and process, San Francisco Estuary Institute Aquatic Science Center (2012)]. 17 Many more tribes and tens of thousands more tribal members lived throughout the San Francisco Bay and Bay-Delta headwaters prior to colonization [Footnote 18: Id.]. Native Californians exercised Traditional Ecological Knowledge to enhance fish habitat, reduce pathogens, and tend to culturally essential species. [Footnote 19: Cal. Delta Stewardship Council,	Please see Common Response 10.1, Economically Disadvantaged Communities, and Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses.

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		Amended Delta Plan Chapter 4: Protect, Restore, and Enhance the Delta Ecosystem 4-8 (2022), https://deltacouncil.ca.gov/pdf/delta-plan/2022-06-29-chapter-4-protect-restore-and-enhance-the-delta-ecosystem.pdf]. Stewardship practices included controlled burning for riparian vegetation, food productivity, and sustainable harvest of ecologically important plant species [Footnote 20: Delta Plan Chapter 4 Proposed Amendment at p. 4-8]. The Shingle Springs Band of Miwok Indians, for example, stewarded and utilized resources throughout Delta waterways, including fish, plants, roots, berries, and other traditional resources found along the rivers. With village sites at the confluence of the Sacramento and Feather rivers, the Tribe considers the Delta waterways its lifeblood, providing them with food, medicine, clothing, shelter, ceremony, and other cultural and spiritual uses. [Footnote 21: [Attachment 2] Attachment 1, Shingle Springs Band of Miwok Indians, et al., Title VI Complaint and Petition for Rulemaking for Promulgation of Bay-Delta Water Quality Standards (Dec. 15, 2022), Exhibit E, Attachment A, Declaration of Malissa Tayaba ¶ 2 [hereinafter “Decl. of Malissa Tayaba”]. For millennia, Indigenous Peoples sustainably managed a healthy and vibrant Bay-Delta that supported essential subsistence and cultural practices. From the mid-1800s, the nascent California state government undertook a brutal campaign to sever Indigenous Peoples’ deep connections to Bay-Delta waters, carrying out a program of genocide that forcibly removed Native American tribes from their ancestral lands and [t]he violent removal of Indigenous Peoples from their ancestral lands violated their inherent title to land that they occupied for thousands of years and the water rights that should be attached to that title. [Footnote 22: See generally Benjamin Madley, An American Genocide: The United States and the Californian Indian Catastrophe, 1846-1873 at 23 (2017); see also Cal. State Water Res. Control Bd., Resolution No. 2021-0050: Condemning Racism, Xenophobia, Bigotry, and Racial Injustice and Strengthening Commitment to Racial Equity, Diversity, Inclusion, Access, and Anti-Racism 2 (2021), https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2021/rs2021_0050.pdf] [Footnote 23: See generally United States v. Adair (9th Cir. 1983) 723 F.2d 1394, 1413 (recognizing that “uninterrupted use and occupation of	

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		land and water created in the Tribe aboriginal ‘Indian title’ to all of its vast holdings”)). As the State Water Board has acknowledged, “white supremacy led to the genocide and forced relocation of Native American people to facilitate white resettlement and the enslavement of Native American and Black people for white economic gain.” [Footnote 24: State Water Resources Control Bd., Resolution No. 2021-0050, 7(a) (Nov. 16, 2021) (hereafter, “State Water Bd. Anti-Racism Resolution”)]. In an 1851 address to the Legislature, for instance, California’s first governor proclaimed that “a war of extermination will continue to be waged between the two races until the Indian race becomes extinct.” [Footnote 25: Office of Governor Gavin Newsom, Executive Order N-15-19 (June 18, 2019), https://tribalaffairs.ca.gov/wpcontent/uploads/sites/10/2020/02/Executive-Order-N-15-19.pdf (recognizing that “the State historically sanctioned over a century of depredations and prejudicial policies against California Native Americans”)]. The State then provided \$1.29 million in 1850s dollars to subsidize private and militia campaigns against California’s Native population. [Footnote 26: Press Release, Off. Of Governor Gavin Newsom, Governor Newsom Issues Apology to Native Americans for State’s Historical Wrongdoings, Establishes Truth and Healing Council (Jun. 18, 2019) (hereafter “Newsom Apology to Native Americans”)]. Both the State and Federal governments played a direct role in the “program of genocide” against Native tribes that divested tribal communities of their inherent rights to Delta waters. [Footnote 27: Benjamin Madley, <i>An American Genocide: The United States and the Californian Indian Catastrophe, 1846-1873</i> at 14 (2017) (explaining that state and federal “lawmakers played a key role in th[e] genocide” against Native Californians “by stripping them of legal rights, by making anti-Indian crimes extremely difficult to prosecute, and by refusing to ratify treaties signed by federal agencies and California Indian leaders that could have restrained the violence”)]. In 1850, the newly formed California Legislature passed a law cruelly titled “Act for the Government and Protection of Indians,” which removed tribes from their traditional lands, separated Indigenous children from	

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		their families, and created a system of indentured servitude as punishment for minor crimes [Footnote 28: Act for the Government and Protection of Indians, 1850 Cal. Stat. 408]. That following year, Congress adopted the California Land Claims Act, which created a two-year window to claim property derived from land grants by the Spanish or Mexican governments [Footnote 29: California Land Claims Act, 9 Stat. 631 (1851); See also Paul Wallace Gates, Land and Land Law in California 25 n.1 (1991)]. Because tribes were largely unaware of the Act and its implications, the California Lands Claim Act became another instrument to deny tribes their “legal interest in ... their aboriginal lands.” [Footnote 30: Advisory Council on Cal. Indian Policy, Historical Overview Report: Special Circumstances of California Indians 5 (1997) [hereinafter “ACCIP”]]. Duplicious treaty negotiations furthered this dispossession. Between 1851 and 1852, California tribes were compelled to sign 18 treaties with the federal government, ceding their ancestral lands – territory that was presumed to encompass the entire state of California [Footnote 31: ACCIP, supra note 30, at 5]. In exchange, treaty negotiators promised the tribes – including commenter Winnemem Wintu Tribe – reservations and the benefits that flow from them. Implicit among these benefits are federal reserved water rights. Had the treaties been ratified, they would have guaranteed ample reserved water rights in perpetuity to signatory tribes. Pursuant to the U.S. Supreme Court’s decision in <i>Winters v. United States</i>, 207 U.S. 564 (1908), and its progeny, the federal government’s reservation of land in trust for a tribe implicitly reserves the quantum of water necessary to fulfill the purpose of that trust. [Footnote 32: <i>Winters v. United States</i> (1908) 207 U.S. 564 (recognizing that the United States implicitly reserves for tribes the amount of water necessary to fulfill the purpose of an Indian reservation when it withdraws land from the public domain to establish the reservation)]. These federal reserved rights have a priority date going back to the date of reservation, are exempt from appropriation under state law, and, unlike appropriative water rights recognized under state law, cannot be lost or yielded through non-use [Footnote 33: See, e.g., <i>id.</i>, 207 U.S. at	

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		577 (“The power of the Government to reserve the waters and exempt them from appropriate under the state laws is not denied, and could not be. That the Government did reserve them we have decided, and for a use which would be necessarily continued through the years”)]. But the federal and state governments broke their promises. After lobbying by California legislators and business interests worried about the mineral estate that would be reserved to tribes by the treaties, the U.S. Senate refused to ratify them, instead placing the treaties under an injunction of secrecy for over 50 years [Footnote 34: ACCIP, supra note 30 at 5]. Although many of the signatory tribes were unaware that the treaties had not been ratified and their inherent title to the lands remained intact, state and federal leaders nonetheless acted as if the lands had been ceded, opening them up for settlement by non-natives without establishing the guaranteed reservations [Footnote 35 ACIP, supra note 30 at 5; see also Madley, supra note 22 at 211 (recounting that many Native Californians “had relocated to provisions reservations” in accordance with the treaty provisions)]. When tribes who had left their ancestral lands for negotiated reservations returned after the Senate nullified the reservations, they found that their lands had been appropriated [Footnote 36: Madley, supra note 22, at 212]. As a result of the government’s duplicity, “all the California Indians became landless.” [Footnote 37: ACCIP, supra note 30 at 7]. Robbed of their treaty reservations, the tribes were denied corresponding federal water rights reserved to them by the broken treaties [Footnote 38: See State Water Board Anti Racism Resolution at ¶ 7(b) (“Historical land seizures, broken promises related to federal treaty rights, and failures to recognize and protect federal reserved rights, have resulted in the loss of associated water rights and other natural resources of value, as well as cultural, spiritual, and subsistence traditions that Native American people have practiced since time immemorial.”)]. And robbed of their land through this duplicity, the tribes were denied access to the rights that attach to their prior, inherent title. Although at least 110 California tribes obtained federal recognition through subsequent instruments and over 300 individual Native American allotments have been set aside – all	

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		of which comes with enduring federal reserved rights – post-treaty reservation does not substitute for the water rights guaranteed to the tribes by legal instruments that they executed and relied upon. Further, over 80 tribes in California have not yet obtained federal recognition but hold just as deep and enduring an interest in the use and stewardship of water necessary to support tribal cultural, traditional, and spiritual practices [Footnote 39: See State Water Res. Control. Bd. Draft Staff Report for the Phase II Update of the Bay-Delta Water Quality Control Plan [hereinafter “Staff Report”] at 11-3 (recognizing that tribes without federal recognition “still have a significant interest in water management decisions that could support traditional practices or culturally significant species”)]. California’s hybrid water rights system emerged as yet another tool to further the dispossession and alienation of tribes. Early decisions by the California courts recognized two classes of surface water rights: riparian and appropriative. Riparian rights grant property owners the right to remove reasonable amounts of water from waterways that are contiguous to their land for use on their property. Riparian rights can only be acquired by owning property that touches a water source [Footnote 40: See <i>Lux v. Haggin</i> (1886) 69 Cal. 255, 391-92)]. Appropriative rights grant individuals or entities the right to remove water from a waterway for use elsewhere. Under the appropriative rights regime, water belonged to the first (non- Indigenous) person to assert ownership, which entailed “simply diverting water and putting it to use.” [Footnote 41: See <i>Irwin v. Phillips</i>, 5 Cal. 140, 146-47 (1855) (endorsing the principle of prior appropriation, or “first in time, first in right,” as establishing priority for appropriative rights)]. Neither category of rights accommodates tribal claims based on millennia of water use and stewardship nor Native tribes’ continuous occupation of land prior to colonization and displacement. As such, California’s water rights regime has done inherent violence to tribal culture, identity, and ways of life. The State Water Board itself has recognized that “watersheds are now primarily managed through large-scale diversion of water for municipal, industrial, agricultural, and commercial beneficial uses to the detriment of traditional, local, and cultural uses and without compensation, recognition, or replacement.” [Footnote 42: Cal. State Water Res. Control Bd.,	

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		supra note 22 at 3]. Racist State legislation and discriminatory policies have also excluded communities of color from possessing land and, by extension, water rights. In the early decades of California statehood, Asian immigrants made up the brunt of California's agricultural workforce. By 1880, Chinese immigrants worked across Delta regions as farm owner-operators, large- and small-scale tenants, and laborers. [Footnote 43: Sucheng Chan, Chinese Livelihood in Rural California: The Impact of Economic Change, 1860-1880, 53(3) Pacific Historical R. 273, 293 (1984)]. The number of Japanese immigrants participating in California farm labor grew with the 1882 Federal Chinese Exclusion Act, which barred Chinese immigrants from entering the country [Footnote 44: Chinese Exclusion Act (1882), https://www.archives.gov/milestone-documents/chinese-exclusionact#:~:text=In%20the%20spring%20of%201882,immigrating%20to%20the%20United%20States (last updated Jan. 17,2023)]. More than 5,000 Japanese Californians were listed as farm operators on the 1920 census [Footnote 45: Robert Higgs, Landless by Law: Japanese Immigrants in California Agriculture to 1941 (1978) 38(1) J. of Econ. History 205, 206-07]. Filipina/o workers and students "streamed into the United States" in the decades after the United States' forced colonial occupation of the Philippines through the Philippine- American War [Footnote 46: Dawn Mabalon, Little Manila is in the Heart: The Making of the Filipina/o American Community in Stockton, California (2013) p. 5 [hereinafter, "Little Manila is in the Heart"]]. Many Filipinos became farm laborers due to the agricultural industry's demand for low-wage workers. "By the 1920s, San Joaquin County growers had become dependent on Filipino labor," with "thousands of Filipinas/os in the 1920 and 1930s provid[ing] California growers with the cheap, immigrant labor they needed to harvest the 'green gold' growing from the fields and orchards of the Central Valley and Delta." [Footnote 47 Id.]. By the late 1920s, Filipino workers were involved in the processing of every major crop grown in the Delta region. They comprised over 80% of the workforce cultivating and harvesting asparagus, one of the Delta's signature crops [Footnote 48: Id., p. 69]. Stockton also became "the center of a West Coast migratory circuit" for Filipina/o laborers, with thousands more Filipina/o workers	

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		staying in Stockton year-round to prune in the wintertime and pick asparagus in the spring and tomatoes and grapes in the summer and fall [Footnote 49: Id., p. 5]. Even though Asian immigrants powered California’s agricultural industry, these communities were barred by law from owning farmland. Passed in 1913, the California Alien Land Law expressly prevented Asian immigrants from owning California farmlands [Footnote 50: California Law Prohibits Asian Immigrants from Owning Land, https://calendar.eji.org/racial-injustice/may/3 (last visited Jan. 18, 2024)]. A 1920 voter pamphlet supporting the expansion of the Alien Land Law stated that the statute’s “primary purpose is to prohibit Orientals who cannot become American citizens from controlling our rich agricultural lands.” [Footnote 51: <i>Fujii v. State</i>, 38 Cal. 2d 718, 735 (1952)]. With the expansion of this law to extend to the children of immigrants, the Legislature ensured these immigrant communities would not gain access to generational advancement [Footnote 52 <i>Oyama v. California</i> (1948) 332 U.S. 633, 658-59 (conc. Opn. Of Murphy, J.)]. Over the course of the 20th century, Asian immigrants, barred from property ownership and facing waves of anti-Asian violence, sought refuge in nearby cities. Those cities, segregated by racially restrictive covenants and redlining, forced Asian immigrants and other people of color into the most disinvested neighborhoods. South Stockton, where Coalition member Little Manila Rising is located, was one of these neighborhoods. Redlining maps produced by the government sponsored Home Owners’ Loan Corporation designated much of South Stockton grade D, or red, deeming the areas hazardous for bank lending [Footnote 53: See Robert K. Nelson, et al., <i>Mapping Inequality: Redlining in New Deal America: Stockton, CA</i>, https://dsl.richmond.edu/panorama/redlining/#loc=13/37.956/-121.337&city=stockton-ca (last visited Dec. 14, 2022); see generally Richard Rothstein, <i>The Color of Law: A Forgotten History of How Our Government Segregated America</i> (2017)]. The maps described one South Stockton neighborhood with significant Asian and Black populations as “infested with subversive racial influences.” [Footnote 54: See Nelson, supra note 53].	

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		The experiences of Asian immigrants are echoed in the stories of Black migrant workers who came to California farms in the late 1800s [Footnote 55: Michael Eissinger, <i>The Transplantation of African Americans and Cotton Culture to California's Rural San Joaquin Valley During the Nineteenth and Twentieth Centuries</i> 8 (2009) (Master's Thesis, Cal. State Univ., Fresno) [hereinafter <i>Transplantation of African Americans and Cotton Culture</i>]]. By 1950, there were over 40,000 Black Americans in the San Joaquin Valley [Footnote 56: <i>Transplantation of African Americans and Cotton Culture</i> at 9 (citing the 1950 U.S. Census)]. The government responded to the presence of growing Black populations with racially restrictive covenants, redlining, and violence. These tactics forced Black farmworkers to move to settlements on the outskirts of Central Valley farmland. White inhabitants had previously abandoned these arid plots because of their lack of access to water [Footnote 57: Michael Eissinger, <i>Re-Collecting the Past: An Examination of Rural Historically African American Settlements across the San Joaquin Valley</i> 156 (2017) (Ph.D. dissertation, Univ. of Cal., Merced) [hereinafter <i>Re-Collecting the Past</i>]]. The de jure and de facto segregation of this time shaped property ownership and neighborhoods as we know it today. Mexican migrant workers, too, were outcasted by the government after they were exploited for their labor via the Bracero Program, which began in 1940 [Footnote 58: Cal. State Parks, <i>Latinos in Twentieth Century California: National Register of Historic Places Context Statement</i> 9 (2015), https://ohp.parks.ca.gov/pages/1054/files/latinosmpdf_illustrated.pdf]. The first 500 bracero workers were sent to Stockton to work on sugar beet farms [Footnote 59: Id.]. This number grew to more than four million Mexicans working in California during the duration of the Bracero program, which ended in 1964 [Footnote x: 60 Id.]. After WWII ended, the federal government began heavily restricting immigration, setting strict quotas for the number of authorized immigrants. These restrictive immigration policies, in combination with the end of the Bracero Program, led to even greater numbers of unsanctioned migrations in the latter half of the 20th century [Footnote 61: Id. At 10]. As more and more Mexican migrant workers began to settle in the U.S., they were often relegated to low-level, manual	

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		labor jobs, and settled near their workplaces [Footnote 62: Id at 120]. Their neighborhoods were gradually parsed out as segregated barrios or colonias, reinforced through exclusionary devices like racially restrictive covenants [Footnote 63: Id. 99]. Colonias, which are unincorporated communities, still struggle with access to safe water and adequate infrastructure. There as many as 219 of these unincorporated areas in San Joaquin Valley today [Footnote 64 Rubin et. Al, Unincorporated Communities in the San Joaquin Valley: New Responses to Poverty, Inequity, and a System of Unresponsive Governance (Nov. 27, 2007), available at: https://www.prrac.org/projects/fair_housing_commission/los_angeles/Colonias_CRLA_%20PolicyLink%20Framing%20Paper.pdf at 12]. These decisions made by those in power decades and even centuries ago have left lasting marks on South Stockton and communities like it, creating multigenerational wounds that will never be fully repaired. The Board has acknowledged this in its Resolution No. 2021-0050, 2022); see generally Richard Rothstein, <i>The Color of Law: A Forgotten History of How Our Government Segregated America</i> (2017). The historical seizures of land from people of color have had, and continue to have, long-standing, oppressive impacts that extend beyond the loss of the land itself. These impacts include the loss of the associated water rights and other natural resources of value, lack of access to affordable and reliable governmental services, and forced relocation to areas with fewer or lower quality natural resources.⁶⁵ [Footnote 65: State Water Res. Control Bd., Res. No. 2021-0050. Condemning racism, xenophobia, bigotry, and racial injustice and strengthening commitment to racial equity, diversity, inclusion, access, and anti-racism (2021)]. California’s water rights system is built on these wildly unjust and inequitable foundations. And this history has clear throughlines to the present, as manifest in the skewed demographics of those who hold water rights, and power over water rights, today. This is made clear in a January 2023 analysis of the demographics of water rights holders and managers by Department of Water Resources (“DWR”) staff, which seeks to unearth “who makes decisions about California’s water.”	

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		[Footnote 66: Megan Fidell and Paul Shipman, Cal. Dep't of Water Resources, Who Makes Decisions About California's Water (Jan. 9, 2023), available at https://www.restorethedelta.org/wp-content/uploads/2023-Fidell-Who-Makes-Decisions-about-Californias-Water.pdf]. The study authors coded nearly 14,000 individual rights holder by race and coded about 1500 directors of water agencies for race and gender, comparing each board to the race and gender of the service areas. The results, according to DWR staff, "were not surprising." [Footnote 67 Id. At 1]. The Report concluded that: At every level, the people who make decisions about California's water are more white and more male than the population of California. At the local agency level, boards of directors are 86% White and 79% male. At the individual level, 91% of small named water rights holders have last names that code as White. The demographics of these water rights holders and managers reflect the history of exclusion, dispossession, and discrimination legislated into the foundations of the water rights system; they do not reflect the current makeup of California. [Footnote 68: According to the July 2023 census, only 34.7 percent of Californians identify as non-Latino/a/e White. See U.S. Census Bureau, Quick Facts California, https://www.census.gov/quickfacts/fact/table/CA/PST045223 (last visited Jan. 13, 2024)]. The Board has acknowledged the unjust foundation of California water rights and management; it should take the opportunity before it to begin rectifying these wrongs.	
458	11	Transformation of the Bay-Delta and its Ecological Crisis While the State waged a campaign of genocide and dispossession against Native tribes and legislated segregation for communities of color, it also facilitated the hydrological overhaul of the Bay-Delta to benefit nascent mining, agricultural, and industrial interests. These changes had dramatic effects on Bay-Delta ecosystems. The Bay-Delta's natural runoff patterns changed as hillsides were denuded for mining and logging while wetlands and floodplains were drained for conversion to agricultural production [Footnote 69 The Bay Institute, San Francisco Bay: The Freshwater-Starved Estuary 8 (Sept. 2016),	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		https://cawaterlibrary.net/wpcontent/uploads/2016/09/Freshwater_Report.pdf]. The peat soils that remained were compacted, oxidized, and eroded, thereby inducing large amounts of sediment to wash into Bay-Delta waterways [Footnote 70 Id. at p. 9; Cal. State Water Res. Control Bd., Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem 25 (Aug. 3, 2010), https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf]. Meanwhile, the construction of a vast network of tidal channels isolated individual waterways from each other and their adjacent habitats – preventing channels from naturally meandering over time, hastening flow velocities, and disrupting the natural interconnectedness of Bay-Delta [Footnote 71: Cal. Delta Stewardship Council, Amended Delta Plan Chapter 4: Protect, Restore, and Enhance the Delta Ecosystem 4-13 (2022), https://deltacouncil.ca.gov/pdf/delta-plan/2022-06-29-chapter-4-protect-restore-and-enhance-the-deltaecosystem.pdf]. By the early 1900s, about 95% of native ecosystems and vegetation communities in the Delta had [Footnote 72: Id. At 4-12.]	
458	12	State-authorized storage and diversion projects radically transformed Bay-Delta hydrology. The diversion and export of water from the Bay-Delta has radically reduced freshwater flow volumes and altered natural flow cycles “at the expense of natural estuarine processes.” [Footnote 73: Id. at 4-15]. In-Delta diversion began as early as 1869 with reclamation of Sherman Island and grew in the ensuing decades in proportion to reclaimed marshland areas [Footnote 74: Contra Costa Water Dist., Historical Fresh Water and Salinity Conditions in the Western Sacramento-San Joaquin Delta and Suisun Bay, Technical Memorandum WR10-001 at A-10 (2010), https://cawaterlibrary.net/wp-content/uploads/2017/10/swrcb_ccwd2010.pdf]. By 1916, increasing upstream diversions linked to the explosion of rice cultivation in the Sacramento Valley initiated unprecedented salinity intrusion into the Delta [Footnote 75: Id.]. Reduction in flows hastened in the 1920s as irrigated agriculture exploded, Bay Area cities grew, and the region experienced a decade of	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. Please see Common Response 1.5, Trinity River, for discussion on the use of Trinity River water in exports, the neutral effects on the Trinity River watershed, and the proposed regulatory solution.

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		sustained drought [Footnote 76: The Bay Institute, supra note 69 at 9]. The construction and operation of the massive Central Valley Project from the 1940s and 50s (including the Shasta Dam on the Sacramento River and Friant Dam on the San Joaquin River), followed by the State Water Project in the 1960s and 70s, furthered this radical alteration of the flow hydrology [Footnote 77: Id.; see generally Tim Strophane, Drought, Water Law, and the Origins of California’s Central Valley Project (2016)]. Together these projects are the single largest extractor of Bay-Delta freshwater and comprise the world’s largest water storage and conveyance system [Footnote 78: The Bay Institute, supra note 69]. The construction of the Central Valley Project’s Trinity River Division (“TRD”) exemplifies the government’s audacious modification of California flow hydrology and its consequences for California tribes. The Trinity River is the largest tributary to the Klamath River, which empties directly into the Pacific Ocean at Requa, California, north of Eureka. The Trinity and Klamath Rivers “once teemed with bountiful runs of salmon and steelhead,” which have “defined the life and culture of the Hoopa Valley and Yurok Indian Tribes.” [Footnote 79: U.S. Dept. of Interior, Record of Decision: Trinity River Mainstem Fishery Restoration, Final Environmental Impact Statement/Environmental Impact (2000)]. Both Tribes retain tribal fishing and hunting rights – secured to them in the establishment of their reservations along the Klamath River – that are immune from state regulation or interference [Footnote 80: Id.; see Arnett v. Five Gill Nets (1975) 48 Cal.App.3d 454, 461 (recognizing that Indians on the Klamath River Reservations “had fishing rights derived from Congress” and that “State qualifications of those traditional rights was precluded by force of the Supremacy Clause”)]. Following adoption of the Trinity River Act of 1955, [Footnote 81: Trinity River Act, Pub. L. No. 84-386, 69 Stat. 719 (1955)]. the U.S. Bureau of Reclamation led the construction of the TRD’s expansive new diversion and storage facilities that largely rerouted the natural flow of the Trinity River from the Klamath	

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		River watershed into the Bay-Delta, conveying it through the Clear Creek Tunnel into Whiskeytown Lake and on into the Sacramento River. As a result, the Trinity River is legally classified as part of the “Delta tributary watershed” despite lacking any natural hydrological connection to the Bay-Delta [Footnote 82: Cal. Water Code § 78647.4(b)]. The TRD’s Trinity and Lewiston Dams directly eliminated 109 miles of important salmonid habitat above Lewiston, California, and diversions to the Sacramento River have decimated the Trinity’s native fish populations and habitat [Footnote 83: U.S. Dept. of Interior, supra note 79 at 1]. The upshot of all these state and federal export projects is drastically reduced flows into and through the Bay-Delta. Around 31% of inflow is diverted before it ever reaches the Bay-Delta [Footnote 84: Cal. Delta Stewardship Council, A More Reliable Water Supply for California 83 (2018), https://deltacouncil.ca.gov/pdf/delta-plan/2018-04-26-amended-chapter-3.pdf]. Some of this water is returned to Bay-Delta tributaries through wastewater effluent or agricultural return flows, though at degraded quality [Footnote 85: Id.]. The State Water Project and Central Valley Project together export 5.1 million acre-feet (MAF) per year from the Bay-Delta, accounting for 24% of inflows [Footnote 86: Id.]. The combined effects of upstream diversions and water exports have cut annual outflow from the Bay-Delta by half or more relative to unimpaired conditions [Footnote 87: Id. at 28 (reporting that outflows were reduced on average by 48% relative to unimpaired conditions between 1986 and 2005)]. In dry conditions, diversions and exports reduce annual flows by more than 65% [Footnote 88: Cal. Water Res. Control Bd., supra note 10 at 1-5]. In certain months, reduction in outflows exceeds 80% [Footnote 89: Id.]. According to the State Water Board, under certain conditions, “flows are completely eliminated or significantly reduced at certain times in some streams in the [Bay-Delta] watershed, and a significant portion of the inflows that are provided to the [Bay-Delta] are exported without contributing to [Bay-Delta] outflows.” [Footnote 90: Cal. State Water Res. Control Bd., July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan 6 (2018),	

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		https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/sed/sac_delta_framework_070618%20.pdf]. This is so despite massive imports of water from the Trinity River. Between the inception of its full operation in 1964 and 2000, TRD exports of Trinity River water to the Sacramento River averaged 75% of the Trinity River's natural flow, or roughly 988,000 acre-feet per year [Footnote 91: U.S. Dept. of Interior, supra note 79 at 20]. In some years, exports to the Sacramento River basin reached as high as 90% of annual Trinity River inflow [Footnote 92: Id.]. Since 2000, Trinity River exports have been limited by a U.S. Department of Interior decision requiring variable annual instream flows for the Trinity River from the TRD ranging from 369,000 acre-feet in critically dry years to 815,000 acre-feet in extremely wet years [Footnote 93: Id. At 2].	
458	13	The transformation of the Bay-Delta has led to a litany of ecological harms and Social impacts. Freshwater flow reductions have caused a cascade of ecological impacts in the Bay-Delta, including altered salinity levels, higher water temperatures, changes to water circulation patterns, increased concentration of pollutants, alteration of dissolved oxygen and other water quality parameters, disruption of fish migratory routes and nursery conditions, and habitat loss [Footnote 94: See, e.g., Cal. State Water Res. Control Bd., supra note 90, at 6]. Poorly managed releases from upstream dams and reduced inflows coupled with diversion and export of water also alter peak, base, and pulse flows to which aquatic species are adapted [Footnote 95 Id.]. Among these changes, reduced flows affect how far inland the low salinity zone between seawater and freshwater (referred to as "X2") lies. When diversions reduce river flows, this X2 location shifts inland, raising overall salinity levels in the Bay-Delta [Footnote 96: The Bay Institute, supra note 69, at iii-iv]. Shifting the X2 location also reduces food availability for native fish [Footnote 97: Letter from Justin Ly, U.S. Nat'l Oceanic and Atmospheric Admin., to Eileen Sobeck, Cal. State Water Res. Control Bd. (May 6, 2022),	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. Please see Common Response 1.3, Revised Proposed Plan Amendments, for discussion on the provisions in the Bay-Delta Plan for reasonable protection of fish.

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		https://www.waterboards.ca.gov/drought/sacramento_river/docs/exhibit-c-protest-shasta-tmp.pdf]. For example, the National Marine Fisheries Service (“NMFS”) predicts that reduced Delta outflow and the X2 shift will suppress the Delta Smelt’s access to one of its preferred food sources, the copepod <i>Eurytemora affinis</i> [Footnote 98 Id.]. Water diversions have also caused water temperatures in salmon natal streams to rise above levels required for their spawning and survival [Footnote 99: The Bay Institute, supra note 69, at 47]. Full reservoirs tend to stratify into layers of warm water near the surface, with colder water toward the bottom [Footnote 100: See Yifan Cheng et. al., Reservoirs Modify River Thermal Regime Sensitivity to Climate Change: A Case Study in the Southeastern United States, 56 Water Res. Rsch. 1 (2020)]. When reservoirs lose water to diversions, they warm more quickly because of a higher surface areato- volume ratio [Footnote 101: See Id., at p. 11]. Downstream, depleted rivers equilibrate more quickly with the surrounding air [Footnote 102: Env’t Prot. Agency, EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards 7 (2003), https://nepis.epa.gov/Exe/ZyPDF.cgi/P1004IUI.PDF?Dockey=P1004IUI.PDF]. Fish embryos are particularly at risk from warm water. As temperatures rise, embryos within eggs require more oxygen, but their ability to take in more is limited by the rate of diffusion across the egg surface [Footnote 103: Benjamin Martin et al., The Biophysical Basis of Thermal Tolerance in Fish Eggs, 287 Proc. Royal Soc’y B: Biological Sci. 1 (2020), https://doi.org/10.1098/rspb.2020.1550]. Adults are also at risk from increased disease transmission and other stressors [Footnote 104: Env’t Prot. Agency, supra note 102, at 5, 7]. In 2021, many in the Bay-Delta did not survive long enough to reproduce . [Footnote 105: Scott Wilson, California’s Disappearing Salmon, Wash. Post (Sept. 13, 2021), washingtonpost.com/nation/interactive/2021/california-disappearing-salmon/ (“Of the estimated 16,000 spring-run Chinook that made the journey . . . about 14,500 have died, nearly all of them before spawning”)]. Meanwhile, on the Trinity River, water temperatures reach dangerous levels whenever Trinity Reservoir storage drops below 1.2 million acre-feet	

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		[Footnote 106: Ly, supra note 97]. By the end of 2022, the reservoir had been below that level for nearly 18 straight months [Footnote 107: Cal. Dep't of Water Res., Trinity Lake (CLE): Daily Data, https://cdec.water.ca.gov/dynamicapp/QueryDaily?s=CLE&d=&span=1month (last visited Jan. 18, 2024)]. The changes to stream hydrology and water quality caused by reduced flows have caused fish populations to plummet, “with many species currently on the verge of extinction.” [Footnote 108 Cal. Water Res. Control Bd., supra note 10, at 1-5]. According to the State Water Board, the best available science demonstrates that current flow conditions, if not corrected, will result in permanent impairment to the Bay-Delta’s native fish and wildlife populations as well as other public trust resources [Footnote 109: See id. (“The best available science . . . Indicates that [existing legal requirements in Revised Water Rights Decision 1641 and biological opinions addressing Delta smelt and salmonids] are insufficient to protect fish and wildlife”). Among those at greatest risk are the six native Bay-Delta species listed as threatened or endangered under the federal or California Endangered Species Acts: Delta smelt, longfin smelt, green sturgeon, Central Valley steelhead, winter-run Chinook salmon, and spring-run Chinook salmon [Footnote 110: Cal. State Water Res. Control Bd., Order Conditionally Approving a Petition for Temporary Urgency Changes to License and Permit Terms and Conditions Requiring Compliance with Delta Water Quality Objectives in Response to Drought Conditions 6 (2021), https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/tucp/docs/2021/2021060_1_swb_tuco.pdf]. For example, the San Joaquin basin experienced “an 85 percent net loss in returning adult fall-run Chinook salmon from 1985 to 2017” [Footnote 111: Cal. State Water Res. Control Bd., Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary 1 (2018), https://www.waterboards.ca.gov/plans_policies/docs/2018wqc p.pdf]. According to the State Water Board, “the magnitude of diversions out of the Sacramento, San Joaquin, and other rivers feeding into the Bay-Delta is a major factor in the ecosystem decline.” [Footnote 112: Id.].	

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		In 2023, the threat to California salmon fisheries reached new levels, with the formal closure of recreational and commercial ocean salmon fishing in all regions in California, in addition to the full-closure of California’s recreational salmon fishing season in the Klamath River Basin and Central Valley rivers [Footnote 113: Cal. Dept. of Fish and Wildlife, Recreational Ocean, In-River Salmon Fisheries in California to Close for Remainder of 2023 (May 19, 2023), https://wildlife.ca.gov/News/Archive/recreational-ocean-in-river-salmon-fisheries-in-california-to-close-forremainder-of-2023#gsc.tab=0; NOAA Fisheries, Commerce Secretary Announces Fishery Disaster Determinations for California Salmon Fisheries (Nov. 21, 2023), https://www.fisheries.noaa.gov/feature-story/commerce-secretary-announces-fisherydisaster-determinations-california-salmon]. Closures have only happened twice before in California, in 2008 and 2009 [Footnote 114: CalMatters, No California salmon: Fishery to be shut down this year (March 15, 2023), https://calmatters.org/environment/water/2023/03/california-salmon-fishery-shut-down/]. As a whole, fall Chinook salmon returns to the Sacramento River have plummeted, with 2022 totals only meeting half of the fishery’s minimum target [Footnote 115 Pacific Fishery Mgmt. Council, Review of 2022 Ocean Salmon Fisheries, Table B-1, (Feb. 2023)]. This total is the third lowest return on record for the past 41 years [Footnote 116 Id.]. Indeed, Chinook fishery populations have reached such low levels that in November 2023 the U.S. Secretary of Commerce determined that commercial fishery failures, caused by fishery resource disasters, occurred in the California Sacramento River Fall Chinook fishery and in the Klamath River Fall Chinook fishery [Footnote 117: NOAA Fisheries, supra note 113]. Delta smelt and longfin smelt have fared even worse. They are now “at such low levels that they are difficult to detect in the estuary.” [Footnote 118: Cal. State Water Res. Control Bd., supra note 110, at 7-8]. In 2022, the California Department of Fish and Wildlife detected only sixteen Delta smelt in their historical spring range in the Sacramento-San Joaquin Delta and San Francisco Estuary [Footnote 119: Cal. Dept. of Fish and Wildlife, 20-mm survey Data – Length Frequency (2022) https://apps.wildlife.ca.gov/BD20mm/Main/LengthFrequency]. It has not detected any Delta smelt in autumn-time sampling	

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		since October 2017 [Footnote 120: Cal. Dept. of Fish and Wildlife, 2022 Fall Midwater Trawl annual fish abundance and distribution summary, 2 (Dec. 29, 2022) https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentId=209101].	
458	14	Native species not currently listed as threatened or endangered are also at risk of extirpation. For instance, annual recruitment of White Sturgeon – the largest freshwater fish species in North America – has steadily decreased since the early 1980s [Footnote 121: Attachment 2, San Francisco Baykeeper, et al. (Nov. 29, 2023), Petition to State of California Game Commission to List The California White Sturgeon (<i>Acipenser transmontanus</i>) as Threatened under the California Endangered Species Act (CESA) at 5]. “High levels of water diversion combined with adverse reservoir storage operations generate extremely altered hydrographs throughout the [San Francisco Bay Estuary] watershed – where California White Sturgeon spawn and rear – impairing successful reproduction.” [Footnote 122: Id]. The population is also vulnerable to algal blooms, which have already killed large numbers of adult California White Sturgeon and impede migration through the Delta to spawning grounds in the San Joaquin basin [Footnote 123: Attachment 2]. Mounting threats to California White Sturgeon survival spurred commenter Restore the Delta, together with the San Francisco Baykeeper, The Bay Institute, and the California Sportfishing Protection Alliance, to petition for listing of the species as threatened under both the California and Federal Endangered Species Acts; the petitions are currently pending. Reliance on Trinity River diversions for Bay-Delta flows has caused similar fishery collapse on the Trinity and Klamath Rivers. During the first decade of Trinity River Division operations, diversions to the Central Valley averaged nearly 90% of the upper Trinity River basin inflow; fish populations plummeted by 60 to 80% and fish habitat by 80 to 90% [Footnote 124: U.S. Dept of Interior, supra note 79, at 5]. During the first four weeks of spawning in November 2021, high temperatures of water released from Lewiston Dam destroyed approximately 75% of Coho salmon eggs at the Trinity River Hatchery and similar proportions of protected wild Coho salmon eggs; even lower Trinity Reservoir levels this year may raise fish	After release of the draft Staff Report in September 2023, the California Fish and Game Commission received a petition (dated November 29, 2023) and made white sturgeon a candidate for CESA listing. Chapter 3, Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, and Section 7.6.2, Aquatic Biological Resources, have been revised to indicate the recent listing of white sturgeon as a candidate species under CESA and ESA. These revisions do not change any impact conclusions in Section 7.6.2. See Common Response 3.1, Fish Protection, for a discussion on the process for updates to literature in Chapters 3 and 4, Other Aquatic Ecosystem Stressors, of the Staff Report. Please also see Common Response 1.3, Revised Proposed Plan Amendments, regarding the Trinity River provision to avoid redirected impacts and Common Response 1.5, Trinity River, for further discussion of the Trinity River.

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		mortality even higher [Footnote 125: Ly, supra note 97]. On the Klamath River, runs of Chinook salmon have plunged. This past year saw only 22,000 spawning adult fall-run Chinook salmon, the fourth lowest return in 41 years [Footnote 126: No California salmon: Fishery to be shut down this year, supra note 114]. As noted above, the collapse of Klamath River Chinook salmon populations spurred the California Fish and Game Commission to enact a full closure of California's 2023 recreational salmon fishing season in the Klamath River Basin and the U.S. Secretary of Commerce to determine that a commercial fishery failure due to a fishery resources disaster occurred in the 2023 ocean and inland salmon fisheries for Klamath River Fall Chinook [Footnote 127: NOAA Fisheries, supra note 113].	
458	15	Insufficient instream flows have also facilitated the spread of harmful algal blooms throughout the Bay-Delta, which drive loss of native fish and wildlife species and impair human health and connection to water. HABs are the rapid growth of algae or cyanobacteria,[Footnote 128 U.S. Ctr. For Disease Control and Prevention, Harmful Algal Bloom (HAB)-Associated Illness,https://www.cdc.gov/habs/index.html]. Which is caused by low freshwater flows, poor water circulation, and highwater temperatures, combined with excess nutrients from agricultural runoff and wastewater as well as bright sunlight [Footnote 129 See Jayme Smith et al., California Water Boards' Framework and Strategy for Freshwater Harmful Algal Bloom Monitoring: Full Report with Appendices 1-3 (2021), https://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/1141_FHABStrategy_FullReport.pdf]. Since their emergence in the Bay-Delta in 1999, HABs have become pervasive. In 2022 alone, the State Water Board confirmed 60 HAB incidents in the Bay-Delta [Footnote 130: Cal. Delta Stewardship Council, Harmful Algal Blooms, https://viewperformance.deltacouncil.ca.gov/pm/harmful-algal-blooms (last updated Dec. 2022)]. Because the HAB count relies on voluntary public reporting, the actual number of incidents was likely much higher. By contrast, in 2023, there were fewer reported HABs incidents, likely due to the increased volume of Sacramento and San Joaquin River flows from unusually heavy rains [Footnote 131: Attachment 14, Spencer Fern, HABs Comments on the Draft Staff Report for the Phase II	Please refer to Common Response 4.1, Harmful Algal Blooms, for responses to comments regarding cyanobacteria harmful algal bloom (HAB) formation, the relationship between instream flows and HABs, the relationships between HABs and air quality and human health and State Water Board efforts to address HABs in the Delta. Refer to Staff Report Section 4.3.2, Harmful Algal Blooms, regarding Delta HABs and their potential effects on water quality, aquatic species and human health, the environmental factors influencing the formation of HABs, and a summary of the current scientific understanding, data gaps, and ongoing monitoring and research efforts to better characterize and manage Delta HABs. Also refer to Section 5.6.1.3, Proposed Changes to Monitoring, Assessment, Special Studies and Reporting, regarding monitoring HABs in the Delta, gaps in monitoring, the State Water Board's coordination efforts related to HABs monitoring and collaboration efforts on special studies to help fill gaps in knowledge about how stream flows and other environmental conditions contribute to Delta HABs to inform potential management actions by the Water Boards and others. In addition, the revised proposed Plan amendments described in the final Staff Report include provisions to address HABs, including monitoring requirements to track status and trends and efforts to identify possible HAB management and mitigation measures.

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		Update to the Bay-Delta Plan 1-2 (2023) [hereinafter "Attachment 14"] [Att 14]. HABs cause a litany of harms to aquatic ecosystems and animals [Footnote 132: U.S. Env't Prot. Agency, Cyanobacterial Harmful Algal Blooms (CyanoHABs) in Water Bodies, https://epa.gov/cyanohabs (last updated Apr. 26, 2022)]. The World Health Organization considers cyanobacterial toxins to be "among the most toxic naturally occurring compounds." [Footnote 133: Ingrid Chorus & Martin Welker, Introduction to Toxic Cyanobacteria in Water: A Guide to Their Public Health Consequences, Monitoring and Management 2 (Ingrid Chorus & Martin Welker eds., 2021)]. HABs consume oxygen and prevent light from reaching underwater plants [Footnote 134: U.S. Env't Prot. Agency, The Effects: Dead Zones and Harmful Algal Blooms, https://www.epa.gov/nutrientpollution/effects-dead-zones-and-harmful-algal-blooms (last updated Jan. 31, 2022)]. When the algal blooms die, their decomposition consumes even more dissolved oxygen [Footnote 135 Id.]. Reduced oxygen and light lead to dead zones and reduce key food sources for fish and wildlife higher up the food chain [Footnote 136 Id.]. HABs, which produce cyanotoxins, have also proven fatal to marine mammals, livestock, and pets [Footnote 137 U.S. Env't Prot. Agency, Health Effects from Cyanotoxins, https://www.epa.gov/cyanohabs/health-effectscyanotoxins (last updated July 13, 2023); see also Melissa Miller et al., Evidence for a Novel Marine Harmful Algal Bloom: Cyanotoxin (Microcystin) Transfer from Land to Sea Otters, 5 PLoSOne e12576 (2010), https://doi.org/10.1371/journal.pone.001257]. Cyanotoxins are similarly dangerous to people, who may be exposed by drinking, swimming, or bathing in affected waters, eating contaminated fish or shellfish, or inhaling aerosolized particles [Footnote 138: U.S. Ctr. For Disease Control and Prevention, supra note 14]. Symptoms of exposure to cyanotoxins can range from mild skin rashes to gastrointestinal and respiratory distress [Footnote 139: U.S. Ctr. For Disease Control and Prevention, Avoid Harmful Algae and Cyanobacteria, https://www.cdc.gov/habs/be-aware-habs.html (last updated May 25, 2023)]. High levels of exposure can have other severe health consequences, including damage to the central nervous	

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		system and liver [Footnote 140: Id.]. Recent research shows that HABs may pose air quality risks dangerous for human health. Researchers at the University of North Carolina found a link between HABs-produced volatile organic chemical compounds and the formation of secondary organic aerosols, [Footnote 141: Attachment 6, Haley E. Plaas, et al., Secondary Organic Aerosol Formation from Cyanobacterial-Derived Volatile Organic Compounds, 7 ACS Earth and Space Chemistry 1592 (2023) at p. 1807 [hereinafter “Attachment 6”]] [Att 6]. Which can contribute to the formation of the fine particular matter pollution, PM2.5 [Footnote 142: Id., at p. 1799]. Inhaling PM 2.5 can lead to premature mortality, increased hospital admissions, asthma attacks, and respiratory symptoms [Footnote 143: Cal. Air. Res. Board, Inhalable Particular Matter and Health (PM2.5 and PM10) https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health (last visited Jan. 18, 2024)]. This study is the first of its kind and demonstrates the need for further research into the respiratory effects of HABs. According to the Centers for Disease Control, “[t]here are no known antidotes to cyanotoxins or specific treatments for illnesses caused by cyanobacteria and their toxins.” [Footnote 144: U.S. Ctr. For Disease Control and Prevention, supra note 14]. For these reasons, the State Water Board and the California Office of Environmental Health Hazard Assessment (“OEHHA”) frequently warn that water bodies are dangerous to swim in because of HABs [Footnote 145: Cal. State Water Res. Control Bd., HAB Reports Map, https://mywaterquality.ca.gov/habs/where/freshwater_events.html (last updated Oct. 21, 2022)]. Such HAB-related advisories and closures have increased each year since 2015, and peak late-summer events have more than tripled in that time [Footnote 146: U.S. Env’t Prot. Agency, Tracking CyanoHABs: Mapping Harmful Algal Blooms Reported in U.S. Fresh Waters, https://storymaps.arcgis.com/stories/d4a87e6cdfd44d6ea7b97477969cb1dd (last updated Jan. 8, 2024)]. Nevertheless, warnings by local public health departments remain sporadic and often provide little notice for recreational and subsistence anglers [Footnote 147: [Att 1] Attachment 1, Exhibit E, Attachment E, Declaration of Barbara Barrigan-Parrilla 16 [hereinafter “Decl. of Barbara Barrigan-Parrilla”] (“Even when	

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		blue- green algal blooms are visibly present, it is very uncommon to see any noticing of public health hazards to warn residents and those fishing and recreating in and around these waterways of the health risks from HABs”]].	
458	16	Ongoing State efforts to expand storage and export of Delta flows threaten to continue a legacy of harm to ecosystems and communities. Despite the widely recognized ecological crisis resulting from current storage and diversion infrastructure, the State is pursuing concerted efforts to expand this infrastructure to store and export increasing amounts of Delta water. This is so despite still pending efforts to update Bay-Delta water quality standards, which, once approved, could be incompatible with the proposed infrastructure projects. Since the 1950s, the State has entertained successive efforts to build a massive new State Water Project conveyance system to siphon even more water from the northern Delta, sending it to farms and cities in the south. These proposals began with the California Water Plan, continued with a proposed Peripheral Canal in the following decades, and assumed new forms with successive proposals for an underground conveyance system in the past ten years [Footnote 148: John Hart, A Century of Delta Conveyance Plans, https://cawaterlibrary.net/a-century-of-delta-conveyance-plans/ (last visited Dec. 14, 2022)]. Its most recent iteration, the Delta Conveyance Project, would construct a single 40-mile underground tunnel with two intake facilities along the Sacramento River near the community of Hood, conveying 6,000 cfs of Sacramento River flows underneath the Delta to the Bethany Reservoir for delivery to south of Delta export facilities [Footnote 149: Cal. Dept. of Water Res., Delta Conveyance Project: Draft Environmental Impact Report 3A-6 (2022), https://cadwr.app.box.com/s/vm5r7atxcnnbnc0vvzldrhc514x4619y]. On December 21, 2023 – on the precipice of federal holidays – the California Department of Water Resources approved the Delta Conveyance Project and certified its Final Environmental Impact Report (“EIR”) [Footnote 150: Cal. Dep’t of Water Res., Department of Water Resources Approves Delta	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. Please see Staff Report Section 7.23, Cumulative Impact Analysis, Growth-Inducing Impacts, and Significant Irreversible Environmental Changes, for a discussion on potential effects from water supply projects and Common Response 7.23, Cumulative Impact Analysis, regarding the consideration and analysis of other past, present, and reasonably foreseeable probable future projects. Please also see Common Response 1.3, Revised Proposed Plan Amendments, for information on other water supply projects.

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		Conveyance Project (Dec. 21, 2023), https://water.ca.gov/News/News-Releases/2023/Dec-23/Department-of-Water-Resources-Approves-Delta-Conveyance-Project]. Before the Delta Conveyance Project can go forward, the State Water Board will need to consider whether to approve a change in point of diversion to authorize the new north Delta intake tunnels, as well as Section 401 discharge certifications and Waste Discharge Requirements to assure conformity with water quality standards. The U.S. Army Corps of Engineers also released a draft Environmental Impact Statement for the Delta Conveyance Project for public review and comment under the National Environmental Policy Act through March 16, 2023 [Footnote 151: U.S. Army Corps of Engineers, Delta Conveyance Project, https://www.spk.usace.army.mil/Missions/Regulatory/Delta-Conveyance/#:~:text=The%20public%20draft%20Environmental%20Impact,document%20have%20been%20held%20virtually (last visited Jan. 18, 2024)]. In its comments to the Army Corps, the U.S. Environmental Protection Agency (“EPA”) warned that the “operation of the proposed project has the potential to cause or contribute to long-term exceedances of regulatory water quality standards” and reaffirmed that the project is a candidate for elevation to EPA Headquarters, Office of Water, pursuant to a 1992 Memorandum of Agreement between EPA and the Department of the Army implementing section 404(q) of the Clean Water Act [Footnote 152: Attachment 10, Letter from U.S. EPA, to Michael Jewell, U.S. Army Corps of Engineers (March 16, 2023) [hereinafter “Attachment 10”] [Att 10]]. Once the State Water Board updates the Bay-Delta water quality standards – particularly if it does so in a manner that fulfills its legal obligations to protect beneficial uses and public trust resources – it may render the Delta Conveyance Project wholly incompatible with regulatory water quality standards, and render taxpayer resources and public time invested in reviewing the project obsolete. Meanwhile, the State, together with the U.S. Bureau of Reclamation, is also pushing forward a plan to build an off-shore reservoir/water storage facility – the Sites Project – to divert and store 1.5 million acre-feet of water from the northern reaches of	

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		the Sacramento River at Red Bluff. The Site Project Authority – a State entity – and the Bureau of Reclamation released a Final EIR/Environmental Impact Statement for the Sites Project in November 2023, and the Sites Project Authority approved the project on November 17, 2023 [Footnote 153: Sites, Final Environmental Impact Report Final Environmental Impact Report/Environmental Impact Statement (Final EIR/EIS) (Nov. 2023), https://sitesproject.org/final-environmental-impact-report/]. Signaling its investment in the Project regardless of environmental impacts and potential conflicts with pending water quality standard updates, the Newsom Administration certified the project for judicial streamlining under the newly adopted Senate Bill 149 [Footnote 154: Office of Governor Gavin Newsom, Governor Newsom Streamlines Major Water Storage Project (Nov. 6, 2023), https://www.gov.ca.gov/2023/11/06/governor-newsom-streamlines-major-water-storageproject/#:~:text=WHAT%20YOU%20NEED%20TO%20KNOW,3%20million%20households'%20yearly%20usage]. Meanwhile, the Sites Project Authority proceeded to apply for new appropriative water permits with the State Water Board, drawing protests from tribes, conservation organizations, fisheries associations, environmental justice advocates and others that the Project will jeopardize survival of native fish species and other public trust resources, impair tribal water rights, and obviate any meaningful consideration by the Board of protective water quality standard updates [Footnote 155: See generally Cal. Sportfishing Protection Alliance et al., Petition For Partial Assignment Of State-Filed Application A025517 To Application A025517x01, Petition For Release From Priority Of State-Filed Applications A025513, A022514, A022235, A023780, A023781, And Any Unassigned Portion Of State-Filed Application A025517 In Favor Of Application A025517x01 (Aug. 3, 2023), https://www.friendsoftheriver.org/wp-content/uploads/2023/08/CSPAFOR-et-al-Sites-Water-Rights-Protest-and-Exhibits.pdf; see generally Water Climate Trust et al., Protest of Water Rights Application & Petitions from Sites Project Authority (Aug. 31, 2023), https://acrobat.adobe.com/id/urn:aaid:sc:US:8e4f41c9-7f53-4fa5-8c63-2623a4370d67]. And it will further stress an over-appropriated system. Already, the total volume of water	

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		authorized for diversion is over five times the average unimpaired outflow of the Bay-Delta (28.5 MAF/year) [Footnote 156: Staff Report at 2-117].	
458	17	PROCEDURAL HISTORY OF BAY-DELTA WATER QUALITY STANDARD UPDATES The Porter-Cologne Act charges the State Water Board with the coordination and control of water quality in the state [Footnote 157: Cal. Wat. Code § 13140]. The Board has the authority to allocate water rights [Footnote 158: Cal. State Water Res. Control Bd., The Water Rights Process, available at https://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.html#:~:text=The%20Water%20Commission%20Act%20of,water%20Code%20provisions%20governing%20apropriation] and to create water quality control plans to protect beneficial uses of water. For nearly 50 years, the Board has assumed primary authority for establishing and maintaining water quality standards for the Bay- Delta. Despite a statutory mandate to review the standards every three years, the Board has only done so a handful of times since 1978, leading the EPA to exercise oversight authority to formulate water quality standards in response to significant lapses by the Board. In 1991, the Board first attempted to update water quality standards, but the EPA denied the Plan's revised fish and wildlife objectives because they failed to protect estuarine habitat, as well as other fish and wildlife beneficial uses [Footnote 159: Cal. State Water Res. Control Bd., Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary 5 (May 1995), https://www.epa.gov/sites/default/files/2014-12/documents/ca-sanfrancisco-bay.pdf]. The Board did not adopt the EPA's proposed standards, so the EPA promulgated its own final standards in 1995, which remain on the books today [Footnote 160: Id.]. Later that year, the Board completed a review and revision of the 1978 and 1991 Bay-Delta Plans with its adoption of the 1995 Bay-Delta Plan [Footnote 161 Id]. Since 1995, the Board has only modified the Bay-Delta Plan as a	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		whole once, in 2006 [Footnote 162 Cal. State Water Res. Control Bd., Res. 2018-0059: Adoption of Amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and Final Substitute Environmental Document 1 (2018), https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf]. These modifications were minor, affecting only the program of implementation and leaving water quality standards, including flow objectives, untouched [Footnote 163: Id.; see also Cal. State Water Res. Control Bd., supra note 70 at 18]. The Board recognized that the 2006 Plan was failing in 2008 and announced that it would review water quality standards through a two-part process. [Footnote 164 See Cal. State Water Res. Control Bd., Res. No. 20008-0056: Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary 1 (2008), https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/strategic_plan/docs/baydelta_workplan_final.pdf]. Phase I would determine the salinity and flow objectives for the lower San Joaquin River and the Stanislaus, Merced, and Tuolumne Rivers, while Phase II would determine standards to protect native fish and wildlife in the Sacramento River, the Delta, and associated tributaries [Footnote 165: See id]. Phase I was initiated in 2009, and the Board approved the Phase I amendments nearly a decade later in 2018. These amendments included new and revised flow objectives for the Lower San Joaquin River in addition to a revised south Delta salinity water quality objective [Footnote 166: Cal. State Water Res. Control Bd., supra note 111 at 3]. But the Board decided to defer development of the program of implementation for Phase I plan amendments to a future time, through “subsequent regulatory actions.” [Footnote 167: Cal. State Water Res. Control Bd., supra note 162 at 7]. As of the date of submittal of this comment, the Board is yet to release a proposed implementation plan for Phase I amendments. In October 2017, the Board released a Fact Sheet and Scientific Basis Report outlining its recommendations for a Phase II update, assuring the public that it “plan[ned] to pursue expeditious completion of the update of the Bay-Delta Plan.” [Footnote 168 Cal. State Water Res. Control Bd., Fact Sheet: Phase	

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		II Update of the Bay-Delta Plan: Inflows to the Sacramento River and Delta and Tributaries, Delta Outflows, Cold Water Habitat and Interior Delta Flows 1 (2017), https://www.waterboards.ca.gov/publications_forms/publications/factsheets/docs/201710_phaseII_fact_sheet.pdf; Cal. State Water Res. Control Bd.; supra note 10]. By 2022, the Board had taken no further public action to update the Phase II water quality standards. On May 24, 2022, the Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, Save California Salmon, Little Manila, and Restore the Delta submitted a Petition for Rulemaking to the Board, calling on it to expeditiously update Bay-Delta water quality standards, initiate tribal consultation under Assembly Bill 52, and formally designate Tribal Beneficial Uses (TBUs) for the Bay-Delta Plan [Footnote 169: Attachment 1, Exhibit E [Att 1], May 24, 2022 Petition for Rulemaking to State Water Resources Control Board [hereinafter "Exhibit E"]]. After the Board denied the Petition on June 24, 2022, [Footnote 170: Attachment 1, Exhibit F, June 24, 2022 State Water Resources Control Board Letter Denying Request for Rulemaking [hereinafter "Exhibit F"] [Att 1]. Complainant-Petitioners submitted a Request for Reconsideration on August 22 [Footnote 171: Attachment 1, Exhibit G, August 22, 2022 Request for Reconsideration of Rulemaking Decision Denying Petition to State Water Resources Control Board [hereinafter "Exhibit G"] [Att 1]. The Board again denied the Request for Reconsideration on September 21, 2022 [Footnote 172: Attachment 1, Exhibit H, September 21, 2022 State Water Res. Control. Bd. Letter Denying Request for Reconsideration [hereinafter "Exhibit H"] [Att 1]. On December 16, 2022, the Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, Save California Salmon, Little Manila, and Restore the Delta, later joined by the Buena Vista Rancheria of Me-Wuk Indians, submitted a Title VI Civil Rights Complaint and Petition for Rulemaking to Promulgate Water Quality Standards for the San Francisco Bay/Sacramento-San Joaquin Delta to the U.S. EPA. [Footnote 173: Attachment 1] [Att 1]. A range of organizations, including the NAACP Stockton Chapter, Catholic Charities Diocese for Stockton, Reinvent Stockton Foundation, Third City Coalition, and many others, wrote to the EPA in support. The EPA accepted the Title VI Complaint on August 8, 2023 and initiated an ongoing	

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		investigation into alleged discrimination by the Board, and the parties have entered into pending informal resolution agreement discussions to attempt a negotiated resolution of the Complaint's allegations [Footnote 174 U.S. Env't Protection Agency, External Civil Rights Docket, 2014 – Present, EPA File #01RNO-23-R9, https://www.epa.gov/external-civil-rights/external-civil-rights-docket-2014-present]. The Petition for Rulemaking, which asks the EPA to adopt federal water quality standards for the Bay-Delta that comply with the Clean Water Act, pursuant to its authority under section 303(c)(4)(B) of the Clean Water Act, 33 U.S.C. § 1313(c)(4)(B), remains under consideration by the EPA.	
458	18	Almost fifteen years after initiating Bay-Delta Plan review and update and six years after promising expeditious release of proposed standards, the Board released its draft Staff Report and Substitute Environmental Document for Phase II updates on September 28, 2023. The Staff Report again severs regulatory review, deferring development and circulation of “draft regulatory text [for] proposed Sacramento/Delta changes to the Bay-Delta Plan, including the program of implementation” to an unspecified future point [Footnote 175: Staff Report at 1-4].	The 2023 draft Staff Report includes a sufficiently detailed description of the proposed program of implementation for the purposes of the analysis. However, drafts of the Bay-Delta Plan were subsequently released for public review and comment in October 2024, July 2025, and December 2025. Please see Common Response 1.3, Revised Proposed Plan Amendments, for further information on the revised proposed Plan amendments.
458	19	Meanwhile, the Board has made plain that it delayed updating Phase II Bay-Delta water quality standards to accommodate private negotiation of voluntary agreements for Bay-Delta flow measures [Footnote 176 See Cal. State Water Res. Control Bd., Proposals for Voluntary Agreements to Update and Implement the Bay-Delta Plan (2022), https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/proposed_voluntary_agreements.html ; see also, e.g., Cal. State Water Res. Control Bd., supra note 162 (encouraging stakeholders to reach voluntary agreements and recording its plan to to consider voluntary agreements as part of a plan to implement amended water quality standards)]. On March 29, 2022, the California Natural Resources Agency released a Voluntary Memorandum of Understanding, signed by California state agencies, the U.S. Bureau of Reclamation, and a subset of Bay-Delta stakeholders – contractors, water districts, and water authorities – that export Bay-Delta freshwater flows [Footnote 177: Cal. Nat. Res. Agency, Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water	Chapter 13, Revised Proposed Plan Amendments, in the final Staff Report includes the finalized terms for participation in the VA pathway as an alternative implementation pathway. Please see Common Response 1.3, Revised Proposed Plan Amendments, regarding the VA process and the relationship between the State Water Board's regulatory pathway and the VA pathway, and the enforceability of the VA pathway. Please also see Common Response 3.1, Fish Protection, on the 2017 Scientific Basis Report and 2023 Scientific Basis Report Supplement. External experts conducted rigorous scientific peer review of the 2017 Scientific Basis Report and its 2023 Supplement. Each report was revised to address peer reviewer concerns as well as issues raised in public comments.

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		Quality Control Plan, and Other Related Actions (2022), https://resources.ca.gov/-/media/CNRA-Website/Files/NewsRoom/Voluntary-Agreement-Package-March-29-2022.pdf . The Memorandum calls on the State Water Board to include the Voluntary Agreements as a pathway in the Bay-Delta Plan's program of implementation for salmon and fish viability objectives [Footnote 178: Cal. Nat. Res. Agency, Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions (2022) at 2-3, https://resources.ca.gov/-/media/CNRAWebsite/Files/NewsRoom/emailitems/VoluntaryAgreementMOUTermSheet20220329_SIGNED-20220811.pdf]. The draft Staff Report includes the Voluntary Agreements (VAs) as "a possible pathway for updating and implementing the Bay-Delta Plan," even though the State is yet to release final Voluntary Agreement terms and the scientific basis report is pending peer review [Footnote 179 Staff Report at 1-3, 1-12].	
458	20	Instead of timely updating the standards to protect beneficial uses, the Board has also adopted a pattern and practice of waiving outflow restrictions, salinity objectives, and temperature controls during increasingly frequent extreme drought conditions [Footnote 180 See State Water Res. Control Bd., State Water Project and Central Valley Project Temporary Urgency Change Petition, https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/tucp/index.html (last visited Nov. 16, 2022); Cal. State Water Res. Control Bd., Order Setting Terms and Conditions for Fishery Protection and Setting a Schedule for Completion of Tasks (1990) [hereinafter "Order 90-5"], https://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/1990/wro90-05.pdf]. At the request of the California Department of Water Resources and U.S. Bureau of Reclamation, the Board issued temporary urgency change orders in 2014, 2015, 2021, 2022, and 2023 [Footnote 181: Cal. State Water Res. Control Bd., State Water Project and Central Valley Project Temporary Urgency Change Petitions, https://www.waterboards.ca.gov/drought/tucp/]. This pattern and practice contradicts the Board's own statements that water quality objective waivers are "not sustainable for fish and	In Section 7.24, Alternatives Analysis, the Staff Report describes the possibility of Temporary Urgency Change Petitions (TUCPs) related to the Projects' D-1641 requirements, excerpted below: "The State Water Board has approved multiple TUCPs in recent years related to the Projects' D-1641 requirements, including TUCPs submitted by the Projects in 2014, 2015, 2016, 2021, 2022, and 2023 (petitions were also submitted in 2008/2009). California law identifies TUCPs as limited to urgencies that cannot otherwise be avoided through the exercise of due diligence (Wat. Code § 1435, subd. (c)). However, it is foreseeable that the State Water Board may receive and could approve TUCPs during future drought and drought recovery periods." The adaptive implementation range described in Chapter 5 of the Staff Report, Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta, which would allow the State Water Board to adjust the percent of unimpaired flow required in response to changing hydrologic conditions may reduce the need for temporary urgency change petitions and orders. Additionally, the revised proposed Plan amendments described in Chapter 13, Revised Proposed Plan Amendments, identify the need for

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		wildlife and that changes to the drought planning and response process are needed to ensure that fish and wildlife are not unreasonably impacted in the future and to ensure that various species do not go extinct.” [Footnote 182: Cal. State Water Res. Control Bd., Water Rights Order 2015-0043 at 39 (Jan. 19, 2016), https://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2015/wro2015_0043.pdf].	additional actions to reduce the incidence of temporary urgency change petitions related to Bay-Delta Plan requirements as a possible topic for hearings conducted as part of the Board’s periodic review process.
458	21	THE STATE WATER BOARD’S LEGAL OBLIGATIONS TO SAFEGUARD BAYDELTA WATER QUALITY The California State Water Resources Control Board together with the nine regional water quality control boards are the principal state agencies “with primary responsibility for the coordination and control of water quality” in the state [Footnote 183: Cal. Wat. Code § 13001]. The State Water Board is directly responsible for setting, reviewing, and updating water quality standards for the Bay-Delta through the Bay-Delta Plan. Principle laws and state policies that govern the Board’s management of Bay- Delta water quality standards and flows are discussed below. California Environmental Quality Act The State Water Board’s water quality control planning is a certified regulatory program governed by the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq. [Footnote 184: Cal. Pub. Res. Code, § 21080.5, subd. (b)(2); Cal. Code Regs., tit. 23 § 3775 seq.]. CEQA is a comprehensive scheme designed to provide long-term protection to the environment [Footnote 185: Cal. Pub. Res. Code, § 21001]. In enacting CEQA, the Legislature declared that all public agencies with authority over activities that may affect the environment must give prime consideration to preventing environmental damage when carrying out their duties [Footnote 186: Pub. Res. Code, § 21000, subd. (g)]. When acting within the scope of its certified regulatory program, the Board is alleviated from CEQA’s requirements for preparing an EIR, negative declaration, and/or initial study to analyze the environmental impacts of projects it approves [Footnote 187: Pub. Res. Code, § 21080.5; Cal. Code Regs., tit. 14 §15251, subd. (g)]. Instead, the	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		State Water Board must prepare a Substitute Environmental Document (“SED”) to meet the requirements of CEQA. While an SED need not comply with certain procedural elements required for an EIR, the SED must meet CEQA’s substantive mandates [Footnote 188: See <i>Mountain Lion Foundation v. Fish and Game Comsn.</i> (1997) 16 Cal.4th 105, 113-114]. Such substantive requirements include a stable and certain description of the proposed activity, identification and analysis of potentially significant environmental impacts – including impacts to tribal cultural resources – and identification of reasonable alternatives and mitigation measures to avoid or minimize any such impacts [Footnote 189: Cal. Code Regs., tit. 23 § 3777 (a)]. Regulations governing the State Water Board’s water quality control planning also specifically require that any draft SED include, at a minimum, the following information: (A) An identification of the reasonably foreseeable methods of compliance with the project; (B) An analysis of any reasonably foreseeable significant adverse environmental impacts associated with those methods of compliance; (C) An analysis of reasonably foreseeable alternative methods of compliance that would have less significant adverse environmental impacts; and (D) An analysis of reasonably foreseeable mitigation measures that would minimize any unavoidable significant adverse environmental impacts of the reasonably foreseeable methods of compliance [Footnote 190: Cal. Code Regs., tit. 23 § 3777 (b)]. CEQA mandates comprehensive, public review of proposed projects and “broadly invokes the policy of permitting full public participation” throughout the review process [Footnote 191: <i>Joy Rd. Area Forest & Watershed Assn v. Cal. Dep’t of Forestry & Fire Prot.</i>, 142 Cal.App.4th 656, 670 (2006)]. Consistent with CEQA’s information disclosure obligations, the SED’s analysis and supporting data must be sufficient to “enable those who did not participate in its preparation to understand and to consider	

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		meaningfully the issues raised by the proposed project.” [Footnote 192: Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal., 47 Cal.3d 376, 405 (1998)]. CEQA thereby ensures “the integrity of the process of decision-making by precluding stubborn problems or serious criticism from being swept under the rug,” [Footnote 193: Kings Cnty. Farm Bureau v. City of Hanford, 221 CalApp.3d 692, 733 (1990)]. And empowers the public to “respond accordingly to action with which it disagrees.” [Footnote 194: Laurel Heights, 47 Cal.3d at 392].	
458	22	Clean Water Act and Porter-Cologne Act In addition to requirements under CEQA, the State Water Board’s amendments to the Bay-Delta Plan must be prepared in accordance the federal Clean Water Act, 33 U.S.C. section 1251 et seq., and applicable water quality planning provisions of California’s Porter- Cologne Water Quality Control Act, California Water Code section 13000 et seq. (“Porter- Cologne Act”). The Clean Water Act and Porter-Cologne Act together govern water quality standards in California. The Clean Water Act aims to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” and to attain “water quality which provides for the protection and propagation of fish, shellfish, and wildlife.” [Footnote 195: 33 U.S.C. § 1251(a), (a)(2)]. The Act requires each state to establish water quality standards for bodies of water within the states boundaries [Footnote 196: 33 U.S.C. §§ 1313(a)-c; 40 C.F.R. § 130.3]. Each state must first designate uses of a particular body of water, and then designate water quality criteria sufficient to protect the designated uses, consisting of beneficial uses and scientifically-based criteria to protect those uses [Footnote 197: 33 U.S.C. § 1313 (c)(2)(A); 40 C.F.R. §§ 131.6 (c), 131.11]. States must review the standards every three years, holding public hearings and, “as appropriate, modifying and adopting standards” to meet the Act’s objectives [Footnote 198: 33 U.S.C. § 1313]. The U.S. Environmental Protection Agency then reviews any updated standards to ensure that they meet the requirements of the Clean Water Act, including ensuring that they are adequate “to protect the public health or welfare” and “enhance the quality of water.” [Footnote 199: 33 U.S.C. §	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. See also Common Response 1.2, Water Quality Control Planning Process, for a discussion of the State Water Board’s authorities and obligations under the Porter-Cologne Water Quality Control Act and the Clean Water Act.

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		1313(c)(2)(A); see also 40 C.F.R. § 131.5]. If a standard fails to meet the applicable criteria, the EPA exercises oversight authority to approve or disapprove any new or revised state standard and oversee appropriate corrective action [Footnote 200: 33 U.S.C. § 1313(c)(3)-(4); see also 40 C.F.R. § 131.5]. As noted above, the EPA has exercised this oversight authority to shape water quality standards in the Bay-Delta when confronted with significant lapses by the Board. The Porter-Cologne Act implements the Clean Water Act in California [Footnote 201: City of Arcadia v. State Water Res. Control Bd., 135 Cal. App. 4th 1392, 1405 (2006)]. The goal of the Porter-Cologne Act is “to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.” [Footnote 202: City of Arcadia, 135 Cal. App. 4th 1392, 1405 (2006)]. Under the Porter-Cologne Act, regional water quality control boards have primary responsibility for formulating and adopting water quality control plans for their respective regions, which must conform to any state policy for water quality control. However, the State Water Board is also empowered to formulate its own water quality control plans – like the Bay-Delta Plan – which supersede any conflicting regional plans [Footnote 203: Cal. Wat. Code, § 13170; see also United States v. State Water Resources Control Bd. (1986) 182 Cal.App.3d 82, 109]. The Porter-Cologne Act designates the State Water Board as the “state water pollution control agency” for purposes of the Clean Water Act [Footnote 204: Cal. Wat. Code § 13160]. Like the Clean Water Act, the Porter-Cologne Act requires all state water quality control plans to be “periodically reviewed.” [Footnote 205: Cal. Wat. Code § 13240]. The Clean Water Act and Porter Cologne Act both mandate public participation in the review and update of water quality standards. For instance, the triennial review mandated by the Clean Water Act requires “public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards.” [Footnote 206: 33 U.S.C. § 1313 (c)(1)]. Likewise, the Porter-Cologne Act requires a noticed public hearing prior to adoption of any water quality control plan [Footnote 207: Cal. Wat. Code § 13244].	

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458	23	C. Tribal Consultation and Engagement in Water Governance In furtherance of tribal sovereignty, the Legislature adopted Assembly Bill 52 (“AB 52”) in 2014, amending CEQA to mandate government-to-government consultations on CEQA projects and formal tribal involvement in identification and protection of tribal cultural resources. Under AB 52, public agencies must consult with tribes traditionally and culturally affiliated with the geographic area affected by a project prior to project approval and “avoid damaging effects to any tribal cultural resource” whenever feasible [Footnote 208: Cal. Pub. Res. Code 21080.3.1]. “Consultation” with a California Native American tribe means “the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement.” [Footnote 209: Cal. Gov. Code § 65352.4]. Consultation shall be conducted in a way that is mutually respectful of each party’s sovereignty and shall also recognize the tribes’ potential needs for confidentiality [Footnote 210: Id.] Tribal consultation is also a core policy priority in California. In 2011, Governor Brown issued Executive Order B-10-11 requiring government-to-government consultation on policies that may affect tribal communities [Footnote 211: Exec. Order B-10-11 (2011)]. Governor Newsom extended these commitments in 2019 through Executive Order N-15-19, which formally apologized to California tribes for the “attempted destruction of tribal communities” and discriminatory laws and policies that “den[ied] the existence of tribal government powers that persisted well into the twentieth century” and reaffirmed the state policy of government-to-government consultation with tribes on matters affecting tribal communities [Footnote 212: Id.]. The Executive Order also established a Truth and Healing Council to clarify the historical record of the relationship between the State and Native communities [Footnote 213: Exec. Order N-15-19 (2019)]. In furtherance of state policy, the State Water Board has memorialized its specific commitments to meaningfully consult with affected tribes as well as communities most directly impacted by state water quality management decisions	The State Water Board has conducted extensive public and tribal related outreach and appreciates the significant input from tribes and environmental justice communities related to the Sacramento/Delta Update to the Bay-Delta Plan. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to tribal outreach and engagement, and CEQA and Assembly Bill 52 requirements. Also see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses and Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board’s efforts to engage more robustly with California Native American Tribes and integrate Traditional Ecological Knowledge/tribal knowledge into the State Water Board’s Bay-Delta Plan update and implementation processes. Please see Common Response 10.1, Economically Disadvantaged Communities, for responses to comments related to the State Water Board’s Racial Equity Resolution and Racial Equity Action Plan.

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		[Footnote 214: See State Water Bd. Anti-Racism Resolution; Gov. Code, § 65040.12(e)(2)(D) (defining “environmental justice” to include “[a]t a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions”); see generally, e.g., Pub. Resources Code, § 21080.3.1 (codifying tribal consultation requirements under CEQA)]. In 2019, the State Water Board adopted a tribal consultation policy expanding upon AB 52’s statutory minimum requirements. The intent of the policy is to foster strong, effective, and respectful government-to-government dialogues between Water Board staff and both federally and non-federally recognized California Native American tribes [Footnote 215: State Water Bd. Tribal Consultation Policy, p. 3]. Included within the Tribal Consultation Policy are guidelines and tools necessary for fostering and sustaining meaningful government-to-government relationships between the Water Boards and California Native American tribes. Best practices include consulting with one tribe at a time unless otherwise agreed upon and engaging in communication and consultation as early in the decision-making process as possible, before making any decision [Footnote 216: Id. at p. 10]. In November 2021, the State Water Board adopted a Racial Equity Resolution, which directed staff to develop a plan of action to advance racial equity within the Water Boards. The Resolution recognizes that “colonization, displacement, and genocide of Native American people in the United States have contributed to the loss of water resource and watershed management practices that supported Native American people’s traditional food sources and ways of life” and led to deprivation of inherent tribal water rights [Footnote 217: State Water Bd. Anti-Racism Resolution ¶ 7(b)]. The Resolution also connects this historic state-sponsored violence and discrimination with present-day water quality management, acknowledging that the State’s watershed management practices privilege “large-scale diversion of water for municipal, industrial, agricultural, and commercial beneficial uses” to the detriment of tribes [Footnote 218: State Water Bd. Anti-Racism Resolution ¶ 7(b)]. As one step toward repairing these historic and ongoing injustices, the State Water Board has committed to “improving communication, working relationships, and co-management practices with all	

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		California Native American tribes, including seeking input and consultation on the Water Boards' rules, regulations, policies, and programs to advance decisions and policies that better protect California's water resources." [Footnote 219: Id. At p. 8, ¶ 7].	
458	24	Public Trust and Reasonable Use Doctrines In addition to these statutory obligations, the State Water Board has common law and constitutional responsibilities to safeguard public trust resources and assure the reasonable use of water in the state. It is well-settled that the State, including when acting through the State Water Board, "has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." [Footnote 220: Nat'l Audubon Soc'y v. Superior Court, 33 Cal. 3d 419, 446 (1983); See also Cal. Water Code § 1243.5]. The range of resources protected by the public trust is expansive, encompassing tidelands, baylands, and navigable waters, as well as inland tributaries, non-navigable streams, and groundwaters hydrologically connected to other public trust resources [Footnote 221: See, e.g., S.F. Baykeeper, Inc. v. State Lands Com. (2015) 242 Cal.App.4th 202, 233; Nat'l Audubon Society, 33 Cal.3d at p. 437; Env'tl. Law Found. v. State Water Resources Control Bd. (2018) 26 Cal.App.5th 844]. So, too, public trust uses include "not just navigation, commerce, and fishing, but also the public right to hunt, bathe, and swim," as well as the preservation of lands as open space or habitats to satisfy ecological, aesthetic, or spiritual values [Footnote 222: Marks v. Whitney (1971) 6 Cal.3d 251, 259-60]]. Article X, Section 2 of the California Constitution codifies the doctrine of reasonable use, declaring that "the waste or unreasonable use or unreasonable method of use of water [is to] be prevented" and that "[t]he right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served." [Footnote 223: Cal. Const., art. X, § 2]. The Legislature has also codified the Board's	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. See also Common Response 1.2, Water Quality Control Planning Process, for further discussion of the State Water Board's consideration of the public trust doctrine throughout the water quality control planning process and the State Water Board's authority to prevent waste and unreasonable use under Article X, Section 2.

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		authority and duty to realize this constitutional principle by limiting the use and diversion of water to what is reasonable [Footnote 224: See, e.g., Cal. Wat. Code §§ 100, 275, 1050, 1831, 85023]. For instance, in furtherance of the State policy to prevent unreasonable use or diversion of water, section 275 of the Water Code requires the State Board to “take all appropriate proceedings or actions before executive, legislative, or judicial agencies to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state.” [Footnote 225: Cal. Wat. Code § 275]. The Sacramento-San Joaquin Delta Reform Act of 2009 affirmed the application of the public trust and reasonable use doctrines to management of Bay-Delta waters, declaring that “the longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the [Bay-Delta].” [Footnote 226: Cal. Wat. Code § 85023].The Act states that the waters of the Sacramento–San Joaquin River and Delta watershed shall achieve “co-equal goals” of “providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.” [Footnote 227: Cal. Wat. Code § 85020, 85054].	
458	25	Civil Rights Obligations Pursuant to, Title VI of the Civil Rights Act of 1964, California law, and its own Racial Equity Resolution, the State Water Board must assure that its actions do not exacerbate existing racial inequities in either purpose or practical effect. Title VI and the EPA’s implementing regulations prohibit entities that receive federal financial assistance from engaging in activities that subject individuals to discrimination on the basis of race, color, or national origin [Footnote 228: 42 U.S.C. § 2000d], When any part of an agency is extended federal financial assistance, all of its operations are considered a “program or activity” subject to Title VI requirements [Footnote 229 Id.], As a recipient of federal funds from the EPA, [Footnote 230: In fiscal year 2021, EPA awarded over \$252 million to the State Water Board – equaling 2.12% of EPA spending and the second highest obligated amount to grantees. See USA Spending, FY 2021 Spending by Agency, https://www.usaspending.gov/explorer/agency (last accessed	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. See also Common Response 10.1, Economically Disadvantaged Communities, for a discussion of the State Water Board’s racial equity resolution and action plan and how the State Water Board has considered environmental justice and racial equity throughout the Bay-Delta Plan amendment process. See also Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for a discussion of tribal engagement and outreach throughout the water quality control planning process as well as tribal concerns regarding the VAs. Finally, please also see Common Response 4.1, Harmful Algal

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		May 22, 2022)] the State Water Board must adhere to these Title VI requirements with respect to all of its programmatic and regulatory activities, including regulation of Bay-Delta Plan water quality. The EPA must also ensure that its funds are not used to support discrimination on the basis of “race, color, or national origin.” [Footnote 231: 42 U.S.C. § 2000d; 40 C.F.R. Part 7], The State Water Board’s failure to adhere to Title VI requirements may result in termination or refusal of federal assistance and other measures necessary to obtain compliance [Footnote 232 See 40 C.F.R. § 7.130]. Agencies violate Title VI by carrying out activities that either have discriminatory intent, or create a disparate impact on protected groups, including tribes and other communities of color [Footnote 233: 40 C.F.R. § 7.35(b)] The Delta Tribal Environmental Coalition’s Title VI civil rights complaint alleges that the State Water Board has discriminated against California tribes and communities of color in the Bay-Delta region by failing to update water quality standards and by intentionally excluding tribes and Black, Asian, and Latino residents from participating in policymaking processes. In particular, the Complaint alleges that out-of-date water quality standards have allowed a proliferation of harmful algal blooms, collapse of native fish species, and loss of native riparian vegetation. All of this results in particularly severe impacts for Bay-Delta tribes throughout the Delta and communities of color in and around the South Stockton area. By accepting the Complaint for investigation, the EPA has determined that the allegations in the Complaint are sufficient to state a claim for discrimination in violation of Title VI and the EPA’s implementing regulations and that the Complaint meets other conditions for EPA to exercise jurisdiction. In addition to these federal requirements, California state law codifies the duties of public agencies to avoid racially discriminatory activities and redress existing racial inequities in land use and planning. California Government Code section 11135 contains parallel language to Title VI, prohibiting both intentional discrimination and discriminatory impact in programs administered by state agencies, including the State Water Board [Footnote 234: Gov. Code, § 11135(a); Darensburg	Blooms, for a discussion of impacts on disadvantaged communities and tribes caused by harmful algal blooms.

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		v. Metropolitan Transportation Com. (9th Cir. 2011) 636 F.3d 511, 519] Section 11135 applies to discrimination in environmental matters [Footnote 235: See Comunidad en Accion v. Los Angeles City Council (2013) 219 Cal. App. 4th 1116, 1137 (conc. & dis. opn. of Rubin, J.)]. Through more recent legislative enactments specific to environmental justice, the Legislature has also expressed its recognition of the need to address the “inequitable distribution of environmental benefits and burdens” resulting from “generations of injustice towards people of color, low-income residents, tribal communities, and other marginalized populations in California through discriminatory environmental and land use policies.” [Footnote 236: Assem. Bill No. 1628, § 1 (2019)]. California law seeks to correct these disproportionate environmental burdens by advancing “environmental justice,” defined as the “fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” [Footnote 237: Gov. Code § 65040.12(e)]. In particular, Senate Bill 2108, approved by the Governor in September 2022, recognizes that disadvantaged communities are disproportionately impacted by water quality pollution, which exacerbates persistent inequities, and that the State Water Board’s “programs were established over a structural framework that perpetuated inequities based on race.” [Footnote 238: Assem. Bill No. 2108 §1(a)]. The law directs the State and Regional Water Quality Control Boards to “address the connection between protecting and managing water resources and systemic and institutional racism,” including by conducting outreach to impacted communities as early as possible in planning and policy processes and to make findings on environmental justice, tribal impacts, and racial equity considerations when adopting or updating any water quality control plan [Footnote 239: Assem. Bill No. 2108 §1(h)]. The State Water Board’s own Racial Equity Resolution affirms the Board’s commitment to making racial equity, diversity, inclusion, and environmental justice central to its work. The Racial Equity Resolution acknowledges the State’s role in entrenching racial inequity in water rights and water management, and it affirms the Board’s commitment to the	

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		“protection of public health and beneficial uses of waterbodies in all communities, and particularly Black, Indigenous, and people of color communities disproportionately burdened by environmental pollution.” [Footnote 240: State Water Bd. Anti-Racism Res., p. 7 ¶ 5].	
458	26	This Staff Report falls well short of CEQA's requirements for informed decision-making and environmental protection. The Staff Report's Substitute Environmental Document (SED) contains numerous deficiencies under CEQA and should be corrected and recirculated. These deficiencies include: 1) lack of a stable project description, 2) piecemeal environmental review, 3) failure to identify the project area properly, 4) failure to set forth a reasonable range of alternatives, and to adequately analyze the alternatives it does set forth, 5) failure to adequately assess the environment impact of harmful algal blooms, and 6) failure to engage in government-to-government consultation with tribes under AB 52. The range and number of deficiencies in the SED is alarming. These deficiencies threaten to undermine one of the core tenets of CEQA: public participation. The SED fails to provide the public with a sufficiently clear and complete environmental review document to enable meaningful public involvement. These deficiencies also fail to provide the Board, the ultimate decision-maker, with a comprehensible document to make informed, reasoned decisions. Though DTEC commenters intimately understand the severity of the Bay-Delta crisis and the urgent need for protective water quality standards, the legal requirement for adequate environmental review cannot be cast aside. The SED must be compliant with the law, and we ask that the SED be recirculated to ensure that it is.	The Staff Report fully satisfies the basic purposes of CEQA, which are to: (1) inform governmental decision makers and the public about the potential significant environmental effects of proposed activities; (2) identify ways that environmental damage can be avoided or significantly reduced; (3) prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible; and (4) disclose to the public why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved. (Cal. Code Regs., tit. 14, § 15002, subd. (a).) To fulfill these functions, an evaluation of the environmental effects need not be exhaustive, but the sufficiency of an environmental analysis is to be reviewed in light of what is reasonably feasible and CEQA documents need not be perfect. CEQA documents should be adequate, complete, and represent a good faith effort at full disclosure. (Id., § 15151.) Section 7.1, Introduction, Project Description, and Approach to Environmental Analysis, of the 2023 draft Staff Report provides a basic project description, including a description of the project purpose and goals, and refers to Chapter 5, Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta, for a detailed description and discussion of the proposed Plan amendments. Please refer to Common Response 7.1, General CEQA and Approach to the Analysis, regarding the adequacy of the project description and the approach to the analysis. See Common Response 1.1, General Comments, regarding the public process for the 2023 draft Staff Report. Please see Common Response 1.2, Water Quality Control Planning Process, for a response to comments alleging piecemealing of the 2018 LSJR/SD Update and Sacramento/Delta Update to the Bay-Delta Plan.

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			Section 7.24, Alternatives Analysis, of the Staff Report provides sufficient descriptions of the proposed alternatives for the purposes of the analysis. See Common Response 7.24, Alternatives Analysis, regarding the description, analysis, and range of feasible alternatives. Section 7.1.5.1, Sacramento/Delta Watershed, Plan Area, and Study Area, of the 2023 draft Staff Report adequately describes the project area. Section 7.12, Hydrology and Water Quality, of the 2023 draft Staff Report discusses HABs and possible mitigation options in adequate detail. See Common Response 4.1, Harmful Algal Blooms, regarding the evaluation of HABs. Chapter 11, Tribal Engagement, of the 2023 draft Staff Report adequately details tribal outreach and engagement. See Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, regarding tribal consultation and engagement.
458	27	The SED lacks a stable project description and thereby impairs meaningful public involvement. As a Substitute Environmental Document issued under the Board's certified regulatory program, [Footnote 241: Cal. Code Regs. Tit. 14 (« CEQA Guidelines ») § 15250] the Staff Report is subject to CEQA's broad policy goals and substantive standards intended to ensure meaningful public review of proposed agency actions and avoidance of significant adverse effects on the environment where feasible [Footnote 242: Pesticide Action Network North America v. Dept. of Pesticide Regul. ("PANNA"), 16 Cal.App.5th, 232, 241]. Among the core CEQA provisions applicable to certified regulatory program documents are those governing the contours of the CEQA "project" subject to environmental review [Footnote 243: See CEQA Guidelines § 15250; W. Placer Citizens of Ag. & Rural Env't v. County of Placer, 144 Cal.App.4th 890, 898 ("A description of the project is an indispensable element of a valid EIR.")]. Like any CEQA environmental review document, an SED must set forth "an accurate, finite, and stable description" of the proposed project [Footnote 244: Washoe Meadows Cnty. V. Dept. of Parks & Recreation, 17 Cal.App.5th 277, 287 (2017) (quoting County of Inyo v. City of Los Angeles, 71 Cal.App.3d at 192-93 (explaining	Section 7.1, Introduction, Project Description, and Approach to Environmental Analysis, of the 2023 draft Staff Report provides a basic project description, including a description of the project purpose and goals, and refers to Chapter 5, Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta, for a detailed description and discussion of the proposed Plan amendments. Please refer to Common Response 7.1, General CEQA and Approach to the Analysis, regarding the adequacy of the project description and the approach to the analysis. See Common Response 1.1, General Comments, regarding the public process for the 2023 draft Staff Report. Section 7.24, Alternatives Analysis, of the Staff Report describes the alternatives. See Common Response 7.24, Alternatives Analysis, regarding the description and analysis of alternatives. Chapter 9, Proposed Voluntary Agreements, of the 2023 draft Staff Report adequately discussed the Voluntary Agreements as they were proposed at that time. The operative provisions of the Voluntary Agreements are incorporated in the VA pathway that is analyzed in Chapter 13, Revised Proposed Plan Amendments. Please see Chapter 13 and Common Response 1.3, Revised Proposed Plan Amendments, regarding the VA pathway.

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		that an “accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR”)]]. This provision stems from one of the most significant parts of CEQA – meaningful public participation in environmental review of proposed agency action [Footnote 245: See CEQA Guidelines § 15201; Washoe Meadows v. Dept. of Parks & Recreation at 285 (“Informed public participation is essential to environmental review under CEQA.”)]. The public and decision-makers must understand what a proposed project will actually entail to enable intelligent public participation and informed decision-making. By contrast, when a CEQA document “contains unstable or shifting descriptions of the project, meaningful public participation is stultified.” [Footnote 246: San Joaquin Raptor Rescue Ctr. V. County of Merced, 149 Cal.App.4th 645, 656 (2007)]. Courts have long recognized that project descriptions that fail to set out the nature and scope of a project are “fundamentally inadequate and misleading.” [Footnote 247: Washoe Meadows at 287 (quoting Citizens for a Sustainable Treasure Island v. City and County of San Francisco (“Treasure Island”) 227 Cal.App.4th 1036, 1052 (2014))]. This problem arises when a CEQA document sets forth inconsistent and shifting descriptions of the project being considered [Footnote 248: Id. (discussing County of Inyo, 71 Cal.App.3d 185)]. It also arises when a CEQA document presents a range of project alternatives, deferring identification of the actual project until the close of public comment [Footnote 249: See generally Washoe Meadows, 17 Cal.App.5th 217]. “A description of a broad range of possible projects, rather than a preferred or actual project, presents the public with a moving target and requires the commenter to offer input on a wide range of alternatives that may not be in any way germane to the project ultimately approved.” [Footnote 250: Washoe Meadows at 288]. Absent clear identification of the actual, preferred project, the public and decision-makers cannot weigh the costs and benefits of a proposed project with its alternatives, adequately assess mitigation measures, or properly assess a no project alternative [Footnote 251: Id. At 287 (quoting Treasure Island at p. 1052)]. The Court of Appeal’s 2017 decision in Washoe Meadows	The revised proposed Plan amendments would require that any adjustment to the numeric inflow requirement would be subject to public review and comment prior to a decision by the Executive Director of the State Water Board, in conjunction with the annual and periodic review processes. Any decision would also be informed by best available scientific information. The revised proposed Plan amendments also include provisions for minimum human health and safety water supplies.

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		Community v. Department of Parks & Recreation is instructive. There, the agency prepared a draft EIR that set forth five different alternatives for addressing the Upper Truckee River's contribution to discharge of sediment into Lake Tahoe, indicating that "following a period for public comment, one of the alternatives, or a variation thereof, would be selected as the project." [Footnote 252: Washoe Meadows at 283]. The court held that a CEQA document that "states the eventual proposed project will be somewhere in a 'reasonable range of alternatives' is not describing a stable proposed project." Instead, the EIR "functioned more as a scoping plan under CEQA Guidelines section 15083, which should be formulated prior to environmental review to identify the range of actions, alternatives, and effects to be analyzed. The Staff Report suffers from precisely the project description errors that the Court of Appeal identified in Washoe Meadows. Rather than identify a clear, stable Project, the staff reports sets forth a range of five different options, expressly deferring selection of an alternative as the actual going-forward project until the close of public comment. Indeed, the Staff Report is explicit that it "does not identify the preferred proposal for moving forward with the update to the Bay- Delta Plan, and all alternatives and variations described in this draft Staff Report are available for consideration and adoption during the public planning process." [Footnote 253: Staff Report at 1-20]. This disclaimer is reiterated throughout the Staff Report [Footnote 254: Staff Report at 5-1; id. At 7-2-2; id. At 7-2-3]. Compounding the instability of the project description, the Staff Report has put forth highly dissimilar alternatives, which would constitute dramatically different projects. Under Washoe Meadows, presentation of "dramatically different projects" for public review and comment in a CEQA document is prejudicial error, as it "presents an obstacle to informed public participation." [Footnote 255: Washoe Meadows at 288] Likewise, here, the Staff Report sets forth five alternatives, three of which are flow-based. These alternatives differ greatly in both method and goal. The Vas includes a combination of proposed flow and non-flow habitat restoration measures, and are proposed for an 8-year timeframe, whereas the other standards	

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		would persist until expressly amended [Footnote 256: Staff Report at 9-4; Footnote 257: Id. At 9-7]. The Vas also set forth their own narrative salmon objective, which aims “to contribute” to the salmon doubling goal by 2050, and a vague narrative viability objective, which aims to maintain water quality conditions to support and maintain viable native fish populations [Footnote 258: Id]. By contrast, the flow based alternatives – which include the proposed plan amendments, “low flow,” and “high flow” alternatives – employ different flow-based regimes to protect beneficial uses [Footnote 259: Id. At 5-2]. These alternatives differ in their goals and method, as the Vas primarily rely on habitat restoration without inflow or outflow assurances, while the flow-based alternatives set varying numeric objectives for flows. Even among the different flow-based alternatives, there are vast and underexplained differences. For instance, the proposed plan amendments contain an adaptive range, which is missing from the low and high flow alternatives. And taking only the proposed plan amendments, the Board would allow unimpaired flows to vary between 45 and 65% – a vast 20% range significant enough to create its own project instability, particularly as the Board has provided no explanation for how the range will be managed. With no clearly identified proposed project, the presentation of these very dissimilar, and internally unstable, alternatives sows confusion and presents the public “with a moving target,” impairing public participation and decision-making [Footnote 260: Washoe Meadows at 288] The Board may believe that it is sufficient under CEQA that the SED review and solicit public comment on each of the alternatives. But the court in Washoe Meadows laid this argument to rest, explaining that “the problem with an agency’s failure to propose a stable project is not confined to ‘the informative quality of the EIR’s environmental forecasts.’” [Footnote 261: Id.] Without a clear project description, the public cannot focus its attention on the Board’s actual proposal nor compare the environmental effects of the alternatives with the intended Board action. As a consequence, the SED, as in Washoe Meadows, is best understood as a much delayed initial scoping plan that formulates possible proposals for Board	

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		action: the Board will need to circulate an actual draft SED for public review and comment once it settles on its proposed project.	
458	28	The Staff Report segments environmental review by deferring review of multiple integral parts of the Bay-Delta Plan update. In addition to lacking a stable project description, the Staff Report lacks a complete one. Under CEQA, a “project” means the “whole of an action.” [Footnote 262: CEQA Guidelines § 15378(a)]. This “broad interpretation of ‘project’ . . . Is designed to provide the fullest possible protection of the environment within the reasonable scope of CEQA’ statutory language.” [Footnote 263: POET, LLC v. State Air Res. Bd., 12 Cal.App.5th 52, 73 (2017)]. Consequently, CEQA prohibits “‘piecemeal’ review of the significant environmental impacts of a project.” [Footnote 264: Banning Ranch Conservancy v. City of Newport Beach, 211 Cal.App.4th 1209, 1222 (2012) (quoting Berkeley Keep Jets Over the Bay Com. V. Board of Port Cmrs. 91 Cal.App.4th 1344, 1358 (2001))]. That is, an agency cannot “[divvy] up a project into smaller pieces to avoid considering the environmental impacts of the entire project.” [Footnote 265: Orinda Assn. v. Bd. Of Supervisors, 182 Cal.App.3d 1145, 1171 (1986) (quoting Topanga Beach Renters Assn. v. Department of General Services 58 Cal.App.3d 188, 195–196 (1976))]. Yet the Board has done just this by piecemealing environmental review of the Bay- Delta Plan update. Most significantly, the Board has unlawfully piecemealed review of the Phase II standards by deferring development of regulatory text that includes the program of implementation to some untold future time [Footnote 266: Staff Report at 1-2 (“However, the specific changes to the Bay-Delta Plan, and specifically the program of implementation, have not been developed yet”)]. The program of implementation – a required component of any water quality control plan – is necessary “to achieve [flow, salinity, and water quality] objectives,” [Footnote 267: Staff Report at 1-1] and will set forth the actual regulatory changes to the Bay-Delta Plan [Footnote 268: Id., at 1-2]. Yet it was not included in the SED. The water quality standards and program of implementation are so interrelated that separating out the program of implementation	Section 7.1, Introduction, Project Description, and Approach to Environmental Analysis, of the 2023 draft Staff Report provides a basic project description, including a description of the project purpose and goals, and refers to Chapter 5, Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta, for a detailed description and discussion of the proposed Plan amendments. Please see Common Response 7.1, General CEQA and Approach to the Analysis, regarding the adequacy of the project description and the scope of the project described and analyzed. See Chapter 13 and Common Response 1.3, Revised Proposed Plan Amendments, for information on the project description regarding the program of implementation. See Common Response 1.1, General Comments, regarding the public process for the 2023 draft Staff Report.

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		prevents the public from understanding the actual nature of the water quality standard updates and their likely environmental consequences. Pursuant to well-established CEQA substantive requirements, the water quality standards and program of implementation are clearly a single project for purposes of CEQA, the environmental impacts of which must be disclosed and reviewed in a single document. Under CEQA, a project “refers to the underlying activity which may be subject to approval and not the approval of that activity.” [Footnote 269: POET, LLC at 73 (quoting California Unions for Reliable Energy v. Mojave Desert Air Quality Management Dist. 178 Cal.App.4th 1225, 1238 (2009))]. Multiple activities are part of the “whole of an action” and must be reviewed in a single CEQA document when the activities are “related to each other.” [Footnote 270: POET, LLC at 74]. A sufficient relationship exists when activities further a common objective or when they are “related in (1) time, (2) physical location and (3) the entity undertaking the action.” [Footnote 271: POET, LLC at 74]. The Court of Appeal’s decision in POET, LLC v. State Air Resources Bd. Is instructive. There plaintiffs contended that two sets of Low Carbon Fuel Standard regulations adopted several years apart constituted a single project for purposes of CEQA, which had been unlawfully severed by subjecting them to separate environmental reviews. The Court of Appeals agreed, holding that these two sets of regulations were sufficiently related to each other to constitute a single CEQA project because they shared “the same overall objective . . . [and] were adopted by the same entity ... for the purpose of achieving that objective.” In addition, the regulations cover activity in the same geographical area – California. They address the same subject matter,” and they have a temporal connection “as is demonstrated by the fact the 2015 LCFS regulations replaced the original LCFS regulations, making them sequential.” [Footnote 272: POET, LLC at 75]. Likewise, the Phase II water quality standards and their program of implementation have the same legal objective – to assure protection of beneficial uses in the Bay-Delta. They are both	

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		undertaken by the Board to accomplish that unified objective; they apply to the same geographic area; and they are temporally connected, as the Board has promised that the program of implementation will sequentially follow the current SED. Indeed, the water quality standards and the program of implementation that puts them into effect together comprise the Phase II Bay-Delta Plan update. Under POET, it is evident that the SED and program of implementation are so related as to constitute the same CEQA project. In piecemealing their environmental review, the Board perpetuates further delay, confusion, and uncertainty. Without a complete document that explains what the Bay-Delta Plan's project actually is, the public is unable to understand the complete package they are being asked to comment on and its aggregate environmental effects, and they are denied the opportunity to understand whether any of the alternatives will actually achieve the objectives of the Bay-Delta Plan. Indeed, Chair Esquivel himself stated as much at the December 11, 2023 Phase II public hearing, during which he informed the public that because the Staff Report lacks a program of implementation, the SED provides only a "crude[]" analysis of environmental impacts, many of which will ultimately "fall potentially outside the range of impacts [the Board has] identified as part of the draft staff report." [Footnote 273: See State Water Res. Control Bd., Public Hearing: Sacramento Delta Draft Staff Report at 4:32:18 (Dec. 11, 2023)]. He thus cautioned that "[f]olks are trying to put the cart before the horse a bit in what you're expecting from this document." [Footnote 274: Id. At 4:32:50]. But this is precisely the problem: CEQA requires the Board to provide the public with a realistic account of reasonably foreseeable impacts through the SED and to make its decisions based on an informed and holistic account of the entire project's anticipated effects. Without the disclosure and analysis of the program of implementation that will explain how standards are translated into actual modifications in flows, the Board is making its decisions in the dark, and the public cannot know that the Board "has, in fact, analyzed and considered the ecological implications of its action." [Footnote 275: Joy Rd., 142 Cal.App.4th at 670].	

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458	29	The SED fails to properly identify and analyze the project area. Excluding the Trinity River from the SED's project area violates CEQA, as the Trinity River is both legally classified as part of the Bay-Delta and is relied upon for inflows that all Project alternatives depend upon. CEQA requires that a lead agency accurately identify the project area and "discuss significant impacts that the proposed project will cause in the area that is affected by the project." [Footnote 276: Bakersfield Citizens for Local Control v. City of Bakersfield, 125 Cal.App.4th 1184, 1216 (2004) (citing CEQA Guidelines § 1525.(a)); see CEQA Guidelines § 15124(a) (The lead agency must identify "the precise location and boundaries of the proposed project [which] shall be shown on a detailed map, preferably topographic."); CEQA Guidelines § 16126.2(a) (requiring consideration of changes of the project to "the existing physical conditions in the affected area," including discussion of "relevant specifics of the area, physical changes, alteration to ecological systems . . . And other aspects of the resource base such as water, historical resources, scenic quality, and public services."); CEQA Guidelines § 15125(c) ("The EIR must demonstrate that the significant impacts of the proposed project were adequately investigate and discussed and it must permit the significant effects of the project to be considered in the full environmental context")]. "If the description of the environmental setting is inaccurate, incomplete or misleading, the EIR does not comply with CEQA." [Footnote 277: Cleveland Nat. Forest Found. V. San Diego Ass'n of Govts., 17 Cal.App.5th 413, 439 (2017); see also San Joaquin Raptor/Wildlife Rescue Ctr. V. County of Stanislaus, 27 Cal.App.4th 713, 729 (1994) ("Without accurate and complete information pertaining to the setting of the project and surrounding uses, it cannot be that the FEIR adequately investigate and discussed the environmental impacts of the development project")]. Failure to disclose and analyze the entire affected project area in the environmental analysis misleads the public by understating the scope and potential gravity of environmental effects [Footnote 278: See King Cnty. Farm Bureau v. City of Hanford, 221 Cal.App.3d 692, 718, 721 (A "project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant."); San Joaquin Raptor, 27 Cal.App.4th at 729 (inadequate description of environmental setting "renders the	Under the Plan amendments, the new flow requirements would not apply to the Trinity River. However, flows from the Trinity River to the Bay-Delta watershed are incorporated into SacWAM and therefore are a part of the Staff Report's analyses. Please see Common Response 1.5, Trinity River, for more information.

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		identification of environmental impacts legally inadequate and precludes a determination that substantial evidence supports the Board’s finding that the environmental impacts on wildlife and vegetation have been mitigated to insignificance”)]. As a consequence, the agency cannot define the area “so narrowly. . . That it necessarily eliminates a portion of the affected environmental setting.” [Footnote 279: Bakersfield Citizens, 124 Cal.App.4th at 1216]. The SED’s exclusion of the Trinity River and the Klamath River Basin from the Project area has done just that. Through the Trinity River Division, the Central Valley Project reengineered the hydrology of the Trinity River – which naturally flows into the Klamath River before emptying into the Pacific Ocean – by modifying it to feed the Sacramento River through Whiskeytown Reservoir, a formerly distinct watershed. Recognizing that the Trinity River is now functionally part of the Bay-Delta and a major source of its flows, the State legally reclassified the Trinity River as part of the “Delta tributary watershed.” [Footnote 280: Cal. Wat. Code, § 78647.4(b)]. Indeed, the Staff Report relies on the Trinity River for Delta inflows under all Project alternatives, [Footnote 281: Staff Report at 7.2-2 (“Inflows from the Sacramento River, its tributaries, and Delta eastside tributaries (the Cosumnes, Mokelumne, and Calaveras Rivers) that would require 55 percent unimpaired flow, with an adaptive range from 45 percent to 65 percent unimpaired flow”)] and the Report is explicit that satisfying any of the instream flow regimes requires import of Trinity River water into the Sacramento [Footnote 282: Id. At 2-20 (“The Sacramento River also receives imports from the Trinity River system through operations of the [Central Valley Project].”); p. 2-41 (“Trinity River flows are imported to the Sacramento River watershed through the Clear Creek Tunnel to Whiskeytown Reservoir.”), (62 percent of the volume of water in the Whiskeytown Reservoir is imported from the Trinity River:)]. The SED’s exclusion of the Trinity River from the Project area makes the “description of the environmental setting of the project site and surrounding area . . . Inaccurate, incomplete and misleading” and also “renders the identification of environmental impacts legally inadequate.” [Footnote 283: San	

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		Joaquin Raptor, 27 Cal.App.4th at 729]. As a practical and legal component of the Bay-Delta watershed, the Trinity River must be included in the environmental analysis to assure consideration of all reasonably foreseeably environmental effects. The Board's failure to include the Trinity River in its analysis carries enormous consequence for Klamath River Basin tribes, as the Report omits consideration of the alternatives' potential to impair reserved rights and tribal cultural resources of Klamath River Basin tribes [Footnote 284: See Arnett v. Five Gill Nets 48 Cal.App.3d 454, 461 (1975) (recognizing that Indians on the Klamath River Reservations "had fishing rights derived from Congress" and that "State qualifications of those traditional rights was precluded by force of the Supremacy Clause"); see also Baley v. United States 942 F.3d 1312, 1323 (Fed. Cir. 2019) ("Federal and California state courts have recognized that the right of the Yurok and Hoopa Valley Tribes to take fish from the Klamath River for ceremonial, subsistence, and commercial purposes was reserved when the Hoopa Valley reservation was created")] as well as Tribal Beneficial Uses protected by the North Coast Basin Plan [Footnote 285: Cal. Reg'l Water Quality Control Bd., North Coast Region, Basin Plan (Chapter 2) 2-3 (2018), (Defines Native American Culture (CUL) as a beneficial use. "Uses of water that support the cultural and/or traditional rights of indigenous people such as subsistence fishing and shellfish gathering, basket weaving and jewelry material collection, navigation to traditional ceremonial locations, and ceremonial uses") https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/180710/BPChapter2BeneficialUses.pdf].	
458	30	The SED fails to set forth a reasonable range of alternatives or adequately analyze the alternatives it does consider. The range of alternatives considered by the Board fails the rule of reason. The alternatives considered by the Staff Report do not constitute a reasonable range of alternatives. The "consideration of alternatives is one of the hallmarks of CEQA analysis." [Footnote 286: PANNA at 603-04; see Pub. Res. Code § 21001(g) (declaring it the policy of the state to "[r]equire government agencies . . . To consider alternatives to proposed action affecting the environment")]. SEDs, like any environmental analysis	Please see Common Response 7.24, Alternatives Analysis, regarding the analysis and range of feasible alternatives. .

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		governed by CEQA, must set forth a “range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project,” and it must “evaluate the comparative merits of the alternatives.” [Footnote 287: CEQA Guidelines § 15126.6]. Under certified regulatory programs, “the public agency bears the burden of affirmatively demonstrating that, notwithstanding a project’s impact on the environment, the agency’s approval of the proposed project followed meaningful consideration of alternatives.” [Footnote 288: PANNA at 603 (quoting Mountain Lion, 16 Cal.4th at 134)]. The required range of potentially feasible alternatives is governed by a “rule of reason” and must be sufficient to “foster informed decision-making and public participation.” [Footnote 289: CEQA Guidelines § 15126.6(a).]. The SED’s alternatives analysis falls well short of these requirements. The SED considers three flow-based alternatives. The low flow alternative is described as a “new numeric inflow objective for the Sacramento/Delta tributaries [that] would require between 35 and 45 percent unimpaired flow.” [Footnote 290: Staff Report at 7.2.-6]. The high flow alternative is described as a “new numeric inflow objective for the Sacramento/Delta tributaries [that] would require between 65 and 75 percent unimpaired flow.” [Footnote 291: Staff Report at 7.2.-7]. Unlike the proposed plan amendments, which set an inflow objective at 55 percent with an adaptive range of 45 to 65 percent, neither the low or high flow alternatives sets forth an specific inflow objective or an adaptive range. [Footnote 292: Staff Report at 7.2-6 to 7.2-7] And the Staff Report contains no explanation at all for if or how flows will be managed in the ten percent range set forth in the low and high flow alternatives to maximize benefits or avoid impacts. The alternatives fail to provide the Board with a feasible alternative that would be environmentally protective; as a consequence, the SED does not “produce information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned.” [Footnote 293: Citizens of Goleta Valley v. Board of Supervisors at 1178-1179 (quoting San Bernardino Valley Audubon Society, Inc. v. County of San	

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		Bernardino 155 Cal.App.3d 738 (1984)]. The SED dismisses the low flow alternative out of hand because it self-evidently fails to protect beneficial uses [Footnote 294: Staff Report at 7.2-7]. The proposed plan amendment alternative, which allows for flows as low as 45 percent of unimpaired flow, does not follow the Board's own science that says flows of 65 percent or higher are generally needed to protect public trust resources, and it has far too broad an adaptive range to create a stable and certain project description. The high flow alternative, though closer to levels necessary to protect public trust resources, lacks an adaptive range at all that would be needed to avoid impacts to cold water pool and carryover storage in upstream reservoirs, rendering the high flow alternative a meaningless strawman [Footnote 295: See id. At 7.2-8 ("Although the required Delta inflows would be higher under the High Flow Alternative compared to the proposed Plan amendments and would provide ecosystem benefits, the beneficial environmental effects under the High Flow Alternative would be limited due to significant challenges in maintaining suitable water temperatures for cold water aquatic species and carryover storage for environmental and water supply purposes")]. The Board provides no explanation at all for the inflow numbers around which the various alternatives were organized, or for its decision not to consider any alternatives between the proposed plan amendment and the high flow alternatives. Meanwhile, the Vas, are only conceptual and lack a basis in science. To meet CEQA's requirement to set forth a reasonable range of feasible alternatives that could avoid potential adverse effects, the Board should consider – and adopt – an alternative that would require 65 percent unimpaired flow but that also possesses an adaptive range that could allow flows as low as 60 percent if necessary to avoid adverse impacts to cold water species and carryover storage in exceptionally hot or dry years. The evidence, including the Staff Report's own analysis, shows that the Bay-Delta ecosystem thrives as flows increase [Footnote 296: Staff Report at p. 3-110 ("Generally, the higher the flows up to 100 percent of unimpaired flow (and higher in summer and fall) and the lower the X2 value, the greater the expected benefits are for native species and the ecosystem, provided that adequate supplies are maintained for cold water and flows at other	

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		times”)]. One example of a species that thrives with flows of 65 percent and higher is the Chinook salmon. Table 3.14-4 in the Staff Report shows that the frequency of meeting a target of 20,000 cubic feet per second (“cfs”) at Rio Vista, which is needed to support the outmigration of juvenile Chinook salmon, increases as the inflow objective increases [Footnote 297: Id. At 3-114]. These results align with the Board’s 2010 report, Development of Flow Criteria for the Sacramento- San Joaquin Delta Ecosystem (“Public Trust Flows Report”), which recommended 75 percent unimpaired Sacramento River inflows to increase juvenile salmon outmigration survival for fall-run Chinook salmon [Footnote 298: Cal. State Water Res. Control Bd., Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem 114, 132 (Aug. 3, 2010), https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf]. This same report recommends 75 percent of unimpaired Delta outflow to promote increased abundance and improved productivity for longfin smelt and other estuarine species [Footnote 299: Id. At 99. Table 1. Frequency of each flow scenario meeting the 20,000 cfs target at Rio Vista, the Delta spawning habitat for Chinook salmon]. Likewise, the Staff Report’s outflow analysis shows that the necessary Delta outflows required for supporting beneficial uses are met more frequently as flow scenarios increase [Footnote 300: Staff Report at 3-118, Table 3.14-6]. And its analysis of the percent increases of population abundance indices for four native Bay-Delta species [Footnote 301: Id. At 3-122 to 3-123, Table 3.14-7] explains that “more substantial benefits [would be expected] from 65 and 75 percent scenarios when compared with current conditions” while only “[m]odest benefits would be expected from the 55 scenario.” [Footnote 302: Staff Report at 3-121]. Without an alternative with a 65 percent inflow objective with a reasonable adaptive range, the SED cannot be said to be compliant with the governing “rule of reason.” While an SED need not propose alternatives that are “remote or speculative,”	

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		[Footnote 303: CEQA Guidelines § 15126.6(f)(3), § 15145] proposing an alternative that advances an inflow objective of 65 percent with a narrow adaptive range is neither. Missing such an alternative, the SED fails to identify environmentally preferable options or identify measures for the public and decisionmakers that could protect public trust resources and avoid adverse environmental impacts.	
458	31	[Exhibit 1: Table 3.14-4, Frequency of Meeting Rio Vista Targets for Chinook Salmon Species, from the 2023 Draft Staff Report]	This exhibit was included in the comment letter. The exhibit does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing exhibits.
458	32	The alternatives analysis misses the requisite level of detail required for meaningful decision-making and public participation. The Staff Report also fails to advance a meaningful discussion of the alternatives it does set forth. The SED must describe the alternatives in sufficient detail to allow a meaningful “comparative analysis.” [Footnote 304: CEQA Portal Topic Paper, Alternatives, p. 7, “Under CEQA, alternatives do not need to be described or analyzed at the same level of detail as the proposed project (CEQA Guidelines Section 15126.6(d)). However, they need to be described in enough detail to allow a comparative analysis of the alternatives against the proposed project (see Residents Ad Hoc Stadium Committee v. Board of Trustees (1979).”]. However, the alternatives analysis fails to provide the public and decisionmakers with the level of detail needed to comprehend and compare the alternatives. These failures are particularly evident for the high flow alternative. As discussed above, Staff characterize the high flow alternative as having tradeoffs for upstream water temperature and cold water storage, but the Staff Report does not provide the requisite level of detail to allow the public to comprehend the significance of these concerns. For example, as shown in Table 6.3-10 [Exhibit 2], which describes average losses in watershed storage across flow scenario, losses are most pronounced at a 75 percent unimpaired flow scenario. But the numbers reflect relatively small losses in storage overall, especially comparing 65 to 55 percent scenarios. Neither the Staff Report’s hydrology	The “significant challenges” in maintaining carryover storage do not relate to a specific threshold, but rather the concept that as percent of unimpaired flow increases, the anticipated carryover storage decreases compared to baseline levels, as demonstrated in Tables 6.3-8 and 6.3-9 of the draft Staff Report. Similarly, carryover storage levels are not “compromised” at one particular level, but are continuously compromised by greater degrees as they decrease with increased percent unimpaired flow. These impacts are compounded by the effect increased unimpaired flow has on water supply; relatively small losses in carryover storage may be especially critical when supply is also lower. Please see Common Response 7.24, Alternatives Analysis, regarding the reasonable range of alternatives presented in the 2023 draft Staff Report, the evaluation of the alternatives, and for a discussion of the Environmentally Superior Alternative. Also see Common Response 7.1, General CEQA and Approach to the Analysis, regarding comparison of impacts under the flow scenarios and Voluntary Agreements.

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		chapter nor its alternatives analysis explains what level of loss creates “significant challenges” for maintaining carryover storage [Footnote 305: Staff Report at 7.2-8.]. These missing details confuse and obscure the real environmental benefits and costs for the high flow alternative, making it difficult for the public to understand whether so-called “high flows” would actually compromise carryover storage. Other aspects of the alternative’s analysis create further confusion. For example, the VA alternative is never compared with any of the flow alternatives. This comparison is critical, considering that the Vas and flow-based alternatives vary greatly in goal and method. Another area of confusion is that the low and high flow alternatives do not have a target inflow objective or adaptive range, but the proposed plan amendments do. The differences across alternatives make it difficult for the public to compare alternatives and their environmental consequences. The Staff Report must be revised to set forth an actually reasonable range of alternatives, and fully disclose the environmental benefits and costs of each, to provide the public and decisionmakers sufficient information to understand whether a feasible and environmentally superior alternative to the proposed plan amendments exists.	
458	33	[Exhibit 2: Table 6.3-10, Average End-of-September Watershed Total Storage for Baseline (thousand acre-feet) and Percent Difference from Baseline for the Flow Scenarios, from the 2023 Draft Staff Report]	This exhibit was included in the comment letter. The exhibit does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing exhibits.
458	34	The SED fails to adequately assess the severity of Harmful Algal Blooms and consequently fails to propose sufficient mitigation strategies for HABs. The draft SED does not adequately assess HABs as a significant environmental impact and fails to present adequate mitigation strategies for HABs. An SED must consider significant environmental impacts and measures to mitigate them to insignificance [Footnote 306: Cal. Code. Regs. Tit. 23 § 3777(b)(2)]. Mitigation includes minimizing the degree or magnitude of the impact [Footnote 307: CEQA Guidelines § 15370(b)]. The Staff Report largely ignores the primary driver of HABs – low flows. By ignoring the correlation of flows and HABs,	Many environmental factors affect the occurrence of cyanobacterial harmful algal blooms (HABs) in the Delta. HABs are affected both by tidal flows and net flows. Tidal back-and-forth flows would not be affected by the flow scenarios, but net flow in some Delta channels could be affected by the flow scenarios. Net flow is important because it controls water residence time and can move cyanobacteria out of an area. Possible effects associated with changes in net flow are discussed in the Staff Report. Environmental effects of a project are assessed by comparing baseline conditions to project conditions. If baseline environmental conditions are poor, but the project would have no effect, there would be no impact.

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		the mitigation measures and alternatives fail to address the HABs problem. While the Staff Report does discuss the impact of HABs on reservoir storage and exports, [Footnote 308: Staff Report, at 7.12.1-29 (“Low water levels at reservoirs could result in higher water temperatures at shallow locations in reservoirs, particularly in summer months, which could help drive algal bloom formation. (USEPA 2013).”); 7.12.1-92 (“lower reservoir storage could result in increased algal growth in export reservoirs, which could also affect drinking water quality”)] the Report includes no analysis of how low flows, like the flows proposed by most of the Report’s alternatives, will exacerbate HABs. As acknowledged in the Staff Report, “low streamflow may be the most important factor for maintaining HABs, at least for Microcystis.” [Footnote 309: Id. At 7.12.1-29; See also 7.12.1.38 (“Several studies indicate that low flows through the Delta are associated with increased HAB formation. HABs are more frequent and more severe in dry years”)]. The effect of flow on HABs is well-documented and helps explain the correlation between the increased Sacramento River flows and less reported HABs incidents this past year [Footnote 310: Attachment 14, Spencer Fern, HABs Comments on the Draft Staff Report for the Phase II Update to the Bay-Delta Plan p. 1-2 (2023) [hereinafter “Attachment 14”] [Att 14]]. Despite Staff’s acknowledgement of the clear correlation between flows and HABs, the Report contains no discussion of how increasing flows can be utilized as a mitigation strategy to manage HABs. This oversight also leads the Board to prioritize water rights holders over Bay-Delta communities and tribes [Footnote 311 Id.]. As discussed above, HABs harm the health and welfare of communities that reside nearby and depend on the waterways, they impair tribal ceremony and cultural practice, they impair safe recreation, and they alienate Delta tribes and communities, in addition to their adverse impacts on native fish and wildlife. The Staff Report should have examined effects of the various flow scenarios (as well as the Vas) on HABs throughout the Bay-Delta, as well as the resulting implications for Delta environmental justice communities and tribes.	The Staff Report Section 7.12.1.1, Environmental Setting (specifically the “Delta” subsection), discusses HABs within the context of the Delta and the environmental factors that influence bloom formation. In addition, Section 7.12.1.3, Impact Analysis (“Delta” subsection), discusses the potential impacts of changes in Delta flows on HABs in the Delta. As described in the section titled “Nutrients, Organic Material, Harmful Algal Blooms, Invasive Aquatic Plants, and Dissolved Oxygen,” it is possible that reduced Delta inflows in summer and fall and reduced exports could lead to an incremental increase in the production of HABs in some Delta channels at some times, particularly in Delta channels that convey Sacramento River water to Delta export pumps. The Staff Report Appendix A2, Delta Simulation Modell II (DSM2) Methods and Results, provides a more detailed evaluation of potential hydrologic changes in the southern Delta (Victoria Canal and the San Joaquin River near Stockton) associated with the 35, 45, 55, 65, and 75 flow scenarios using DSM2 and how those potential changes may affect HABs at those locations. The proposed Plan amendments could cause reductions in Delta inflow during the summer and fall due to increases in flow earlier in the year. The higher flow scenarios, which have larger increases in spring flow, also have larger reductions in flow later in the year. For this reason, requiring higher percents of unimpaired flow would not increase flows at the time of year when HABs are most problematic. The project has been revised as described in Common Response 1.3, Revised Proposed Plan Amendments. The analysis in Section 13.7.12.1, Surface Water, demonstrates that those project revisions could reduce project-related HABs impacts in the Delta. Chapter 13, Revised Proposed Plan Amendments, of the final Staff Report includes a revised list of mitigation measures to address the potential impacts of the revised proposed Plan amendments on HABs in the Delta under MM-SW-a,f: 4. Avoid or Reduce Harmful Algal Blooms and Invasive Aquatic Weeds (see Appendix H3, Mitigation Measures for the Revised Proposed Plan Amendments). In addition, final Staff Report Section 13.3.9.2, Harmful Algal Blooms, describes provisions included in the

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		The Staff Report reflects the Board’s strategy of delay and postponement on developing a meaningful HABs strategy. The SED’s mitigation strategies largely focus on forming task forces and continual monitoring of the HABs situation [Footnote 312: Staff Report, at 7.12.1-117 (“The State Water Board will continue to monitor HABs under the Surface Water Ambient Monitoring Program (SWAMP).”), (“The regional water boards will continue to require monitoring through permitting for some nutrients...[and] will continue to identify waterbodies that are impaired by elevated levels of nutrients.”), (“State Water Board staff from the Division of Water Rights are coordinating with other staff within the regional water boards and other divisions within the State Water Board...to develop new special studies for HAB monitoring, identify gaps in long-term monitoring, and communicate the latest science on HABs and prevention and mitigation measures”)]. While these strategies are necessary and should be employed to develop additional research and monitoring on HABs, they are not enough. From 2016 to 2019, 11 lakes within California were closed for recreation because of HABs [Footnote 313: Staff Report. At 7.18-10]. In Sacramento County alone, there have been 40 HABs reports since 2020, according to the Board’s HABs tracker [Footnote 314: Attachment 14 at p. 7 [Att 14]]. According to the Delta Stewardship Council’s HABs tracker, 221 HABs incidents have been voluntarily reported since 2016 [Footnote 315: Delta Stewardship Council, Harmful Algal Blooms, Incident Report of Harmful Algal Blooms in the Delta, https://viewperformance.deltacouncil.ca.gov/pm/harmful-algal-blooms]. Because of the lack of continuous monitoring, these numbers certainly capture only a sliver of the problem. However, one thing is certain – as climate change induces more drought and higher temperatures – there will be more and more HABs incidents unless adequate instream flows are prioritized. This will mean more polluted waterways, increased health risks, and foreclosed opportunities for communities and tribes to use these waterways for subsistence, recreation, and cultural, ceremonial, and religious practices.	revised proposed Plan amendments for addressing HABs in the Delta. As explained in the Staff Report Chapter 9, Proposed Voluntary Agreements, the VAs would not affect tidal and net flow in dead-end sloughs and other Delta channels with poor circulation where HABs are most likely to occur and, therefore, it is unlikely that HAB formation would be affected by the Voluntary Agreements. Staff Report Chapter 10, Economically Disadvantaged Communities, has been revised to include a discussion of HABs as an issue of concern for economically disadvantaged communities in the Delta. Please refer to Common Response 4.1, Harmful Algal Blooms, for responses to comments related to HABs; Common Response 10.1, Economically Disadvantaged Communities, regarding the 2023 draft Staff Report’s analysis of impacts on economically disadvantaged communities; Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, regarding tribal beneficial uses; and Common Response 7.1, General CEQA and Approach to the Analysis, for a response to comments related to the adequacy of mitigation presented in the Staff Report.
458	35	The SED fails tribal consultation requirements. i. The Board violates CEQA by failing to undertake tribal	The State Water Board actively sought, and continues to seek, consultation with interested California Native American Tribes consistent with Executive Order (EO) B-10-11 and its Tribal

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		consultation and to identify and minimize impacts on tribal cultural resources. The State Water Board failed to engage in meaningful government-to-government consultation with tribes and thereby neglected to identify and minimize impacts on tribal cultural resources as mandated by CEQA. Assembly Bill No. 52 (AB 52) amended CEQA to mandate early tribal consultation prior to and during CEQA review, and it positioned California Native American tribes as the experts on cultural resources within their own geographical areas [Footnote 316: Heather Dadashi, CEQA Tribal Cultural Resource Protection: Gaps in the Law and Implementation, 39:2 UCLA J. Env't L. Pol'y 231 (2021)]. Prior to adoption of AB 52, CEQA was ineffectual in directly addressing tribal concerns, and California Native American governments lacked a consistent, formal role in the environmental review process [Footnote 317: Id.]. The California Legislature passed AB 52 on September 28, 2014 in response to these growing concerns and in recognition of California Native American tribal sovereignty and the unique relationship between tribal governments, California state and local governments, and other public agencies [Footnote 318: Id.]. The primary goal of AB 52 is to assure the direct and meaningful involvement of California Native American tribes in decision-making processes that impact the sites, features, places, cultural landscapes, and other resources that have cultural significance to a tribal community. AB 52 is considered more robust than other historic and cultural resource protection statutes because it provides greater legal protections for resources and requires more stringent consultation requirements [Footnote 319: Dadashi supra note 316 at 233 (citing Assemb. B. 52, c. 532, § 2, 2013–2014 Leg., Reg. Sess. (Cal. 2014))(discussing in Part II AB 52's broad protections as compared to other statutes)]. Additionally, rather than treating tribal members as members of the public and limiting their participation to comment writing or public hearings, AB 52 offers tribal governments a seat at the decision-making table with lead agencies from the inception of the planning process [Footnote 320: Id.]. AB 52 specifies that a project that may "cause a substantial adverse change in the significance of a tribal cultural resource" is a "project that may have a significant effect on the environment." [Footnote 321: Cal. Pub. Res. Code § 21084.2 (2021)]. To help determine whether a project may have such an effect, public agencies are required to	Consultation Policy. The State Water Board proceeded with EO B-10-11 because the provisions of Assembly Bill (AB) 52 do not apply to a certified regulatory program or a project with a Notice of Preparation (NOP) filed before July 1, 2015. (The Revised Notice of Preparation for the Sacramento/Delta Update to the Bay-Delta Plan was issued in 2012.) Agencies and tribal governments consulting on projects with NOPs filed before July 1, 2015, can utilize the EO B-10-11 process and those with NOPs filed on or after July 1, 2015, can employ either AB 52 or EO B-10-11. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to tribal outreach and engagement, and CEQA and AB 52 requirements.

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		consult with any California Native American tribe [Footnote 322: A California Native American tribe is “a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission” (NAHC). This definition does not distinguish between federally recognized and non-federally recognized tribal groups and is therefore more inclusive than the federal definition of “Indian tribe.” Cal. Pub. Res. Code § 21073 (2021); 25 U.S.C. § 3001(7)] that requests consultation and is traditionally and culturally affiliated with the geographic area of a proposed project [Footnote 323: Cal. Pub. Res. Code § 21080.3.1(b) (2021)]. Tribal consultation under AB 52 must begin prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report for a project [Footnote 324: Cal. Pub. Res. Code § 21080.3.1(b) (2021)]. Meaningful consultation between government agencies and tribal governments must be conducted in a manner that recognizes the cultural values of all parties involved and is respectful of each party’s sovereignty [Footnote 325: Cal. Gov’t Code § 65352.4 (2021)]. “Consultation with tribes is considered the most effective way for lead agencies to determine if a project could result in significant environmental impacts to tribal cultural resources.” [Footnote 326: Dadashi, supra note 316 at 234]. If a lead agency determines through consultation that a project may cause a substantial adverse change to tribal cultural resources, it must consider measures to mitigate that impact. The California Public Resources Code provides examples of mitigation measures that lead agencies may consider to avoid or minimize impacts to tribal cultural resources [Footnote 327: Cal. Pub. Res. Code, § 201884.3 (b)(2) (2021)]. Examples include: avoidance and preservation of the resources in place; treatment of the resource with culturally appropriate dignity; protection of the traditional use of the resource; protection of the confidentiality of the resource; and permanent conservation easements with culturally appropriate management. If mitigation measures are agreed upon with a tribe in accordance with Public Resources Code section 21082.3, the mitigation measures must be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program [Footnote 329: Cal. Pub. Res. Code, § 21082.3]. In drafting the Staff Report, the State Water Board neglected AB 52 consultation altogether. Absent AB 52 compliance, lead agencies like the	

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		Board are under no affirmative duty to contact tribes for consultation or to identify and mitigate impacts to tribal cultural resources [Footnote 330: Under Cal. Exec. Order No. B-10-11 (Sept. 19, 2011), the Board is encouraged, but not required, to consult with Tribes on policies that affect tribal communities]. After the Coalition petitioned the State Water Board to consult with tribes on the Phase II update under AB 52, the Board stated that it would begin outreach to tribes under Executive Order B-10-11 but believed that it had no duty to conduct AB 52 consultation [Footnote 331: Exhibit H]. The Board did not begin any outreach until January 2023, and has since held a handful of workshops, listening sessions, and meetings to receive tribal input on the Bay- Delta Plan update. While an important first step in, these meetings – which have come at the conclusion of the environmental review process – are no substitute for the legal consultation requirements set forth under CEQA and the Board’s own tribal consultation policies [Footnote 332: Attachment 13, Gary Mulchay, Comments on Tribal Engagement Section of Draft Staff Report–Tribal Water Rights [hereinafter “Attachment 13”] [Att 13]]. To the extent that the Board suggests that engagement with tribes under the vague mandates of Executive Order B-10-11 can substitute for government-to-government consultation under AB 52, it is clearly wrong. The State Water Board should have engaged in AB 52 consultation with California Native American tribes traditionally and culturally affiliated with the geographic areas affected by the Bay-Delta Plan. This includes all tribes whose rights and interests will be affected by decisions about Delta water management: tribes within the Delta (such as Shingle Springs Band of Miwok Indians and Buena Vista Rancheria of Mi-Wuk Indians), in Delta headwaters (including Winnemem Wintu Tribe), and tribes in water basins affected by Delta imports and exports (such as the Yurok and Hoopa Valley Tribes). Under AB 52, the Board should have consulted with the tribes to assure identification of potential tribal cultural resources in the project area (including identification of the Bay-Delta watershed itself and its rivers and tributaries as tribal cultural resources), the potential significance of project impacts on identified resources, and the development of project alternatives and mitigation measures to avoid and reduce impacts. Without proper	

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		consultation, the Board made errors in documenting tribal perspectives, and has failed to capture the richness and depth of historical and present tribal relationships with Bay-Delta waterways. The State Water Board's failure to take up AB 52 consultation demonstrates a pattern and practice of brushing past tribal concerns and neglecting to treat tribal representatives as experts of their own histories and practices.	
458	36	ii. The State Water Board is not exempt from AB 52 consultation. The Board's assertion that it is exempt from AB 52 tribal consultation is plainly wrong. Environmental reviews under the Board's certified regulatory program "remain[] subject to the broad policy goals and substantive requirements of CEQA." [Footnote 333: Pesticide Action Network N. Am. v. Dept. of Pesticide Regulation, 16 Cal.App.5th 224, 243 (2017)]. Through AB 52, the Legislature expanded CEQA's substantive requirements and policy goals to include consideration of impacts on tribal cultural resources and incorporation of tribes' unique expertise in environmental assessments [Footnote 334: Assemb. B. 52, c. 532, § 1(b)(4), (5), 2013–2014 Leg., Reg. Sess. (Cal. 2014)]. To comply with CEQA's substantive requirements and policy goals, including AB 52 tribal consultation requirements, the Board must conduct consultation on all Bay-Delta Plan environmental reviews. The Staff Report asserts that the Board is exempt from AB 52 consultation because the project's notice of preparation ("NOP") was filed before July 1, 2015 [Footnote 335: AB 52 applies to any "project that has a notice of preparation or a notice of negative declaration filed or mitigated negative declaration on or after July 1, 2015." Id. § 11]. Staff's analysis that the Board may bypass AB 52 consultation because the Board has kept this legally required update pending for more than a decade is troubling and undercuts its commitments to meaningful consultation and engagement with tribes. In any event, although the NOP for the Bay-Delta Plan updates was issued on January 24, 2012, it was not until at least 2017 that preparation of any environmental analysis for Phase II of the Bay-Delta Plan commenced. The Board approved Phase I	Please see the response to comment 458-35 for response related to Assembly Bill (AB) 52 consultation and Executive Order (EO) B-10-11. Also see Common Response 1.2, Water Quality Control Planning Process, for responses to comments related to reasonable protection of fish and wildlife and consideration of other beneficial uses.

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		amendments to the Bay-Delta Plan in December 2018 after nearly a decade of initiating a review process for updating Phase I water quality standards in 2008. [Footnote 336: Cal. State Water Res. Control Bd., Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary 3 (2018), https://www.waterboards.ca.gov/plans_policies/docs/2018wqc_p.pdf]. Meanwhile, in October 2017, the State Water Board released a Fact Sheet and Scientific Basis Report outlining its recommendations for the Phase II update and assuring the public that it “plan[ned] to complete [the Bay-Delta Plan update] process without further delay.” [Footnote 337: Cal. State Water Res. Control Bd., Fact Sheet: Phase II Update of the Bay-Delta Plan: Inflows to the Sacramento River and Delta and Tributaries, Delta Outflows, Cold Water Habitat and Interior Delta Flows 1 (2017), https://www.waterboards.ca.gov/publications_forms/publications/factsheets/docs/201710_phaseII_factsheet.pdf; Cal. State Water Res. Control Bd., Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows 99 (2017), https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_wa terfix/exhibits/docs/PC_FFA&IGFR/part2/pcffa_168.pdf]. Nine months later, the Board released a framework document describing the Phase II update process, which projected that the Board would release a draft staff report on comprehensive Phase II amendments in 2018 [Footnote 338: Cal. State Water Res. Control Bd., July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan 6 1-2 (2018), https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/sed/sac_delta_framework_070618%20.pdf]. It was not until September 2023 that the draft Staff Report for Phase II of the Bay-Delta Plan was released. While the Board points to 2012 as the starting point for Phase II amendments to the Bay-Delta Plan, the actual starting point was 2017 – two years after AB 2015 was adopted.	

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		Given that the Board will need to recirculate the draft SED with a stable, complete, and finite project description, the Board will also need to engage AB 52 consultation on the revised SED to comply with CEQA's substantive mandates and broad policy goals. The Board should take this as an opportunity to correct its previous missteps and meaningfully work with tribal governments to understand and mitigate the impacts to tribal cultural resources. AB 52 acknowledges tribes as experts of their own histories and practices related to the tribal cultural resources with which they are traditionally and culturally affiliated. It also acknowledges the importance of allowing tribal governments to share their knowledge in the environmental review process with the ultimate goal of environmental and cultural resource protection. Without tribal consultation, violations of tribes' sovereign rights to government-to-government consultation and assaults to tribal cultural resources and interests may replicate through these subsequent environmental reviews. II. The Board must adopt flow-based standards that guarantee protection of beneficial uses.	
458	37	A. The Board should adopt an inflow objective of 65 percent with a reasonable adaptive range and management strategies to implement a functional flows regime. The proposed Plan amendments' numeric inflow objective of 55 percent of unimpaired flow with an adaptive range of 45 to 65 percent is incapable of meeting the Board's legally mandated duties to reasonably protect beneficial uses and base water quality criteria on "sound scientific rationale." [Footnote 339: Cal. Wat. Code § 13241; 40 C.F.R. § 131.11(a)(1)]. Based on the best available science and Traditional Ecological Knowledge regarding Bay-Delta waterways, as well as the exigency of the ecological crisis in the Bay-Delta, we recommend that the Board adopt a flow objective of 65 percent unimpaired flow with a reasonable adaptive range (permitting inflows/outflows to drop no lower than 60 percent unimpaired flow) together with management strategies that implement a functional flows approach.	Please see Common Response 1.1, General Comments, for information on the Delta Flow Criteria Report; Common Response 1.2, Water Quality Control Planning Process, for information on the reasonable protection of fish and wildlife beneficial uses; Common Response 3.1, Fish Protection, for information on the use of best available science; and Common Response 1.3, Revised Proposed Plan Amendments, for information on the regulatory pathway implementation of the inflow objective.

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		When flows follow the natural hydrograph and return closer to unimpaired flow levels, all native Bay-Delta species benefit, as do the communities that depend on Bay-Delta ecology. “Flows are the “‘master variable’ driving geomorphic, biological, chemical process important to aquatic ecosystems.” [Footnote 340: CA SWRCB- Web Support, June 7, 2023 State Water Resources Control Board Meeting, YOUTUBE (June 7, 2023), https://www.youtube.com/watch?v=DxfPFqJfSn4 (featuring Emily Moloney’s presentation at 1 hour, 37 minutes)]. The Staff Report underscores this: “The frequency of meeting the flows to support estuarine beneficial uses increases with each increase in the range of flow scenarios.” [Footnote 341: Staff Report at 3-117; Staff Report at 3-110 (“Generally, the higher the flows up to 100 percent of unimpaired flow (and higher in summer and fall) and the lower the X2 value, the greater the expected benefits are for native species and the ecosystem, provided that adequate supplies are maintained for cold water and flows at other times.”)]. As the Staff Report further explains, “[t]he more frequently a species flow is met, the more favorable conditions are to support the beneficial use.” [Footnote 342: Staff Report at 3-117]. Sufficient flows are also critical to avoiding and mitigating spread of harmful algal blooms, which, as explained in Section B below, impair fish and wildlife, recreational, and tribal beneficial uses, among others [Footnote 343: Staff Report at 7.12.1-29 (“low streamflow may be the most important factor for maintaining HABs, at least for Microcystis.”); see also id. at 7.12.1.38 (“Several studies indicate that low flows through the Delta are associated with increased HAB formation. HABs are more frequent and more severe in dry years”)]. Without adequate flows, the range of processes necessary for functioning aquatic systems suffer. In turn, beneficial uses that depend on a functional ecology are impaired. At inflows of 55 percent, extinctions of native fish species and further degradation of Bay- Delta waterways is at best delayed, not avoided. This is particularly so as the SED understates likely impacts on fish and wildlife by, as discussed below, including in its modeling unprotected flows that would disappear once additional water projects like the Delta Conveyance Project and Sites Reservoir are built. As elaborated in attached comments by Restore the Delta, “If the goal of the Board is to do the bare	

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		minimum, then 55% may work but in the probable scenario of increased exports, excessive use of Temporary Urgency Change Petitions, and the construction of new water infrastructure projects, extinction of native fish is guaranteed.” [Footnote 344: Exhibit A at 3]. Further, as climate change increases water temperatures and imposes other stressors on aquatic systems, adequate flows become even more important, not less. Flow objectives that based on data about actual regulatory flow levels and are responsive to the exigency of the crisis in the Bay-Delta and the climate crisis are needed. Flow objectives should also incorporate a reasonable adaptive range that ensures inflow and outflow levels fall no lower than 60 percent unimpaired flows – the lowest level the Board identified as necessary to “preserve the attributes of a natural variable system to which native fish species are adapted.” [Footnote 345: Public Trust Report at 5; see also Id. At 120-21]. And it should incorporate management strategies and criteria governing how flows will be managed within the adaptive range to ensure protection of beneficial uses, including those uses dependent on upstream reservoir cold water storage. These management strategies should embody a functional flows regime to best guarantee protection of beneficial uses. Functional flows are components of the hydrograph that provide a distinct geomorphic or ecological function and attempt to reflect the natural patterns of flow variability [Footnote 346: Sarah M. Yarnell, Geoffrey E. Petts, John C. Schmidt, Alison A. Whipple, Erin E. Beller, Clifford N. Dahm, Peter Goodwin, & Joshua H. Viers, Functional Flows in Modified Riverscapes: Hydrographs, Habitats and Opportunities, 65 BioScience 963, 966 (2015)]. Functional flows differ from other flow-based approaches “in that flow allocations are made with consideration of how the duration, timing, and rate of change of flows – rather than just the magnitude – are influenced by the geomorphic context and sediment supply conditions.” [Footnote 347: Yarnell, supra note 346 at 970]. Developing management strategies that seek to create a functional flow regime can mitigate tradeoffs with increasing flows, ensuring, for instance, that cold water temperatures are maintained at levels needed for upstream	

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		spawning while streams receive pulse flows that mimic processes to which species are adapted.	
458	38	Adaptive management premised on functional flows also offers an opportunity to meaningfully incorporate TEK in partnership with tribes, as the Staff Report indicates that the Board aspires to do [Footnote 348: Staff Report at 5-58 (“TEK could improve adaptive management of unimpaired flow to achieve a functional flow regime.”)]. For Buena Vista Rancheria, for instance, TEK reflects the importance of [mimicking] natural flows.” [Footnote 349: CA SWRCB- Web Support, supra note 340]. The Tribe’s experience spans the dry, normal, and wet years expressed in the natural hydrograph. Delta species are adapted to this natural variability. A functional flow regime, for example, would teach that in certain times of the year, even in a dry year, a pulse flow would be required to give a queue to the salmon to come upriver to spawn. In this way, TEK integrates indigenous knowledge, grounded observation, lived experience with the needs of aquatic species, and best available science into allowing natural processes to be expressed in a managed system. The experiences of tribes with functional flows is reinforced by the scientific literature. Researchers conducted a case study on Putah Creek, a highly regulated river, by studying the response of fish species to a functional flow regime, which was designed to mimic the seasonal changes in decreases and increases of flow [Footnote 350: J. D. Kiernan, P. B. Moyle, & P. K. Crain, Restoring native fish assemblages to a regulated California stream using the natural flow regime concept, Ecological applications: a publ’n of the Ecological Soc’y of America, 1472 (2012)]. By the end of the study, native fish assemblages had greatly increased, [Footnote 351: Id. At 1480] likely due to flow events that allowed for increased flows, cooler water temperatures, and the creation of favorable conditions for habitat and spawning for fish [Footnote 352: Id. At 1480-1481]. A narrow adaptive range and management strategies that aim to follow a functional flows regime can help balance the competing needs of the Bay-Delta waterways.	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Traditional Ecological Knowledge/tribal knowledge. Please see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board’s efforts to engage more robustly with California Native American Tribes and integrate Traditional Ecological Knowledge/tribal knowledge into the State Water Board’s Bay-Delta Plan update and implementation processes.
458	39a	The Staff Report’s proposed plan amendments fail to comply with the requirement that water quality objectives ensure the reasonable protection of beneficial uses.	Please see Common Response 1.2, Water Quality Control Planning Process, for information on reasonable protection of fish and wildlife beneficial uses. Please also see Chapter 3,

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		As written, the Staff Report's proposed plan amendments would not meet the standard of reasonable protection of beneficial uses required under the Porter-Cologne Act [Footnote 353 Cal. Wat. Code § 13241]. Staff's rationale for the proposed plan amendments is that "[b]ecause 55 percent unimpaired flow is the flow level at which more significant improvements to fish and wildlife beneficial uses are expected and cold water supplies can still be maintained, the proposed starting point for the flow level is 55 percent." [Footnote 354: Staff Report at 5-16 (emphasis added)]. The Staff Report misunderstands the law: the standard under Porter-Cologne is reasonable protection, not "more significant improvement." Nothing in the Staff Report links a 55 percent inflow objective to reasonable protection of beneficial uses. Some improvement on baseline conditions is not the same as reasonable protection.	Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, and Chapter 4, Other Aquatic Ecosystem Stressors, of the Staff Report and Common Response 3.1, Fish Protection, for information on the benefit analyses.
458	39b	As just one example of where the Staff Report's analysis falls short, the Staff Report makes no effort to explain whether or how a 55 percent inflow objective will ensure flows necessary to support viability of native fish species. At best, the Report considers the percent increases in species abundance indices relative to baseline conditions, as shown in Table 3.14-7 [Footnote 355: Staff Report at 3-122 to 123]. But this analysis leaves out critically imperiled species like the Chinook salmon and Delta smelt, as well as California White Sturgeon, and makes no effort to explain whether the increases over baseline it does consider will come anywhere close to reasonable protection of beneficial uses (versus a modest slowing of existing pathways to extinction) [Footnote 356: Id.]. These errors are replicated in the SED's analysis of Aquatic Biological Resources. For instance, the SED considers the frequency of meeting winter-spring outflows to benefit estuarine habitat and species, showing, for instance, that at 55 percent unimpaired flows, there would be sufficient outflows to support positive population growth for Green and White sturgeon 19 percent of the time and Longfin smelt 32 percent of the time [Footnote 357: Staff Report at 7.6.2-38 (referencing Table 7.6.2-5)]. It concludes that such growth-supporting flow levels would "occur at a greater frequency under the proposed Plan	The 2023 draft Staff Report shows that inflows in the 55 scenario (and corresponding outflow) 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. Results in Tables 3.14-7 and 7.6.2-5 focus on the benefits of increased flow to estuarine habitat and species. Other sections address other species and tributary habitats so that the 2023 draft Staff Report provides a comprehensive analysis of many species in many habitats in the study area. For example, the benefits of increased flow to Chinook salmon are addressed in Section 3.4, Chinook Salmon (<i>Oncorhynchus tshawytscha</i>) and Central Valley Steelhead (<i>Oncorhynchus mykiss</i>), and in Section 7.6.2, Aquatic Biological Resources, (see Table 7.6.2-4); flow-effects on Delta smelt are addressed in Section 3.8, Delta Smelt (<i>Hypomesus transpacificus</i>), (see Table 3.8-1); and flow effects on white sturgeon are discussed in Section 3.6, Green Sturgeon (<i>Acipenser medirostris</i>) and White Sturgeon (<i>Acipenser transmontanus</i>). Regarding flow frequencies, see Common Response 3.1, Fish Protection, for information on the flow benefit analyses. Increased flows under the proposed Plan amendments would be expected to restore and maintain natural processes, such as

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		amendments compared with baseline conditions and should contribute to increased population abundance for bay shrimp, green and white sturgeon, longfin smelt, Sacramento splittail, and starry flounder.” But again, it makes no effort to consider benefits to other imperiled fish species such as Delta smelt or Chinook salmon other than hypothesizing that “[o]ther native aquatic species that use estuarine habitat likely also should benefit from the more natural hydrological regime, including increased Delta outflows, that would occur as a result of the proposed Plan amendments.” The Staff Report also makes no effort to quantify benefits to other essential riparian species like tule, willow, cochina (mugwort), and cottonwood necessary to protect Tribal Beneficial Uses, or to mitigation of HABs and improvement of other water quality parameters necessary to satisfy recreational beneficial uses. And even for the species it does consider, the SED makes no effort to explain whether frequencies of providing adequate flows are sufficient to support viable fish populations. For instance, Delta smelt, which spawn and die every year, would need growth-sustaining flows most years. Likewise, longfin smelt spawn and die every two years, but a 55 percent flow objective would provide adequate flows to support longfin population growth only 32 percent of the time from January to June [Footnote 358: Staff Report at 7.6.2-38 (referencing Table 7.6.2-5)]. And even with 55 percent instream flows, the SED concludes that winter-spring Delta outflows adequate to support longfin smelt populations would only be met two percent more of the time [Footnote 359: Id.]. It is simply implausible that this two percent increment is the difference between endangerment and viability for this imperiled species.	sediment deposition, marsh accretion, nutrient transport, seed dispersal, and flow-related disturbance, which would maintain and improve habitat conditions for native freshwater wetland and riparian species. These benefits would include any special-status plants and wildlife found in these habitats, including freshwater emergent wetlands; seasonal wetlands; seeps, springs, and meadows; and managed wetlands. See Section 7.6.1, Terrestrial Biological Resources, for more information. Tribal beneficial uses are addressed in Section 11.5, Tribal Beneficial Uses. See also Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, regarding tribal beneficial uses. The purpose of an analysis pursuant to CEQA is to disclose potential environmental effects of a proposed project and to minimize significant, avoidable environmental impacts. Please see Common Response 7.1, General CEQA and Approach to the Analysis, regarding general CEQA overview. Furthermore, CEQA does not compel the State Water Board to solve existing environmental problems during the process to update the Water Quality Control Plan. See Common Response 4.1, Harmful Algal Blooms, regarding instream flows and HABs. The proposed Plan amendments were developed to improve flow and water quality conditions over a large geographic area, and particularly for fish and wildlife beneficial uses in the Sacramento River watershed, Delta eastside tributaries, and Delta regions. As such, recreational opportunities that are supported by healthy rivers and a functioning watershed are, overall, expected to be improved. The 2023 draft Staff Report Section 7.18, Recreation, identified less-than-significant impacts from the proposed Plan amendments on recreation from increased HAB production in reservoirs and Delta channels. However, in response to a substantial number of public comments received from tribal and environmental justice communities stating that HABs cause significant impacts to recreational users of water, and in recognition of recreation as an important public use of these Delta channels and reservoirs and as a beneficial use of water in the Bay-Delta Plan and other basin plans, the impact conclusion (in Section 13.7.18, Recreation, of

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			the 2025 partially recirculated draft Staff Report) was revised to potentially significant and mitigation measures have been identified. See measure 3 of MM-REC-a, Protect Water Quality and Avoid or Reduce Harmful Algal Blooms and Invasive Aquatic Weeds, of Section H.3.1.13, Recreation, in Appendix H3, Mitigation Measures for the Revised Proposed Plan Amendments.
458	39c	The Report also overstates even these benefits to native fish species through assumptions quietly baked into its models. The Staff Report’s analysis of effects on hydrology and beneficial uses are based on “modeled flows” premised on the existing state of storage and export infrastructure and water rights permitting [Footnote 360: See id. at 6-1 (explaining that “modeled results represent the overall system changes caused by replacing one set of requirements with another . . . [a]ctual historical real-time operations may vary from modeled operations, resulting in different water availability outcomes than those calculated here.”)]. These modeled flows are comprised largely of “expected uncaptured flows” including “flood control releases, and other flows that occur in the system because the water is not needed for diversion or not able to be diverted due to physical or other limitations.” [Footnote 361: Staff Report at 3-111; see id. at 6-5 (modeled flows are based in significant part on “reservoir flood-release spills”)]. This differs from the 2017 Scientific Basis Report, where Delta inflow and outflow levels did “not include other uncaptured flows.” [Footnote 362: Id.]. Instead, the 2017 Scientific Basis Report calculated unimpaired flows by “illustrat[ing] the flows that would be expected to occur if meeting the percent of unimpaired flow level was the only factor controlling flows.” [Footnote 363: 2017 Scientific Basis Report, supra note 10, at 5-7]. The Scientific Basis Report explicitly excluded “other flows that would occur as a result of flood control releases, other regulatory flow requirements, or other reasons that are not associated with the percent unimpaired flow requirements” to ensure that its analyses were grounded on “the expected minimum flows that would result under [each unimpaired flow] requirement” considered [Footnote 364: Id. at 5-8]. As a result, the SED concedes that its “analyses of expected flows show greater benefits than the results for the flow levels presented in the Scientific Basis Report due to these other flow	See Staff Report Section 7.23, and Section 13.7.21, Cumulative Impacts, Growth-Inducing Impacts, and Significant Irreversible Environmental Changes, for an analysis of the effects of new water supply projects, including Sites Reservoir and Delta Conveyance Project on Delta outflow. In addition, Section 13.5, Beneficial Environmental Effects discusses that new water supply projects could reduce the benefits of the revised proposed Plan Amendments. See Common Response 1.2, Water Quality Control Planning Process, on reasonable protection of fish and wildlife beneficial uses and Common Response 1.3, Revised Proposed Plan Amendments, regarding comments on other water supply projects. Also see Common Response 7.23, Cumulative Impact Analysis, for responses to comments related to the consideration and analysis of cumulative impacts associated with Sites Reservoir and the Delta Conveyance Project.

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		contributions from flood control releases, other regulatory requirements, and other purposes.” [Footnote 365: Staff Report at 3-111 (emphasis added)]. What the Staff Report obfuscates, however, is that the Board, together with the Department of Water Resources (DWR), is already planning to eliminate much or all of these uncaptured flows. As discussed above, the Board is currently considering applications for new and modified water rights for the Sites Project over protest by Winnemem Wintu Tribe, Restore the Delta, and numerous other environmental and environmental justice organizations and tribes. And in December 2023, DWR approved the Delta Conveyance Project and certified its Final EIR. If these projects are brought online, as the State is seeking, they will largely, if not entirely, eliminate uncaptured Bay-Delta flows, including existing flood control releases and water currently not needed for diversion [Footnote 366: The Staff Report also concedes that actual flows may in the future vary significantly from modeled flows if, for instance, “reservoirs [are] eventually [] operated using protocols that different from the scenarios as modeled.” Id. At 7.2.6-55]. Considering that the Board is already anticipating these changes, its sleight of hand in substituting mandatory unimpaired flow levels with modeled flows that include flood releases and other uncaptured flow provides a highly misleading portrait of the extent to which the proposed Plan amendments will improve prospects for native fish species survival and other beneficial use attributes above baseline, not to mention the extent to which they will actually satisfy the Board’s legal obligations to reasonably protect beneficial uses.	
458	40	Compounding this problem, the Board makes no effort at all to account for impacts of climate change on hydrology, water supply, temperature, and other water quality parameters expected to affect protection of beneficial uses. The Staff Report is explicit that “[a]nticipated changes in hydrology and water supply associated with climate change are not explicitly modeled using SacWAM for this Staff Report.” [Footnote 367: Staff Report at 6-8]. Instead, the Staff Report employs uncertainty about the precise effects of climate change on local hydrology and water supply to ignore climate change altogether. But uncertainty does	Please see Common Response 4.2, Drought and Climate Change, for further information on the consideration of climate change in the Staff Report and consistency with regulatory requirements and other policies.

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		not alleviate the Board’s responsibility to reasonably forecast and account for the implications of climate change on protection of beneficial uses. The law is clear that an agency is “not entitled to simply throw up its hands and ascribe any effort at quantification to a ‘crystal ball inquiry.’” [Footnote 368: WildEarth Guardians v. Zinke, 368 F.Supp.3d 41, 75 (D.D.C. 2019) (quoting Scientists’ Inst. For Pub. Info. V. Atomic Energy Comm’n, 481 F.2d 1079, 1092 (D.C. Cir. 1973))]. Rather, environmental analysis “necessarily involves some ‘reasonable forecasting’ and [] agencies may sometimes need to make educated assumptions about an uncertain future.” [Footnote 369: Sierra Club v. Fed. Energy Regul. Comm’n, 867 F.3d 1357, 1374 (D.C. Cir. 2017); see also, e.g., Sierra Club v. County of Fresno, 6 Cal. 5th 502, 522 (2018) (“[S]cientific certainty is not the standard.”); L.A. Unified Sch. Dist. V. City of Los Angeles, 58 Cal.App.4th 1019, 1027-28 (1997) (rejecting agency’s determination that project’s noise impacts on schools was “too speculative” to evaluate); Berkeley Keep Jets Over the Bay Comm. V. Bd. Of Port Comm’rs, 91 Cal.App.4th 1344, 1370 (2001)]. By omitting the obvious implications of climate change on hydrology, water supply, and other parameters, the Board makes its proposed plan amendments look better on paper than they could possibly manifest in reality.	
458	41	The Staff Report’s discussion of the other flow alternatives fare no better. For instance, its discussion of the high flow alternative highlights Staff’s failure to link the proposed flow regime to the protection of beneficial uses. As discussed earlier, the Staff Report rejects a 65 percent unimpaired flow objective because maintaining cold water resources and managing water supply becomes “more challenging.” [Footnote 370: Staff Report at 5-16]. “Challenging” water management is not a bar to creating adequate water quality objectives. The Porter-Cologne Act acknowledges the difficulties of water management and still mandates that water quality objectives consider “water quality conditions that could reasonably be achieved through the coordinated control of all factors that affect water quality in the area.” [Footnote 371: Cal. Water Code § 13241]. At 65 percent unimpaired inflows, the Board can create water quality conditions that protect downstream beneficial uses while managing upstream water storage concerns. This is particularly	The regulatory pathway implementation of the inflow objective could require flows within the range of 45 to 65 percent, inclusive. Thus, 65 percent of unimpaired flow is included within the revised proposed Plan amendments. Refer to Common Response 1.2, Water Quality Control Planning Process, regarding the consideration of beneficial uses; and Common Response 1.3, Revised Proposed Plan Amendments, regarding regulatory pathway implementation of the inflow objective.

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		so if, as commenters recommend, the Board pairs the 65 percent unimpaired flow objective with a reasonable adaptive range (allowing flows no lower than 60 percent unimpaired flow) and adaptive management strategies premised on a functional flows approach.	
458	42	III. The Board must designate Tribal Beneficial Uses and protect Tribal Reserved Rights. California's current water rights regime excludes nearly half of the State's over 200 tribes from federal reserved water rights and relies on a prior appropriative rights scheme that reflects genocide, displacement, and exclusion [Footnote 372: State Water Bd. Racial Equity Resolution No. 2021-0050 (Nov. 16, 2021)]. Since time immemorial California Native American tribes have used, and continue to use, Bay-Delta waters to support their cultural, subsistence, and ceremonial rights. As a result of years of activism, studies, and advocacy by Native American tribes, Tribal Beneficial Uses (TBUs) were established as a water quality protection measure for the preservation of California surface waters in a manner unique to tribal culture, tradition, ceremonies, and lifeways. TBUs account for traditional and cultural uses of water not covered by existing beneficial uses, and potential greater fish consumption by California Native American tribes. They are the only beneficial uses that specifically name California tribes in their definitions. The implications of designating TBUs are far reaching. First, adding TBUs to the Bay-Delta Plan is essential in fulfilling the State Water Board's obligations to protect water quality standards under the Clean Water Act and Porter-Cologne Act. Second, failure to designate TBUs would violate the spirit of the Board's commitments to advancing racial equity and environmental justice in its watershed management. Adding TBUs to the list of existing beneficial uses is necessary for the State to begin repairing the harm it has done to tribal culture and identify by implementing and maintaining a colonial system of water rights and governance [Footnote 373: Attachment 4, Coalition, Comment Letter on Proposed Addition of Tribal Beneficial Uses to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta [hereinafter	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses and tribal reserved water rights. As discussed in Chapter 13, Revised Proposed Plan Amendments, the revised proposed Plan amendments incorporate Tribal Beneficial Uses (TBUs), would designate Tribal Tradition and Culture (CUL) beneficial use, and include provisions for tribal outreach and engagement and incorporation of tribal feedback and Traditional Ecological Knowledge (TEK) into the Bay-Delta Plan update and implementation processes. Please see Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on incorporation and designation of Tribal Beneficial Uses.

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		“Attachment 4”) [Att 4]]. Even more pressing, without formal designation of TBUs, Native tribes will continue to experience waterways that are incompatible with tribal subsistence, health, culture, and ceremony. Because of tribes’ unique relationships to the waterways, existing water quality standards are inadequate to protect California Native American communities that have greater exposure to water pollutants due to greater ingestion of water, dermal exposure, ingestion of plants, and ingestion of fish and shellfish through tribal traditional and cultural practices and subsistence fishing [Footnote 374: See, Cal. Reg’l Water Quality Control Bd., Cent. Valley Region, Tribal Beneficial Uses Designations: A Primer to the Basin Plan Amendment Process 7 (2022), https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/tribal_beneficial_uses/tbu_r5_bpaprimer.pdf]. In addition, the loss of native fish and riparian species through impaired water flow poses existential harms to many tribal nations, whose identity and cultural and spiritual practices depend on thriving populations of native species. Formally designating TBUs affirms, and actually allows for, the heightened protection needed for tribal uses of and engagement with water. Commenters urge the Board to designate TBUs without any further delay on a whole watershed basis, in accordance with how tribes live and experience the Bay-Delta as one interconnected system. At this point, the Board is still “considering” the addition of TBUs to the Bay-Delta Plan [Footnote 375: Staff Report at 11-10]. But mere consideration is not enough [Footnote 376: Attachment 13 at 1]. The Board itself recognized the need to protect activities specific to tribes’ historic and unique uses of California waters when it established and defined two beneficial uses unique to California tribes [Footnote 377: Cal. Water Res. Control Bd., Res. No. 2017-0027 (May 2, 2017) (hereafter State Water Bd. TBUs Resolution)]. The Board should take the next logical step and codify TBUs on par with all other existing beneficial uses in the Bay-Delta Plan which are designated Plan-wide, not limited to specific waterbodies or parts of waterbodies [Footnote 378: See, e.g., Cal. Water Res. Control Bd., supra note 337, at 7 (stating the	

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		beneficial uses designated in the Bay-Delta Plan, which do not contain any geographic limitations)]. Adding TBUs to the list of existing beneficial uses is a simple task and one that is necessary for the Board to begin the subsequent process of developing water quality objectives and implementation programs. Finally, ample evidence affirms that tribes have exercised traditional, cultural, and subsistence uses throughout the entire Bay-Delta watershed since time immemorial, and thus there is no need for further proceedings to make these designations for the Bay-Delta Plan through this update.	
458	43	A. Watershed-wide TBUs designation is consistent with the State Water Board's authorities under federal and state water quality protection statutes. The State Water Board is the only agency with authority to protect Tribal Beneficial Uses of the Bay-Delta watershed. The State Water Board is charged with protecting water quality throughout California, pursuant to the federal Clean Water Act and the Porter- Cologne Act [Footnote 379: 33 U.S.C. § 1313; Cal. Water Code § 13160]. Beneficial uses form the cornerstone of water quality protection under these statutes. The Clean Water Act and U.S. EPA's implementing regulations require states to establish beneficial uses reflecting general categories of uses specific to the navigable waters involved and water quality criteria to protect those uses [Footnote 380: Clean Water Act, § 303(c)(2)(A); 40 C.F.R. § 131.10(a)]. Water quality criteria must be adequate to protect, among other 19 designated beneficial uses: shellfish harvesting; commercial and sport fishing; warm and cold freshwater habitat; migration of aquatic organisms; spawning, reproduction, and/or early development; estuarine habitat; wildlife habitat; and rare, threatened, or endangered species. [Footnote 381: Cal. Reg'l Water Quality Control Bd., Cent. Valley Region, supra note 375 at 8]. They must also protect both contact and non-contact water recreation and municipal and domestic water supply [Footnote 382: Cal. State Water Res. Control Bd., supra note 111 at 8]. Once beneficial uses are designated, appropriate water quality objectives and programs of implementation are established to ensure the protection of beneficial uses [Footnote 383: 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. § 131.2; see Wat. Code, § 13241].	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses and the process to reasonably protect those uses. As discussed in Chapter 13, Revised Proposed Plan Amendments, the revised proposed Plan amendments incorporate Tribal Beneficial Uses (TBUs), would designate Tribal Tradition and Culture (CUL) beneficial use, and include provisions for tribal outreach and engagement and incorporation of tribal feedback and Traditional Ecological Knowledge (TEK) into the Bay-Delta Plan update and implementation processes. Please see Chapter 13, Revised Proposed Plan Amendments, for additional information on incorporation and designation of Tribal Beneficial Uses.

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		While the Porter-Cologne Act provides Regional Water Boards with primary responsibility for formulating and adopting water quality control plans for their respective regions, [Footnote 384: Cal. Water Code § 13240] the State Water Board is also empowered to formulate its own water quality control plans, which supersede any conflicting regional plans [Footnote 385 Cal. Water Code § 13170; see United States v. State Water Resources Control Bd. (1986) 182 Cal.App.3d 82, 109]. Since 1978, the State Water Board has exercised this authority to establish water quality control standards across the Bay-Delta watershed through the Bay-Delta Plan [Footnote 386: Cal. Water Res. Control Bd., supra note 337 at 4]. In 1972, the State Water Board adopted a uniform list of beneficial uses, including descriptions, to be applied throughout all basins of the state [Footnote 387 See Cal. Reg'l Water Quality Control Bd., North Coast Region, Basin Plan, Chapter 2 (2018), https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/180710/BPChapter2BeneficialUses.pdf]. The basis for this list of beneficial water uses is section 13050(f) of the Porter-Cologne Act, which states: “Beneficial uses’ of the waters of the state that may be protected against water quality degradation include, but are not necessarily limited to, domestic, municipal, agricultural, and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.” The State Water Board has recognized the same seventeen beneficial uses for the Delta since its 1995 Bay-Delta Plan update [Footnote 388: Cal. Water Res. Control Bd., Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary 8-9. (Dec. 13, 2006)]. Notably absent from these beneficial uses are uses that directly recognize and protect tribal interests, and those of other subsistence fishers. In response to growing calls to account for activities specific to Native American tribes’ traditional and cultural uses of California’s waters in beneficial use designations, the State Water Board in 2017 established three new statewide beneficial uses definitions for use by the State and Regional Water Boards: Tribal Tradition and Cultural (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing (SUB) – collectively, TBUs	

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		[Footnote 389: State Water Bd. TBUs Resolution, supra note 378]. These beneficial uses were developed in collaboration with California tribes and members of the public to recognize the unique relationship that tribes have to California waterways and to acknowledge the need for heightened protections for tribal uses beyond the beneficial uses already recognized in water quality control plans. After the State Water Board's adoption, the U.S. EPA approved all three definitions, giving them immediate effect for Clean Water Act purposes [Footnote 390: Tomás Torres, Director, Water Division, EPA letter to Felicia Marcus, Chair, State Water Resources Control Bd. (July 14, 2017), https://www.epa.gov/sites/default/files/2017-07/documents/ca_hg_approval_letter_with_enclosures_signed_071417.pdf]. The adoption of these TBUs definitions, however, did not in itself amend basin plans or designate these uses to specific waterbodies in the State. Instead, Regional Water Boards must choose to add TBUs definitions to their respective basin plans. Once the definitions are included in the basin plan, the regions can then designate TBUs to waterbodies, or specific parts of waterbodies, and move toward protecting those uses of water [Footnote 391: Cal. Water Res. Control Bd., Protecting water quality for Tribal Beneficial Uses 2, https://www.waterboards.ca.gov/tribal_affairs/docs/2022/tbu-basin-amendment-09202022.pdf]. While the Regional Water Boards have their own processes in place for waterways within their jurisdiction, the State Water Board has authority over the Bay-Delta watershed through the Bay-Delta Plan. As the State Water Board controls water quality for the Bay-Delta watershed through the Bay-Delta Plan, the State Water Board should adopt TBUs for the Bay-Delta watershed as a whole. Adopting TBUs on a watershed-wide basis is the best way to ensure the protection of tribal uses of water.	
458	44	Designation of TBUs is necessary to realize the Board's commitments to advance racial equity and repair harm to tribal communities. Protecting TBUs through the Bay-Delta Plan is long overdue. While DTEC appreciates that the Board is now, for the first time,	The State Water Board appreciates these comments and the overall active participation and engagement by the Shingle Springs Band of Miwok Indians, the Winnemem Wintu Tribe, and Buena Vista Rancheria of Me-Wuk Indians in the planning process. The State Water Board and its staff have learned a lot from tribal engagement with these tribes in particular, and based

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		considering incorporating TBUs into the Bay-Delta Plan, consideration is not enough. The Board has an opportunity to make good on its promises to protect tribal uses of water to ensure that tribes have the opportunity to continue to practice their tribal tradition, culture, and lifeways by formally designating TBUs as beneficial uses of Bay-Delta waters on a whole watershed-wide basis, on par with its treatment of every other designated use of Bay-Delta waters. In addition to its statutory authorities, the State Water Board's recent Racial Equity Resolution calls for meaningful protection of TBUs [Footnote 392: State Water Bd. Racial Equity Resolution No. 2021-0050, ¶ 9(2) (Nov. 16, 2021)]. The Racial Equity Resolution recognizes the damage the State has done to tribes' cultural, spiritual, and subsistence traditions, including by: dispossessing tribes of their lands and waterways through colonization, genocide, and displacement; depriving tribes of water rights through broken federal treaty promises and failure to recognize reserved rights under state law; and degrading tribes' uses of water by managing watersheds through large-scale diversions and failing to provide the instream flows needed for a healthy Bay-Delta ecosystem [Footnote 393: Id. ¶¶ 7(b)-(c)]. In the Racial Equity Resolution, the Board emphasizes its work to recognize and protect TBUs in its efforts to address environmental injustices [Footnote 394: Id.]. Failure to add TBUs to the Bay-Delta Plan would violate the spirit of the Board's commitments to advancing racial equity and environmental justice in its watershed management. The Board reiterated its calls for the protection of tribal uses in a recent comment letter to the EPA [Footnote 395: Attachment 12, State Water Resources Control Bd., Comment Letter on Proposed Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights, p. 3 (Mar. 6, 2023) (hereafter, "Tribal Reserved Rights Comment Letter") [Att 12]]. There, the Board argued that tribal use designations in water quality standards are the best tool for protecting tribes' cultural, spiritual, and subsistence traditions, due to the limited reach of water rights for many California tribes resulting from the sordid history of violence, dispossession, and duplicitous treaty negotiations by federal and state governments [Footnote 396: Id.; California Water Curtailment Cases, Nos. H047270 & H047927 (Cal. Ct. App. Mar.	on this input, recognize the unique connection tribes have with water and how it largely does align with the purposes and goals of the Bay-Delta. These comments and other similar and powerful testimony serve as the basis for the State Water Board's designation of Tribal Tradition and Culture (CUL) beneficial use in the Bay-Delta watershed. The State Water Board looks forward to continued tribal participation in the implementation phase of the Bay-Delta Plan. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses and tribal reserved water rights. Please see Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on incorporation and designation of Tribal Beneficial Uses. Please refer to Common Response 10.1, Economically Disadvantaged Communities, for responses to comments related to the State Water Board's Racial Equity Resolution and Racial Equity Action Plan.

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		14, 2022)]. But for the State's role in undermining the ratification of treaties with California tribes, California Native American tribes would have treaty reserved rights that the State would need to protect through water quality standards. While the State Water Board and the EPA must do more to realize and protect tribal water rights, adopting TBUs is a small step toward making amends for the State's role in undermining tribal sovereignty and cultural and ceremonial uses of water. The Board has an opportunity and obligation to prevent further harm to tribes by adopting TBUs in the Bay-Delta Plan now.	
458	45	C. The Board must designate TBUs on a watershed-wide basis in accordance with the evidence before it. In addition to the Board's statutory authorities and policy commitments, watershed-wide TBUs designation is supported by testimony and documentation already before the Board. A whole watershed approach recognizes that tribes have always lived and experienced the Bay-Delta as one interconnected, interdependent system – stretching from the headwaters to the Pacific. Watershed wide TBUs designation is also needed to protect migratory species and other cultural resources that require healthy conditions throughout the ecosystem. For example, Bay-Delta channels serve as a key migratory route and nursery area for the Nur, which spend most of their adult lives in the saline lower estuary bays or the Pacific Ocean and return to inland streams and tributaries to spawn [Footnote 397: Cal. Water Res. Control Bd., Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem at 38 (Aug. 3, 2010)]. The overall ecosystem health needed to support TBUs must be achieved through a whole watershed approach. It is well-established that tribes have practiced cultural and subsistence traditions in the Bay- Delta since time immemorial. Native Californians have lived in the Bay-Delta for thousands of years, using and stewarding native Bay-Delta plants, fish species, and other wildlife. Although the degraded quality of Bay-Delta waters has posed serious threats to tribal cultural survival, tribes' unique relationships with Bay-Delta waters, species, and	Please refer to the response to comment 458-44.

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		landscapes have persisted. The experiences of Shingle Springs Band of Miwok Indians, the Winnemem Wintu Tribe, and Buena Vista Rancheria of Me-Wuk Indians exemplify historical and ongoing tribal uses of Bay-Delta waters as an interconnected system, and the irreparable harm tribes face if the Board does not take urgent action to restore the health of the Bay-Delta watershed. For years, California Native American tribes have implored the State Water Board to timely adopt TBUs and have provided extensive documentation of their irreplaceable connections to and use of Bay-Delta waters. In its 2022 Petition for Rulemaking, the Coalition – including Shingle Springs Band of Miwok Indians and Winnemem Wintu Tribe – called on the Board directly to update Bay-Delta water quality standards, including by incorporating TBUs into its water quality control plan. The Petition shared how, despite an increasingly degraded Delta watershed, the tribes continue to engage Tribal Beneficial Uses according to the Board’s own TBU definitions, including Tribal Tradition and Culture, Tribal Subsistence Fishing, and Subsistence Fishing [Footnote 398: See Cal. Water Res. Control Bd., Tribal Beneficial Uses Fact Sheet (Nov. 2020), https://www.waterboards.ca.gov/tribal_affairs/docs/tbu_fact_sheet_v04.pdf]. Petitioner Shingle Springs Band of Miwok Indian, for example, shared how the loss of native riparian vegetation, degraded water quality, and proliferation of harmful algal blooms interferes with tribal members’ ability to carry out traditional ceremonial practices, gather riparian vegetation for cultural implements, carry out traditional fishing practices, and practice and pass on traditional ecological knowledge [Footnote 399: Exhibit E at 41]. Petitioner Winnemem Wintu Tribe, described how continuing declines in Nur populations threaten the very core of tribal identity and the Tribe’s existence as a People [Footnote 400: Exhibit E at 41.]. The Petition called on formal beneficial use designation as a first and necessary step towards ensuring the protection of the cultural, spiritual, and traditional rights of California Native American Tribes. Tribal members and representatives have continued to articulate their ongoing connections to Bay-Delta waterways through hours of oral testimony, meetings, and public comments before	

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		the State Water Board. On June 7, 2023 the State Water Board held a hearing to consider adding TBUs to the Bay-Delta Plan. There, the Coalition, along with other tribes and tribal non-profit organizations, detailed the ample record of tribes' beneficial uses of waterways for subsistence and culturally-specific purposes up and down the Bay- Delta. Several tribal representatives described the necessity of designating TBUs on a whole watershed-wide basis, consistent with how their communities understand the Bay-Delta as an interconnected system whose waterways continue to support practices and activities specific to historic, present, and future tribal uses of water. For the Buena Vista Rancheria of Me-Wuk Indians, all Ki-ku (water) is connected [Footnote 401: Tribal elders of the Buena Vista Rancheria of Me-wuk Indians, whose Rancheria land is located in Southwestern Amador County in the Mokelumne River Watershed, have shared this message: Ki-ku (water) is life. Ki-ku is a relation. Ki-ku connects us. Past, present, future. Upstream, downstream. Below ground, above ground. All Ki-ku is connected. All water is connected. Presentation by Emily Moloney, Water Coordinator, Buena Vista Rancheria of Me-wuk Indians to State Water Resources Control Bd. (June 7, 2023)]. Today, tribal uses of Ki-ku are disrupted by a legacy of settler colonization and genocide, land use modification and privatization, and the pollution of waterways. During a public comment period following the tribal panel, members of the public – and the Board itself – shared significant support for adding TBUs beneficial uses to the Bay-Delta Plan. Commenters called on the Board to formally designate TBUs throughout the watershed without the specific designation process currently employed by the regional boards. Given the considerable evidence already in the record of tribes' irreplaceable connections to and use of Bay-Delta waters, no additional proceedings are needed to support adding TBUs to the Bay-Delta Plan. Asking tribes to provide further documentation to prove the existence of their cultural, spiritual, and subsistence traditions in the Bay-Delta water risks re-traumatization, fails to recognize the substantial investment tribes have already made in educating the State Water Board, and is unnecessarily burdensome. The State Water Board should formally designate TBUs on a watershed-wide basis consistent	

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		with the Board's treatment of all other beneficial uses in the Bay-Delta Plan.	
458	46	D. The Board's concerns surrounding Plan-wide TBUs designation are unconvincing. Instead of taking the simple step of designating TBUs, the Staff Report offers a series of policy concerns, none of which present an actual (as opposed to political) barrier to designation, but which collectively manifest the Board's political reluctance to formally center tribes and tribal uses of water in water governance. The Staff Report reiterates the Board's concerns for designating TBUs ahead of the Regional Water Boards and suggests that case-by-case designation by the Regional Boards is more appropriate. But leaving TBUs designation to the primary responsibility of the Regional Water Boards leaves tribal uses of water vastly unprotected. It also ignores the need for flow-based regulations in protecting TBUs and the Board's authority to govern water quality standards directly. Without formal designation of TBUs in the Bay-Delta Plan, tribal uses will not receive the protection required for tribes' cultural, spiritual, and subsistence traditions in the Bay-Delta – protections that are afforded to other beneficial uses across the watershed. The Board should heed its own call to action and designate TBUs on a watershed-wide basis now.	Please refer to the response to comment 458-44. The revised proposed Plan amendments incorporate Tribal Beneficial Uses (TBUs), would designate Tribal Tradition and Culture (CUL) beneficial use, and include provisions for tribal outreach and engagement and incorporation of tribal feedback and Traditional Ecological Knowledge into the Bay-Delta Plan update and implementation processes. Please see Chapter 2 of the revised proposed Plan amendments and Section 13.7.2, Environmental Analysis of CUL Tribal Beneficial Use Designation, of the Staff Report for more discussion and environmental analysis of the CUL Tribal Beneficial Use designation.
458	47	i. The Board has authority to designate TBUs at the watershed-wide level. The suggestion that TBU designation must take place at the regional level first ignores the fact that the State Water Board governs Bay-Delta water quality standards directly, and that the Board has assumed authority since 1978 to make beneficial use designations under the Bay-Delta Plan [Footnote 402: See Exhibit F at 8]. Furthermore, Staff's suggestion that beneficial use designation be left to the Regional Boards fails to acknowledge that beneficial uses in regional basin plans have never been treated as sufficient to protect beneficial uses in the Bay-Delta Footnote 403: See, e.g., Shingle Springs Band of Miwok Indians et al, Request for Reconsideration of Rulemaking	The revised proposed Plan amendments incorporate Tribal Beneficial Uses (TBUs) into the Bay-Delta Plan and designates Tribal Tradition and Culture (CUL) beneficial use as it relates to native fish and wildlife, particularly salmon, for the Bay-Delta watershed. Please see Section 13.7.2, Environmental Analysis of CUL Tribal Beneficial Use Designation, of the Staff Report for more discussion. Please see also Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses.

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		Decision of the State Water Resources Control Board Denying Petition to Review and Revise Bay-Delta Water Quality Standards, Ex. G to Title VI Complaint, 7 (Aug. 22, 2022)]. If the State Water Board leaves Regional Water Boards to engage in site-specific designation processes, TBUs will not be protected in a manner consistent with how tribes live and experience the Bay-Delta as one interconnected system. Currently, Regional Water Boards are taking different approaches to TBUs designations, with some making limited, site-specific designations while others are pursuing watershed-wide designations [Footnote 404: See Cal. Water Res. Control Bd, Regional Water Board Progress Updates on Tribal Beneficial Uses, https://www.waterboards.ca.gov/tribal_affairs/regional_tbu_updates.html]. This disjointed, patchwork approach to designation is especially challenging for tribes who practice cultural, spiritual, and subsistence traditions in waterways that cross Regional Board jurisdictions and must therefore navigate different TBU designation processes. It also ignores the extensive evidence and Traditional Ecological Knowledge before the Board affirming the need for a Plan-wide approach on par with other beneficial use designations. Regional Board beneficial use designations occur through the regulatory action of amending the region's basin plans [Footnote 405: Cal. Water Res. Control Bds. supra note 375 at 5]. Each basin plan amendment is subject to legal requirements and an extensive information gathering and public review process. Unlike beneficial use designation at the state level, beneficial use designations at the regional level apply to specific waterbodies or parts of waterbodies, not to an interconnected watershed like the Bay-Delta. The Central Valley Water Board, for example, is in the process of designating TBUs for specific waterbodies within its basin plan. After adopting TBU definitions into its Sacramento and San Joaquin River Basin Plan, project staff are now consulting with tribes who anticipate submitting TBU designation requests on a rolling basis. Each waterbody designation request must contain "substantial evidence," which includes not just scientific and technical data, but also a full range of cultural information including tribal histories and other	

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		forms of tribal ecological knowledge [Footnote 406: See id. at 11]. Once submitted, Regional Water Board staff will review information provided with the designation request and, eventually, prepare an SED [Footnote 407: Id.]. The basin plan amendment will also require external scientific review, public workshops and meetings and, finally, Regional Water Board review of the amendment through a public hearing [Footnote 408: Id.]. Approaching TBU designations differently from other beneficial uses is not only insufficiently protective; giving TBUs less weight would also undermine the State Water Board's commitments to centering tribes and Traditional Ecological Knowledge in its watershed management. Additionally, more narrow designations could raise privacy and confidentiality concerns if tribes were asked to identify specific locations with spiritual and cultural importance. Such an approach would also cause unnecessary burden and delay for tribes and the State Water Board alike, as greater evidentiary burdens and consultation would likely be required for more granular TBUs designations. In contrast, tribes have already provided the Board with ample evidence of their relationship to and beneficial uses of the Bay-Delta as one interconnected system, so formal tribal consultation on watershed-wide TBUs designations could be completed during this Bay-Delta Plan update without further delay. Contrary to the Board's suggestion that designation of TBUs in the Bay-Delta Plan is premature and dependent on actions by the Regional Water Boards, the Board has all the authority it needs to designate TBUs in the Bay-Delta Plan. Demurring to the Regional Water Boards to designate specific waterbodies or parts of waterbodies on a case-by-case basis is inconsistent with the Board's treatment of all other beneficial uses in the Bay-Delta Plan, relegating Tribal Beneficial Uses, without reason or explanation, to a second-tier status. All other beneficial uses in the Bay-Delta Plan are designated Plan-wide, not limited to specific waterbodies or parts of a waterbody, and TBUs should be accorded the same treatment [Footnote 409: See, e.g., State Water Res. Control Bd. Supra note 337 at p. 7 (stating the beneficial uses designated in the Bay-Delta Plan, which do not contain any geographic limitations)]. Given that the Board has assumed sole authority to make beneficial use designations	

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		under the Bay-Delta Plan, it has also assumed the responsibility to rectify this failure.	
458	48	E. Existing beneficial uses are insufficient to protect tribal uses of water. Even if the Regional Boards go through the process of amending their basin plans and designating tribal uses to specific waterbodies, TBUs will remain unprotected unless and until they are added to the Bay-Delta Plan on a Plan-wide basis and accompanied by adequate flow standards. The Board suggests that certain TBUs will be protected as a consequence of flow actions for the reasonable protection of fish and wildlife [Footnote 410: Staff Report at 11-11]. It is wrong. While flow actions for the reasonable protection of fish and wildlife may benefit tribal uses of water, extensive documentation and testimony before the Board shows that formal designation of TBUs separate from existing beneficial uses is needed to ensure adequate protection of tribal uses of waters throughout the Bay-Delta. Flows and water volumes needed to protect tribal uses have importance differences from those needed to protect existing designated beneficial uses, such as fisheries and aquatic habitats. For example, the culturally specific ways that tribes interact with the water – like elevated levels of fish consumption through subsistence fishing practices, directly entering and ingesting water during ceremony, and putting reeds in mouth during basket weaving – require distinct protections. Likewise, more flows are needed to mitigate HABs in Bay-Delta waterways to levels that allow for tribal cultural and ceremonial use; otherwise, the presence of cyanotoxins in locations containing tribal cultural resources or sacred sites may prevent people from exercising TBUs altogether for fear of harm to their health. As one example, the Winnemem Wintu Tribe's coming-of-age ceremonies involve swimming across a river near a sacred rock, and water blessings consist of cupping river water in their hands and placing it on their heads and hearts [Footnote 411: Attachment 1, Exhibit E, Attachment B, Decl. of Gary Mulcahy ¶	Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to harmful algal blooms and California Native American Tribes. Please see Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on incorporation and designation of Tribal Beneficial Uses.

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		32 [hereinafter “Decl. of Gary Mulcahy”]]. Neither of these practices can take place when HABs are present [Footnote 412 Id.]. Additionally, riparian resources used by tribes, such as tule, are not directly covered by other beneficial uses. The Board’s suggestion that flow measures for existing beneficial uses would protect certain TBUs ignores the science and traditional ecological knowledge presented to the Board by tribes.	
458	49	The Board itself has acknowledged that Regional Water Board designation of TBUs would not be adequate to protect Tribal Beneficial Uses in the Bay-Delta. In a prior resolution addressing designation of TBUs in the context of water quality objectives for mercury, the State Water Board suggested that certain constraints may apply to the Regional Boards’ implementation of TBUs in their basin plans [Footnote 413: Cal. Water Res. Bd. TBUs Resolution, supra note 378]. That is, the resolution instructed that regional water quality control plans will not contain requirements to address flow needs for fisheries or aquatic habitat to protect a CUL, T-SUB, or SUB beneficial use [Footnote 414: Id. 12, Resolution 7. This directive does not preclude elevating flow requirements to protect TBUs for needs unrelated to fisheries or aquatic habitat. In fact, the Resolution expressly recognizes that flow objectives may be established for CUL beneficial uses]. Such limitations are improper, as the evidence is clear that sufficient flows are necessary to ensure protection of TBUs. And any limitations on use of flow-based criteria that may exist for regional basin plans do not and must not apply here, where the State Water Board is making the designations directly and has authority to set flow-based criteria on its own cognizance. Flow-based criteria are a principal instrument the Board has used to protect beneficial uses since the inception of the Bay-Delta Plan, and this should apply no differently to TBUs than for all other beneficial uses. If the Board fails to adopt TBUs at a Plan-wide level, there will be no consideration of flow-based criteria sufficient to protect tribal cultural uses of water. The Board’s proposal for case-by-case designation by the Regional Boards ignores tribes’ repeated calls for watershed-wide protection of tribal cultural uses of water, consistent with	The State Water Board continues to learn and improve on its understanding and approach to Tribal Beneficial Uses (TBUs) through outreach and engagement with California Native American Tribes. The revised proposed Plan amendments designate Tribal Tradition and Culture (CUL) specifically due to the cultural and spiritual importance of native fish and wildlife, particularly salmon, to tribes. 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 Boards’ water quality control plans, including the fish and wildlife beneficial uses. The Staff Report acknowledges that although the CUL beneficial use does not itself authorize implementation actions aimed at protecting fish populations, there is a practical overlap: implementation actions taken to protect aquatic life beneficial uses related to flow, water project operations, and physical habitat restoration, also support the healthy fish populations on which tribal cultural and spiritual uses depend. To the extent that other tribal uses and activities encompassed within the CUL use may be directly supported by flow actions, including for example, navigation, gathering and consumption of natural resources, and immersion ceremonies, the implementation actions protecting the fish and wildlife beneficial uses may also incidentally support those cultural activities and lifeways. It’s possible that additional flow-based water quality objectives or site-specific water right requirements could be considered if it is determined that additional flow is 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

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		how tribes understand and interact with the Bay-Delta as one interconnected system. The Board should make real its commitments to centering tribal voices. As stated in the Board's Anti-Racism Resolution, the Board must "center[] its work and decision-making on Black, Indigenous, and people of color who are disproportionately represented in the most vulnerable communities and in unsheltered populations, while ensuring the full benefits of the Water Boards' programs for all people." [Footnote 415: Id. At 7; Cal Water Res. Control Bd., Anti-Racism Resolution at 7(b).] To date, the Board has yet to take tangible action to effectuate its Anti-Racism Resolution in the Delta. If the State Water Board is truly invested in repairing the injustices and inequities baked into its own programs and the water rights regime it implements, it will begin by making real its commitments to formally designate and protect TBUs as part of the Bay-Delta Plan. Implementing TBUs in the Bay-Delta Plan is an important step towards ensuring that the cultural, spiritual, and subsistence traditions practiced by tribes throughout the Bay-Delta watershed since time immemorial can persist in the face of existential threats posed by the Bay-Delta's degraded quality, which will be further heightened by climate change [Footnote 416: Attachment 11, Coalition Comment on Proposed Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights [hereinafter "Attachment 11"] [ATT 11]]. The State Water Board has an opportunity through the TBUs designation and implementation process to meaningfully center tribes and traditional ecological knowledge in its management of Bay-Delta water resources. If TBUs are actually protected, the benefits of a healthier Bay-Delta ecosystem will not only serve tribes, but will also extend to all Californians who rely on the water, species, and landscapes supported by this unique ecosystem.	uses such as REC-1, although it is possible that a ceremony could require more flow at certain places and times. The State Water Board considers the designation of CUL in the Bay-Delta Plan to be a tangible action taken consistent with its direction articulated in the Racial Equity Resolution. Please see Common Response 10.1, Economically Disadvantaged Communities, for additional information on the State Water Board's Racial Equity Resolution and Racial Equity Action Plan. Please see also Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses.
458	50	The Board must ensure protection of Tribal Reserved Rights. In addition to formally designating and protecting tribal uses of water, water quality standards must also account for and protect tribal reserved rights [Footnote 417: "Tribal reserved rights" are distinct from Winters rights or "federal reserved rights." Tribal reserved rights refer to any rights to aquatic and/or aquatic-dependent resources reserved or held by tribes, either expressly	Please see Section 11.2.1, Tribal Reserved Water Rights, in the final Staff Report for information on tribal reserved water rights. Please also see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to tribal reserved water rights.

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		or implicitly, through treaties, statutes, executive orders, or other sources of Federal law]. The EPA is in the process of finalizing a rule that will formalize and clarify already existing requirements that state agencies – including the State Water Board – ensure in setting or amending water quality standards that those standards protect tribal reserved rights [Footnote 418: Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights, 87 Fed. Reg. 74361 (Dec. 5, 2022)]. As the EPA observed in the proposed rules, it has already disapproved state water quality standards adopted by the State of Maine that did not adequately protect tribal reserved rights and admonished the State of Washington to consider tribal reserved fishing rights in setting human health criteria [Footnote 419: 87 Fed. Reg. at 74365]. The State Water Board has itself agreed that explicit consideration of tribes’ cultural, spiritual, and sustenance practices in a water quality context is warranted [Footnote 420: Attachment 12] [Att 12]. In fact, in its comment to the EPA on its proposed rule, the State Water Board urged the EPA to go a step further and protect the rights and interests of tribes that fall outside recognized tribal reserved rights [Footnote 421: “USEPA’s decision to tether the proposed rule to a rights-based approach will not adequately protect all the tribes’ uses of waters. All of a tribe’s activities and actual uses of a waterbody are not necessarily reflected by the tribal reserved right. In such cases, limiting water quality protections to only those tribal activities stemming from the tribal reserved right has the drawback of not reflecting all of the tribal uses actually being made of waterbodies.” (Attachment 12 at 11.)]. Despite the Board’s insistence on the importance of even more expansive protections for tribal uses of water, the Board’s draft Staff Report excludes any discussion of how and when tribal reserved rights will be protected and accounted for [Footnote 422: Attachment 13 at 1 [Att 13]]. Specifically, the Report includes no consideration at all of flow levels necessary to protect tribal reserved rights (including but not limited to reserved fishing and hunting rights of tribes in the Klamath River Basin) and includes no program of implementation specifying how tribal reserved rights will be protected and federal reserved water rights prioritized. In deferring development of regulatory text as well as a program of implementation for the Bay-Delta	

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		Plan update, [Footnote 423: Staff Report at 1-2 (“However, the specific changes to the Bay-Delta Plan, and specifically the program of implementation, have not been developed yet.”)] the State Water Board leaves tribal reserved rights vastly unprotected.	
458	51	As discussed above, the Board has unlawfully deferred development and environmental review of the program of implementation even while conceding that the program is necessary “to achieve [flow, salinity, and water quality] objectives.” [Footnote 424: Id. at 1]. Without a program showing when and how the standards will be put into effect, the standards the Board approves will be paper commitments that, as in the case with Phase I standards, will likely be years away from practical implementation; meanwhile, instream flows will remain inadequate to protect tribal reserved rights and cultural resources. The Board must proceed to develop and disclose a program of implementation that ensures that the implementation of the Bay- Delta Plan does not impinge on federal reserved water rights, including unquantified Winters rights, and assures protection of tribal reserved rights for all tribes in the Bay-Delta watershed and its tributaries. The Board should begin by undertaking a more robust program to identify aquatic dependent tribal reserved rights, identify and quantify federal reserved water rights, and ensure that reserved water is not available for appropriation. The Board must meaningfully engage California Native Tribes as partners in these processes, rather than developing its proposed pathway and engaging with tribes on protection of their own rights and resources as a check-the-box afterthought.	The 2023 draft Staff Report includes a sufficiently detailed description of the proposed program of implementation for the purposes of the analysis. However, drafts of the Bay-Delta Plan were subsequently released for public review and comment in October 2024, July 2025, and December 2025. Please see Common Response 1.3, Revised Proposed Plan Amendments, for further information on the revised proposed Plan amendments and Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses.
458	52	The Board must do more to assure integration of Traditional Ecological Knowledge in Bay-Delta water governance. A. The Board must meaningfully engage tribes as the holders of Traditional Ecological Knowledge. As currently drafted, the State Water Board’s brief section on Traditional Ecological Knowledge (“TEK”) [Footnote 425: This section generally uses the phrase “Traditional Ecological Knowledge,” or “TEK,” but recognizes that a variety of terms, including Traditional Knowledge, Indigenous Traditional	The revised proposed Plan amendments describe commitments related to tribal engagement actions and states that the State Water Board will consider and incorporate Traditional Ecological Knowledge (TEK), tribal feedback, and perspectives shared by California Native American Tribes to inform the State Water Board’s efforts to update and implement the Bay-Delta Plan. TEK will be considered in a full and complementary way alongside non-Indigenous scientific approaches. As the State Water Board develops specific policies and guidelines regarding incorporation of TEK, those policies and guidelines will be adhered to. In addition, the State Water Board’s consideration and

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		Knowledge] is inadequate to meaningfully engage tribal perspectives essential for well-informed decision-making in the Bay-Delta. As its original stewards, California Native Tribes and Indigenous communities have deep expertise critical for successful watershed management in the Bay-Delta. Traditional Ecological Knowledge includes observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment [Footnote 426: Office of Sci. and Tech. Pol’y Council on Env’t Quality, Memorandum for Heads of Federal Departments and Agencies, (Nov. 30, 2022) https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf. (citing U.S. Fish & Wildlife Services, Traditional Ecological Knowledge for Application by Service Scientists (Feb. 2011), https://www.fws.gov/sites/default/files/documents/TEK-Fact-Sheet.pdf)). It is specific to a location and applies to phenomena across biological, social, cultural, and spiritual systems [Footnote 427: Id.]. TEK is an accumulating body of knowledge, practice, and belief that continues to develop and evolve through generations of cultural transmission and ecological changes [Footnote 428: Id.]. TEK is unique to each group of Indigenous Peoples and deeply connected to the communities holding that knowledge. Inclusion of Traditional Ecological Knowledge is necessary for appropriate protection of tribal uses of Delta waters and also respectful of the sovereignty and self-determination of Tribal Nations throughout the watershed. After receiving requests from California Native American tribes to incorporate TEK into proposed Plan amendments and implementation measures, the Board states that it has begun the process of documenting TEK and traditional resource management strategies of tribes in the Bay-Delta watershed, including its tributaries [Footnote 429: Staff Report at 11-13]. What the Board misses, however, is an understanding that TEK cannot simply be written down and then used (or discarded) by the Board in its decision-making; indeed, to treat TEK in such an extractive manner would further the legacy of alienating tribes from water and its management. As currently drafted, the Staff Report’s focus on TEK	incorporation of TEK and tribal feedback and perspectives will follow CARE principles. To ensure adherence to the CARE principles, the State Water Board will request tribal review by the Bay-Delta Tribal Advisory Group of any Bay-Delta Plan related documents incorporating TEK and will revise documentation of TEK based on that feedback. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for more information on tribal outreach and engagement and Traditional Ecological Knowledge/tribal knowledge. Please see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board’s efforts to engage more robustly with California Native American Tribes and integrate Traditional Ecological Knowledge/tribal knowledge into the State Water Board’s Bay-Delta Plan update and implementation processes.

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		documentation risks extracting Indigenous Knowledge from tribal communities without their consent. The Staff Report explains, for example, that staff are currently exploring avenues to interview tribal members with the intention of documenting their TEK. The Report does not, however, outline how these interviews will be conducted, what information will be collected, and how that information will be used, stored, and disseminated. Nor does it conceive of the tribes as partners in incorporating TEK into evaluation, implementation, and updating of water quality standards. Accordingly, while the Board is moving in the right direction in acknowledging the importance of TEK, the Board and staff members face severe limitations in their current understanding and implementation of TEK. These limitations stem from the long history of tribal exclusion from decision-making processes in the Bay-Delta. As the Board rightfully points out, access to TEK is limited because tribes are often hesitant to share their knowledge for fear that they will lose the rights to their data, thereby threatening tribal sovereignty [Footnote 430: Id.]. The Board must shift from a framework that focuses on documentation of TEK to one focused on proactive and consistent engagement with tribes in governance and protection of their own cultural resources. Working in partnership with tribes to incorporate TEK that is culturally precise and sufficiently robust to encompass the diversity of Indigenous knowledge forms held by California tribal communities will be critical to ensure that flows and diversions are managed in a way that restores holistic ecological health and human connection to the water. And the Board must ensure that Indigenous Knowledge is engaged in a manner that is respectful of tribal sovereignty and is mutually beneficial for tribal communities. As the Board continues to develop a deeper understanding of TEK and as it continues to grow and maintain mutually beneficial relationships with Tribal Nations needed to appropriately include TEK in the Bay-Delta Plan, it should consider the following recommendations. First, the Board must engage with California Native American tribes to accurately and appropriately describe tribal relationships to Bay-Delta waters through government-to-government consultation. Without meaningful consultation and engagement, the Staff Report fails	

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		to appreciate the deep and ongoing connections California Native American Tribes maintain to Bay-Delta waters. Second, the Board must improve and sustain meaningful engagement with tribes in the setting, implementation, and evaluation of water quality standards. Third, the Board should co-create and implement a policy for meaningful incorporation of TEK together with tribes. Presently, the Board offers no concrete steps for documenting and incorporating TEK into the Bay-Delta Plan. The Board should work together with tribes to create a concrete plan.	
458	53	B. Meaningful consultation with tribes is essential to restoration of the ecological health of the Bay-Delta and human connection with the water. The State Water Board has statutory and policy obligations to consult with tribes in the adoption of the Bay-Delta Plan. Instead of pursuing meaningful consultation with tribes to affirmatively protect their water-related cultural resources, states, including California, have demonstrated a recurring practice of excluding tribes from decision-making processes and coordinating with them only as a check-the-box exercise. That is exactly what happened here. Instead of engaging in legally mandated AB 52 government-go-government consultation, the Board held several tribal meetings and listening sessions where staff shared updates on the Bay-Delta Plan and solicited feedback from tribal representatives. The Board should have undertaken AB 52 consultation from the inception of the Phase II update process (at least as of 2017, when the Board took its first steps toward the update), consulting with tribes on a nation-to-nation basis to understand how the scope of the plan affects individual tribes and their distinct interests in the Bay-Delta watershed. A handful of tribal meetings where staff and Board members engaged tribal interests generally does not constitute the type of meaningful government-to-government consultation mandated under CEQA. Even in the absence of statutory consultation requirements, the Board's own Tribal Consultation Policy states that "a best practice is to consult with tribes out of respect for their status as sovereign governments or based on the unique tribal interests	The tribal meetings and listening sessions referenced in this comment were not intended to replace government-to-government consultation or to act in-lieu of legally mandated consultation requirements. The referenced tribal meetings and listening session were intended to inform California Native American Tribes of the process to update the Bay-Delta Plan, the alternatives evaluated in the draft Staff Report, and of the opportunities to engage and participate in the process to update the Bay-Delta Plan, including opportunities to engage in government-to-government consultation. These meetings were also intended to help gather feedback and input on broad tribal topics that could be expanded upon during formal consultation. On January 13, 2023, State Water Board staff mailed EO B-10-11 letters offering formal consultation on the update and implementation of the Bay-Delta Plan to approximately 90 California Native American Tribes identified within the Bay-Delta and Trinity watersheds. The EO B-10-11 letters also contained general information on the Bay-Delta Plan and the efforts to update and implement the Bay-Delta Plan, as well as a timeline for milestones. Tribal contact information was obtained through the State Water Board's Office of Public Engagement, Equity, and Tribal Affairs' tribal consultation list, which is periodically updated with information from the California Native American Heritage Commission. In response, State Water Board staff received three requests for government-to-government consultation. Although the January 13, 2023 letter requests a written response within 45 days of receipt of the letter, the request for government-to-government consultation remains open. To request government-to-government consultation or

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		that may be affected by a proposed action, policy, or set of activities.” [Footnote 431: Cal. State Water Res. Control Bd., Tribal Consultation Policy 10 (2019), https://www.waterboards.ca.gov/tribal_affairs/docs/california_water_board_tribal_consultation_policy.pdf]. The Board’s current tribal engagements fall well short of its commitments to strengthening and sustaining government-to-government relationships with California Native American Tribes. Without tribal consultation on the SED itself, violations of tribes’ sovereign rights to government-to-government consultation and assaults to tribal cultural resources and interests will be replicated through subsequent environmental reviews. Given that the Board will need to recirculate the draft SED with a stable, complete, and finite project description, it must engage AB 52 consultation on the revised SED to create a more accurate and complete analysis with California Native American tribes whose identity, culture, and religion are integrally connected with the Bay-Delta. By creating this document unilaterally, the State Water Board’s Tribal Engagement section is truncated and fails to capture the richness and depth of historical and present tribal relationships with Bay-Delta waterways. Currently, the draft Staff Report devotes only 22 out of 6,000 pages tribal considerations. The Board should dedicate ample space to engaging the voices and perspectives of tribes in and around the watershed, and it should integrate learnings from tribal consultation and engagement throughout its analysis, rather than relegating them to a small standalone chapter. Further, because each tribe can only speak for itself, the Board cannot substitute engagement with a single tribe for engagement with impacted tribal nations. Rather, the Board must prioritize proactive and consistent engagement with the diversity of tribal communities throughout the Bay-Delta and its headwaters on a nation-to-nation basis. In the meantime, these comments provide suggestions to help fill in some of the current gaps in knowledge and additional illustrative examples from the experiences of DTEC members. As an initial matter, the Board’s description of the Bay-Delta as “sustain[ing] Indigenous Peoples for over 5,000 years” [Footnote	other engagement, please contact the Tribal Coordinator for Bay-Delta Plan update and implementation processes. Contact information is available at https://waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/tribal_coordination.html. The suggestion to replace a fixed number of years with the phrase time immemorial, has been integrated throughout final Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses. Please see also Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Traditional Ecological Knowledge/tribal knowledge, tribal outreach and engagement, and CEQA and Assembly Bill 52.

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		432: [There was no footnote 432 in the document]]. Severely understates California Native American tribes' history and presence in the Bay-Delta. Indigenous Peoples have used and diverted the water running through their ancestral lands since time immemorial and should be recognized as the Delta's first water users. Although the degraded quality of Bay-Delta waters has posed serious threats to tribal cultural survival, tribes' unique relationships with Bay-Delta waters, species, and landscapes have persisted. Today, many California tribes continue to rely on Bay-Delta waterways for subsistence, ceremony, and tradition. The Board must do more to acknowledge and engage the ongoing relationships tribes have to the Delta waters. To do otherwise is to ignore the lived experiences of Delta tribes who continue to assert their inherent water rights: namely, the rights that flow from tribes' longstanding water stewardship and use [Footnote 433: Id.; ACCIP, Trust and Natural Resources Report (1997) 20 (hereafter ACCIP Trust and Natural Resources)].	
458	54	The Board must also broaden its conception of TEK as something frozen in the past that can be reduced to sentences to a living relationship that tribes hold with water, land, and all they sustain, one focused on connection, stewardship, identity, and mutuality. Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, and Buena Vista Rancheria of Me-Wuk Indians offer the following illustrations of exercise of TEK by DTEC members to further the Board's understanding. The Board can begin to understand from our tribes' commitments to exercise of TEK, and restoration of TEK in our own governance and cultural activities, the unique relationships tribal nations hold to Bay-Delta waters and the irreparable harm tribes face if the Board does not prioritize working with tribes to restore the health of the Bay-Delta watershed. The Shingle Springs Band of Miwok Indians has stewarded and utilized resources from the waterways of the Sacramento-San Joaquin River Delta for sustenance, medicine, transportation, ceremony, clothing, and shelter, among other cultural and subsistence uses, since time immemorial [Footnote 434: Decl. of Malissa Tayaba ¶ 2]. In recent years, the Tribe has been returning to Bay-Delta waterways and working to restore	State Water Board staff appreciates examples of how Traditional Ecological Knowledge (TEK) can be integrated into state and federal processes. The State Water Board is interested in integrating TEK into the Bay-Delta Plan update and implementation processes and understands this can only be achieved through collaboration with California Native American Tribes. Please see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board's efforts to engage more robustly with California Native American Tribes and integrate Traditional Ecological Knowledge/tribal knowledge into the State Water Board's Bay-Delta Plan update and implementation processes. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Traditional Ecological Knowledge/tribal knowledge.

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		connections to cultural resources and traditional ways of life by reclaiming its culture and healing the alienation of many tribal members from the water. In 2017, the Tribe founded a TEK program to aid in these efforts. TEK program coordinators spend time reeducating tribal members about their connections to the waterways and teach tribal members how to make regalia, food, clothing, shelter, and transportation out of natural resources found along their ancestral village sites. In 2020 the Tribe purchased a small tract of land at its ancestral village site in Verona, where the Feather River meets the Sacramento River. Yet, despite regaining this limited riparian access to ancestral waterways, the degraded condition of the Bay-Delta is impeding the Tribe's long-sought reconnection. For example, traditional riparian cultural resources – like tule, a long grassy plant that once lined the waterways and from which the Tribe fashioned fishing boats, regalia, and other important cultural and subsistence implements – either no longer exist or are largely unsuitable for use because of the polluted state of the water. During the summer of 2022, the Winnemem Wintu partnered with state and federal agencies in pursuing measures to bring winter-run Chinook salmon eggs back to the McCloud River [Footnote 435 Native News Online Staff, NATIVE NEWS ONLINE, California Tribe Teams Up with State, Federal Agencies to Protect Endangered Salmon (May 08, 2023), https://nativenewsonline.net/environment/california-tribe-teams-up-withstate-federal-agencies-to-protect-endangered-salmon (referencing work to transport 40,000 fertilized eggs. Many of the eggs hatched and the Tribe worked with staff to collect juvenile fish before they reached the reservoir and biologists moved them downstream so the salmon could continue to the ocean.)]. The partnership supports a joint effort to return the salmon to their original spawning areas in cold mountain rivers for the first time since Shasta Dam blocked their migration in the 1940s [Footnote 436: Id.]. The partnership recognizes the Winnemem Wintu as the original stewards of salmon whose knowledge and expertise is essential for the future flourishing of the species. In May 2023, the Winnemem Wintu, California Department of Fish and Wildlife (CDFW), and National Oceanic Atmospheric Administration (NOAA) Fisheries signed agreements to restore Chinook salmon in the McCloud	

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		River [Footnote 437: NOAA Fisheries, The Original Salmon Stewards, https://www.fisheries.noaa.gov/west-coast/endangered-speciesconservation/original-salmon-stewards (last visited Jan. 19, 2024)]. The new agreements call on the Winnemem Wintu Tribe to be a “co-equal decisionmaker,” and call for the Tribe to contribute TEK to the project, including oral history, knowledge of the Tribe’s deep cultural connection to winter-run Chinook salmon, and practical knowledge of the species [Footnote 438: Native News Online Staff, supra note 436]. Working in close consultation with the Winnemem Wintu – and relying on a handscribbled design by Chief Caleen Sisk – a team of UC-Davis scientists constructed a groundbreaking egg incubator that mimics the conditions of the McCloud River [Footnote 439: Marc Dadigan, Rewilding Baby Salmon Using Indigenous Knowledge, Earth Island J. (Nov. 7, 2023), https://www.earthisland.org/journal/index.php/articles/entry/re-wilding-baby-salmon-according-to-indigenousknowledge?fbclid=IwAR3c0zEWoW080H6whBbf91bUZ6o-jIRPX86uEnXAUKpr-w3G3jDKiAzjcp#]. The incubator, which the Tribe is referring to as the Nur-Nature Based incubator (Nur is the Winnemem Wintu word for salmon), allows young salmon more time to practice swimming against river currents [Footnote 440: Dadigan, supra note 440]. The incubator hatched an estimated 40,000-plus eggs this past summer and fall and is observed to have nurtured healthy young salmon that are well prepared for life in a free flowing river [Footnote 441 Id.].	
458	55	The Board must sustain meaningful engagement with tribes in the setting, implementation, and evaluation of water quality standards. Designating TBUs in the Bay-Delta Plan is necessary but not sufficient to restore ecological health and integrity of Bay-Delta waterways: Restoration of flows sufficient to protect tribal uses of Bay-Delta waters will not occur until the State Water Board operationalizes TBUs by establishing water quality objectives, criteria, and a program of implementation that substantively support tribal uses of Bay-Delta waters. Although Bay-Delta Plan review has lagged years and even decades behind the statutory deadline, past failures must not hinder progress on ensuring	The revised proposed Plan amendments designate Tribal Tradition and Culture (CUL) beneficial use specifically due to the cultural and spiritual importance of native fish and wildlife, particularly salmon, to tribes. 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. The revised proposed Plan amendments include adaptive implementation and are designed to be adjusted as needed moving forward. Provisions for tribal input are included so that tribal voices are actively involved in this process. As discussed in Staff Report Section 13.7.2, Environmental Analysis of CUL Tribal Beneficial Use Designation, to the extent that other tribal uses and activities encompassed within the CUL use may

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		protection of TBUs. Rather, TBU implementation provides an opportunity for the Board to make real on its important statutory obligations to regularly review and update the Bay-Delta Plan. First, the Board has an opportunity to engage tribes as partners in ensuring TBU protection through design of the Phase I and II programs of implementation. As explained above, the Board's failure to set forth and analyze programs of implementation together with the standards themselves is an immense oversight that only further delays progress on the comprehensive completion of the Bay-Delta Plan update. Without a program of implementation in place, tribal communities and other members of the public are left without clear direction on the actions the Board will take to achieve water quality objectives, making it impossible to provide constructive feedback and recommendations. The Board should center tribal participation and Traditional Ecological Knowledge in the development of the program of implementation, both to meet its commitments to consultation and tribal engagement and to ensure that water quality objectives and implementation plans are culturally appropriate and substantively protective of tribal uses. Second, after the Board designates TBUs for the Bay-Delta watershed as a whole – which must be done through the current plan update – it should partner with tribes to evaluate how well water quality standards and their implementation are working to protect TBUs and where they are falling short. This will require establishing a framework for ongoing government-to-government consultation and engagement with tribal non-profit organizations during periodic reviews of the Bay-Delta Plan – which, pursuant to the Clean Water Act, must occur on an ongoing, triennial basis. Third, where water quality standards are leaving TBUs unprotected, the Board must work with the tribes to identify changes to water quality standards and their implementation required to ensure protection of TBUs, just as with any other beneficial uses. This will require providing resources to and empowering tribes and tribal-nonprofits to work together with the Board to identify and evaluate numeric and/or narrative water quality objectives for TBUs, including flow-based and	be directly supported by flow actions, including for example, navigation, gathering and consumption of natural resources, and immersion ceremonies, the implementation actions protecting the fish and wildlife beneficial uses may also incidentally support those cultural activities and lifeways. The analyses also may be used to inform future flow-based actions if necessary for the reasonable protection of CUL uses not already addressed in the Bay-Delta Plan. In addition, the environmental analysis provides a programmatic evaluation of reasonably foreseeable water quality regulatory controls that may be developed through the State Water Board's Division of Water Quality and the Regional Water Quality Control Boards water quality authorities. New beneficial use designations alone, including CUL, do not necessarily mean that additional water quality objectives, restrictions on waste discharges, or other new or different actions will be necessary. 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 Water Contact Recreation (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 discharge requirements for the reasonable protection of CUL uses in the watershed. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses. Please see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board's efforts to engage more robustly with California Native American Tribes and integrate Traditional Ecological Knowledge/tribal knowledge into the State Water Board's Bay-Delta Plan update

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		other water quality objectives adequately protective of TBUs, and a program of implementation to realize the objectives, as well as building tribal capacity to monitor water quality to ensure safe conditions for practicing cultural, spiritual, and subsistence traditions. To facilitate this ongoing engagement and participation, the Board should establish a tribal advisory group for Bay-Delta Plan TBUs that would participate in every triennial review and in working with the Board on periodic updates of the Bay-Delta Plan.	and implementation processes, including the formation of a Tribal Advisory Group.
458	56	The Board should co-create and implement a policy for meaningful incorporation of TEK together with tribes. To effectively engage Traditional Ecological Knowledge in water governance, the State Water Board must work together with California Native American tribes to co-create and implement a TEK policy. The State Water Board joins a growing list of state and federal agencies that have taken up efforts to improve the recognition and inclusion of TEK as a compliment to western ecological knowledge in environmental research, policies, and decision-making [Footnote 442: For example, this list includes the U.S. Environmental Protection Agency, the Departments of Agriculture and the Interior, the National Oceanic and Atmospheric Administration, and the Advisory Council on Historic Preservation]. As the Board correctly points out, the collaboration of Indigenous knowledge with western knowledge can deepen understanding of the interconnectedness of the natural world and provide a more holistic and effective approach to adaptive management. After centuries of suppression of Indigenous knowledge forms, lifeways, and philosophies, the process of engaging TEK can revitalize tribal uses of water throughout the watershed and better inform environmental policy and adaptive management. While the Staff Report emphasizes the importance of TEK to inform reasonable protection of TBUs, it lacks guidance for incorporating Indigenous Knowledge in Bay-Delta planning, or water governance more broadly. For example, staff identify how TEK may be used to improve ongoing monitoring and assessment of native species or to enhance information about historical species assemblages to inform planning in adaptive	Please see the response to comment 458-52.

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		management of floodplain restoration sites. Although these examples correctly outline the significance of TEK in improving watershed management, the Board's analyses stop short of offering concrete next steps for incorporation of TEK into the Bay-Delta Plan. Without such measures, the Board runs the risk of extracting knowledge from tribes without ensuring that Indigenous Knowledge is considered and applied in a manner that is respectful of tribal sovereignty and is mutually beneficial for tribal communities. To assure that implementation of TEK does not become yet another exercise in cultural appropriation, the Board should co-create a TEK policy together with California Native American tribes to actually protect those uses and inform decision-making. The policy should include a set of guidelines and best practices for working with tribes to request, document, and integrate TEK in decision-making in a way that is sensitive to tribal interests and respectful of tribal sovereignty, similar to the Board's own Tribal Consultation Policy. [Footnote 443: See State Water Resources Control Bd., Tribal Consultation Policy (June 2019), https://www.waterboards.ca.gov/about_us/public_participation/tribal_affairs/docs/california_water_board_tribal_consultation_policy.pdf]. The Board should consider the creation of a Tribal Advisory Board to assist in developing the TEK policy, in addition to TBU evaluation and implementation. Guidelines set forth by the federal administration offer a useful starting point for the State Water Board. In December 2022, The White House Council on Environmental Quality ("CEQ") and the White House Office of Science and Technology Policy ("OSTP") jointly released government-wide guidance and an accompanying implementation memorandum for recognizing and including Indigenous Knowledge in federal research, policy, and decision making. [Footnote 444: Office of Sci. and Tech. Pol'y Council on Env't Quality, supra note 427]. The guidance identifies promising practices for collaborating with Tribal Nations and Indigenous Peoples respecting the decisions of these communities to engage or decline to participate in and knowledge sharing on their own terms. As one example, the guidelines acknowledge that appropriately	

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		recognizing and applying Indigenous Knowledge requires growing and maintaining strong and mutually beneficial relationships between agencies and tribal communities [Footnote 445: Office of Sci. and Tech. Pol’y Council on Env’t Quality, supra note 427]. Such relationships are important in building trust and common understanding for pursuing co-management of resources and in facilitating the exchange of information. The State Water Board should similarly commit to growing and sustaining relationships with tribal partners throughout the Bay-Delta. The guidelines identify several principles and practices necessary for agencies to make sustained efforts to build and maintain trust to support Indigenous Knowledge: 1. Acknowledge Historical Context and Past Injustice. 2. Practice Early and Sustained Engagement. 3. Earn and Maintain Trust. 4. Respect Different Processes and World Views. 5. Recognize Challenges. 6. Consider Co-management and Co-stewardship Structures. 7. Pursue Co-Production of Knowledge [Footnote 446: Id.]. The second principle mirrors tribes’ repeated requests that the Board engage in regular, meaningful, and robust consultation consistent with AB 52 and the Board’s own Tribal Consultation Policy. With this principle, the White House Guidelines emphasize that agencies should not initiate consultation with an assumption that the Tribal Nation will share its knowledge, but rather “with an inclusive process that empowers the Tribal Nation to determine if, and how, Indigenous Knowledge may be included in the agency’s process.” [Footnote 447: Id. At 9]. Likewise, the White House guidelines’ focus on earning and maintaining trust, pursuing coproduction of knowledge, and developing co-management structures mirror what tribes have been asking of the Board for designation and implementation of	

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		TBUs. As the federal government's experience recognizes, a robust, co-created TEK policy will do much to avoid the damaging missteps that have characterized the current Bay-Delta update process and assure a better relationship between the Board and tribes, and ultimately better outcomes for the Bay-Delta, going forward.	
458	57	The Board's economic analysis overstates costs to the agricultural industry from reduced reliance on Delta water while ignoring the vast benefits from restoration of ecological health and social welfare in the Bay-Delta. The State Water Board's economic analysis is inadequate. By focusing almost exclusively on costs to agricultural production from reducing diversions and ignoring costs to communities from continued suppression of instream flows, the Board fails to provide an accurate picture of costs and benefits to support informed decision-making. Under the Porter-Cologne Act, the State Water Board must take into account economic considerations, among other factors, when establishing water quality objectives for the reasonable protection of beneficial uses [Footnote 448: Section 13241 of the Water Code sets forth a non-exclusive lists of considerations in establishing water quality objectives, including "past, present, and future beneficial uses of water," "environmental characteristics of the hydrographic unit under consideration, "water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area," "economic considerations," and the "need to develop and use recycled water." Cal. Wat. Code § 13241]. Likewise, under the Board's CEQA-certified regulatory program, the SED for the Bay-Delta Plan update must "take into account a reasonable range of . . . Economic" as well as environmental and other factors [Footnote 449: 23 Cal. Code Regs. § 3777(c)]. The Clean Water Act sets a floor for water quality in the state: the Board may only take economic considerations into account in setting objectives to the extent that they are "more stringent than required by federal law." [Footnote 450: City of Burbank v. State Wat. Res. Control Bd., 35 Cal.4th 613, 628 (2005) (emphasis added)]. Ultimately, the purpose of the Porter-	Consistent with the consideration of factors under Water Code section 13241, the State Water Board included an extensive economic analysis in Chapter 8, Economic Analysis and Other Considerations, of the Staff Report. Please refer to Common Response 1.2, Water Quality Control Planning Process, for Board consideration of factors under Water Code section 13241. Section 8.6.1, Recreational and Commercial Fisheries, in the 2023 draft Staff Report (Section 8.6, Fisheries Economic Analysis, in the final Staff Report) addresses potential economic effects concerning commercial and recreational sport fisheries, with an emphasis on Chinook salmon. Section 13.8.4, Fisheries Economic Effects, provides supplemental economic information relevant to recreational and commercial fisheries and discusses fisheries economic effects under the revised proposed Plan amendments. In addition, in response to comments received on the economic analysis presented in the Staff Report, Chapter 8, Economic Analysis and Other Considerations, has been updated to include a new Section 8.6, Fisheries Economic Analysis, that addresses potential economic benefits from implementation of the flow scenarios and subsequent aquatic ecosystem improvements and benefits for native fish species. Among other topics, Section 8.6, Fisheries Economic Analysis, in the final Staff Report includes discussion of subsistence fishing and tribal uses of fish. This new section provides additional context and information concerning beneficial fisheries and ecosystem economic effects, but does not change the conclusions of the Staff Report's economic analysis. The State Water Board used the best tools and information available to estimate economic effects, and it would be highly speculative to quantify the fisheries and other related beneficial economic effects of the project that are associated with aquatic ecosystem improvements. As discussed in Section 8.6, Fisheries

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		Cologne Act is “to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.” [Footnote 451: Id. At 619; see Cal. Wat. Code § 13000. The Board must conform to and implement this legislative policy in its policy decisions. Cal. Wat. Code § 13001 (“The State board and regional boards in exercising any power granted in this division shall conform to and implement the policies of this chapter”)]. This means that in setting water quality objectives, the Board must consider not only costs of reducing discharges but also the myriad of benefits – economic and social, tangible and intangible. Further, neither the Porter-Cologne Act, nor any other expression of legislative policy, prioritizes economic considerations above other values, such as protection of public trust resources and beneficial uses or restoration of ecological integrity. Even so, for the Board’s economic analysis to mean anything in decision-making, it must provide a reasonably comprehensive analysis of costs and benefits of its decision. This requires a searching and unbiased analysis of quantifiable and nonquantifiable benefits from restored flows in the Bay-Delta to tribes, disadvantaged communities, diverse sectors, and ecosystems in and around the Bay-Delta. The economic analysis set forth in Chapter 8 of the Staff Report falls well short. The Board dedicates nearly its entire economic analysis in Chapter 8 to quantifying losses to agricultural production from restoration of instream flows. But this analysis relies on questionable assumptions and outdated and unreliable data. At the same time, the Board waives away benefits from restored flows. The result is an economic analysis that presents a worst-case scenario with inflated numbers on the cost side and essentially no values to compare to on the benefits side.	Economic Analysis, of the final Staff Report, the economic analysis of flow scenario effects on aquatic ecosystems is largely qualitative due to the challenges with fish population modeling in the Sacramento/Delta watershed. For a discussion of challenges with fish population modeling, see Appendix G2, Final Scientific Basis Report Supplement in Support of Proposed Voluntary Agreements for the Sacramento River, Delta, and Tributaries Update to the San Francisco Bay/Sacramento-San Joaquin Delta Water Quality Control Plan. Chapter 8, Economic Analysis and Other Considerations, analyzes economic effects of the proposed Plan amendments, including economic effects relevant to DACs. Chapter 8, Economic Analysis and Other Considerations, also summarizes potential sources of funding for municipal water supply and conservation. In addition, Chapter 10, Economically Disadvantaged Communities, provides an overview of DACs and their water supplies and incorporates information from several other sections and chapters to summarize potential effects of the Sacramento/Delta update to the Bay-Delta Plan on DACs.
458	58	A. The economic analysis overstates costs to the agricultural industry from reduced reliance on Delta water. The Board’s economic analysis relies on outdated data and questionable assumptions, making its estimates of economic costs to agriculture unreliable for decision-making. First, the Board’s agricultural production model (SWAP) is calibrated	The Staff Report’s analysis of environmental impacts and economic effects is appropriate for the large scope of the project and wide range of possible response actions. Section 7.1, Introduction, Project Description, and Approach to Environmental Analysis, describes the approach to the analysis and reasonably foreseeable methods of compliance and response actions. As described in Section 7.1, Introduction, Project

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		based on 2010 data [Footnote 452: Staff Report at 8-11 n.3 (« Crop water estimates presented here were developed using 2010 land use data developed by DWR. »)]. But the Board concedes that agricultural production, and agricultural water use patterns, have changed significantly since 2010, and are likely to change even more in future years [Footnote 453: Id. At 8-41 (noting that “cropping patterns have changed over time when compared with the SWAP baseline year of 2010; in particular, there has been an increase in acreage of tree crops, such as almonds, and a reduction in acreage of alfalfa”)]. For instance, the Board notes that “plantings of alfalfa” – particularly water-intensive crop – “are anticipated to decline in Kings, Kern, Tulare, and Fresno Counties, due to competition from other crops, especially tree nuts.” [Footnote 454 :Staff Report at 8-21; see also id. At 8-52 (noting that alfalfa, which was the highest acreage crop in the San Joaquin Valley in 2010 – 2012, had significantly declined by 2015, putting it second to almonds)]. California’s Department of Food & Agriculture releases annual crop reports with data on the production and value of crops throughout the state. The Board should utilize more recent crop data to provide a more accurate analysis. Second, the modeling assumptions baked into the Board’s analysis are highly questionable. For instance, the Staff Report indicates that modeling assumes relatively low ground water pumping replacement rates. And it appears not to consider mitigations on losses through water management measures like water conservation, recycling, demand management, and ground water storage and recovery, as well as mitigations on losses from crop switching. Indeed, the Board concedes that the SWAP model “does not capture the full set of other water management actions that agricultural producers may pursue in response to reduced water supplies” and that as a result, the SWAP model results “should be considered an indicator of the change in crop acreage and agriculture economic effects,” though the actual outcome “may vary.” [Footnote 455: Staff Report at 8-41 to 8-42]. As a result, the Board’s conclusions about anticipated economic costs to agriculture from reduced Delta exports is likely a worst-case scenario, when in reality much of the costs can be offset by measures to reduce reliance on the need for Delta water. Likewise, in section 8.4.4, Agricultural Economic Effects on	Description, and Approach to Environmental Analysis, it is uncertain how water users may respond to changes in Sacramento/Delta supplies, and the water supply reductions could be distributed somewhat differently than modeled. The environmental analysis often considers a range of potential outcomes, including the most conservative for evaluating potentially significant effects on the physical environment. In many cases, there may be no impact. For each resource area, the analysis assumes a worst-case scenario. Some impacts are inversely proportional, and it is not possible for a worst-case scenario to occur for every environmental resource area. Given the inherent uncertainties involved in modeling agricultural impacts and economic effects, the Staff Report uses a reasonable and conservative approach to evaluating potential economic effects of the flow scenarios. As discussed in Section 8.4, Agricultural Water Supply Economic Effects, of the 2023 draft Staff Report (and final Staff Report) most of the irrigated agriculture in the study area is located on the valley floor portion of the Sacramento/Delta and the San Joaquin Valley. For these areas, growers’ responses to changes in water supply are estimated using the SWAP model, which is the best available tool for modeling agricultural economic responses to water supply shortage. It has been peer-reviewed and applied to numerous policy analyses and impact assessments over the last two decades. However, SWAP does not capture the full set of other water management actions that agricultural producers may pursue in response to reduced water supplies, such as groundwater storage and recovery, use of recycled water, and water transfers. This combination of factors is an indicator that the SWAP model results should be considered an indicator of the change in crop acreage and agricultural economic effects, but the actual outcome on crop acreage and revenue may vary to some degree from the model results. Please see Common Response 8.1, Economic Analysis and Other Considerations, for additional information on the SWAP model, including SWAP modeling and other water management actions and assumptions about groundwater pumping in SWAP. The SWAP model uses DWR 2010 land use survey data, which is the best publicly available and validated data source. The Staff

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		Economically Disadvantaged Communities, the Staff Report uses the IMPLAN model to analyze employment information relevant to agricultural economic effects on disadvantaged communities ("DACs"). Here the Board assumes that groundwater would not be used as a replacement for reduced Sacramento/Delta surface water supplies. [Footnote 456: Id. At 87-89]. But the Board does not support this assumption; rather as the Board acknowledges, the reality is that water users may increase groundwater pumping as a substitute supply which could lead to agricultural economic effects that could be less than indicated by the IMPLAN modeling results. [Footnote 457: Id]. And water users are likely to undertake water management actions, including water transfers, water recycling, crop switching, and other conservation measures that could also result in much lower agricultural economic costs on DACs (and reliance on groundwater substitutes), and potentially even benefits as water users and governmental sectors invest in measures to reduce water use and promote reuse. In other words, the Board's analysis assumes that systems will not adapt in response to changed water conditions, which is not the case.	Report appropriately acknowledges that cropping patterns have changed over time when compared to the SWAP baseline year of 2010. See Common Response 8.1, Economic Analysis and Other Considerations, for additional discussion on SWAP assumptions about baseline cropping patterns. Chapter 8, Economic Analysis and Other Considerations, adequately evaluates the potential agricultural economic effects of the proposed Plan amendments, including economic effects relevant to DACs. Section 8.4.4, Agricultural Economic Effects on Economically Disadvantaged Communities, is informed by IMPLAN modeling results, and SWAP model results are used as input to IMPLAN. Section 8.4.4, Agricultural Economic Effects on Economically Disadvantaged Communities, appropriately acknowledges that the IMPLAN model results assume that groundwater would not be used as a replacement for reduced Sacramento/Delta surface water supplies. In reality, some individual water users could choose to increase groundwater pumping as a substitute supply, where available and not locally restricted. If individual water users choose to increase groundwater pumping as a substitute supply, the reductions in crop acreage and associated agricultural economic effects could be less than indicated by the IMPLAN modeling results. See Common Response 8.1, Economic Analysis and Other Considerations, for additional information on the IMPLAN model and regional economic effects.
458	59	B. The Staff Report makes no effort to quantify benefits to a host of sectors from restored Delta flows. Despite its legal obligations to consider a reasonable range of economic factors, the Report makes no effort to quantify benefits to a host of sectors from restored flows and ecological health in the Delta. In fact, the Report's economic analysis only allocates 16 out of 120 pages to the assessment of economic benefits. Further, while the section on economic costs to agriculture production provides detailed modeling quantifying anticipated revenue loss, the section on economic benefits makes little to no effort to quantify benefits on the other side of the ledger. Instead, the Board puts forth a brief and qualitative assessment of potential positive economic effects on commercial and	Please see response to Comment 458-57 regarding the potential economic benefits from implementation of the flow scenarios and subsequent ecosystem improvements and benefits for native fish species. See also Common Response 10.1, Economically Disadvantaged Communities, for DAC comments of existing conditions and CEQA analysis and benefits of increased flows to DACs.

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		recreational fisheries, recreation, ecosystem services, wildlife refuges, and energy (hydropower) production. Without a comprehensive analysis of the potential positive economic effects – based on technical modeling and economic forecasting – it is impossible to accurately balance the economic costs and benefits of the alternatives the Board is considering. The result is an incomplete economic analysis that the public is unable to evaluate and the Board cannot rely on for decision-making. For example, in the section on commercial and recreational fishing industries, the Report glosses over positive economic effects to fishing and alludes to any economic benefits in only general terms. Instead of modeling fishing revenues estimates against baseline and each of the different flow scenarios (as the Report did in its agricultural crop revenue modeling), the analysis provides a qualitative assessment of the likelihood of positive economic effects to commercial and recreational fishing industries. The section notes that the Sacramento/Delta update to the Bay-Delta Plan would be “expected to contribute to the recovery of Chinook salmon and other native fish species, which would have positive economic effects on California’s commercial and recreational fishing industries.” [Footnote 458: Staff Report at 8-105]. But it does not attempt to quantify these positive economic effects; rather, the only data the Board provides at all for this sector are annual revenue estimates from commercial fishing industries and estimates on Chinook salmon population harvests, which have declined significantly over the past few decades. The Report briefly mentions that the 2023 salmon closures are projected to “take a toll on California’s fishing industry that will result in loss of 100 percent of the 5-year average annual ex-vessel value of \$15,033,200,” [Footnote 459 Id.] but it provides no explanation of the benefits to the fishing industry – and the sectors that rely on it – from not just lifting the closure, but restoring native fisheries and preventing additional listings with restored instream flows. A thorough economic analysis of commercial and industrial fishing industries would quantify revenue loss in greater detail and model fishing revenues compared to baseline and each of the flow scenarios. It would also analyze second and third order impacts to the communities and individuals who traditionally	

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		rely on fishing for jobs and economic security, sustenance, recreation, and cultural activities. In September of 2020, the California Department of Water Resources conducted a survey of historically burdened, underrepresented, low income and otherwise vulnerable populations (also referred to as Economically Disadvantaged Communities) to gather input from disadvantaged community members who live in the Delta [Footnote 460: See Cal. Dept. of Water Resources, Your Delta Your Voice Environmental Justice Community Survey (May 2021), available at https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/Public-Information/DCP_EJSurvey-Report-5-28-2021_Final_508.pdf]. The survey found that respondents rely on Delta fish to feed their families on a nearly costless basis. Specifically, the survey found that “[f]or 90% of the fishing locations respondents identified, they indicated that they eat fish from the Delta four or more times per week.” [Footnote 461 Id. at 7]. Without analyzing the myriad of impacts to disadvantaged communities – including food, economic and housing security, health outcomes, and cultural loss – the Report’s analysis fails to accurately present the economic and social impacts resulting from devastated fisheries, or the benefits from their restoration.	
458	60	Declining fish populations also impact tribal communities. It is well documented, for example, that a loss of fisheries is directly linked to declining health outcomes for tribal communities, including obesity, diabetes, and cardiovascular disease [Footnote 462: Decl. of Gary Mulcahy 31]. For instance, “[d]ata from the 2005 Karuk Health and Fish Consumption Survey show that the loss of the most important food source, the Spring Chinook Salmon run, is directly linked to the appearance of epidemic rates of diabetes in Karuk families, which are nearly four times the national average.” [Footnote 463: Kari M. Norgaard, The Effects of Altered Diet on the Health of the Karuk People 3 (Nov. 2005), https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/PCFFA&IGFR/part2/pcffa_195.pdf]. Loss of native food sources is also associated with high rates of heart disease and hypertension for members of the Karuk tribe.” [Footnote 464: Id.]. These health impacts extend to the loss of mental, emotional, cultural, and	In response to comments received on the economic analysis presented in the Staff Report, Chapter 8, Economic Analysis and Other Considerations, has been updated to include a new Section 8.6, Fisheries Economic Analysis, that addresses potential economic benefits from implementation of the flow scenarios and subsequent aquatic ecosystem improvements and benefits for native fish species. Among other topics, Section 8.6 in the final Staff Report includes discussion of subsistence fishing and tribal uses of fish. This new section provides additional context and information concerning beneficial fisheries and ecosystem economic effects but does not change the conclusions of the Staff Report’s economic analysis.

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		spiritual benefits of harvesting and eating traditional food sources. [Footnote 465: Id.]. The Yurok Tribe, for instance, suffers from a suicide rate nearly 14 times the national average. [Footnote 466: See Joe Mozingo, How a Remote California Tribe Set Out to Save Its River and Stop a Suicide Epidemic, L.A. Times (May 19, 2017), https://www.latimes.com/local/california/la-me-salmon-demise-yurok-suicides-20170519-htmllstory.html]. This rash of suicides has been linked to the loss of native fisheries and the ensuing damage to tribal identity and culture. [Footnote 467: Id.].	
458	61	The Report similarly elides economic benefits to a host of additional sectors and systems, including recreation, ecosystem services, wildlife refuges, and hydropower production. The Report briefly introduces each sector, describes how that sector has suffered from poor water quality standards, and then acknowledges that the proposed plan amendments could provide economic benefits. But it makes no effort at all to quantify those benefits or model revenue estimates under the different flow scenarios. In the ecosystem services section, for example, the Report describes a number of values generated by ecosystem services that are directly tied to market activity, including the use by humans of timber, raw materials, food, and fuel [Footnote 468 Staff Report at 8-108]. While the Report states that it is challenging to quantify non-market values of ecosystem services, such as viewing wildlife, hiking, and enjoying scenic vistas, the Board's analysis makes no attempt to quantify those values which provide direct economic use to humans. The analysis instead surmises that the proposed Plan amendments, which are intended to provide for the reasonable protection of fish and wildlife beneficial uses, would "complement ecosystem services," and "could help to address [...] issues" resulting from inadequate Bay-Delta water quality standards such as aquatic species decline, physical habitat degradation, water quality impairments, and climate change [Footnote 469: Staff Report at 8-109]. Even worse, the Board wholly ignores existing models that quantify economic and social values of ecosystem services, which are already relied on by state and federal governments in their decision-making, as well as the	Please see response to Comment 458-57 regarding the challenges with fish population modeling and the potential economic benefits from implementation of the flow scenarios and subsequent ecosystem improvements and benefits for native fish species. In addition, the specific tools and approaches referenced by the commenter were reviewed and considered. It is not possible to conduct a quantitative economic analysis of ecosystem services benefits using the tools identified by the commenter and any such attempt would be highly speculative given the geographic scope of the project. The tools identified by the commenter either remain in development or are appropriate for smaller geographic areas, rely on specific physical or biological data not available, and do not provide a suitable model for conducting economic analyses of ecosystem services at the geographic scale of the Sacramento/Delta watershed. In response to comments received on the 2023 draft Staff Report, changes in hydropower generation revenues were estimated using a representative monthly price series. Please see Common Response 8.1, Economic Analysis and Other Considerations, for the results of this analysis and additional discussion related to changes in hydropower generation revenues.

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		vast literature on currently available ecosystem service models and the need to incorporate their results to allow for informed decision-making on regulatory actions that affect water flows and other resources. [Footnote 470: See, e.g., USGS, Ecosystem Services Assessment and Valuation, https://www.usgs.gov/centers/geosciences-andenvironmental-change-science-center/science/ecosystem-services-assessment (discussing and linking to several models used by USGS to quantify and map economic and social values for ecosystem services); Office of Management and Budget, Guidance for Assessing Changes in Environmental and Ecosystem Services in Benefit-Cost Analysis (Aug. 2023), https://www.whitehouse.gov/wp-content/uploads/2023/08/DraftESGuidance.pdf; see also, e.g., A. Villamagna et al., A Methodology for Quantifying and Mapping Ecosystem Services Provided by Watersheds (2015), https://link.springer.com/chapter/10.1007/978-94-017-9846-4_8#Bib1].	
458	62	The Report similarly makes no attempt to quantify or otherwise value the vast benefits to Economically Disadvantaged Communities from improved instream flows and reduction in HABs and other detrimental pollutants, including benefits to improved community health and wellness, reduction of health system costs, increased recreational opportunities, enhanced spiritual and aesthetic values, restoration of connection to the landscape, improvement in greenspace and reduction in heat island effects, and the many other human values that derive from restored relationships with a healthy estuary.	Section 8.6, Other Economic Effects, in the 2023 draft Staff Report (Section 8.7, Other Economic Effects, in the final Staff Report), considers other economic effects that could occur as a result of the Sacramento/Delta update to the Bay-Delta Plan, including effects on commercial and recreational fisheries, recreation, ecosystem services, wildlife refuges, and energy (hydropower) production. In addition, in response to comments received on the economic analysis presented in the Staff Report, Chapter 8, Economic Analysis and Other Considerations, has been updated to include a new Section 8.6, Fisheries Economic Analysis, that addresses potential economic benefits from implementation of the flow scenarios and subsequent aquatic ecosystem improvements and benefits for native fish species. This new section provides additional context and information concerning beneficial fisheries and ecosystem economic effects but does not change the conclusions of the Staff Report's economic analysis. See also Common Response 10.1, Economically Disadvantaged Communities, for additional discussion of benefits of increased flows and DACs.

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			In addition to the economic analysis and discussion of benefits via increased instream flows described above, the Staff Report considers the ways that HABs may be affected by flows in Section 4.3.2, Harmful Algal Blooms. Further information on instream flows and HABs can be found in Common Response 4.1, Harmful Algal Blooms, that also describes ways in which HABs may affect air quality or recreation. The State Water Board recognizes that HABs and water quality are significant concerns to members of DACs and tribal communities. Please see Common Response 4.1, Harmful Algal Blooms, for more information on harmful algal blooms and DACs.
458	63	The Report likewise fails to set forth any meaningful analysis of the vast benefits to tribal communities – both quantifiable and invaluable – from restored instream flows. These include benefits to tribal sovereignty and self-determination, tribal culture and identity, exercise of tribal religion and ceremony, and tribal health and wellness. Instead of attempting to value these benefits in economic or even non-economic terms, the Board sweeps them away entirely with the passing assertion that values like cultural heritage, aesthetics, and spiritual enrichment are hard to quantify [Footnote 471: Staff Report at 8-108]. Furthermore, by wholly excluding the Trinity River from its analysis, the Report’s economic analysis automatically discounts any potential benefits to that ecosystem and the tribal communities that depend on it. In sum, the Board has given a highly speculative and likely inflated number on the costs side of the ledger and pretends that there is no number at all on the benefits side to compare to. The result is a highly misleading portrait of economic effects of increased instream flows.	The State Water Board recognizes the centrality that vital fish populations and aquatic life have for cultural, spiritual, ceremonial, and traditional rights and lifeways for tribes. Please see response to Comment 458-57 regarding new Section 8.6, Fisheries Economic Analysis, in the final Staff Report, that addresses potential economic benefits from implementation of the flow scenarios and subsequent aquatic ecosystem improvements and benefits for native fish species. Please also see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for a discussion on protection of tribal beneficial uses of water. Please see Common Response 1.5, Trinity River, on the consideration of the Trinity River watershed.
458	64	Relatedly, the report makes no effort to quantify costs from the current no project scenario, where massive diversions and exports persist, or the costs that would result from non-protective standards like the Voluntary Agreements. This includes quantifiable costs related to the proliferation of HABs, fisheries, ecosystem services, public health and hospital systems, recreational industries, and tribal economies, as well as indeterminable costs to tribal culture, identity, religion, and sovereignty and to the welfare of communities harmed by and alienated from unhealthy waterways. Without this realistic	Please see response to Comment 458-57 regarding new Section 8.6, Fisheries Economic Analysis, that addresses potential economic benefits from implementation of the flow scenarios and subsequent aquatic ecosystem improvements and benefits for native fish species.

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		baseline assessment of costs from business as usual, it is impossible for the public to evaluate the economic impacts (which may well be net positive) from restoring flows.	
458	65	The Board violates its obligations to consider and safeguard the public trust. The public trust is an ancient common law doctrine that “enshrin[es] humanity’s entitlement to air and water as a public trust.” [Footnote 472: Env’t. Law Found. v. State Water Res. Control Bd., 26 Cal.App.5th 844, 856 (2018)]. The State of California acceded to public trust responsibilities when it acquired title to “all navigable waterways and the lands lying beneath them” at the inception of statehood. [Footnote 473: Nat. Audubon Soc’y v. Superior Ct., 33 Cal.3d 419, 434 (Cal.1983)]. The doctrine rests on several related precepts: that “the public rights of commerce, navigation, fishery, and recreation are so intrinsically important and vital to free citizens that their unfettered availability to all is essential in a democratic society;” that “certain interests are so particularly the gifts of nature’s bounty that they ought to be reserved for the whole of the populace;” and that “certain uses have a peculiarly public nature that makes their adaptation to private use inappropriate.” [Footnote 474: Env’tl. Law Found., 26 Cal.App.5th at p. 856 (citation omitted)]. The State’s public trust responsibilities extend to a broad array of natural resources, including navigable waters, tidelands, baylands, wildlife, fish, and the water on which they depend, which it holds in trust for the benefit of the public. [Footnote 475: See San Francisco Baykeeper, Inc. v. State Lands Com., 242 Cal. App. 4th 202, 233-34 (2015); see also, e.g., Colberg, Inc. v. State of California ex rel. Dept’s of Pub. Works, 67 Cal.2d 408, 416 (The public trust doctrine obligates the State to protect common resources, including fish and the water on which they depend, by acting as “trustee of a public trust for the benefit of the people”). Indeed, under the Water Code, “[a]ll water within the State is the property of the people of the State.” [Footnote 476: Cal. Wat. Code § 102]. As trustee, the State is legally obligated to protect these public trust resources and prevent their impairment [Footnote 477: Id.]. “While the public trust doctrine has evolved primarily around the rights of the public	At the time the 2023 draft Staff Report was released for public comment, an explicit public trust analysis was not included, as the rulemaking process for the Sacramento/Delta update to the Bay-Delta Plan was still at a preliminary stage with numerous options being evaluated for potential inclusion in the plan update. Now that the State Water Board has identified a precise set of revised proposed Plan amendments as the proposed project, as part of the process to revise the 2023 draft Staff Report in response to input from the public, the State Water Board has added a section summarizing the State Water Board’s public trust evaluation for the proposed amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed. Please refer to final Staff Report Section 13.6.1, Public Trust Analysis, for the State Water Board’s public trust analysis of the revised proposed Plan amendments. Please also see Common Response 1.2, Water Quality Control Planning Process, regarding the State Water Board’s consideration of the public trust doctrine when adopting and updating water quality control plans.

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		with respect to tidelands and navigable waters, the doctrine is not so limited.” [Footnote 478: S.F. Baykeeper, Inc. v. State Lands Com., 242 Cal.App.4th 202, 233 (2015)]. For instance, public trust protections extend to inland waters and non-navigable streams to the extent diversions could impact navigable waters, as well as groundwater extractions that could have adverse impacts on other public trust waters. [Footnote 479: People v. Gold Run Ditch & Mining Co., 66 Cal.138, 151-52 (1884); see Nat. Audubon, 33 Cal.3d 419, Env’tl. Law Found., 26 Cal.App.5th 884]. The range of uses protected by the public trust is expansive, “encompassing not just navigation, commerce, and fishing, but also the public right to hunt, bathe, or swim,” as well as aesthetic, spiritual, and ecological values. [Footnote 480: S.F. Baykeeper, 242 Cal.App.4th at 233]. Public rights protected by the trust also include “preservation of . . . Lands in their natural state, so that they may serve as . . . Open space[] and as environment which provide food and habitat or bird and marine land, and which favorably affect the scenery and climate of the area.” [Footnote 481: Marks v. Whitney, 6 Cal.3d 251, 259-60 (1971)]. Despite allowing for water diversions detrimental to fish and wildlife, California has long been concerned with the decline of fish and wildlife resources in the state, highlighting the need for rigorous attention to its public trust duties [Footnote 482: Cal. Fish & Game Code §§ 2761(b), (c), (d); see also §§ 2050–55 (the California Endangered Species Act) (California’s legislature at least since 1985 has intended to “make reasonable efforts to prevent further decline in fish and wildlife, to restore fish and wildlife to historic levels where possible, and to enhance fish and wildlife resources where possible”)]. Through the Water Code, the Legislature designated the State Water Board as steward of the People’s water, giving it “expansive powers to safeguard the scarce water resources of the state.” [Footnote 483: Id. At 444 (citation omitted)]. As such, the Board “has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust users whenever feasible.” [Footnote 484: Id. At 446 (emphasis added); see also Light v. State Water Resources Control Bd., 226 Cal.App.4th 1463, 1489 (2014.)]. “[T]he Board’s authority to apply the public trust doctrine extends to rights not covered by the permit and license system;” it is “independent of	

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		and not bounded by the limitation of the Board’s authority [to permit]” water rights [Footnote 485: Env’t. Law Found., 26 Cal.App. At 862]. As a consequence, the Board’s duty to protect the public trust requires it to take “full consideration of the state’s public interest” before taking any action or decision that could “adversely affect” the public trust [Footnote 486: S.F. Baykeeper, 242 Cal.App.4th at 234]. In undertaking this analysis, the Board must identify the interests protected by the public trust, identify and adopt feasible measures to reduce or avoid impacts to trust resources, and make clear and explicit to the public any balancing the Board undertakes that could impact public trust resources [Footnote 487: See, e.g., Nat. Audubon, 33 Cal.3d at 426 (“Before state courts and agencies approve water diversions they should consider the effect of such diversions upon interests protect by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests”)]. In undertaking this balancing, the Board is to extend a “presumption in favor of public use, access, and enjoyment.” [Footnote 488: In re Water Use Permit Applications, 9 P.3d 409, 454 (Haw. 2000); see Joseph Sax, The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention, 68 Mich. L.Rev. 471 (1970) (discussing presumption in favor of protecting public resources)]. The Board cannot move forward with a Bay-Delta Plan Update on this Staff Report without violating its sacred duties to consider and protect the public trust. The Staff Report fails to perform any public trust analysis at all despite the Board’s clear legal obligations and a settlement agreement through which the Board committed to doing just that in this Staff Report. And had the Board performed the required analysis, it would show that the actions the Board is considering for this water quality control plan update – including the proposed plan amendments and the Voluntary Agreements – fall well short of protecting public trust resources to the extent feasible.	
458	66	The Staff Report omits the legally required public trust analysis. In July 2020, the Board entered into a Settlement Agreement and Release of Claims with plaintiffs California Sportfishing Protection Alliance, Aqualliance, and the California Water Impact	At the time the 2023 draft Staff Report was released for public comment, an explicit public trust analysis was not included, as the rulemaking process for the Sacramento/Delta update to the Bay-Delta Plan was still at a preliminary stage with numerous options being evaluated for potential inclusion in the plan

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		Network to resolve claims in the case California Sportfishing Protection Alliance, et al. v. California State Water Resources Control Board and Thomas Howard, Case Number RG15780. ("Settlement Agreement"). The Agreement recognizes that the Board's "duty to balance competing interests in formulating water quality objectives can be harmonized with its duty under the common law public trust doctrine to protect public trust resources to the extent feasible and consistent with the public interest." [Footnote 489: State Water Resources Control Bd. Cases, 136 Cal.App.4th 674, 777-78 (2006)]. But this is only possible if the Board undertakes a "transparent public trust evaluation" in formulating water quality control standard updates [Footnote 490: 2020 Settlement Agreement and Release of Claims with California Sportsfishing Protection Alliance, Aqualliance, and the California Water Impact Network at 3 in the case California Sportsfishing Protection Alliance, et al. v. California State Water Resources Control Board and Thomas Howard (Case Number RG15780498) [hereinafter "Settlement Agreement"]]. Toward these ends, the Settlement Agreement is explicit that "the Staff Report prepared in connection with the pending update to the Bay-Delta Plan [must] include, in addition to the analysis required by the Porter-Cologne Water Quality Control Act, an express evaluation of whether the proposed amendments [to the Bay-Delta Plan] will protect the subject fish and wildlife public trust uses to the extent feasible and consistent with the public interest, taking into consideration all relevant factors." [Footnote 491: Settlement Agreement at 4]. Among factors to be considered are: the public interest in protecting public trust fish and wildlife uses; evaluation of whether proposed amendments will protect subject fish and wildlife public trust uses to the extent feasible; the extent to which proposed amendments to the Bay-Delta Plan protect fish and wildlife public trust uses under different hydrological conditions, including during periods of drought and water supply shortage; economic impacts of the proposed amendments to trust and non-trust uses; and evaluation of the proposed plan amendments' consistency with Fish and Game Code section 5937 [Footnote 492 Id.]. The Board must also "explain its findings and describe the specific factors it balanced in making its determination of whether the proposed	update. Now that the State Water Board has identified a precise set of revised proposed Plan amendments as the proposed project, as part of the process to revise the 2023 draft Staff Report in response to input from the public, the State Water Board has added a section summarizing the State Water Board's public trust evaluation for the proposed amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed. Please refer to final Staff Report Section 13.6.1, Public Trust Analysis, for the State Water Board's public trust analysis of the revised proposed Plan amendments. As required under the July 17, 2020 Settlement Agreement between the State Water Board and California Sportfishing Protection Alliance et al, the State Water Board has included a public trust analysis in Section 13.6.1 of the final Staff Report. Please also see Common Response 1.2, Water Quality Control Planning Process, regarding the State Water Board's consideration of public trust resources when formulating or amending water quality control plans. The Delta Flow Criteria Report identified specific non-regulatory flow criteria in a scenario where fishery protection was the sole purpose for which waters were put to beneficial use. Thus, when the Delta Flow Criteria Report identified a Delta outflow criterion of 75 percent unimpaired Delta outflow from January through June as protective of public trust resources, the analysis was conducted without considering either the need for cold water reserves to aid in temperature management or the need to preserve supplies for other beneficial uses of water. For further discussion of the Delta Flow Criteria Report, please refer to Section 1.2.4, The Delta Reform Act and Delta Flow Criteria Report, of Staff Report Appendix B, Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows. The Staff Report considers a reasonable range of alternatives and analyzes their environmental impacts as required by CEQA and as further discussed in Common Response 7.24, Alternatives

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		amendments will protect the subject fish and wildlife public trust uses to the extent feasible and consistent with the public interest.” The Staff Report does not include the required public trust analysis. Indeed, aside from passing mentions of the Board’s public trust responsibilities, the Staff Report does not discuss public trust uses or resources at all, not to mention provide a “transparent public trust evaluation for the Bay-Delta Plan Update.” [Footnote 493: Settlement Agreement at 3]. As a consequence, the Staff Report does not fulfill the Board’s very clear Settlement Agreement commitments, nor does it come anywhere close to complying with its general duties under well-settled law to consider the public trust and inform the public of any balancing it undertakes and the consequences of this balancing for public trust interests. Even setting aside the Board’s responsibilities to make its public trust analysis “transparent,” there is simply no public trust consideration that can be inferred from the analysis that the Staff Report does undertake. Although the law is clear that the Board must protect public trust uses “whenever feasible,” the Board did not assess feasibility at all in the Staff Report [Footnote 494: State Water Res. Control Bd. Cases, 136 Cal. App. 4th at 778 (the Board has discretion to determine what is feasible); In re Bay-Delta etc., 43 Cal. 4th 1143, 1154 (2008) (“the state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible”) (quoting Nat’l Audubon Soc’y, 33 Cal. 3d at 446)]. Rather the Report merely recognizes the Board’s “duty to protect, where feasible, the state’s public trust resources” without making explicit the public trust interests at stake, how they will be affected by the proposed plan amendments or alternatives, whether there are feasible actions that could better protect the resources, or what tradeoffs the Board is engaging in its decision-making [Footnote 495: Staff Report at 7.12.2-10]. It is impossible to protect public trust resources whenever feasible without conducting a feasibility analysis. To the extent the Board believes that its consideration of the “high flow alternative” in the SED constitutes the requisite feasibility analysis, it is wrong. The Staff Report recognizes that	Analysis. The 2023 draft Staff Report fully described the proposed Plan amendments in Chapter 5, Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta, and the alternatives in Sections 7.2, Description of Alternatives, and 7.24, Alternatives Analysis, with sufficient detail for the purposes of the analysis. As stated in the California Code of Regulations, an EIR must contain sufficient information about each alternative to permit an evaluation of the relative merits of the alternatives and the project. (14 Cal. Code Regs § 15126.6(a).) Further, the analysis must contain concrete information about each alternative sufficient to allow a fact-based comparison of the alternatives with the project and the significant adverse environmental effects of each alternative must be discussed, but in less detail than is required for the project’s effects. (14 Cal. Code Regs § 15126.6(d).) The State Water Board sufficiently analyzed the high flow alternative for the purposes of CEQA.

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		“the Delta Reform Act required the Board to identify flow criteria for the Delta ecosystem necessary to protect public trust resources.” [Footnote 496: Staff Report at 1-7 to 1-8]. The Board’s findings on flows necessary to protect public trust resources are set forth in its August 2010, Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem (“Public Trust Flows Report”) [Footnote 497: Id.]. The Public Trust Flows Report found that “the best available science suggests that current flows are insufficient to protect public trust resources” and that “there is sufficient scientific information to support the need for increased flows to protect public resources,” and it set forth specific flow objectives to protect public trust resources [Footnote 498: State Water Resources Control Bd., supra note 299].⁴⁹⁸ The Staff Report states that the high flow alternative – which would require between 65 and 75 percent unimpaired flow – “could provide for Delta inflow and Delta outflows identified in the State Water Board’s 2010 [Public Trust Flows] report.” [Footnote 499: Staff Report at 7.2-7]. But it does not give flows in this range fair consideration. Whereas the proposed plan amendments include an expansive adaptive range, the high flow alternative includes none at all. As a consequence, because the high flow alternative would never allow flows to go below 65 percent, even to avoid impairment of public trust interests, the high flow alternative provides no latitude for functional flow or adaptive management to allow the Board to avoid its claim that the high flow alternative would present “challenges in maintaining suitable water temperatures for cold water aquatic species and carryover storage for environmental and water supply purposes.” [Footnote 500: Id. At 7.2-8]. The high flow alternative, in other words, is set up to fail. The Board should instead consider and adopt the proposed plan amendments set forth in this comment, which are based in TEK and the best available science. These amendments would maintain public trust flows as an objective while allowing for adaptive management to avoid impairment of other ecological values and permit some balancing, with clear and explicit guardrails, of public trust values against other priorities where in the public interest.	
458	67	Likewise, to the extent the Board believes it can substitute analysis of environmental impacts or beneficial uses for a public	At the time the 2023 draft Staff Report was released for public comment, an explicit public trust analysis was not included, as

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		trust analysis, it is also wrong. The Board must balance protection of the broad range of designated beneficial uses with its duty to protect public trust uses [Footnote 501: State Water Res. Control Bd. Cases, 136 Cal. App. 4th 674, 777-78 (2006)]. While it is true that the Board has an obligation to “take into account, whenever it is in the public interest, the amounts of water needed to remain in the source for protection of beneficial uses,” this obligation is different from conducting state water management policy with reasonable use and public trust in mind [Footnote 502: Cal. Wat. Code, §§ 1243.5, 85023]. The Staff Report considers certain beneficial uses such as municipal, industrial, agricultural, hydropower, fish, and wildlife uses, but it does not identify the connection to public trust uses. “[A] use does not qualify as a trust use simply because it might confer a public benefit.” [Footnote 503: San Francisco Baykeeper, Inc., 242 Cal. App. 4th at 235-36 (sand mining, an industrial use of land, despite having public benefit, is not part of the public trust); Zack’s, Inc. v. City of Sausalito, 165 Cal. App. 4th 1163, 1176 (2008) (acting for public benefit is different from protecting the public trust)]. The Board omits entirely public trust uses of critical importance to the cultural, spiritual, and economic survival of Delta tribes: subsistence fishing, ceremonial, recreational, cultural, ecological, and other uses tribes in the Bay-Delta have practiced with respect to Bay-Delta waters since time immemorial. And it gives short shrift to the vital recreational, aesthetic, and health-sustaining public trust uses that Delta communities – particularly disadvantaged environmental justice communities – are entitled to enjoy. This omission is particularly clear with respect to the Board’s failure to consider flows that could reasonably mitigate the growing HABs scourge in the Bay-Delta, which increasingly prevents the public from enjoying Delta waters. This is especially so for residents of disadvantaged Delta communities, who cannot simply travel elsewhere to recreate, as the Staff Report assumes [Footnote 504: Staff Report, Ch. 7.18-10].	the rulemaking process for the Sacramento/Delta update to the Bay-Delta Plan was still at a preliminary stage with numerous options being evaluated for potential inclusion in the plan update. Now that the State Water Board has identified a precise set of revised proposed Plan amendments as the proposed project, as part of the process to revise the 2023 draft Staff Report in response to input from the public, the State Water Board has added a section summarizing the State Water Board’s public trust evaluation for the proposed amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed. Please refer to final Staff Report Section 13.6.1, Public Trust Analysis, for the State Water Board’s public trust analysis of the revised proposed Plan amendments. Please also see Common Response 1.2, Water Quality Control Planning Process, regarding the State Water Board’s consideration of public trust resources when formulating or amending water quality control plans. The revised proposed Plan amendments designated Tribal Tradition and Culture (CUL) as a beneficial use for the Bay-Delta Watershed, and incorporates Tribal Subsistence Fishing (T-SUB) and Subsistence Fishing (SUB) in the context of the plan’s provisions for the reasonable protection of fish and wildlife. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for additional discussion of incorporation and designation of Tribal Beneficial Uses. Please also see Common Response 4.1, Harmful Algal Blooms, for a discussion of harmful algal blooms (HABs) in the Bay-Delta, the impacts of HABs on economically disadvantaged communities, and the need to analyze the impacts of low flows and different flow alternatives on the occurrence and severity of HABs.
458	68	Nor can a public trust analysis be backed out of the Staff Report’s evaluation of beneficial uses. As discussed above, the Staff Report at best considers incremental improvements to requisite flows and other habitat measures that proposed plan amendments would and VAs might yield; it does not, however,	The Staff Report contains extensive analysis of the benefits associated with a range of analyzed alternatives (see Chapter 3, Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations; Section 9.6, Beneficial Environmental Effects of Proposed VAs; Section 13.5, Beneficial Environmental Effects)

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		consider whether the proposed amendments or any alternatives would actually provide reasonable protection of beneficial uses as required by the Porter-Cologne Act. For instance, aside from the percent increases in species abundance indices relative to baseline conditions (which the Staff Report ran only on four Bay-Delta species), [Footnote 505: Staff Report, Ch. 3, Table 3.14-7] the Report omits analysis that would be necessary to explain whether or how the proposed alternatives will protect fish and wildlife beneficial uses. Without disclosure of the alternatives' abilities to protect beneficial uses, the public also cannot discern whether any of the options the Board is considering would protect public trust resources, or the extent to which they would trade public trust values away in service of other interests.	and their potential impacts on various resources, including water supply (see Chapter 6, Section 9.5, and Section 13.4, each titled Changes in Hydrology and Water Supply; Chapter 10, Economically Disadvantaged Communities), groundwater resources (see Section 7.12.2, Section 9.7.12.2, and Section 13.7.12.2, each titled Groundwater), aquatic resources (see Section 7.6.2, Section 9.7.6.2, and Section 13.7.6.2, each titled Aquatic Biological Resources), and economic resources (see Chapter 8, Section 9.8, and Section 13.8, each titled, Economic Analysis and Other Considerations). Additional discussion of the benefits and impacts associated with different alternatives is also contained in Section 7.24, Alternatives Analysis; Section 9.9, Modular Alternatives for Proposed VAs; and Section 13.7.22, Impact Summary and 13.7.23, Ability to Achieve Project Purpose and Goals. Please see the response to comment 458-67 for a discussion of the public trust analysis included in the final Staff Report. Also, see Common Response 1.2, Water Quality Control Planning Process, for a discussion of the reasonable protection of fish and wildlife beneficial uses.
458	69	The Staff Report proposes Bay-Delta Plan amendments that go too far in trading away public trust interests. Based on the analysis the Board has provided, it is clear that the options it is considering for a Bay-Delta Plan update go too far in trading away public trust resources and uses. The Board must ensure that “[a]ll uses of water, including public trust uses, must . . . Conform to the standard of reasonable use.” [Footnote 506: Santa Barbara Channelkeeper v. City of San Buenaventura, 19 Cal. App. 5th 1176, 1186 (2018) (citations omitted)]. Sustainability of native fisheries is one of the key considerations the Board must take into account in its planning efforts, including in determining the reasonableness of use or diversion of water [Footnote 507: Stanford Vina Ranch Irrigation Co. v. State, 50 Cal. App. 5th 976, 1003 (2020) (citations omitted), as modified (July 8, 2020)]. But the Board gives it short shrift. For instance, the available evidence shows that Chinook salmon thrive at inflows that occur at unimpaired flow levels of 65	Please see the response to comment 458-67 for a discussion of the public trust analysis included in the final Staff Report. See also Common Response 1.2, Water Quality Control Planning Process, for a discussion of Article X, Section 2 of the California Constitution’s prohibition of waste and unreasonable use. Contrary to this commenter’s assertion, the State Water Board has not failed to meaningfully consider an alternative that would provide for 65 (or more) percent unimpaired inflows. As described in Section 7.2.3.4, High Flow Alternative (Alternative 3) of the 2023 draft Staff Report, the State Water Board has evaluated a high flow alternative (Alternative 3) and included both 65 percent and 75 percent unimpaired flow scenarios in modeling evaluations, as described in the 2023 draft Staff Report Appendix A1, Sacramento Water Allocation Model Methods and Results, through Appendix A8, Salmon Tributary Habitat Analysis. As identified in Section 7.2.3.4, though there are

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		percent and higher [Footnote 508: Staff Report at 3-114]. Yet the Board fails to meaningfully consider an alternative that would provide for 65 percent unimpaired inflows. While the proposed plan amendments could hypothetically allow flows as high as 65 percent, the Board targets a 55 percent flow objective and allows flows to drop as low as 45 percent. From experience, this floor is likely to become the norm (even the ceiling) for unimpaired flows in the Delta. And the Board does nothing to explain when and how flows would be maintained at 65 percent to avoid deleterious impacts on Chinook salmon and other imperiled native fish species. Nor, as discussed above, does the Board give meaningfully consideration to an alternative that would maintain flows at the range necessary to avoid irreversible harm to Chinook salmon while allowing for adaptive management to avoid impacts on other public trust values. While some (transparent) balancing is permissible, the Board cannot balance away public trust interests entirely. Second, the Board advances consideration of voluntary agreements that will not only impair public trust resources and uses but also shed the Board's duties to protect them. The Board's duty to protect public trust resources can be surrendered "only in rare cases." [Footnote 509: Nat. Audubon Soc'y v. Superior Ct., 33 Cal. 3d at 441]. Parties that acquire rights in trust property, such as water flows, "generally hold those rights subject to the trust, and can assert no vested right to use those rights in a manner harmful to the trust." [Footnote 510: Id. At 441]. But here, VA Parties (i.e., state and federal agencies, local water agencies, private companies, and a non-profit mutual benefit corporation) will have unfettered discretion to manage public trust resources through vaguely defined flow and non-flow measures [Footnote 511: Staff Report at 1-3]. The Board's overseeing of this water management is crucial, especially since the Board itself recognizes the inherent uncertainty in VA implementation measures and, therefore, in VA outcomes in the years ahead [Footnote 512: See e.g., Staff Report at 9-52, 9-81, 9-111, 9-113]. And yet the Staff Report expresses no concerns with VA standards and measures that are subject to change and allow VA Parties an eight-year period of unchecked experimentation, at the near certain expense of public trust resources and values	expected ecosystem benefits under Alternative 3, the beneficial environmental effects would be limited given challenges in maintaining water temperatures later in the year, and would also likely cause carryover storage shortages, bringing additional environmental and water supply impacts. See Common Response 7.24, Alternatives Analysis, for more discussion of comments on flow alternatives. Contrary to this commenter's assertions, the VA pathway preserves a regulatory role for the State Water Board. As described in final Staff Report Section 13.3.4.9, VA Governance, the State Water Board will provide oversight and guidance on VA compliance, and will participate in VA decision making. The revised proposed Plan amendments further require VA parties to develop a tribal engagement plan describing opportunities for tribal engagement and input to the VA decision making. Finally, as described in Section 13.3.4.10 of the final Staff Report, Continuation, Modification or Termination of the VAs, the VAs may be modified or terminated as part of the State Water Board's annual or periodic review processes. Further, the revised proposed Plan amendments requires VA parties to submit hypotheses, metrics, and targets to the State Water board for approval, which may be updated via the State Water Board's annual or periodic review processes; and requires VA parties to submit reports to the State Water Board containing flow and non-flow accounting information, ecological monitoring data, tribal outreach and engagement activities, among other analyses and information. For more details on these reporting requirements, please see final Staff Report Section 13.3.4.8, Annual Reports, Periodic Reports, and Ecological Outcomes Analysis Report. Please note that the implementation agreements produced by VA parties such as the Yuba Water Agency contain contractual language that improperly purports to bind future Boards and are not incorporated into the Bay-Delta Plan. Additionally, by establishing both a regulatory pathway and a VA pathway, the revised proposed Plan amendments establish that parties not covered under a voluntary agreement would be subject to the regulatory pathway. Thus, should a VA party elect to withdraw

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		[Footnote 513: See id. At Ch. 1 (talking generally about the inherent flexibility in implementation associated with Vas)]. With the Vas, the Board impermissibly surrenders its duty to protect public trust by guaranteeing years of uncertainty and experimentation by non-State actors. Indeed, while the State has not yet disclosed final VA agreements, draft agreements contain clauses that evidence an intent to exempt VA parties from effective Board oversight, even if necessary to protect public trust interests. The Draft Yuba River Implementation Agreement provides that: [T]he Parties will ask the State Water Board to include in the Bay-Delta Plan amendments provisions confirming that: (a) the State Water Board will not take any water-quality or water-right actions that would affect YWA beyond the actions described as YWA's contributions to the Yuba River VA Program, or any other actions that would increase any of YWA's commitments to contribute to the implementation of any of the Bay-Delta Plan's water-quality objectives, during the term of this Agreement; and (b) if the State Water Board takes any such actions, then YWA may terminate or withdraw from this Agreement [Footnote 514: Attachment 8 [Att 8], Draft Implementation Agreement between California Department of Water Resources and Yuba County Water Agency [hereinafter "Attachment 8"]; see also Attachment 9, Draft Mokelumne River Implementation Agreement [hereinafter "Attachment 9"] (describing the relicensing of the Lower Mokelumne River Hydroelectric Project, "In any Clean Water Act section 401 water quality certification issued by the State Water Resources Control Board (SWRCB) in connection with any proceeding regarding the relicensing of the Lower Mokelumne River Hydroelectric Project (FERC Project No. 2916) commencing during the effective period of the Voluntary Agreement, the SWRCB will not impose any condition regarding flows or non-flow measures which exceeds the requirements for the Mokelumne River specified in this Exhibit B.X.1.") (emphasis added)]. In sum, the VA agreements would trade away the Board's legal obligations to protect and preserve the public trust and hand its authority to regulate Bay-Delta water quality over to a select	from the VAs, water rights previously covered under the VA pathway would be subject to the requirements of the regulatory pathway. Please also see Common Response 1.3, Revised Proposed Plan Amendments, regarding the voluntary agreement process and the relationship between the State Water Board's regulatory pathway and the VA pathway. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, regarding tribal concerns with the VAs.

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		community of water rights claimants that can experiment with habitat measures and continue to divert water without public trust resources in mind. The inevitable consequence will be further impairment of the public trust and sacrifice of the interests of communities most dependent on public trust resources and sued – Delta tribes and disadvantaged communities. The Board simply cannot approve or advance the Plan consistent with its obligations as trustee of the People's trust.	
458	70	VIII. The Staff Report fails to adequately address the emergent public health and environmental dangers of HABs The Staff Report's discussion regarding harmful algal blooms fails to address HABs impacts on beneficial uses, including TBUs, and fails to address HABs' role in exacerbating existing environmental injustices. The Board also continues to ignore requests that it adopt numeric water quality criteria for HABs, and it ignores the EPA's mandate to consider adopting the EPA's recommended HABs criteria, published pursuant to notice and comment [Footnote 515: Environmental Protection Agency, Recommended Human Health Recreational Ambient Water Quality Criteria or Swimming Advisories for Microcystins and Cylindrospermopsin 5 (May 2019), https://www.epa.gov/sites/default/files/2019-05/documents/hh-rec-criteria-habs-document-2019.pdf]. Despite ample evidence that HABs can be managed throughout achievable measures like increasing flows, the Staff Report speaks only to HABs as a problem requiring further study and monitoring. While DTEC appreciates the commitments to better monitor and track HABs, HABs have already been established as a prevalent problem within the Bay-Delta that requires urgent action through water quality standards themselves.	Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to cyanobacteria harmful algal blooms (HABs) and California Native American tribes, economically disadvantaged communities and environmental justice communities, water quality standards for cyanotoxins, HABs and instream flow, and State Water Board efforts to address HABs in the Delta. Refer to Staff Report Section 4.3.2, Harmful Algal Blooms, regarding Delta HABs and their potential effects on water quality, aquatic species and human health, the environmental factors influencing the formation of HABs, and a summary of the current scientific understanding, data gaps, and ongoing monitoring and research efforts to better characterize and manage Delta HABs. In addition, the revised proposed Plan amendments described in the final Staff Report include provisions to address HABs, including efforts to identify possible HAB management and mitigation measures.
458	71	The Board should adopt a surface water objective for HABs, based on the EPA's recommended guidance. On June 6, 2019, following a 90-day public comment period, the EPA issued final recommended human health recreational ambient water quality criteria for the cyanotoxins microcystins and cylindrospermopsin [Footnote 516 Id.]. The EPA's recommended criteria identify maximum concentrations of	Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to water quality standards for cyanotoxins, nutrient discharge and cyanobacteria harmful algal blooms (HABs) in the Delta, and State Water Board efforts to address HABs. Refer to Staff Report Section 5.6.1.3, Proposed Changes to Monitoring, Assessment, Special Studies and Reporting,

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		cyanotoxins that would be protective of human health given a primary contact recreational exposure scenario: 8 µg/L for microcystins and 15 µg/L for cylindrospermopsin, using 10-day assessment periods [Footnote 517 Id.]. These levels are less protective than the trigger levels set forth in the California Voluntary Guidance for Response to HABs in Recreational Inland Waters for advisory notification, which set Tier 1 Caution warning levels at 0.8 µg/L for microcystins and 1 µg/L for cylindrospermopsins [Footnote 518: California Voluntary Guidance for Response to HABs in Recreational Inland Waters, https://mywaterquality.ca.gov/habs/resources/habs_response.html]. The EPA's guidance makes clear that such numeric nutrient criteria are relevant not only for notification purposes but as “useful tools to support water quality assessments, watershed protection or restoration, TMDL development, and permitting programs,” among other functions [Footnote 519: Final Technical Support Document at p. 26]. EPA's recommended criteria represent a bottom-line objective the Board should adopt to combat HABs. Under the Clean Water Act, the Board must adopt EPA's recommended criteria parameters in this long-overdue triennial review, or, if declines to do so, “provide an explanation when it submits the results of its triennial review to the Regional Administrator consistent with [Clean Water Act] section 303(c)(1).” [Footnote 520: 84 Fed. Reg. at 26414; see 40 C.F.R. § 131.20(a).]. Yet other than acknowledging the existence of EPA's recommended criteria, [Footnote 521: Staff Report at 7.12.1-132] the Staff Report provides no discussion of their applicability to Bay-Delta waterways or its reasons for refusing to adopt the EPA's recommended criteria. Given that it has been well over a decade since the Board last conducted a triennial review, the Board is in no position to defer this analysis to the illusory next review, nor would the law allow it. And although the Board is not legally required to adopt EPA's recommended criteria, it still must create water quality standards that are scientifically defensible and protective of designated uses [Footnote 522: 84 Fed. Reg. § 26414 (2019)]. The State Water Board can do this “by adopting criteria based on (1) the EPA's recommended criteria, (2) the EPA's criteria modified to reflect local conditions, or (3) other scientifically defensible methods.” [Footnote 523: Id.] In addition	regarding monitoring HABs in the Delta, gaps in monitoring, the State Water Board's coordination efforts related to HABs monitoring and collaboration efforts on special studies to help fill gaps in knowledge about how stream flows and other environmental conditions contribute to Delta HABs to inform potential management actions by the State Water Board and others. In addition, the revised proposed Plan amendments described in the final Staff Report include provisions to address HABs, including monitoring requirements to track status and trends and efforts to identify possible HAB management and mitigation measures.

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		to the EPA recommendations, the State has already done the work to develop its own health-based criteria-for HABs specific to California waterways; it simply has not taken the requisite next step of translating them in water quality objectives [Footnote 524: California Cyanobacteria and Harmful Algal Bloom (CCHAB) Network, Appendix to the CCHAB Preliminary Changes to the Statewide Voluntary Guidance on CyanoHABs in Recreational Waters 1 (Jan. 2016)]. Nor has the Board explained how it intends to adopt HABs criteria based on other scientifically defensible methods. Without a HABs objective, the widespread damage caused by HABs will remain both impossible to meaningfully assess and pervasive. To meet its obligations to protect the public trust and provide for the reasonable protection of beneficial uses, including Tribal Beneficial Uses, DTEC urges the Board to adopt a water quality objective for HABs, using the EPA recommended water quality criteria as a baseline to create numeric objectives protective of beneficial uses.	
458	72a	The Staff Report fails to fully identify and discuss the detrimental impacts of HABs on beneficial uses. The Staff Report fails to adequately discuss the impacts of HABs on beneficial uses, namely, the impacts HABs have on recreation and fishing. Staff claim that HABs will not have a significant impact on recreation, a hasty and incorrect conclusion: An incremental increase in potential HABs from changes in reservoir levels could cause closures to recreation in some waterbodies, but the potential increased frequency of closures is not expected to result in a substantial number of recreationists moving to alternate recreational locations to the extent that it would physically deteriorate those alternate locations . . . Therefore, the impact would be less than significant [Footnote 525: Staff Report at 7.18-10.]. First, this impacts analysis misses the mark by only discussing the potential for physical deterioration on alternative recreation spots. This analysis fails to comment on the initial problem – HABs shutting down recreation spots in the first place. Within	Section 7.18, Recreation, includes an analysis on recreational activities using methods and criteria consistent with the State Water Board’s environmental checklist (Cal. Code Regs, tit. 23, div. 3, ch. 27 §§ 3720-3781, Appendix A) and other State Water Board CEQA requirements, as described in Section 7.1, Introduction, Project Description, and Approach to Environmental Analysis. Per these criteria, Section 7.18 adequately identifies the potential impacts on recreation, including potential impacts from increased HABs, that could occur as a result of changes in hydrology . Section 7.18 states that an incremental increase in potential HABs from changes in reservoir levels could cause closures to recreation in some waterbodies, but the potential increased frequency of closures is not expected to result in a substantial number of recreationists moving to alternate recreational locations to the extent that it would physically deteriorate those alternate locations. The threshold of significance under Section 7.18 is whether changes in hydrology would sufficiently alter the distribution of recreationists among recreational locations to substantially degrade facilities at other recreational locations. Therefore, this impact was determined to be less than significant. Please refer to

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		the recreation chapter, Staff cites that eleven lakes throughout California have closed over a three year period because of HABs [Footnote 526: Id.]. This number seems significant, but the Staff Report does not discuss the implications of these closures. If the Report had discussed the impact of recreation closures due to HABs, Staff would have concluded that HABs impacts on recreation is a significant environmental effect and a significant impairment to recreational beneficial uses.	Common Response 4.1, Harmful Algal Blooms, regarding HABs-related effects on recreation. The 2023 draft Staff Report Section 7.18, Recreation, and Section 9.7.18, Recreation, identified less-than-significant impacts on recreation from increased HAB production in reservoirs and Delta channels. Increased HABs can interfere with contact recreation, including causing temporary closures to recreation in some waterbodies; however, potential increased frequency of closures is not expected to result in a substantial number of recreationists moving to alternate recreational locations to the extent that it would substantially physically deteriorate those alternate locations. In response to a substantial number of public comments received from tribal and environmental justice communities stating that HABs cause significant impacts to recreational users of water, this impact conclusion has been conservatively revised in Chapter 13, Revised Proposed Plan Amendments, to potentially significant. To reduce or avoid these potentially significant impacts, Section 13.7.18, Recreation, identifies mitigation measures. Please refer to Mitigation Measure MM-REC-a: 3, Protect Water Quality and Avoid or Reduce Harmful Algal Blooms and Invasive Aquatic Weeds.
458	72b	Second, even if the analysis only focuses on HABs forcing people to recreate elsewhere, this is still a significant impact. By inadequately mitigating HABs and forcing residents to recreate elsewhere, the legacy of racism and discrimination that segregated Bay-Delta communities lives on. These recreational waterways are not only for recreation – they are also waterways that communities live and work on and nearby. Those communities also recreate at these waterways and should not be forced to relocate their uses because of HABs, even if they had the resources to do so. The environmental injustice implications of HABs are stark – and are already felt by Bay-Delta residents. As explained by a member of Restore the Delta and Stockton resident, Big Break Shoreline has had to close access to its kayak	The Staff Report identifies HABs as a statewide water quality issue that exists independently of potential incremental impacts from the revised proposed Plan amendments. The Staff Report Section 7.18, Recreation, impact analysis under Impact REC-a identified that under the proposed Plan amendments, changes in hydrology could lead to increased HAB production in reservoirs and Delta channels and could interfere with recreation, including causing temporary closures to recreation in some waterbodies. Section 7.18 concluded that these changes would not exceed the recreation threshold for a potentially significant impact because the potential increased frequency of closures would not be expected to result in a substantial number of recreationists moving to alternate recreational locations to the extent that it

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		launch point over the summer to prevent people from recreating in HABs-infested waters [Footnote 527: Attachment 14 [Att 14], Spencer Fern, HABs Comments on the Draft Staff Report for the Phase II Update to the Bay-Delta Plan 3 (202) [hereinafter "Attachment 14"]]. He explains, The kayak launch closing canceled a kayaking trip for youth from Stockton to escape the HABs-infested waters in Stockton HABs closures that last for the majority of the summer, or that force residents of disadvantaged communities to drive many miles to enjoy water recreation when rivers exist a few blocks away from their homes, but are too polluted to enter, are prime examples of disparate impacts resulting from Water Board management of the Delta [Footnote 528: Id.]. Similarly, DTEC member Little Manila Rising has also faced difficulties organizing recreational opportunities for youth in the community. The organization received a State Coastal Conservancy grant to implement a kayaking program for Stockton youth to explore Bay-Delta waterways. But, because of the proliferation of HABs throughout Stockton adjacent portions of the San Joaquin River, the organization has been unable to carry out the programming for almost a full year after receiving the grant [Footnote 529: Attachment 1, Exhibit B, Declaration of Spencer Fern ¶ 9 [hereinafter "Decl. of Spencer Fern"]]. The organization has also been forced to travel significant distances and allocate burdensome amounts of funding for transportation to access water safe enough for recreational activities – costs that lower income Stockton residents often cannot bear [Footnote 530: Id.]. For residents familiar with Delta waterways, the Bay-Delta "now instills a feeling of disgust" [Footnote 531: Attachment 1, Exhibit D, Declaration of Artie Valencia ¶ 5 [hereinafter "Decl. of Artie Valencia"]]. and makes residents wonder whether "recreational trips are safe any longer or will be available in the future." [Footnote 532: Attachment 1, Exhibit C, Declaration of Sarai Medina ¶ 7 [hereinafter "Decl. of Sarai Medina"]]. HABs' impacts on recreation also hold economic implications. Stockton is already one of the country's most economically distressed cities. The foul odors of HABs render waterways inaccessible, impair tourism, [Footnote 533: Delta Protection Commission, Economic Sustainability Plan for the	would substantially physically deteriorate those alternate locations. Accordingly, Section 7.18 concluded that these impacts would be less than significant. Section 9.7.18, Recreation, reached the same impact conclusion. In response to public comments and in recognition of recreation as an important public use of these Delta channels and reservoirs and as a beneficial use of water in the Bay-Delta Plan and other basin plans, this impact conclusion is revised to potentially significant in Chapter 13, Section 13.7.18, Recreation, and is revised in Sections 7.18 and 9.7.18 of the final Staff Report. Mitigation measures are identified to reduce or avoid impacts on recreation (see Appendix H3, Mitigation Measures for the Revised Proposed Plan Amendments). Please refer to the response to comment 458-34. Also see Common Response 4.1, Harmful Algal Blooms, for responses to comments regarding cyanobacterial harmful algal blooms (HABs) and recreation; Common Response 10.1, Economically Disadvantaged Communities, regarding the Staff Report's analysis of impacts on economically disadvantaged communities; and Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, regarding tribal beneficial uses.

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		Sacramento-San Joaquin Delta, at p. ii-iii (Delta recreation and tourism adds a total of \$144 million to the regional economy, which is a decline from 2012 estimates.)) decrease property values, and increase drinking water treatment costs [Footnote 534: Walter Dodds et al., Eutrophication of U.S. Freshwaters: Analysis of Potential Economic Damages, 43 Env't Sci. & Tech. 12 (2009)]. As Dillon Delvo, Executive Director of Little Manila Rising, explains: “[u]nlike many water front communities that have beautiful waterways that are economic drives, [South Stockton] waterways are toxic and inaccessible. They are something that residents and would-be tourists run from rather than gravitate toward.” [Footnote 535: Attachment 1, Exhibit E, Attachment D, Declaration of Dillon Delvo ¶ 19 [hereinafter “Decl. of Dillon Delvo”]]. These impacts also feed into the idea that the area is “unworthy of economic and recreational improvement . . . [,] a narrative that is ingrained and keeps Stockton stagnant, just like our waterways.” [Footnote 536: Decl. of Artie Valencia ¶ 3].	
458	73	HABs also have dire implications for the subsistence fishing practices that thousands rely upon in the Bay-Delta. An estimated 24,000 to 40,000 subsistence fishing visits are made to the Delta annually [Footnote 537: Barbara Barrigan-Parrilla et al., The Fate of the Delta: Impacts of Proposed Water Projects and Plans on Delta Environmental Justice Communities 54 (2018), https://www.restorethedelta.org/wp-content/uploads/The-Fate-of-the-Delta-final.pdf . [hereinafter, “Fate of the Delta”]]. Subsistence fishers throughout the Bay-Delta, many of whom are immigrants and/or people of color, [Footnote 538: Fraser Shilling et al., Contaminated Fish Consumption in California’s Central Valley Delta, 110 Env’t Rsch. 334, 335, 337 (2010)]. experience a loss of food supply as fish populations decline. Impaired Bay-Delta water quality also puts them at heightened risk of exposure to contaminants that accumulate in waterways and the fish they consume [Footnote 539: Fate of the Delta, supra note 538, at 54-55]. Indeed, OEHHA advises against the consumption of five separate fish species in the Sacramento River and Northern Bay-Delta [Footnote 540: Cal. Office of Env’t Health Hazard Assessment, Fish Advisories, Sacramento River and Northern Delta, https://oehha.ca.gov/advisories/sacramento-river-and-	Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to Delta cyanobacterial harmful algal blooms (HABs). The State Water Board is committed to supporting actions to address HABs. These include supporting science, research, monitoring, and special studies that are needed to develop HAB-predictive models and identify possible management and mitigation measures that could be used to control HABs in the Delta, in addition to supporting incident response and other actions to address HABs. These commitments are described in Staff Report Section 5.6.1.3, Proposed Changes to Monitoring, Assessment, Special Studies, and Reporting. Section 13.3.9.2, Harmful Algal Blooms, of the 2025 partially recirculated draft Staff Report describes provisions included in the revised proposed Plan amendments for addressing HABs in the Delta.

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		northern-delta (last visited Jan. 12, 2024)] and two fish species in the Central and South Bay-Delta based on the presence of PCBs, mercury, and other toxins [Footnote 541: Cal. Office of Env't Health Hazard Assessment, Fish Advisories, Delta, Central and South, https://oehha.ca.gov/fish/advisories/delta-central-and-south-0 (last visited Jan. 12, 2024)]. OEHHA also advises against consuming all fish and shellfish species in the Port of Stockton [Footnote 542: Id.]. The disparate impacts borne by Bay-Delta communities of color as a result of HABs are not adequately addressed in the Staff Report. Addressing HABs should be a priority in Staff's ultimate recommendation to the Board and in the Board's decision.	
458	74	C. The Staff Report fails to recognize that HABs create disparate impacts for Native communities and impair Tribal Beneficial Uses. The Staff Report lacks any discussion of the impacts of HABs on Tribal Beneficial Uses, despite their damaging and widespread effects. Proliferation of HABs create unique harms for Native tribes as HABs impede Native religious and cultural practices. DTEC member Winnemem Wintu's coming-of-age ceremonies involve swimming across a river near a sacred rock, and water blessings consist of cupping river water in their hands and placing it on their heads and hearts [Footnote 543: Decl. of Gary Mulcahy ¶ 32]. Neither of these practices can take place when HABs are present [Footnote 544: Decl. of Gary Mulcahy ¶ 32]. According to Shingle Springs Band tribal council member Malissa Tayaba, HABs "are becoming more and more of an obstacle for [the tribe] every year in accessing traditional cultural resources, furthering the alienation already posed by the Delta's degraded state." [Footnote 545: Decl. of Malissa Tayaba ¶ 16] HABs have forced the cancellation of tribal fishing trips designed to teach youth about traditional diets and food sovereignty [Footnote 546: Decl. of Malissa Tayaba ¶ 16]. And "even if [tribal members] could catch fish, they knew they could not eat them because of the risk of toxic exposure from the harmful algal blooms." [Footnote 547: Decl. of Malissa Tayaba ¶ 17].	Please refer to Common Response 4.1, Harmful Algal Blooms, for responses to comments about harmful algal blooms and California Native American Tribes. Also refer to Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses.

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		The continuing decline in water quality results in unique injury to Bay-Delta tribes: it perpetuates the legacy of colonization, marginalization, and genocide that has marked the California state government's relationship with Native tribes since the mid-1800s. And it compromises the continuing existence of tribes as a People. As Vice Chair Tayaba explains: [The Shingle Springs Band of Miwok Indians] are the survivors of disease, colonization, genocide and removal. We return to Pusune, Wallok, and other important sites to remember, reconnect, teach, learn, and restore. We cannot do this work without healthy rivers – the lands, plants, fish, and animals that connect me and my Tribe to our ancestors and that are interwoven with my culture, religion, and identity cannot exist if there is not enough water in the Sacramento River and its tributaries to create the conditions needed to support life. If [Bay-Delta] water quality continues to deteriorate, I fear that the resources and landscapes we are working so hard to restore our connection to will become increasingly unsuitable for use or disappear altogether. Such loss would amount to cultural genocide for our Tribe [Footnote 548: Decl. of Malissa Tayaba ¶ 17]. Native tribes cannot move elsewhere to escape HABs. Their existence and livelihoods are threatened by HABs, which are exacerbated by continual delays and ineffectual water quality standards that fail to address HABs. To allow for adequate protection of TBUs and to allow for Native tribes to retain and restore their cultural heritage, responsive and effective action must be taken to address HABs.	
458	75	D. The Staff Report fails to adequately identify the significant environmental impact HABs will have on air quality and human health. The Staff Report incorrectly asserts that air quality impacts of HABs in depleted Bay- Delta waterways are unlikely to be significant. A recent study published by the University of North Carolina found a link between HABs-produced volatile organic	Please refer to Common Response 4.1, Harmful Algal Blooms, regarding harmful algal blooms, including their relationship to streamflows, a discussion of water quality standards for HABs, and the potential implications of HABs for air quality and environmental justice communities.

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		chemical compounds and the formation of secondary organic aerosols, [Footnote 549: Attachment 6 [Att 6] at 1807] which can contribute to the formation of the air pollutant PM2.5 [Footnote 550: Id. at 1799.]. The authors state, “[t]he inhalation of ultrafine and fine aerosol, regardless of composition, is associated with adverse health outcomes, including elevated risks of cardiovascular and pulmonary morbidity and mortality.” This study is the first of its kind and demonstrates the need for further research into the respiratory effects of HABs. Adding to the litany of known harms HABs can cause, the implications of this study are grave when considering the impacts HABs have on communities. Many Bay-Delta communities of color already bear numerous environmental harms, with HABs adding to that burden. This is especially prevalent in South Stockton. South Stockton contains a constellation of transportation infrastructure and heavy industry sites, creating high air pollution impacts [Footnote 551: Decl. Dillon Delvo ¶ 14]. According to CalEnviroScreen, multiple census tracts in South Stockton – all within a half-mile of Bay-Delta waterways – score in the 96th through 99th percentiles of all California communities for overall pollution burdens, meaning that these communities suffer from more pollution exposure than up to 99% of the rest of the state [Footnote 552: See Cal. Office of Env’t Health Hazard Assessment, CalEnviroScreen Version 4.0, https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40 (last visited Jan. 12, 2024)]. Parts of South Stockton are also among the most disadvantaged communities in the country [Footnote 553: See White House Council on Env’t Quality, Climate and Economic Justice Screening Tool, https://screeningtool.geoplatform.gov/en/#22/37.94502384/-121.2722151 (last visited Jan. 12, 2024)]. For example, residents of the census tract where Coalition member Little Manila Rising is based are in the 99th percentile nationally for PM2.5, the 86th percentile for asthma, and the 91st for proximity to Superfund sites [Footnote 554: Id.]. The same census tract is in the 96th percentile nationally for number of low-income households [Footnote 555: Id.] and is in the 87th percentile for linguistic isolation, [Footnote 556: See Cal. Office of Env’t Health Hazard Assessment, CalEnviroScreen 4.0 Indicator Maps,	

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		https://experience.arcgis.com/experience/ed5953d89038431dbf4f22ab9abfe40d/ (last visited Jan. 12, 2024)] which refers to the proportion of limited English-speaking households. HABs cause outsized aesthetic, economic, spiritual, and health impacts to the area’s residents. Because of the legacy of discriminatory urban planning decisions and ongoing industrial development, South Stockton has relatively little greenspace and is particularly prone to the heat island effect [Footnote 557: Decl. of Dillon Delvo ¶ 21.]. During the summer, residents of South Stockton often try to escape the heat by using the city’s waterways, only to encounter HABs. As a Stockton resident and Restore the Delta employee puts it: The people living closest to the waterways often belong to environmental justice communities that suffer the most from air and water pollution. They don’t have the money to pay for air conditioning. They cannot afford to go somewhere else during the summer’s sweltering heat . . . The sad truth is that the waterways hurt more than they help [Footnote 558: Decl. of Sarai Medina ¶ 4.]. HABs also pose particular health risks to the community’s unhoused residents. For instance, South Stockton’s Mormon Slough is home to a large encampment of unhoused residents who use the Shipping Channel and San Joaquin River for basic needs like hygiene, sanitation, and subsistence fishing [Footnote 559 Decl. of Dillon Delvo ¶ 17]. These 248 residents risk ingesting or coming into direct contact with the toxic blooms and suffering severe health effects. Waterways and riparian buffers could help absorb heat, reduce temperature disparities, and mitigate the effects of climate change. Instead, South Stockton’s waterways create new health risks for a vulnerable community [Footnote 560: See Decl. of Sarai Medina ¶ 21]. These activities and the proximity of South Stockton residential areas to the waterways put these residents at disproportionately high risk of inhaling airborne toxins from HABs, which can be mobilized by wind and travel for miles, exacerbating respiratory problems like asthma [Footnote 561: See Kirkpatrick et al., Inland Transport of Aerosolized Florida Red Tide Toxins, 9 Harmful Algae 186, 186 (2010); Decl. of	

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		Barbara Barrigan-Parrilla ¶ 18; Kris Freeman, Seasick Lungs: How Airborne Algal Toxins Trigger Asthma Symptoms, 113 Env't Health Perspectives 632 (2005)]. The results of the UNC study discussed above illustrate that it is likely that many health risks caused by HABs are yet to be understood. And in some cases, the contact with HABs is especially direct. High school students regularly run around the banks of McLeod Lake during physical education classes, mere feet from the blooms [Footnote 562 Decl. of Spencer Fern ¶ 2]. One student reported that she and her classmates occasionally had to cover their noses and mouths because the smells were so bad [Footnote 563: Exhibit A, Declaration of Cintia Cortez ¶ 3 [hereinafter "Decl. of Cintia Cortez"]]. Since Stockton residents suffer from some of the highest asthma rates nationwide, these students and other residents are uniquely vulnerable to health impacts from aerosolized HAB particles [Footnote 564: See, e.g., Decl. of Barbara Barrigan-Parrilla 18]. Staff must act now to create flow objectives that are responsive to the threats that communities of color face because of HABs. Delaying in creating responsive and effective standards jeopardizes communities' health, livelihood, and well-being and continues the legacy of environmental racism and injustice in the Bay-Delta.	
458	76	The Board Should Reject the Voluntary Agreements. Despite widespread pushback, the Board continues to mobilize the Vas as an alternative to minimum unimpaired flow regulations. For the past seven years, the Vas have been a painful distraction from the real work before the Board – the legally mandated task of updating water quality standards to ensure reasonable protection of beneficial uses and public trust resources. Instead, the Board has delayed the update to accommodate exclusionary backroom negotiations between State and federal agencies, local water agencies, and private companies at the expense of a robust, public process. And it now proposes to substitute regulatory standards for eight more years of experimentation by the same water diverters that acquired water rights through genocide, exclusion, and violence and have	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project and Common Response 1.2, Water Quality Control Planning Process, for information on the consideration of beneficial uses and public trust.

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		driven the Bay-Delta's ecological crisis through unsustainable diversions and exports. This is not a way to manage water for the public benefit. The process that produced the Vas lacks fundamental legitimacy; the Vas themselves lack the requisite basis in science and would undermine efforts to attain protection of beneficial uses and public trust resources; consideration of Vas continues to delay meaningful update of water quality standards at the expense of ecological and human health and welfare as well as tribal sovereignty; and the VA framework, and the Board's consideration of it, are riddled with legal vulnerabilities that will only set back this gravely delayed update even further. It is time for the Board to let go of the Vas and put its resources into regulating in the public interest.	
458	77	A. The Voluntary Agreements are the result of inequitable and discriminatory processes that exclude Native American Tribes, communities of color, and the general public from participating in water quality governance. The public will never accept the Voluntary Agreements as a legitimate substitute for sound governance of Bay-Delta water quality. In addition to being wholly inadequate to protect the health of the Bay-Delta estuary, the Voluntary Agreements are the result of exclusionary, backroom negotiations that have prioritized the voices and interests of water agencies over Bay-Delta tribes, communities, and ecosystems. The Vas are, in other words, irreparably tainted. "Nowhere are water policy inequities clearer than in the Bay-Delta 'voluntary agreement' process". [Footnote 565: The voluntary agreement process has failed for years to solve the Bay-Delta's water problems. It is, however, working for California's water elite. It maintains their control of water allocations. It has stopped the State Board from requiring more environmental flows in our rivers and the Bay-Delta. (Op-ed by Chief Sisk and Barbara Barrigan-Parilla) https://www.mercurynews.com/2021/09/18/opinion-governor-must-integrate-justice-into-state-water-policy/]. The Board states that Vas resulted from negotiations between "interested stakeholders and various other state agencies. [Footnote 566: Staff Report at 9-3] But it omits that the only	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. Also see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for a discussion of tribal concerns with the VA pathway.

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		entities that have ever been invited to the government's VA negotiating table, or even privy in any respect to discussions, are water agencies, water contractors, irrigation and water districts, and private companies. The singular presence of these entities at the negotiating table manifests a throughline from the violent and exclusionary foundations of California's water rights systems to water governance today.	
458	78	As discussed above, California's water rights system rests on deeply unjust and inequitable foundations. Between 1845 and 1852 – as the architecture for state water rights was being elaborated – the State's Indigenous population declined by two-thirds as the result of murder, disease, starvation, and displacement; overall it is estimated that fewer than 30,000 of the precolonial population of California Native American people survived this period that has come to be known as the California Genocide [Footnote 567: Madley, supra note 22]. As Governor Newsom has recognized, the State itself endorsed and even legislated a systematic campaign to destroy and remove California tribes [Footnote 568: Executive Order N-15-19]. In one of its first acts, for instance, the new California legislature adopted the Act for Government and Protection of Indians, which, far from providing protection, provided for the removal of tribes from their traditional lands, separation of children from families, and creation of a system of indentured servitude for minor crimes. Additional legal instruments like the California Land Act and land reclamation policies (including the 1887 Dawes Act among others) served as tools for further dispossession and displacement of tribes from their ancestral homelands. Meanwhile, in perhaps the greatest of these many acts of state-sponsored deception, California tribes were compelled to sign 18 treaties between 1851 and 1852 which, at the behest of the California congressional delegation, were never ratified and instead maintained in secrecy for over 50 years, beyond the congressional prohibition on ratification of new treaties with American Indian tribes [Footnote 569: ACCIP, supra note 30 at 5]. The upshot for California tribes is that in addition to being dispossessed of ancestral lands and waters, the state and federal governments' breach of treaty promises to tribes has limited	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses.

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		tribes' ability to claim and effect federal water rights – rights which should have priority of use dating to the inception of California statehood when the treaties were executed. And like other communities of color in California, tribes have suffered from systematic exclusion and discrimination that has vastly limited their ability to acquire riparian land and assert and maintain appropriative water rights within the colonial system. The result is, today, a water rights system where the vast majority of water rights holders are white (91 percent according to one DWR analysis), as are the vast majority of persons who direct water agencies and agricultural water districts [Footnote 570: Restore the Delta, Analysis: California Water Rights Still 90% White, (Feb. 27, 2023) https://www.restorethedelta.org/2023/02/27/analysis-california-water-rights-still-90-white/]. By giving water rights claimants who acquired rights through the dispossession and exclusion of tribes and communities of color the only seats at the negotiating table, the State brings the racism and genocidal foundations of the water rights systems directly into the Bay-Delta planning process. Indeed, the State never invited any California Native American tribe into discussions, not to mention engaging in legally mandated AB 52 consultation on this government directed program. Nor did it open the door to Bay-Delta community-based organizations, tribal non-profits, environmental justice organizations, fishing interests, environmental or conservation groups, Delta residents, or any other stakeholders fighting for and dependent on a healthy Bay-Delta estuary.	
458	79	Beyond excluding key stakeholders from the private negotiations, the agencies formulating the Voluntary Agreements have repeatedly denied requests from stakeholders seeking information about the negotiations and their participants. The Natural Resources Defense Council, for example, submitted several California Public Record Act requests for documents related to the Voluntary Agreements. The agencies refused to share documents pertaining to the negotiations, claiming that nearly all relevant documents were exempt from disclosure under the Public Records Act [Footnote 571: Email from Jessica Aresca, CalEPA Pub. Rec. Act Coordinator, to Doug Obegi (Feb. 2,	Please see Common Response 1.1, General Comments, for a response to comments about the process to develop the VA pathway.

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		2022), https://www.nrdc.org/sites/default/files/mediauploads/final_responses_to_calepa_public_records_act_requests_dated_7_23_21_and_11_8_21.pdf]. The undersigned have submitted similar requests to VA participants seeking documentation of discussions and discussion participation and have been similarly rebuffed. Compounding the shroud of secrecy, the individuals invited into the backroom deals were required to sign confidentiality agreements to further shield the negotiations from public input [Footnote 572: See Nat. Res. Def. Council, Common Interest and Confidentiality Agreement (2019), https://www.nrdc.org/sites/default/files/mediauploads/va_water_user_common_interest_agreement.pdf]. The agencies' decision to withhold key information demonstrates a pattern and practice of excluding Tribes, disadvantaged communities, and others from providing meaningful input on processes that affect all members of the public. When the Board did eventually extend an invitation to non-party stakeholders to engage in any discussion about the Vas, it did so nearly two months after the voluntary agreement framework had been settled and with only three days' notice [Footnote 573: Decl. of Barbara Barrigan-Parrilla ¶ 24.]. Further, the invitation was limited to workshops on "implementation of the [voluntary agreement] program." [Footnote 574: Id.]. Communities who are most impacted by current and future environmental harms caused by detrimental water quality standards continue to be left out of critical government planning processes.	
458	80	The Board suggests that the exclusionary origins of the VAs can be cured by bringing the VAs forward now for public review and agency approval through the instant Bay-Delta Plan update process. It is wrong. As an initial matter, the State continues to hide the full contours of the agreements from public review; indeed, the Board provides the public only a "preliminary draft of the Strategic Plan" for the VAs, not the final VAs themselves, at the same time that it proposes to adopt the still unformulated agreements in lieu of a regulatory update [Footnote 575: Appendix G1 at 1.]. And it insultingly suggests that "TEK could . . . Inform adaptive management of the proposed Vas if they are adopted, through engagement by VA parties with California	The operable provisions of the VAs were described in Chapter 9, Proposed Voluntary Agreements, of the 2023 draft Staff Report and are described in the revised proposed Plan amendments, not the VA party documents. Please see Common Response 1.3, Revised Proposed Plan Amendments, for more information on the VA pathway. Also see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for information on tribal engagement and traditional ecological knowledge.

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		Native American tribes” without ever consulting with tribes themselves on the subject [Footnote 576: Staff Report at 9-74].The Board’s attempt to now engage some form of albeit patchwork public review of the Vas is also too little too late. The Voluntary Agreements were predetermined in closed door negotiations and are no longer open for meaningful input. And they derive from a process that excluded the vast majority of stakeholders actually affected by degraded Bay-Delta water quality. The limited public insight the Board offers into the Vas now cannot overcome the fact that the Vas perpetuate injustice by leaving water management in the hands of the same people who brought the Bay-Delta watershed into a state of crisis.	
458	81	The VAs lack a scientific basis and would conflict with the Board’s legal obligations to ensure reasonable protection of beneficial uses and public trust resources. As discussed above, state and federal law charge the Board with maintaining water quality standards adequate to protect beneficial and public trust uses in the Bay-Delta and with regulating rights to use and divert Bay-Delta water to satisfy those standards. And the Clean Water Act’s implementing regulations are clear that water quality standards must be based on a sound scientific rationale [Footnote 577: 40 C.F.R. § 131.11(a)(1)]. The VAs are not. Instead, the VAs would trade away improvements in instream flow – which both TEK and science demonstrate are essential to restoring ecosystem health and allowing for survival of native fish species and restoration of native riparian habitat – for vague non-flow habitat restoration commitments that have no basis in science. As a result, in addition to suffering from fundamental illegitimacy, the Vas would fall short of ensuring adequate water quality to protect beneficial uses of Bay-Delta waters and public trust interests.	The science supporting the proposed flow and non-flow habitat provisions included in the VAs was evaluated in the Scientific Basis Report Supplement (Staff Report Appendix G2). Please see Common Response 1.2, Water Quality Control Planning Process, for information on the consideration of beneficial uses, the Clean Water Act, and public trust; Common Response 3.1, Fish Protection, on the use of best available science; and Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for a discussion of traditional ecological knowledge.
458	82	The VAs ignore the well-documented need for adequate flows. The Board has repeatedly recognized that the viability of native fish populations in the Bay- Delta primarily depends on increasing flows. For instance, in its 2017 Scientific Basis Report, which the Final Draft Scientific Basis Report Supplement [Footnote 578: Staff Report at App. G2.] (“Scientific Basis Report Supplement”) adds to, the Board stated that “flow is commonly regarded as a key driver or ‘master variable’ governing the	Please see Chapter 9, Proposed Voluntary Agreements, and Chapter 13, Revised Proposed Plan Amendments, of the Staff Report for information on the quantity of flow and benefits expected to result from the VAs. See also Common Response 1.1, General Comments, for information on the Delta Flow Criteria Report and Common Response 1.2, Water Quality Control Planning Process, for information on reasonable protection of fish and wildlife and public trust.

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		environmental processes in riverine and estuarine systems such as the Bay-Delta and its watershed” and that “flow and physical habitat . . . are not interchangeable.” [Footnote 579: 2017 Scientific Basis Report, supra note 10] This conclusion was consistent with the Board’s findings in its 2010 Public Trust Flows Report that 75% of unimpaired Delta outflow from January through June, 75% of unimpaired Sacramento River inflow from November through June, and at least 60% of unimpaired San Joaquin River inflow from February through June would be required “to preserve the attributes of a natural variable system to which native fish species are adapted.” [Footnote 580: Public Trust Flows Report, supra note 299 at 5]. Flows adequate to maintain public trust resources and beneficial uses, according to the Board, are substantially greater than Bay-Delta waterways currently maintain, not to mention levels currently required under D-1641 [Footnote 581: See, e.g., Staff Report at 7.6.2-39 (showing that minimum required daily outflow is “often substantially lower than Delta outflows observed under baseline as well as under the 45 to 65 scenarios”)] Neither the Staff Report, nor the Final Scientific Basis Report, suggest otherwise. Rather, the best available science shows that increased flows would, in addition to mitigating HABs and improving riparian habitat, address a broad range of factors that the Supplemental Report recognizes limit fish prevalence: temperatures, contamination, dissolved oxygen, and salinity, among others [Footnote 582: Supplemental Report at Table 2-1]. The current VA framework also radically reduces the amount of additional flows that would have been provided under a 2017 VA proposal (1.3 million acre feet) to less than 500,000 acre feet per year on average – far less than the increased outflows than the Board has indicated are necessary to protect beneficial uses and the public trust [Footnote 583: See Cal. Nat. Res. Agency, Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions (2022), Term Sheet App. 1 (Table 1a detailing proposed new contributions to Delta outflow)https://resources.ca.gov/-/media/CNRAWebsite/Files/NewsRoom/email-items/VoluntaryAgreementMOUtermSheet20220329_SIGNED-	

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		20220811.pdf; see generally Doug Obegi, Honey, the VAs Shrunk the Delta Flows, NATURAL RESOURCES DEFENSE COUNCIL, https://www.nrdc.org/experts/doug-obegi/honey-i-shrunk-delta-flows-aka-voluntary-agreements (April 11, 2022)]. And it makes clear that even these numbers are subject are to change, as they merely “reflect[] status of negotiations as of the date of [the Draft VA Framework].” As a final VA package has not yet been finalized, neither the public nor the Board can know how much flow it would assure. Further, the VA framework provides its signatories with broad discretion in how the VA Flow Measures would be deployed – allowing them, for instance, to “test hypothesis in consideration of hydrological conditions.” [Footnote 584: Staff Report, App. A (Draft VA Strategic Plan), at 10]. In contrast to the much greater clarity and certainty provided by an unimpaired flow objective, the VAs provide little insight into how much water the Board will actually require to flow through Delta waterways. The VA framework attempts to offset the shortcomings in its flow assurances with non-flow habitat restoration commitments [Footnote 585: Cal. Nat. Res. Agency, supra note 584 at 5]. But as amply documented in comments on the Draft Scientific Basis Report Supplement, including by the undersigned, there is no scientific basis for the assumption on which the VAs are built that physical habitat restoration can make up for flows. Nor can they substitute for instream flows adequate to support resident fish populations and fish migration and rearing, reduce the incidence of harmful algal blooms, restore aesthetics and recreational opportunities, and support other public trust uses. TEK and science, including that recognized and relied on by the Board itself, cut in the opposite direction. The Scientific Basis Report Supplement goes so far as to suggest that reliance on flows will somehow harm the Bay-Delta watershed: Reliance on one management tool, such as flow, is less likely to result in a desired outcome, given the level of uncertainty with future conditions. While flow actions rely on a certain amount of precipitation falling each year, many habitat restoration sites may be available to fishes in all water years [Footnote 586: Cal.	

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		Water Res. Control Bd., Final Draft Scientific Basis Report Supplement in Support of Proposed Voluntary Agreements for the Sacramento River, Delta, and Tributaries Update to the San Francisco Bay/Sacramento-San Joaquin Delta Water Quality Control Plan (2023), 6-30 [hereinafter “Final Scientific Basis Report”]]. This statement misses the point. Adequate flows are unavailable because of poor water management by the Board, including it’s the authorization of excessive water exports and consideration of significant new diversion and storage projects. “[T]he uncertainty of future conditions” is largely the result of the Board’s own mismanagement and would only be made worse should the Board adopt Vas premised on uncertain habitat restoration measures with purely hypothetical benefits rather than science- and TEK-based unimpaired flow objectives that promote science-based functional flow regimes. Further, commenters do not propose that the Board rely exclusively on flows as a management tool, but rather that the Board pair a 65 percent unimpaired flow objective with holistic management strategies premised on a functional flow regime. Habitat restoration and other management strategies will do little to promote fish recovery or restore other measures of ecosystem health if there is insufficient water available in the system.	
458	83	The voluntary agreements also exacerbate the problem of insufficient flows by remaining silent on Trinity River Division diversions into the Delta and Trinity River releases, even though the TRD is a major artificial supplier of Sacramento River inflow. Despite this silence, the regulation of Bay-Delta inflows and outflows necessarily implicates flows through the Trinity River and the federally reserved rights of tribes in the Trinity and Lower Klamath basins.	Please see Common Response 1.5, Trinity River, on consideration of the Trinity River watershed.
458	84	Ultimately, there is insufficient evidence before the Board that trading flows for habitat restoration measures will allow for adequate protection of fish and wildlife, recreation, and other beneficial uses as well as public trust interests. The Board has already grappled with the flow-for habitat tradeoff in Phase I of the Bay-Delta Plan Update, and it came to precisely this conclusion.	As explained in the Staff Report, the State Water Board’s Bay-Delta Plan update and implementation efforts are part of a multi-faceted approach to address protection of fish and wildlife in the Bay-Delta watershed and reconcile an altered ecosystem. The State Water Board has responsibility and authority for addressing flow and other water quality impairments, but ecosystem recovery depends on more than adequate flows. It also requires implementation of complementary measures,

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		There, the Board stated that “there is no evidence of the efficacy of non-flow measures to protect fish and wildlife beneficial uses, the amount of water that would be saved through the non-flow measures, or how the non-flow measures would achieve the plan amendments’ goals and objectives Moreover, most non-flow measures require flow in order to be effective.” [Footnote 587: Cal. Water Res. Control Bd., Master Response 5.2: Incorporation of Non-Flow Measures (2018), https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2018_sed/docs/mr5.2.pdf]. Despite much conjecture, neither the Staff Report nor the Scientific Basis Report Supplement establishes otherwise.	including habitat restoration, fisheries management, control of waste discharges and invasive species, and other efforts by other agencies and entities in the watershed that are responsible for these actions. Projects and programs to address these other stressors are often referenced generically as non-flow actions. However, that term is something of a misnomer as it fails to capture both how inadequate flows have contributed to the pervasiveness and severity of other stressors and the need for adequate flows to successfully implement many non-flow or other aquatic ecosystem measures. Chapter 4, Other Aquatic Ecosystem Stressors, acknowledges that the benefits of flows are enhanced when implemented in concert with habitat restoration. Please see Staff Report Chapter 13, Revised Proposed Plan Amendments, for a description of the VA pathway and, Common Response 3.1, Fish Protection, for information on the habitat benefit analyses. Please also see Common Response 1.3, Revised Proposed Plan Amendments, for information on HRL non-flow habitat restoration actions. Please see Common Response 1.2, Water Quality Control Planning Process, for information on the reasonable protection of fish and wildlife and consideration of other beneficial uses.
458	85	The Vas are not grounded in a scientific rationale, as evidenced by the lack of protection they will afford fish and wildlife beneficial uses. The description of the Vas by the Board and the VA parties is also misleading in insinuating to the public that the Vas would assure some actual improvement in instream flows over baseline conditions. The VA framework promises Flow Measures comprising blocks of additional flow, but this so-called addition is relative to a regulatory baseline – not actual conditions in the waterways. Through this sleight of hand, the Staff Report and Final Scientific Basis Report sow confusion and make it difficult for the public to understand what – if any – benefits the Vas would offer. First, the Staff Report and Final Scientific Basis Report confuse the public and obscure actual impacts of the VA proposal by	Please see Common Response 6.2, Baseline and No Project Alternative, for a description of the baseline and reference conditions used in the 2023 draft Staff Report.

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		comparing the Vas to multiple, confusingly described baselines. The Final Scientific Basis Report's baseline, referred to as the "reference condition," is based on flows resulting from State Water Board Revised Water Right Decision 1641 (D-1641) and the 2008/2009 BiOps [Footnote 588: Final Scientific Basis Report, supra note 587, at 1-6]. This baseline differs from the Staff Report's baseline for the proposed Plan amendments and non-VA alternatives, which accounts for regulatory requirements of D-1641, 2019 BiOps, and the 2020 Incidental Take Permit [Footnote 589: Staff Report at 6-4 ("The project baseline includes requirements as they have been implemented in recent years in an attempt to represent existing conditions.") see also id. Table 6.2-1 SacWAM Baseline Model Assumptions.]. This is also different from the Staff Report's baseline for the Vas Chapter, which is also utilized by the Draft Strategic Plan, and is explained further below. [Footnote 590: Staff Report at 9-13 ("The 2019 BiOps condition is different than the Staff Report baseline in that the 2019 BiOps condition is the theoretical assumed starting point for accounting purposes upon which VA assets would be added, rather than a reflection of current or prior existing conditions or baseline . . . The major difference between the baseline and 2019 BiOps condition relative to exports and Delta outflows is the applicability of San Joaquin River inflow to export (I:E) constraints that apply during April and May.")]. As a lay reader, it is challenging to understand how these different baselines compare. It is even more difficult to assess whether Vas are providing benefits or adverse impacts relative to the current conditions baseline that CEQA ordinarily requires for environmental assessments "to provide the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts." [Footnote 591: 14 Cal. Code Regs. ("CEQA Guidelines") § 15125(a)(1).]	
458	86	Second, the Board's comparison to a regulatory baseline rather than an actual conditions baseline obscures that the Vas would assure little, if any, additional flows relative to current or historical conditions. The Draft VA Strategic Plan states that the VA "Flow Measures will be additive to the Delta outflows required by [Revised D-1641] and resulting from the 2019 Biological Opinions." [Footnote 592: Staff Report, App. A (Draft	The baseline, reference condition, and 2019 BiOps condition used in the 2023 draft Staff Report all include the flows resulting from the applicable regulatory requirements, they are not solely the required flows. Thus, comparisons of the proposed VA scenarios to the baseline, reference condition, or 2019 BiOps condition is a true comparison of the additional flows expected from the VAs relative to those conditions. Please see Common

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		VA Strategic Plan), at 7] But the Draft VA Strategic Plan itself concedes that the 2019 Biological Opinions are being challenged in court, including by the California Attorney General's Office for failing to protect endangered fish species from federal water export operations. [Footnote 593: State of Cal. Dept. of Justice, Attorney General Becerra Files Lawsuit Against Trump Administration for Failing to Protect Endangered Species in the Sacramento and San Joaquin Rivers (Feb. 20, 2022), https://oag.ca.gov/news/press-releases/attorney-general-becerra-files-lawsuit-against-trump-administration-failing] And the Board has acknowledged that the "best available science . . . Indicates that [D-1641 and 2008 and 2009 BiOps] are insufficient to protect fish and wildlife." [Footnote 594: 2017 Scientific Basis Report, supra note 10 at 1-5; see also Staff Report at 4 (Existing flows in the Sacramento/Delta watershed "are generally substantially higher than the minimum flows required under D-1641 and other regulatory requirements."); see also Staff Report at 7.6.2, 39 (Daily outflow under D-1641 is "often substantially lower than Delta outflows" currently experienced in the Delta."). If unprotected flows are eliminated due to operation of the Sites Reservoir and Delta Conveyance Project, accompanied by new water rights permitting, minimum required flows under the Vas may be significantly less than the Delta currently experiences. Even taking this low baseline, the Vas do not appear to offer any practical improvement in ecological flows. Table 6-4 [Exhibit 3] to the Final Scientific Basis Report Supplement makes this plain. This table compares the frequency of exceeding ecological flow thresholds under the report's reference condition with the frequencies under the Vas – the results show nearly identical flow threshold frequencies. [Footnote 595: Final Scientific Basis Report, supra note 585 at 6-22 (referring to Table 6-4); see also Staff Report (referring to Table 9.64) (showing almost identical numbers comparing the Vas to the Staff Report's Vas baseline condition)].	Response 1.3, Revised Proposed Plan Amendments, , regarding comments on other water supply projects. Please see Common Response 6.2, Baseline and No Project Alternative, for a description of the baseline and reference conditions used in the 2023 draft Staff Report.
458	87	[Exhibit 3: Table 6-4 from the Scientific Basis Report Supplement. Frequency of Exceeding Ecological Flow Thresholds within the Seasons Specified in Section 5.4]	This exhibit was included in the comment letter. The exhibit does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing exhibits.

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458	88	Third, the VAs' proposed objectives lack the requisite scientific basis for water quality standards. The Vas propose two objectives: a new narrative viability objective that purports to "maintain water quality conditions, including flow conditions...sufficient to support and maintain the natural production of viable native fish populations" and a modified version of the existing Narrative Salmon Objective, which would push out attainment of salmon doubling to 2050. [Footnote 596: Staff Report at 9-7]. The Staff Report fails to identify how the Vas will meet either of these goals. For instance, the Board concluded that the combination of instream rearing and floodplain habitat needed to support 25 percent of the salmon doubling goal would never be met in the VA scenario for the American and Sacramento Rivers [Footnote 597: Id. At 9-77]. The Vas would also never meet the spawning habitat needed to support 25 percent of the doubling goal in the American River [Footnote 598: Id.]. Nor do they explain how tributary physical restoration actions would assure restoration of spawning and rearing habitat sufficient to meet 25 percent of the offspring and salmon double goal populations for each tributary within the VA terms [Footnote 599: Id. At 9-5.]. Nor how meeting 25 percent of the salmon doubling objective would assure attainment of the salmon doubling goal by 2050, as it is unlikely that population increases would occur in the linear fashion that the VA modeling appears to assume. Indeed, the data on projected increases in habitat area for delta smelt, longfin smelt, and salmonids reveal the ineffectiveness of Vas in meeting their own goals. As shown in Figure 9.6-3 [Exhibit 4] of the Staff Report, the largest projected increase in habitat area under the Vas is 19 percent, with the majority of projected increases in habitat being less than 10 percent, and delta smelt larvae experiencing projected decreases from March through June [Footnote 600: Id. At 9-79]. In general, Figure 9.6-3 shows little improvement under the VA scenario relative to the baseline condition or the 2008-2009 BiOps.	The salmon protection objective is not proposed to be modified. The Scientific Basis Report Supplement (Appendix G2) analyzes and documents the benefits of the VAs toward the salmon protection and proposed fish viability objectives.
458	89	[Exhibit 4: Figure 9.6-3, Total Suitable Estuarine Habitat Area Expected for Each Species, Scenario, and Water Year Type, from the 2023 Draft Staff Report]	This exhibit was included in the comment letter. The exhibit does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing exhibits.

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458	90	The Board's analysis of the Vas also suggests in other respects that the Vas may impair conditions for protected species. For instance, abundance indices calculated for four species (Bay Shrimp, Sacramento splittail, longfin smelt, and starry flounder) showed decreases in abundance in wet years [Footnote 601: Id. At 9-77]. And the Staff Report admits that Vas will not be effective during drought conditions, which are expected to increase in frequency and severity with climate change: "[A]dditional flows in the Vas will not be enough to make up for the difference between a Wet and Dry year." [Footnote 602: Final Scientific Basis Report, supra note 585 at 6-30; see also id. ("An extended drought during the 8-year term of the Vas could significantly decrease the realized benefits.")].	Please see Chapter 9, Proposed Voluntary Agreements, of the Staff Report for an analysis of the possible impacts of the proposed VAs.
458	91	The uncertainties of the Vas undercut any scientific analysis presented within the Staff Report. The Scientific Basis Report Supplement's responses to comments do little to allay concerns about the abnormal levels of uncertainty and speculation baked into the VA proposals and modeling, which ultimately make expected outcomes under the Vas little more than guesswork [Footnote 603: Staff Report at 9-81]. Indeed, the Board itself concedes that while "the quantitative and qualitative analyses described in the Final Draft Scientific Basis Report Supplement indicate expected benefits from the proposed Vas, the actual outcomes of the Vas are not certain at this time." [Footnote 604: Staff Report at 9-81 ("Additional uncertainties in VA outcomes arise from the timing of physical habitat restoration completion; assumptions of the suitability of VA habitat assets . . . The lack of a quantitative connection between certain aspects of habitat and species abundance.")]. Nor does the draft VA program offer much in the way of clarity as to what type of restoration projects will be initiated, where and when they will be initiated, how they will be maintained and managed, and how they could provide for fish recovery without water. Likewise, there is no discussion in the Staff Report of the impact of potential future water infrastructure projects, like the Delta Conveyance Project and Sites Reservoir, on habitat restoration projects and their efficacy with higher levels of water storage and export.	The revised proposed Plan amendments outline the requirements the VA parties would be required to fulfill, and the consequences for not doing so. This provides additional certainty regarding the potential benefits of the VAs combined with the regulatory pathway. Please see Common Response 1.3, Revised Proposed Plan Amendments, for more information on the VA Pathway and regarding comments on other water supply projects.

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458	92	Finally, the Staff Report omits adequate explanation for how VA effects would be accounted for and evaluated. The Vas' new narrative viability is wildly vague. And the draft VA program offers little by way of metrics to explain how progress toward this viability objective, or objectives for other beneficial uses, will be assessed. Instead, the VA program would leave development of metrics for evaluating VA outcomes up to the VA Science Program, [Footnote 605: Final Scientific Basis Report, supra note 585 at 1-10 ("The VA Science Program is proposed to . . . Track and report progress relative to the metrics and outcomes stated in Appendix 4.")] comprised of the VA parties themselves. And the Staff Report does not explain how the program will guard against the obvious possibility of bias from relying on regulated parties to both develop their own metrics and evaluate their own progress across the metrics.	The VAs are adequately described in the 2023 draft Staff Report. For more information on the VA pathway, including supplemental science and monitoring, please see Staff Report Chapter 13, Revised Proposed Plan Amendments, and Common Response 1.3, Revised Proposed Plan Amendments.
458	93	Adoption of the VAs would not assure protection of beneficial uses impaired by HABS. HABs are the product of low freshwater flows, poor water circulation, and high water temperatures, combined with excess nutrients from agricultural runoff and wastewater and bright sunlight [Footnote 606: See Jayne Smith et al., California Water Boards' Framework and Strategy for Freshwater Harmful Algal Bloom Monitoring: Full Report with Appendices 1-3 (2021), https://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/1141_FHABStrategy_FullReport.pdf]. Once HABs form, they create dead zones that can kill fish and other animals. [Footnote 607: Env't Prot. Agency, Harmful Algal Blooms, https://www.epa.gov/nutrientpollution/harmful-algal-blooms (last updated Aug. 25, 2022)]. Accordingly, a report that purports to evaluate a policy's impact on fish must consider how it will impact HABs. While the draft Supplemental Report was essentially silent on the issue of HABs [Footnote 608: Despite the increasing proliferation of HABs in the Bay-Delta, HABs were only mentioned once in the Supplemental Report. See Coalition Comment on Draft Scientific Basis Report Supplement in Support of Proposed Voluntary Agreement at p. 7- 8., the Final Scientific Basis Report offers no improvement.] The Final Scientific Basis Report Supplement dedicates no more than two pages to HABs considerations and its discussion of strategies for addressing	The Scientific Basis Report Supplement (Appendix G2 of the Staff Report) serves as an addendum to the 2017 Scientific Basis Report (Appendix B of the Staff Report) by documenting the science supporting the anticipated benefits of implementing the VAs for achieving the stated narrative objectives. The Scientific Basis Report Supplement does not provide a CEQA evaluation of potential impacts associated with the VAs, which is instead provided in the Staff Report (Sections 9.7 and 13.7, each titled Environmental Analysis). As described in Chapter 9, Proposed Voluntary Agreements, and Chapter 13, Revised Proposed Plan Amendments, of the final Staff Report, while implementation of the VAs would not resolve the existing cyanobacterial harmful algal bloom (HAB) problem in the Delta, it also would not exacerbate HABs in the Delta. Also, refer to Common Response 4.1, Harmful Algal Blooms, regarding instream flow and HABs.

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		HABs is minimal at best. Where the Final Scientific Basis Report Supplement does discuss measures to address HABs, it notes that the most successful strategies for mitigating HABs include “increasing the flow of water, promoting mixing of the water column, and reducing the supply of nutrients” while “warm water temperatures, high availability of light, and an ample supply of nutrients,” are likely to facilitate their proliferation [Footnote 609: Final Scientific Basis Report, supra note 585 at 2-24]. But instead of following this science – by, for instance, setting adequate minimum instream flow requirements – the Vas would only monitor HABs [Footnote 610: Id. At 2-25]. While necessary, monitoring alone is not enough. The HABs crisis in the Bay-Delta has exploded in recent years, with 120 incidents reported in 2022, up from 91 in 2021, and 57 in 2020 [Footnote 611: Cal. Delta Stewardship Council, Harmful Algal Blooms, https://viewperformance.deltacouncil.ca.gov/pm/harmful-algal-blooms (last updated Jan. 18, 2023)]. Because this HABs data relies on voluntary public reporting, the actual number of incidents is likely much higher than reported. While the Final Scientific Basis Report Supplements acknowledges that HABs decrease in frequency and severity with increasing flow, it fails to analyze how low flows, like the flows proposed by the Vas, will exacerbate HABs. Also concerning, the Final Scientific Basis Report Supplement notes that while the Vas propose to increase flows primarily during spring above current regulatory minimums, low summer flows in the Bay-Delta are the main driver of HABs [Footnote 612: Final Scientific Basis Report, supra note 585 at 6-2]. As the report acknowledges, “[i]t is therefore unknown but unlikely that the Vas will have any benefits in reducing the frequency or severity of cyanoHABs in the Delta.” [Footnote 613: Id.]. In addition to neglecting flows, the Vas do not address or incorporate any of the other factors that could mitigate the formation of HABs, such as residence time of water, light availability, turbidity, and nutrient concentrations [Footnote 614: Mine Berg & Martha Sutula, Factors Affecting Growth of Cyanobacteria with Special Emphasis on the Sacramento-San Joaquin Delta, SCCWRP Technical Report 869 (2015); P.W.	

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		Lehman et al., Long-term trends and causal factors associated with Microcystis abundance and toxicity in San Francisco Estuary and implications for climate change impacts, 718 HYDROBIOLOGIA 141-158 (2013)].	
458	94	The Report's claims to engage TEK to inform adaptive management of the Voluntary Agreements is misleading. Scientific Basis Report Supplement claims that Staff have taken strides to document Traditional Ecological Knowledge to inform reasonable protection of beneficial uses, including TBUs [Footnote 615: Final Scientific Basis Report, supra note 585 at 1-4]. These claims are misleading and again misunderstand the nature of TEK. Holding a handful of listening sessions to receive tribal input on examples of TEK is no substitute for the collaborative and mutually respectful process that must take place to successfully integrate TEK into water quality planning and water governance more broadly. And again, the Board assumes that TEK can simply be written down and then used (or discarded) in decision-making. The Report, for example, provides several examples of traditional stewardship practices but makes no effort to actually engage tribes in implementing TEK. By focusing its efforts on "documenting" TEK rather than proactively and consistently engaging tribes in governance and protection of their own cultural resources, the Board risks extracting Indigenous Knowledge from tribal communities and, as a result, further alienating tribes from water management. The VA process excluded tribal perspectives from the very beginning. For the Board to turn around now and claim that it has and will engage tribal communities and their TEK to inform adaptive management of the VAs is not only misleading but insulting and disrespectful to tribal communities. Ultimately, the VA framework is damaging to tribal sovereignty and interests. And it would provide for the payment of hundreds of millions of dollars of taxpayer funds to water rights claimants to compensate for the diversion of water that is manifestly unreasonable and thus beyond the scope of any state water right [Footnote 616: See 2022 VA Memorandum of Understanding, supra note 582 at Term Sheet App. 3 (outlining \$2,589 million in voluntary agreement implementation costs)]. By endorsing	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Traditional Ecological Knowledge/tribal knowledge and for responses to tribal comments on the VAs. Please see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board's efforts to engage more robustly with California Native American Tribes and integrate Traditional Ecological Knowledge/tribal knowledge into the State Water Board's Bay-Delta Plan update and implementation processes.

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		Voluntary Agreements rather than updating the Plan through the mandated public process, the Board would surrender its discretion to a select group of private water rights holders at the expense of ecological and human health and public trust interests.	
458	95	The Scientific Basis Report Supplement claims that Staff have taken strides to document Traditional Ecological Knowledge to inform reasonable protection of beneficial uses, including TBUs [Footnote 617: Final Scientific Basis Report Supplement, supra note 587 at 1-4]. These claims are misleading and again misunderstand the nature of TEK. Holding a handful of listening sessions to receive tribal input on examples of TEK is no substitute for the collaborative and mutually respectful process that must take place to successfully integrate TEK into water quality planning and water governance more broadly. And again, the Board assumes that TEK can simply be written down and then used (or discarded) in decision-making. The Report, for example, provides several examples of traditional stewardship practices but makes no effort to actually engage tribes in implementing TEK. By focusing its efforts on “documenting” TEK rather than proactively and consistently engaging tribes in governance and protection of their own cultural resources, the Board risks extracting Indigenous Knowledge from tribal communities and, as a result, further alienating tribes from water management. The VA process excluded tribal perspectives from the very beginning. For the Board to turn around now and claim that it has and will engage tribal communities and their TEK to inform adaptive management of the VAs is not only misleading but insulting and disrespectful to tribal communities. Ultimately, the VA framework is damaging to tribal sovereignty and interests. And it would provide for the payment of hundreds of millions of dollars of taxpayer funds to water rights claimants to compensate for the diversion of water that is manifestly unreasonable and thus beyond the scope of any state water right [Footnote 618: See 2022 VA Memorandum of Understanding, supra note 584 at Term Sheet App. 3 (outlining \$2,589 million in voluntary agreement implementation costs)]. By endorsing Voluntary Agreements rather than updating the Plan through the mandated public process, the Board would surrender its	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Traditional Ecological Knowledge/tribal knowledge and for responses to tribal comments on the VAs. Please see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board’s efforts to engage more robustly with California Native American Tribes and integrate Traditional Ecological Knowledge/tribal knowledge into the State Water Board’s Bay-Delta Plan update and implementation processes.

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		discretion to a select group of private water rights holders at the expense of ecological and human health and public trust interests.	
458	96	The Board's consideration of the VAs has delayed, and continues to delay, update and implementation of Bay-Delta water quality Standards. Instead of carrying out its duties to update water quality standards, the Board has delayed satisfying its legal obligations to accommodate private negotiations of export allowances to the detriment of native species and wildlife, California Native American tribes, and Delta community members. The Board "must conduct a triennial review of its water quality standards," including those contained in the Bay-Delta Plan [Footnote 619: United States v. State Water Resources Control Bd. (1986) 182 Cal.App.3d 82, 108 (citing 33 U.S.C. § 1313(c)(1)); Cal. Wat. Code, § 13240 (requiring that water quality control plans be "periodically reviewed")]. California courts have repeatedly affirmed the Board's responsibility to conduct this triennial review of water quality standards [Footnote 620: See e.g., City of Arcadia v. State Water Resources Control Bd. (2011) 191 Cal.App.4th 156, 175; City of Duarte v. State Water Resources Control Bd. (2021) 60 Cal.App.5th 248, 265; United States v. State Water Resources Control Bd. (1986) 182 Cal.App.3d 82, 108; City of Burbank v. State Water Resources Control Bd. (2005) 35 Cal.4th 613, 632 (Brown, J., concurring)]. But the State Water Board has only completed three full reviews of the Bay-Delta Plan since its initial adoption: in 1991, 1995, and 2006 [Footnote 621: Cal. Water Res. Control Bd., Resolution 2018-0059 at p. 1]. And in its 2006 review, the Board declined to make any substantive changes to the 1995 water quality standards. As a consequence, Bay-Delta waters are still subject to water quality standards adopted twenty-eight years ago, under significantly different ecological, biological, climatic, and demographic conditions. Further, although the 1995 water quality standards anticipated and accommodated drought conditions, the Board has in recent years repeatedly waived the existing Bay-Delta water quality standards, substituting an ad hoc approach to water quality regulation for the comprehensive	The plan amendments were developed to improve flow and water quality conditions over a large interconnected geographic area, and particularly for fish and wildlife beneficial uses in the Sacramento River watershed, Delta eastside tributaries, and Delta regions (Sacramento/Delta). The State Water Board acknowledges that the update to the Bay-Delta Plan has taken a significant amount of time due to the complexity of providing for the reasonable protection of beneficial uses in this large and complex watershed that is integral to the ecosystem, tribal ways of life, the state's water supplies, and numerous other uses. The State Water Board is working as expeditiously as possible to complete the update and move on to the critical step of implementation in a manner that provides the needed flexibilities to move from the current narrower implementation of the Plan through State Water Board Water Right Decision 1641 by few parties to broader implementation over the entire watershed, which has not historically occurred. The water supply adjustments (WSAs) and VA pathway are properly provided as components of staged implementation toward fully achieving the new water quality objectives in the Plan. The revised proposed Plan amendments are broad and contain needed flexibility to adaptively implement the flow and related requirements, which will allow the Plan to adjust in the future without having to start over with another lengthy update process. This will be important as we learn more and measures are implemented. Section 13240 of the Porter-Cologne Act and Section 303, subdivision (c)(1) of the Clean Water Act (codified as 33 U.S.C. section 1313, subd. (c)(1)) require that water quality control plans be reviewed at least once every three years. This requirement helps ensure that water quality control plans are updated regularly to keep pace with changes in regulation, new technologies, policies, and physical changes in the region. Under the revised proposed Plan amendments, the Bay-Delta Plan and its implementation measures, including both the regulatory and VA pathways, will undergo annual and periodic reviews to assess and report on progress on implementation of the Plan and any

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		and publicly-informed review and update of water quality standards that state and federal law require [Footnote 622: See, e.g., Cal. Water Res. Control Bd., State Water Project and Central Valley Project Temporary Urgency Change Petition, https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/tucp/index.html (last visited May 3, 2022)]. The State Water Board has made clear its intent to delay updating Bay-Delta water quality standards to allow the California state government to complete private negotiations of voluntary agreements regarding Bay-Delta Plan flow measures [Footnote 623: See Cal. Water Res. Control Bd., Proposals for Voluntary Agreements to Update and Implement the Bay-Delta Plan (2022), https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/proposed_voluntary_agreements.html; see also, e.g., Cal. Water Res. Control Bd., supra note 15 (encouraging stakeholders to reach voluntary agreements and recording its plan to consider voluntary agreements as part of a plan to implement amended water quality standards)]. As early as October 2017, the Board explicitly stated that it was “encouraging voluntary agreements” as a substitute for a regulatory update. [Footnote 624: See Cal. Water Res. Control Bd., Fact Sheet: Phase II Update of the Bay-Delta Plan at 2 (Oct. 4, 2017).] At the same time, Governor Brown asked then Board Chairwoman Marcus to delay consideration of the Phase I updates to accommodate consideration of the Vas [Footnote 625: Letter from Edmund G. Brown Jr., Governor, State of California, Gavin Newsom, Lieutenant Governor, State of California to Felicia Marcus, Chair, Cal. State Water Res. Control Bd (Nov. 6, 2018) https://media.modbee.com/static/blc2000/waterletter.pdf]. Although the Board promised to release the Phase II draft Staff Report for public review and comment in 2018, it delayed by another five years as VA negotiations dragged out. It was not until March 29, 2022 that the California Natural Resources Agency released a Memorandum of Understanding for the Vas, executed by California state agencies, the U.S. Bureau of Reclamation, and a subset of Bay-Delta stakeholders – contractors, water districts, and water authorities – that export Bay-Delta freshwater flows [Footnote 626: Cal. Nat. Res. Agency, supra note 584]. The Board then waited another year and a half	changes needed to provide for the reasonable protection of beneficial uses. In December 2025, the State Water Board conducted a limited recirculation of the draft Staff Report, making a new section of the Staff Report, Chapter 13, Revised Proposed Plan Amendments, available for public comment. Section 13.3.4, Voluntary Agreement Pathway, contains a detailed description of the VA pathway based on proposed Voluntary Agreements as previously described in Chapter 9, Proposed Voluntary Agreements, and Section 7.2, Description of Alternatives, of the 2023 draft Staff Report. Please see Common Response 1.3, Revised Proposed Plan Amendments, regarding the voluntary agreement process and the relationship between the State Water Board’s regulatory pathway and the VA pathway. See also Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, regarding tribal concerns with the VAs development process.

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		to release the promised draft Staff Report while it evaluated the scientific basis for the Vas and delayed further as it awaited the Draft Strategic Plan for the Vas, which was completed in September 2023, the same month that the Board finally released the Vas. State and water districts purport that the Voluntary Agreements offer swift updating and implementation of outdated Bay-Delta water quality standards. But the secret negotiations have gone on for nearly a decade and only served to delay an update to inadequate water quality standards as Delta ecosystems, tribes, and communities have continued to suffer. And even now, accommodation of the Vas promises further delays: The VA parties have still not released a final VA package, and as, described below, serious consideration of the Vas would require the Board to recirculate the draft Staff Report and SED and would then almost certainly be set aside by the courts, requiring the Board to go back to the drawing board. The Vas have clearly failed. The Board must finally put an end to accommodation of the Vas and move expeditiously to comply with its legal obligations to update and implement the Bay-Delta Plan.	
458	97	Adoption of the VAs would put the Board in clear violation of CEQA. All of the CEQA issues identified within the Staff Report and its SED are amplified in the VA alternative. Among the many flaws with the Board's consideration of the Vas under CEQA, the Vas constitute nothing close to a stable and certain project and are sufficiently distinct from the proposed Plan amendments that recirculation would be necessary before the Vas could be seriously considered. The Board's evaluation of the Vas relies on a flawed baseline premised on hypothetical rather than existing conditions. And the State made no efforts at all to carry out legally required AB 52 consultation – or any consultation at all – in creating or evaluating the Vas and their potentially significant impacts on tribal cultural resources. As explained above, one of the core CEQA provisions applicable to certified regulatory programs is “an accurate, finite, and stable description” of the proposed project [Footnote 627: Washoe	Chapter 9, Proposed Voluntary Agreements, of the 2023 draft Staff Report adequately discusses the Voluntary Agreements as they were proposed at that time. The operative provisions of the Voluntary Agreements are incorporated in the VA pathway that is analyzed in Chapter 13, Revised Proposed Plan Amendments. Section 9.7, Environmental Analysis, also discusses environmental impacts as a result of Voluntary Agreements in adequate detail for the purposes of the analysis. Please see Chapter 13 and Common Response 1.3, Revised Proposed Plan Amendments, regarding the VA pathway. Section 7.1.5.2, Baseline, Evaluation Approach, and Modeling Tools, of the Staff Report describes the project baseline in adequate detail for the purposes of analysis. See Common Response 6.2, Baseline and No Project Alternative, regarding the project baseline and points of comparison for VA benefit analyses. Section 11.2, State Policies on Outreach and Engagement, of the

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		Meadows, 17 Cal.App.5th at 287 (quoting County of Inyo, 71 Cal.App.3d at 192-93 (explaining that an “accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR”))). The public and decision-makers must understand what a proposed project will actually entail to enable intelligent public participation and informed decision-making. By contrast, when a CEQA document “contains unstable or shifting descriptions of the project, meaningful public participation is stultified.” [Footnote 628: San Joaquin Raptor Rescue Ctr. V. County of Merced, 149 Cal.App.4th 645, 656 (2007)]. The Vas are based on shifting sands. Project descriptions that fail to set out the nature and scope of the project are “fundamentally inadequate and misleading.” [Footnote 629: Washoe Meadows, 17 Cal.App.5th at 287 (quoting Treasure Island, 227 Cal.App.4th at 1052)]. Voluntary agreements have not been finalized, and the VA package still awaits finalization of accounting measures of flow and non-flow assets on which the VA program is premised [Footnote 630: Staff Report at 9-81 (“[T]he VA Parties are developing accounting procedures for flow and non-flow assets that, when finalized, would provide additional certainty in how the assets would be provided and thus in the benefits they would be expected to provide.”)]. Because the Vas lack a minimum instream flow guarantee, adoption of the VA assets as a substitute for a clear regulatory requirement may result in significantly less instream flow than under existing conditions, particularly if the Delta Conveyance Project, Sites Reservoir, and additional water diversion projects are approved. Compounding the uncertainty, some undisclosed portion of the flows promised through the Vas relies on potential water purchases, but the sources of those waters have not been identified [Footnote 631: See generally Staff Report at 9-12; see id. At 9-13 (“The sources of the flow assets for the PWA Water Purchase Market Price Program and permanent state water purchases are not fully known at this time and are hereafter termed unspecified water purchases.”)]. The SED also offers little clarity about the nature, location, and extent of habitat restoration measures that will substitute for flows. And by relying on broad assumptions and generalizations, the VA analysis offers no meaningful insight into potential environmental impacts [Footnote 632: Final Scientific	2023 draft Staff Report discusses Assembly Bill 52. See Common Response 1.1, General Comments, regarding the VA development process and Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, regarding tribal engagement and the VAs.

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		Basis Report Supplement, supra note 587 at 7-2 (“Analysis of habitat restoration benefits is based on the assumption that restored sites will replicate natural ecosystem functions and that restoration sites will be maintained over time such that species benefits do not diminish over time.”) (emphasis added)]; see Id. (“Specific locations for VA habitat restoration projects are not yet available, so the modeling relied upon possible locations selected with regional expert opinion. Different locations for these restoration projects could affect the actual outcomes.”) (emphasis added); see Staff Report, at 9-139 (“The proposed Vas include flow that would be provided through water purchases, but the sources of water for the unspecified water purchases described in the VA Term Sheet are not fully known at this time.”) (emphasis added). See generally Staff Report at 9-12; see id. At 9-13 (“The sources of the flow assets for the PWA Water Purchase Market Price Program and permanent state water purchases are not fully known at this time and are hereafter termed unspecified water purchases.”). Essentially, the VA analysis is guesswork, speculating about what assets the parties might offer and grasping at straws about how those putative assets may impact the environment. This is not a stable project description under CEQA. Further, as described above, the Vas – which utilize flow and non-flow habitat restoration measures, and are proposed for an 8-year timeframe – differ dramatically from the proposed Plan amendments and non-VA alternatives – which all set minimum unimpaired flow objectives and persist until expressly amended [Footnote 633: Staff Report at 9-4 & 9-7]. The alternatives also differ in their goals, as the Vas modify an existing narrative objective and add a new one, while the flow-based alternatives continue the existing narrative objective and set varying numeric objectives for flows. Because the Board has not clearly disclosed the Vas as its proposal for updating the Bay-Delta Plan and as well-established law makes clear, the Board cannot adopt the Vas based on this Staff Report and SED, and it could not adopt them in the future without correcting the many flaws – many of them incurable – that infect the Vas and their environmental review [Footnote 634: See, e.g. Washoe Meadow, 17 Cal.App.5th 277].	

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458	98	Among these flaws, the analysis of the Vas also fails to employ an appropriate baseline to accurately evaluate the Vas' reasonably foreseeable environmental impacts. CEQA requires that environmental review documents "contain a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the NOP is published." [Footnote 635 CEQA Guidelines § 15125(a)]. The selection of an appropriate baseline is essential to this task, otherwise the project description, analysis of impacts, mitigation measures, and comparison of alternatives become meaningless [Footnote 636: County of Amador v. El Dorado Cnty. Water Agency, 76 Cal.App.4th 931, 953 (1999)]. Here, as explained above, the Staff Report and SED employ three different baselines. One baseline is used for the evaluation of the proposed Plan amendments and flow-based alternatives, [Footnote 637: Staff Report at 6-4 ("The project baseline includes requirements as they have been implemented in recent years in an attempt to represent existing conditions."); see also id. Table 6.2-1 SacWAM Baseline Model Assumptions] another is used for the VA chapter contained in the SED and by the Draft Strategic Plan for the Vas, [Footnote 638: Staff Report at 9-13 ("The baseline is the primary point of comparison for evaluating the environmental impacts of the alternatives evaluated in the Staff Report. The major difference between the baseline and 2019 BiOps condition relative to exports and Delta outflows is the applicability of San Joaquin River inflow to export (I:E) constraints that apply during April and May."); see also Staff Report, App. G1, Draft Strategic Plan for the Proposed Agreements to Support Healthy Rivers and Landscapes at 7 ("These Flow Measures will be additive to the Delta outflows required by Revised Water Rights Decision 1641 (Revised D-1641) and resulting from the 2019 Biological Opinions.")] and a third is used for the Final Scientific Basis Report Supplement. [Footnote 639: Final Scientific Basis Report Supplement, supra note 587 at 1-6 (The reference condition used in the Scientific Basis Report is the "flows resulting from State Water Board Revised Water Right Decision 1641 (D-1641) and the 2008/2009 BiOps, as modeled.".)] Beyond the confusion caused by shifting baselines, the baselines used to evaluate the Vas clearly flout CEQA requirements. Under CEQA, the baseline must ordinarily describe physical environmental conditions as they currently exist, not hypothetical situations [Footnote 640:	The same modelling baseline scenario is used to evaluate the environmental impacts of all the alternatives. See Section 7.1.5.2, Baseline, Evaluation Approach, and Modeling Tools, of the Staff Report. The modeled representation of the baseline is described in Section 6.2.1, Baseline Assumptions. Section 9.3.6, Description of the Proposed Voluntary Agreements, describes the different points of comparison for the VA flow commitments, including the Staff Report baseline, the 2019 BiOps condition used to model the additive VA flow commitments, and the 2008-2009 BiOps condition used as the point of reference in the benefit analyses of the 2017 Scientific Basis Report and the Scientific Basis Report Supplement. In addition, refer to Common Response 6.2, Baseline and No Project Alternative, for more information about the project baseline.

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		CEQA Guidelines § 15125; see POET, LLC v. State Air Resources Bd., 12 Cal.App.5th 52, 80 (2017) (Board failed to demonstrate that its “CEQA analysis employ[ed] a realistic baseline that [gave] the public and decision makers the most accurate picture practically possible of the project’s likely impacts.” (citation omitted)); County of Amador, 76 Cal.App.4th at 955 (“An EIR must focus on impacts to the existing environment, not hypothetical situations.”)]. Yet the VA baselines are expressly not reflective of physical conditions as they currently exist, or even as they existed in the past or might exist in the future [Footnote 641: See CEQA Guidelines § 15125]. Instead, the Board utilizes a baseline premised on regulatory limits, some of which are in flux and none of which reflect conditions as they actually exist [Footnote 642: See Staff Report at 6-6 (referencing Table 6.2-1)(outlines the host of regulatory requirements in the Bay-Delta assumed in the baseline modelling for the SED’s other project alternatives, of which the 2019 BiOps are only one regulatory requirement)]. Adopting a baseline premised on regulatory conditions rather than actual conditions is a clear violation of CEQA as it precludes the public and decision-makers from understanding the true environmental consequences of the Vas and meaningfully comparing them to the considered alternatives [Footnote 643: See Cmnty. For a Better Env’t v. S. Coast Air Quality Mgmt. Dist., 48 Cal.4th 310, 322 (2010) (“An approach using hypothetical allowable conditions as the baseline results in ‘illusory’ comparisons that ‘can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts,’ a result at odds with CEQA’s intent.” (citation omitted))].	
458	99	Next, under CEQA an SED must consider significant environmental impacts and measures to mitigate them to insignificance [Footnote 644: Cal. Code. Regs. Tit. 23 § 3777(b)(2)]. As discussed above, the draft Staff Report violates CEQA by failing to consider whether the Vas will worsen already persistent harmful algal blooms that impact fish and wildlife objectives, as well as a host of other beneficial uses.	Please see the response to comment 458-93. Section 9.7.12.1, Surface Water, of the 2023 draft Staff Report discusses HABs and possible mitigation options in adequate detail for the purposes of the analysis.
458	100	Further, adoption of the Voluntary Agreements puts the State Water Board in further violation of CEQA due to the lack of government-to-government consultation with California Native American tribes. The Board has clear obligations under CEQA to	The State Water Board actively sought, and continues to seek, consultation with interested California Native American Tribes consistent with Executive Order (EO) B-10-11 and its Tribal Consultation Policy. The State Water Board proceeded with EO B-

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		meaningfully consult tribes in evaluating policy proposals that may impact tribes and their unique relationship to water ways. Specifically, AB 52 amended CEQA to mandate that public agencies consult with tribes traditionally and culturally affiliated with the geographic area affected by a project early in the environmental review process to “avoid damaging effects to any tribal cultural resources” wherever feasible [Footnote 645: Pub. Res. Code §§ 21080.3.1(b), 21084.3; see generally Assem. Bill No. 52 (2014) chp. 532]. AB 52 states that a project that may “cause a substantial adverse change in the significance of a tribal cultural resource” is a “project that may have a significant effect on the environment.” [Footnote 646: Cal. Pub. Res. Code § 21084.2 (2021).] And in determining whether a project may have such an effect, public agencies are required to consult with any California Native American tribe that requests consultation and is traditionally and culturally affiliated with the geographic area of a proposed project [Footnote 647: Cal. Pub. Res. Code § 21080.3.1(b) (2021)]. No such consultation happened here. No tribe is a party to the Vas, nor was any tribe allowed to participate in their negotiation. Nor were tribes consulted in the evaluation of the Vas at any point, not to mention early in the planning process. Instead, tribes were contacted just days before the Board’s January 19, 2023 workshop, well after the VA framework was formulized and after the draft Scientific Basis Report Supplement was issued. Last minute meetings under the guise of tribal consultation are no substitute for the legal consultation requirements mandated by CEQA and set forth under the Board’s own tribal consultation policy. Under AB 52, the Board should have consulted with tribes to assure identification of potential tribal cultural resources in the project area, the potential significance of project impacts on identified resources, and the development of project alternatives and mitigation measures to avoid and reduce impacts. The Board’s failure to engage AB 52 consultation in its evaluation of the Vas exacerbates prior exclusion from the VA negotiations themselves and demonstrates a pattern and practice of neglecting tribal communities and their concerns. And to the extent the Board believes that it did not need to undertake AB 52 consultation for the Vas because the notice of preparation for the Bay-Delta Plan update was issued prior to AB 52’s effective date,	10-11 because the provisions of Assembly Bill (AB) 52 do not apply to a certified regulatory program or a project with a Notice of Preparation (NOP) filed before July 1, 2015. (The Revised Notice of Preparation for the Sacramento/Delta Update to the Bay-Delta Plan was issued in 2012.) Agencies and tribal governments consulting on projects with NOPs filed before July 1, 2015, can utilize the EO B-10-11 process and those with NOPs filed on or after July 1, 2015, can employ either AB 52 or EO B-10-11. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to tribal outreach and engagement, and CEQA and Assembly Bill (AB) 52. Also see Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board’s efforts to engage more robustly with California Native American Tribes. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to tribal comments on the VAs.

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		it is clearly mistaken. The Board first publicly noticed its intent to accommodate Vas as a pathway for updating Phase II of the Bay-Delta Plan in 2017, well after the AB 52 went into effect [Footnote 648: Cal. Water Res. Control Bd., supra note 168 at 2]. Nor is the Board absolved of responsibility for undertaking this consultation even if it is not technically a party to the Vas, as the Board is the lead agency charged with evaluating the Vas and adopting, or rejecting, them as part of the Bay-Delta Plan update.	
458	101	The Board attempts to improperly circumvent EPA oversight authority by adopting the Vas as a regulatory substitute. Under the Clean Water Act, the EPA exercises ultimate oversight authority over water quality standard setting by the States. Accordingly, whenever a State revises or adopts new standards – consisting of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses – it must submit those standards to the EPA for approval or disapproval [Footnote 649: 33 U.S.C. § 1313(c)(2)(A)]. If the EPA determines based on its review of the submitted standards that they are not consistent with Clean Water Act requirements, then the EPA must give the State an opportunity to meet the requirements and promulgate compliant federal standards if the State fails to timely or appropriately act [Footnote 650: 33 U.S.C. § 1313(c)(2)(3)]. Further, the EPA must promptly prepare and publish proposed regulations setting forth revised or new water quality standards in any case where the EPA Administrator “determines that a revised or new standard is necessary to meet the requirements” of the Clean Water Act – an exercise of authority that the EPA Administrator is currently considering pursuant to the Coalition’s December 2022 Petition for Rulemaking [Footnote 651: 33 U.S.C. § 1313(c)(2)(4); see Attachment 1]. The State Water Board has long taken the position that while “water quality standards” require EPA approval before they can go into effect, “[o]ther portions of the Bay-Delta Plan, such as the program of implementation, are to be submitted to U.S. EPA as part of the continuing planning process, but do not require approval.” [Footnote 652: Cal Water Res. Bd. Resolution No. 2006-0098 ¶ 10]. Indeed, the Board has never “concede[d] that	Please see Common Response 1.3, Revised Proposed Plan Amendments, regarding the voluntary agreement process and the relationship between the State Water Board’s regulatory pathway and the VA pathway. Section 303 subdivision (c) of the Clean Water Act requires a state to submit water quality standards, as defined in the Act, to the U.S. Environmental Protection Agency for review and approval. (33 U.S.C. § 1313 subd. (c).) Under the Clean Water Act, a water quality standard consists of designated uses and water quality criteria for such waters based on such uses. (33 U.S.C § 1313 subd. (c)(2)(A).) Under California law, a water quality objective is defined as “the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.” (Wat. Code § 13050, subd. (h).) In accordance with Clean Water Act section 303 subdivision (c), after State Water Board adoption of amendments to the Bay-Delta Plan, the State Water Board will submit the water quality standards contained within the Plan to the U.S. Environmental Protection Agency for its review and approval.

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		it is required under the federal Clean Water Act to submit all parts of the [Bay-Delta] Plan to the U.S. EPA for approval.” [Footnote 653: Id.] Rather, “in the view of the State Water Board, the objectives for flow and operations are not subject to U.S. EPA approval and are provided to U.S. EPA for its consideration as a matter of state/federal comity.” [Footnote 654: Id.]. It is clear from these positions and from the nomenclature used to describe the VA program that the State and VA parties have attempted to construct the Vas with the intention to circumvent EPA water quality standard oversight authority. The Staff Report describes the Vas’ “flow and non-flow actions” as “implementation measures for an existing and proposed new water quality objective in the Bay-Delta Plan.” [Footnote 655: Staff Report at 9-1]. And, as the Board’s resolution adopting the 2006 Bay-Delta Plan makes clear, the Board takes the position that neither objectives nor implementation measures would be subject to EPA approval; rather, at most the Board would submit them to EPA as a matter of comity. The Board’s transparent efforts to circumvent EPA oversight authority fail. However they are labeled, it is clear that the Vas would modify water quality standards for the Bay-Delta and thus be subject to EPA oversight. The Porter-Cologne Act defines the water quality control plan in much the same way that federal Clean Water Act defines water quality standards – as comprising “beneficial uses to be protected,” “water quality objectives,” and “a program of implementation needed for achieving water quality objectives.” [Footnote 656: Compare Cal. Water Code § 13050 with 33 U.S.C § 1313]. These elements together comprise water quality standards – that is the designated uses of the waters involved and the water quality criteria for such waters based upon such uses. The VA’s new narrative objectives, and the measures organizing flow and non-flow assets to achieve them, are, together with beneficial uses the Board designates, the water quality standards that must be submitted to and approved or disapproved by the EPA [Footnote 657: In addition to setting forth a new narrative objective, the Vas effectively modify the existing Narrative Salmon Protection Objective by proposing to attain its salmon doubling goal by 2050. Staff Report at 9-1]. Indeed, this is manifestly the case as the Vas would stand in for	

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		regulatory water quality standard updates (the proposed plan amendments) that the Board appears to concede would require EPA approval before they could go into effect [Footnote 658: See Resolution No. 2006-0098, supra note 653 at ¶ 10]. Creative labeling does not make it otherwise.	
458	102	In adopting the Vas, the Board would impermissibly delegate its regulatory authorities to regulated parties. It is well established that the Board, in exercising regulatory authorities delegated to it by the Legislature, cannot confer on private parties “unrestricted authority to make fundamental policy decisions.” [Footnote 659: People ex rel. Lockyer v. Sun Pac. Farming Co., 77 Cal.App.4th 619, 633-34 (2000) (citing People v. Wright, 30 Cal.3d 705, 712 (1982))]. “This doctrine rests upon the premise that the legislative body must itself effectively resolve the truly fundamental issues. It cannot escape responsibility by delegating that function to others or by failing to establish an effective mechanism to assure the proper implementation of its policy decisions.” [Footnote 660: Id.]. An unconstitutional delegation of authority occurs when the governing body: “(1) leaves the resolution of fundamental policy issues to others or (2) fails to provide adequate direction for the implementation of that policy.” [Footnote 661: Id. (quoting Carson Mobilehome Park Owners’ Ass’n v. City of Carson, 35 Cal.3d 184, 190 (1983))]. To avoid an unlawful delegation, the governing body must therefore: first resolve the truly fundamental issues, and must then establish an effective mechanism to assure the proper implementation of its policy decisions. Thus, a delegation of authority must be accompanied by safeguards which insure that the delegatee does not act arbitrarily [Footnote 662: Id. (quoting Wilkinson, 144 Cal.App.3d at 442)]. “To put it simply, the Legislature could not lawfully grant the power to make laws to a private entity.” [Footnote 663: Int’l Ass’n of Plumbing etc. Officials v. Cal. Building Stds. Com., 55 Cal.App.4th 245, 253 (1997)]. An unlawful delegation of power occurs not only when the	To avoid an unlawful delegation, an agency must resolve fundamental policy issues and establish adequate policy guardrails when vesting authority in regulated parties. (Light v. State Water Resources Control Board, (Light v. State Water Resources Control Bd. (2014) 226 Cal.App.4th 1463, 1491.) Here, the State Water Board has resolved fundamental policy issues by conducting a robust set of environmental analyses and using those analyses to inform the updated water quality objectives and program of implementation, which includes the VA pathway, contained in the revised proposed Plan amendments. These revised proposed Plan amendments must be approved and adopted by the State Water Board itself before going into effect. Further, the State Water Board has established a set of regulatory guardrails to guide implementation of the VAs and reserve the State Water Board’s authority to make changes if necessary. As described in final Staff Report Section 13.3.4.9, VA Governance, the State Water Board will provide oversight and guidance on VA compliance, and will participate in VA decision making. The revised proposed Plan amendments further require VA parties to develop a tribal engagement plan describing opportunities for tribal engagement and input to the VA decision making. Finally, as described in Section 13.3.4.10 of the final Staff Report, Continuation, Modification or Termination of the VAs, the VAs may be modified or terminated as part of the State Water Board’s annual or periodic review processes, if there is significant evidence that continuation of the VAs will jeopardize the continued survival of native fishes, or if VA parties fail or are unable to provide the agreed upon flow and non-flow commitments. As the revised proposed Plan amendments would establish both a regulatory pathway and a VA pathway, any parties not covered under a voluntary agreement would be subject to the regulatory pathway. Thus, water rights previously covered under the VA pathway could become subject to the

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		Legislature impermissibly delegates its legislative powers, but also when a regulatory body impermissibly delegates its regulatory authorities to regulated entities. Indeed, the Court of Appeal in its 2014 decision in <i>Light v. State Water Resources Control Board</i> recognized that unlawful delegation would apply where the State Water Board abdicates its regulatory responsibilities by impermissibly delegating them to regulated parties without establishing adequate policy guardrails and holding ultimate authority to formulate and exercise governing standards [Footnote 664: <i>Light v. State Water Resources Control Bd.</i>, 226 Cal.App.4th 1463, 1490-92 (2014) (considering whether the Board’s adoption of Regulation 862 “improperly delegated the regulatory authority of the Board to [water demand management programs (“WDMPs”)]”). The Court of Appeal in <i>Light</i> set forth a clear line between permissible involvement of regulated industry in shaping well-considered agency decision-making and impermissible abdication of regulatory authority, reasoning that: There is a tension when private industry shares responsibility for the governmental regulation of its commercial activities. On the one hand, members of the industry are well positioned to understand the regulatory needs and the impact of regulation on their business activities. In this respect they are ideal partners in the formulation of appropriate regulations. Perhaps for this reason, it has never been held that the mere involvement of regulated private parties in the making of administrative regulations constitutes an improper delegation of governmental authority. On the other hand, by involving members of the regulated industry the agency runs the risk associated with the fox guarding the henhouse. As a result, there is a ‘tight line between lawful and unlawful delegation of regulatory authority [Footnote 665: <i>Id.</i> (quoting <i>Plumbing etc. Officials</i>, 55 Cal.App.4th at 253)]. As a consequence, while “private entities can formulate and suggest potential regulation, the doctrine of unlawful delegation requires the . . . Regulatory agency to exercise the final say over whether any particular regulation becomes law.” [Footnote 666: <i>Id.</i>]. In addition, the regulatory agency cannot delegate regulatory power to entities “composed of interested members	requirements of the regulatory pathway if the VAs were discontinued, as described in Section 13.3.4.10 of the final Staff Report. Further, the revised proposed Plan amendments requires VA parties to submit hypotheses, metrics, and targets to the State Water Board for approval, which may be updated via the State Water Board’s annual or periodic review processes; and requires VA parties to submit reports to the State Water Board containing flow and non-flow accounting information, ecological monitoring data, tribal outreach and engagement activities, among other analyses and information. For more details on these reporting requirements, please see final Staff Report Section 13.3.4.8, Annual Reports, Periodic Reports, and Ecological Outcomes Analysis Report. The State Water Board has formulated additional accounting requirements for flow and non-flow commitments are contained in Appendices B.1 and B.2 of the revised draft Bay-Delta Plan versions released for public comment in July and December 2025. Contrary to this commenter’s assertion, the VA pathway described in Staff Report Section 13.3.4, Voluntary Agreement Pathway, does not impair the State Water Board’s ability to conduct annual and periodic review. Under the revised proposed Plan amendments, the Bay-Delta Plan and its implementation measures, including both the regulatory and VA pathways, will undergo annual and periodic reviews to assess and report on progress on implementation of the Plan and any changes needed to provide for the reasonable protection of beneficial uses. Also contrary to this commenter’s apparent belief, receiving reporting information from VA parties does not preclude the State Water Board from consulting and reviewing non-VA sources of information or from performing its own analyses to inform the annual and periodic review processes.

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		of regulated industries without imposing standards or safeguards to prevent abuse. Absent the required standards, such grants of authority constitute unconstitutional delegations of legislative power.” [Footnote 667: Id. (quoting Dunn-Edwards Corp. v. S. Coast Air Quality Mgmt. Dist., 19 Cal.App.4th, 545-46 n.5 (1993))]. Here, the Board’s adoption of the Vas in lieu of a regulatory Plan update would constitute a textbook instance of unlawful delegation. The Legislature, through the Water Code, designated the State Water Board as “the state water pollution control agency for all purposes stated in the” federal Clean Water Act, and it vested authority to establish water quality control plans specifically in the State Water Board and the regional water boards [Footnote 668: Cal. Water Code §§ 13160, 13170, 13240]. Through Bay-Delta planning processes, the Board exercises authorities specifically delegated to it by the Legislature through section 13170 of the California Water Code. In addition to updating water quality standards, it also carries out related duties delegated to it by the Legislature for water quality planning and oversight, including the duty to periodically review the Bay-Delta Plan pursuant to section 13240 of the California Water Code to ensure that it provides reasonable protection for designated beneficial uses [Footnote 669: Cal. Water Code § 13240; see also 33 U.S.C. § 1313(c) (requiring triennial review of standards contained in state water quality control plans)]. In adopting the Vas, the Board would abdicate these responsibilities, vesting them instead in regulated parties (water agencies, irrigation districts, and private companies) who would be extended eight years of unconstrained experimentation with water quality control planning, accompanied by the responsibility to review and assess their own progress in meeting legal requirements to protect designated beneficial uses and public trust responsibilities. The Staff Report does surprisingly little to disguise this unlawful delegation. In chapter 9, the Board concedes that it received a fully formulated VA term sheet, signed by state and federal agencies, local water agencies, private companies, and a non-profit mutual benefit corporation [Footnote 670: Staff Report at 9-1]. It also received updates to add additional parties and VA	

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		components. Although, as discussed above, the State Water Board was implicated in development of the Vas to the extent that it elected to delay legally required updates to accommodate these private negotiations, the Board, by its own admission, had no role in their development or formulation. To the extent the Board believes that it can convert this private dealmaking into lawful exercise of regulatory authority by giving its blessing to the Vas through a formal approval, it is clearly wrong. While the Board “can provide for and encourage the participation of private associations in the regulatory process, it must stop short of giving such groups the power to initiate or enact rules that acquire the force of law.” [Footnote 671: Plumbing etc. Officials, 55 Cal.App.4th at 254]. This brightline limitation applies equally to regulation “that would abrogate the state’s police power by giving a private party or parties a veto over a regulatory function.” [Footnote 672: Id.]. The Vas do just that. The Board concedes that it received the Vas after conducting its own analysis and makes no pretense at analyzing them together with proposed Plan amendments to render its own determination about their effectiveness or propriety [Footnote 673: Staff Report at 9-2]. It sets forth the Vas in exactly the form in which they were thrust on the Board, making no effort to modify them to ensure that they satisfy beneficial uses or protect public trust resources (nor could it as the Vas have been handed to the State Water Board as a ready-made contract, which the Board lacks the power to amend). And the Vas would wholly shield Bay-Delta water quality planning from any review or oversight by the Board during their eight year term, as it is only “in the eighth year of the Vas [that] the State Water Board would consider the reports, analyses, information, and data from the VA Science Program, as well as recommendations from the VA Governance Committee and the Delta Independent Science Board (ISB) to decide the future of the VA program.” [Footnote 674: Id. At 9-6]. Through the Vas, regulated parties created their own accountability structure, setting forth vaguely defined “objectives” against which the Vas would be evaluated. And adopting the Vas would put the Board in direct conflict with its duties under the federal Clean Water Act to conduct a triennial review of water quality standards –	

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		which could not occur until, at best, the conclusion of the Vas' eight-year term. Rather, during the VA term, regulated entities would purportedly conduct their own review, submitting their own findings to the Board through reports – a quintessential instance of the fox guarding the henhouse [Footnote 675: The Draft VA Governance Program states that the State Water Board will fulfill its review requirements under the Clean Water Act, 33 U.S.C. § 1313(c)(1), and Water Code § 13240, by incorporating annual and triennial reporting and the Strategic Plan developed by the Systemwide Governance Committee into their triennial review. This is laughably inadequate. The Clean Water Act is explicit that it is the responsibility of the State to “hold public hearings for the purpose of reviewing applicable water quality standards, and as appropriate, modifying and adopting standards” at least once every three years. The State cannot exercise this responsibility if it is shielded from review of VA implementation, obtaining insight only through self-reports from the VA parties].	
458	103	Compounding these problems, the VAs both leave the resolution of fundamental policy issues to regulated parties and fail to provide adequate direction for the implementation of any such policy, in clear violation of the law. The VAs purport to set forth a new narrative objective to achieve the viability of native fish populations, but this objective is so vaguely defined that it provides little in the way of policy direction or standards to guide regulated party actions during the VA term [Footnote 676: see Staff Report at 9-7]. And the Staff Report does nothing to direct implementation of that policy, even if it could be discerned from the new objective. Rather, it explains in almost indecipherable terms that “[t]ributary assets” under the VAs will “include flow and non-flow assets negotiated as of November 10, 2022.” [Footnote 677: Staff Report at 9-8]. Translated, this means that the Board will, in lieu of setting clear regulatory instream flow standards, allow regulated parties to decide for themselves how much additional water to leave in the streams and how much to instead experiment with habitat restoration measures that could purportedly make up for some of the loss in needed flow (an assumption that, as explained above, lacks any sound basis in science or TEK. Making the matter worse, the Staff Report never explains what the “physical habitat restoration	Please see the response to comment 458-102 for a discussion of the State Water Board’s resolution of fundamental policy issues and regulatory guardrails in place for parties subject to the VA pathway. Under the revised proposed Plan amendments, the narrative fish viability objective initially proposed by VA parties has been incorporated into the set of water quality objectives contained in Table 3 of the Bay-Delta Plan. Use of a narrative objective as a means of protecting beneficial uses is appropriate; under the Clean Water Act, water quality criteria may be narrative or numeric. (40 C.F.R., § 131.11, subd. (b).) The fish viability objective is neither unclear nor vague. It identifies the desired water quality conditions as those sufficient to support and maintain the natural production of viable native fish populations, lists measures that reasonably contribute towards attainment of the objective, including both flows and actions to enhance spawning, rearing, growth, and migration of native fish, and provides examples of indicators of fish population viability, including abundance, spatial extent, distribution, structure, genetic and life history diversity, and productivity. The water quality objectives identified in the revised proposed Plan

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		actions” will look like, where they will occur, or how such decisions are to be made during the VA term [Footnote 678: See, e.g., Staff Report at 9-9]. Indeed, agreements that will provide some direction for commitments to habitat restoration activities have not yet been finalized or made available for either Board or public review [Footnote 679: Staff Report, App. G at 4].	amendments would be implemented by flow, cold water habitat, and related program of implementation requirements under the regulatory pathway, which applies to non-VA water rights during the term of the VAs and to other water rights if the VAs are discontinued. Water quality objectives would be implemented by required flow, habitat, and related VA commitments under the VA pathway, which applies to VA water rights during the term of the VA. Please see final Staff Report Section 13.3, Revised Proposed Plan Amendments, for an in-depth description of the various water quality objectives and how they are proposed to be implemented under the regulatory and VA pathways. Quantified flow and non-flow commitments are listed in the revised proposed Plan amendments and are discussed in Section 13.3.4, Voluntary Agreement Pathway, of the final Staff Report. Accounting for the flow and non-flow measures under the VA pathway are described in Appendices B.1 and B.2 of the December 2025 revised draft Bay-Delta Plan.
458	104	Further, the regulated parties, under the VA program, would exercise their own governance of VA activities [Footnote 680: Id. At 4]. While the VA program asserts that this Governance structure will provide “accountability and transparency of the VA Program,” it instead further shields the program from regulatory oversight, as the Board plays no role at all in governance. Rather, the Board would merely “designate a representative to participate in the Systemwide Governance Committee as an advisory resource” but not as a voting member. In this way too, the VAs delegate the Board’s regulatory review and oversight responsibilities to a newly created governance committee in which the Board itself plays no meaningful role. Indeed, the Draft VA Governance Program is explicit that “the parties to each respective Tributary/Delta Voluntary Agreement” – which do not include the Board – “will establish [their] own governance structure.” [Footnote 681: Staff Report, App. G (Draft VA Governance Program) at 4]. At the same time, it relegates the State Board to an advisory, rather than regulatory function, explaining that “the role of State Water Board staff will be to provide advice on compliance with the Bay-Delta Water Quality Control Plan.” [Footnote 682: Id. At 6].	Contrary to the assertions of this commenter, the VA pathway will not relegate the State Water Board to a purely advisory, non-regulatory role. As described in Section 4.4.9.9 of the December 2025 revised draft Bay-Delta Plan and in final Staff Report Section 13.3.4.9, VA Governance, the State Water Board will provide oversight and guidance on VA compliance, and will participate in VA decision making. The revised proposed Plan amendments further require VA parties to develop a tribal engagement plan describing opportunities for tribal engagement and input to the VA decision making. Finally, as described in Section 13.3.4.10 of the final Staff Report, Continuation, Modification or Termination of the VAs, the VAs may be modified or terminated as part of the Board’s annual or periodic review processes. For further discussion of the State Water Board’s authority related to the VA pathway, please see the response to comment 458-102.

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458	105	Comparison with the delegation of authority to a governing body found lawful in <i>Light</i> illustrates the problem. There, the State Water Board, by regulation, “clearly set out the fundamental purposes of the WDMP’s,” “established detailed standards for the manner in which the WDMP governing bodies are to monitor stream level and the type of corrective measures that can be instituted,” and “placed itself between the governing bodies and the regulated growers.” [Footnote 683: <i>Light</i> , 226 Cal.App.4th at 1492]. Further, “no program developed by a governing body” under the regulation would “become effective – will acquire the force of law – until it has been approval by the Board, and that approval must be sought annually.” [Footnote 684: <i>Id.</i>]. Here, by contrast, the Board left the development of the regulatory substitute (the VAs) to regulated parties. It makes no attempt to set forth clear policy direction of its own to organize activities by the VAs or guide their governing body. It establishes no standards for the manner in which the VA parties, or their governing bodies, operate. And far from placing itself “between the governing bodies and the regulated” water diverters, it places itself apart from them, abdicating the field entirely during the eight-year VA term and peering into the governance structure only in an advisory capacity. Unlike in <i>Light</i> , the Board does not oversee or approve activities by the regulated body during the VAs’ initial eight-year term, not to mention doing so annually. It is hard to imagine a clearer example of unlawful delegation than adoption of the VAs would effect.	Please see the response to comment 458-102 for a discussion of the VA pathway and why it is not an improper delegation of the State Water Board’s authority.
458	106	Ultimately, it is a widely known secret that the VAs are not the Board’s idea – rather, the Board is being pressured, perhaps directed, to consider and even adopt the VAs by the California Natural Resources Agency and the Governor’s Office. But the Legislature vested water quality control oversight in the State Water Board, not these other State entities. The VAs are a clear workaround to, and divestiture of, Board authority. Despite failures of trust and communication that have long characterized relationships between the Board and Delta communities and tribes, the undersigned prefer to see the Board exercising its own oversight authority, diligently safeguarding public trust resources and beneficial uses, than entrusting private parties with the authority and responsibility to do so. Indeed, the law requires it.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project; Common Response 1.2, Water Quality Control Planning Process, for information on the consideration of beneficial uses and public trust; and Common Response 1.3, Revised Proposed Plan Amendments, for information on the VA pathway, including enforceability and annual and periodic reviews.

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458	107	[Attachment 1: Shingle Springs Band of Miwok Indians, et al., Title VI Complaint and Petition for Rulemaking for Promulgation of Bay-Delta Water Quality Standards (Dec. 15, 2022)]	This attachment was included with the comment letter. The attachment does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing attachments to comments.
458	108	[Attachment 2: Document titled A Petition to the State of California Fish and Game Commission to List The California White Sturgeon (<i>Acipenser transmontanus</i>) as Threatened under the California Endangered Species Act (CESA)]	This attachment was included with the comment letter. The attachment does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing attachments to comments.
458	109	[Attachment 3: Document titled Petition to List the San Francisco Estuary White Sturgeon (<i>Acipenser Transmontanus</i>) Population as a Threatened Distinct Population Segment Under the Endangered Species Act with Critical Habitat]	This attachment was included with the comment letter. The attachment does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing attachments to comments.
458	110	[Attachment 4: Letter from Shingle Springs Band of Miwok Indians et al. to State Water Resources Control Board dated August 21, 2023 Re: Proposed Addition of Tribal Beneficial Uses to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta]	This attachment was included with the comment letter. The attachment does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing attachments to comments.
458	111	[Attachment 5: Letter from Shingle Springs Band of Miwok Indians et al. to State Water Resources Control Board dated February 8, 2023 Re: Comments on Draft Scientific Basis Report Supplement in Support of Proposed Voluntary Agreements for the Sacramento River, Delta, and Tributaries Update to the San Francisco Bay/Sacramento-San Joaquin Delta Water Quality Control Plan]	This attachment was included with the comment letter. The attachment does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing attachments to comments. Responses to comments on the January 2023 draft Scientific Basis Report Supplement were included in Section 1.3.1, Response to Comments on the Draft Supplement Report, of the September 2023 final draft Scientific Basis Report Supplement (included as Appendix G2 to the Staff Report).
458	112	[Attachment 6: Article titled Secondary Organic Aerosol Formation from Cyanobacterial-Derived Volatile Organic Compounds]	This attachment was included with the comment letter. The attachment does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing attachments to comments.
458	113	[Attachment 7: Document titled Settlement Agreement and Release of Claims {by and between the Plaintiffs California Sportfishing Protection Alliance et al. and California State Water Resources Control Board and Thomas Howard (Case No. RG15780498)}]	This attachment was included with the comment letter. The attachment does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing attachments to comments.

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458	114	[Attachment 8: Document titled Implementation Agreement for Healthy Rivers and Landscapes Program between the California Department of Water Resources and Yuba County Water Agency]	This attachment was included with the comment letter. The attachment does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing attachments to comments.
458	115	[Attachment 9: Document titled Exhibit B.X – Mokelumne River Implementation Agreement]	This attachment was included with the comment letter. The attachment does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing attachments to comments.
458	116	[Attachment 10: Letter from U.S. EPA to U.S. Army Corps of Engineers dated March 16, 2013 Re: Draft Environmental Impact Statement for the Delta Conveyance Project, Sacramento, California (EIS No. 20220183)]	This attachment was included with the comment letter. The attachment does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing attachments to comments.
458	117	[Attachment 11: Letter from Shingle Springs Band of Miwok Indians et al. to U.S. EPA dated March 6, 2013 Re: Comments on Proposed Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights]	This attachment was included with the comment letter. The attachment does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing attachments to comments.
458	118	[Attachment 12: Letter from State Water Resources Control Board to U.S. EPA dated March 6, 2023 Re: Comments to Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights: Docket ID No. EPA-HQ-OW-2021-0791; 87 Fed. Reg. 74363 (Dec. 5, 2022) (to be codified at 40 C.F.R. Part 131)]	This attachment was included with the comment letter. The attachment does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing attachments to comments.
458	119	[Attachment 13] Comments on Tribal Engagement Section of Draft Staff Report - Tribal Water Rights Curious, duplicitous, and somewhat appalling are words that come to mind when you read the Tribal Engagement Section in its entirety. How can it not be a curiosity when the section begins its narrative with an Introduction that attempts to lay out some of the atrocities, back handed policies, and even attempted genocide laid upon California Native Americans, while declaring that "water is at the heart of traditional stories about human origins and spiritual passage as well as sacred in places used for story, ceremony, healing and other purposes" to California Native Tribes and is "considered the very backbone of many tribal societies", yet states later on in the Section that Tribal Beneficial	The State Water Board has conducted extensive public and tribal related outreach and appreciates the significant input from tribes and environmental justice communities related to the Sacramento/Delta Update to the Bay-Delta Plan. As discussed in more detail in Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, and Chapter 13, Revised Proposed Plan Amendments, the revised proposed Plan amendments incorporate Tribal Beneficial Uses (TBUs), would designate Tribal Tradition and Culture (CUL) beneficial use, and include provisions for tribal outreach and engagement and incorporation of tribal feedback and Traditional Ecological Knowledge (TEK) into the Bay-Delta Plan update and implementation processes.

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		Uses (TBUs) are only being 'considered' for inclusion in the Bay-Delta Plan update? Along with the curiosity of the Section, comes a long list which includes some: Tribal Consultation policies, Executive Orders, laws, meetings, outreach, water summits and consultation letters to convey inclusion of California Tribes in the decision-making process. Still, inclusion does not mean equal standing as it relates to government-to-government consultation with tribes. Listening sessions do not equate to 'hearing' what is specifically being said or even 'understanding' the gravity of what is being said. How can any of it when you have not experienced firsthand the generational trauma of ancestors murdered, homelands taken away, cultural and spiritual practices banned, native language forbidden to be spoken, children whisked away to be 'civilized', and relatives sold into slavery or indentured servitude? These are the thoughts and feelings behind what is being 'said'. These are the basis of the 'needs' being conveyed. Hear what is being said from a Tribal perspective. Understand what is being said from a Tribal perspective. Then, maybe you will not just 'consider' adding TBUs to the Bay-Delta Plan update, you will realize that they must be added.	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses and tribal outreach and engagement.
458	120	[Attachment 13] Then we come to the duplicity of it all. Nowhere in the Draft Staff Report does it state how, when, or where Tribal Water Rights will be or are addressed. There is a brief nod to the Winters Doctrine (Winters v. United States, 207 U.S. 564 (1908)), but is mentioned only in relation to federally recognized tribes and fails to even consider individual Native American allotments. There are at least 110 federally recognized tribes in California. There are over 300 individual Native American allotments located both on and off reservations, all of which qualify for federally reserved water rights. There are more than 80 tribes in California that are not currently federally recognized but receive some acknowledgement from the State, and "still have a significant interest in water management decisions that could support traditional practices or culturally significant species". So, where is the water? What are "Winters Doctrine" water rights"?	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for discussion on tribal reserved water rights. Additional information on this topic has been added to Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses.

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		- The rights are considered as having been established as of the date the federal government created the reservation involved. This means that tribal rights are nearly always senior to those of most other current users of Western water. - The rights cannot be forfeited by non-use, as can the rights held under state law according to the principle of "prior appropriation." - Although the scope of these rights is sometimes quantified as being the amount of water necessary to support the "practically irrigable acreage" on a reservation, the rights, once quantified, can be used for non-agricultural purposes. - The rights involve the future needs on a reservation, not just the present needs. And, under U.S. v. Rio Grande Dam and Irrigation Co., 174 U.S. 690 (1899). - These water rights cannot be destroyed by state water law or by water users acting in accordance with state law. To understand the duplicity of it all, we must look at what water rights the State of California does recognize. In California there are water rights, and then there are water rights: "Riparian rights" come with owning land that is adjacent to a water source. This right entitles the landowner to use a share of the water flowing past the property and does not require permits, licenses, or government approval. It does not allow for diversion into storage or for use on land outside the watershed. Riparian rights remain with the property when it changes hands. "Groundwater rights" also derive from ownership of land. Ground water rights are "overlying" rights, meaning a landowner may extract ground water from the underlying aquifer and put it to beneficial use without the need for approval. The key to these two types of water rights is land ownership. Therein lies a basis for water rights inequity.	

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		"Appropriative rights" come in two flavors, i.e., pre-1914 water rights, and post 1914 water rights. Pre-1914 water rights, or "Senior rights" as they have become known, have their origin in the mid to late 1800s. With the discovery of gold in 1849, thousands of fortune seekers flocked to California and changed the course of water rights law. These miners or "49ers" as they became known, built flumes and waterways to work their claims. These Flumes and waterways transported water far from their original river or stream. These miners applied a "finders-keepers" rule to that water in the same way they applied it to their mining claims. The miners would stake their claim by a system they developed of "posting notice" which eventually became today's appropriative right system. Others could divert water from the same river or stream, but their right to divert existed within a hierarchy of priority. Thus, the "first in time, first in right" concept manifested itself. Miners and non-riparian farmers simply took control of water they wanted and used it however they wished. In 1851, the California legislature recognized this appropriative right system as having the force of law. Senior water rights holders and non-riparian farmers acquired their "first in time, first in right" water rights - through murder, mayhem, and attempted extermination of the original custodians of the land and water. A few grim examples: https://en.wikipedia.org/wiki/California_genocide) - Sacramento River Massacre - April 6, 1846 - 120-200 Wintu Indians killed. - Bloody Island Massacre - May 15, 1850 - 60-100 Pomo people killed. This incident led to a general outbreak of settler attacks against and mass killings of native people all over Northern California. - The list goes on and on; 150 Wintu Indians killed, 1,000 Yuki Indians killed, 450 Tolowa Indians killed, and more....https://en.wikipedia.org/wiki/California_genocide)	

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		Knowing the above, post-1914 rights are largely irrelevant because the water rights system was broken before we even got there. The California Indians were dispossessed from the land, faced attempted genocide, and their cultural, spiritual, and religious ties to the waterways through time immemorial were not just disregarded, but actively sought to be eradicated. The sad fact is that the violence that built our water rights system was not only sanctioned by the State of California but encouraged. That's where the appalling part comes in. As societies mature and grow it becomes more urgent to understand where we have been and what we want to become. Do we want to become a society where all people, no matter their race, ethnicity, nationality or religious belief share the equity of society? Or do we continue to embrace our state's history of exclusion, murder, mayhem, and genocide to further the status quo? The time has come to rethink how water is used and shared in California. Understanding the true history of water rights in the state is the first step. Tribal Water Rights must be addressed. Tribal TBUs must be included in the plan update.	
458	121	[Attachment 14] Opening Remarks This Staff Report is insufficient when analyzing the impacts of HABs along the Sacramento River system. The report highlights many aspects about HABs, including reservoir storage, recreational uses, and air quality impacts. However, the Staff Report addresses these concerns unequally. The argument for reservoir storage focuses on water exports over the health of the Sacramento River in regards to HABs. The section on recreational uses discounts the importance of beneficial uses for Tribes and Delta residents. The air quality section needs an update with the best available science. The comments made in this letter are to help address what Phase II standards are	Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to cyanobacterial harmful algal blooms (HABs). See also Common Response 3.1, Fish Protection, regarding use of best available science; Common Response 10.1, Economically Disadvantaged Communities, regarding the Staff Report's analysis of impacts to economically disadvantaged communities; and Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, regarding tribal beneficial uses.

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		needed to improve water quality conditions for the mitigation of HABs throughout the Sacramento River and its tributaries.	
458	122	[Attachment 14] Over-importance of HABs Impacts on Reservoir Storage The Board seems intent on analyzing the impacts of low flow on HABs for reservoir storage and water exports but fails to analyze the impacts on the Northern Delta adequately. In Chapter 7.12.1 on Surface Water Quality, the State Water Board writes: Changes in hydrology may result in reduced reservoir storage levels in some reservoirs at some times and in associated shallower, warmer, more stable water column conditions in those reservoirs. These conditions could lead to increased reservoir algal bloom formations; with lower storage levels, blooms could be more likely to be exposed to reservoir outlets, affecting supplies from the reservoir for downstream releases and water supply purposes. [Footnote 1: Draft Staff Report 2023, Chapter 7.12.1, p. 7.12.1-76.] Increasing reservoir storage will decrease downstream flows along the Sacramento River. The dedicated section for HABs issues on reservoir storage, arguments about stagnant water, and impacts on water exports highlight the bias towards water rights holders. In 2023, there was an increase in flow down the Sacramento River and its tributaries due to increased snowpack melt during the summer months that resulted from an ARkStorm early in the year. Based on reports from the HABs Reports Map on the Surface Water Ambient Monitoring Program (SWAMP) website [Footnote 2: https://mywaterquality.ca.gov/habs/where/freshwater_events.html], fewer HABs were reported in the Sacramento region in 2023 than in prior years. In direct reference to reservoir storage levels, the report claims that "lower summer and fall flows in some Delta channels could result in incremental increased production of HABs. [Footnote 3: Draft Staff Report 2023, Chapter 1, pp. 1-34-1-35.] Restore the Delta continually emphasizes that low flow plays a significant role in HAB formations throughout the Delta water system. The Staff Report conveniently ignores low flow concerns in the Sacramento River	Please refer to the response to comment 458-34. The DSM2 results indicate that average travel times through Victoria Canal under the 65 flow scenario during the primary months for cyanobacterial harmful algal bloom (HAB) activity in the Delta (i.e., June through October) increase relative to baseline and relative to the lower flow scenarios (see Table 7.12.1-18). Increases in travel time could incrementally increase the chances of HABs formation and bloom size; similar increases could occur in other Delta channels that convey Sacramento River water to Delta export pumps. Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to Delta HABs.

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		and the link to HABs production. Where is the HABs analysis for the reduced inflows that Phase II would implement in most of the alternatives? The continued focus on water rights holders over communities that reside by the affected waterways is continued discrimination because it disregards HABs impacts on public health. Phase II flow standards must meet 65% unimpaired flow at a minimum, with upward variability with precipitation, during drought years to protect against HABs throughout the Delta, not for reservoir concerns.	
458	123	[Attachment 14] Impact of HABs on Beneficial Uses HABs must have a statewide standard for drinking water and, equally important, beneficial water uses. Recreational activities, sustenance fishing, swimming, and Tribal Beneficial Uses, including cultural practices and traditional ceremonies, all need HAB protection standards. While page 5-45 of the staff acknowledges USEPA's 2019 HAB standard, the Board dismisses USEPA's evolving water quality and chemical for emerging chemical standards because "there are not yet recommended water quality criteria for most CECs." This dismissal of EPA standards is a major failing in the draft Staff Report. USEPA's 2019 standard is a baseline for public health protection in an evolving field of study. The EPA has encouraged the State Water Board to adopt the HABs standards they have set as a baseline for community protection while further studies and data collection continue to perfect standards. The State Water Board should not drag out setting protections any further. It is beneficial for the Delta that monitoring for HABs is widespread and growing, but it's time to turn the data collected into something substantial. HABs have been progressively getting worse over the past decade, and the State Water Board needs to set a standard for protections for communities against poorly planned projects that supersede the concerns of HABs.	Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to water quality standards for cyanotoxins.
458	124	[Attachment 14] Regarding recreation impacts, it's incorrect to determine that HABs play a "less than significant" impact on recreational access concerning public access to waterways. In Chapter 7.18 on Recreation, the State Water Board writes: Even if some recreational users moved to other reservoirs at certain times and during certain years, based on the number of	Please see the response to comment 458-72a, regarding the 2023 draft Staff Report's impact determination related to HABs effects on recreation. Also, please refer to Common Response 4.1, Harmful Algal Blooms, and Common Response 10.1, Economically Disadvantaged Communities, regarding HABs-related effects on recreation and economically disadvantaged communities.

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		other available recreational areas and the temporary nature of closures, this shift would not likely be in sufficient numbers of recreationists or a period of time to result in substantial deterioration of recreational facilities at alternate locations. Therefore, the impact would be less than significant. [Footnote 4: Draft Staff Report 2023, Chapter 7.18, p. 7.18-10.] The argument around "temporary closures" is disingenuous because Big Break Shoreline has had to cut off access to its kayak launch point over many summer months to prevent people from getting into waters infested by HABs. The kayak launch closing canceled a kayaking trip for youth from Stockton to escape the HABs-infested waters in Stockton, which argues against the idea that there are multiple other available sites to recreate. It's ridiculous that the recommendation would be to find another spot to recreate when talking about community access. Delta residents have a constitutional right to recreate and use local public trust resources. HABs closures that last for the majority of the summer, or that force residents of disadvantaged communities to drive many miles to enjoy water recreation when rivers exist a few blocks away from their homes, but are too polluted to enter, are prime examples of disparate impacts resulting from Water Board management of the Delta.	
458	125	[Attachment 14] Flow Impacts on HABs The flow proposal for Phase II for an adaptive range of 45% to 65% unimpaired flows is insufficient to prevent HABs along the Sacramento River. The adaptive range would mean an average flow of 55% throughout the year, which would not be enough to protect communities along the Sacramento River. The increased flows down the Sacramento River this year compared to previous years [Footnote 5: Sacramento River Flow Charts attached below] and the history of HABs reports during the same years [Footnote 6: Reported HABs along Sacramento County from https://mywaterquality.ca.gov/habs/where/freshwater_events.html] shows a correlation between adequate flow and limitation of HABs. Higher summer flows help to stop the proliferation of HABs. The adaptive range of the 45% to 65% proposal implies 45% unimpaired flow during drought periods, similar to the	Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to instream flow and cyanobacteria harmful algal bloom formation.

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		standard set by Phase I in the San Joaquin River. Under the current Bay Delta Plan, 40% unimpaired flow in the San Joaquin River has not prevented HAB formations throughout the Southern Delta. The Board must prevent another mistake in watershed management and unimpaired flow standards at a minimum of 65% during drought years.	
458	126	[Attachment 14] Impacts of HABs on Tribal Beneficial Uses Lower summer and fall flows lead to increased incidence of HABs near traditional ceremonial sites, which impact cultural practices for tribes that utilize the waterways, thus also making HABs a Tribal Beneficial Use issue. The argument of "temporary closures" is especially exclusionary for tribes because tribes are culturally connected to traditional ceremonial sites along waterways that are affected by toxins from HABs. The exclusionary process of the Voluntary Agreements has left Delta tribes unable to address concerns over water quality with HABs and maintaining cultural traditions and fishing along the Feather and Sacramento Rivers. Canceling or rescheduling cultural traditions to protect the children and elderly is not a temporary concern. The argument that there are a "number of other available recreational areas" cannot be applied to tribes. It is disturbing that there is no dedicated section for HABs for water quality issues tribes face. Tribes have just as many concerns for water quality beyond HABs, and have ecological knowledge of the estuary; their voices must be heard and respected as government entities.	A section on the effects of harmful algal blooms on tribal communities has been added to Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, of the Staff Report. Please find additional information on the effects of harmful algal blooms on tribal communities in Staff Report Section 11.6, California Native American Tribes and Harmful Algal Blooms. Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to harmful algal blooms and California Native American Tribes. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses related to tribal comments on the VAs.
458	127	[Attachment 14] Air Quality Impacts from HABs Chapter 7, the section on air quality, states that HABs have a less-than-significant impact because HABs generate odor. Although odors can be discomforting and annoying, that's not the main reason for concern. A recently published study by the University of North Carolina [Footnote 7: Haley E. Plaas, Jin Yan, Cade Christensen, Seyong Chang, Cintia Cortez, Spencer Fern, Leah Nelson, Alexandria Sabo, N. Cazimir Armstrong, Barbara J. Turpin, Yue Zhang, Hans W. Paerl, and Jason D. Surratt ACS Earth and Space Chemistry 2023 7 (9), 1798-1813 DOI: 10.1021/acsearthspacechem.3c00177] determined a concrete link between HABs and air quality by discovering secondary	Please refer to Common Response 4.1, Harmful Algal Blooms, regarding harmful algal blooms, including their potential implications for air quality and environmental justice communities.

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		volatile organic compounds, including taste and odor compounds, attached to air filters from Stockton and Discovery Bay air monitors. These taste and odor compounds aerosols become particulate matter, and any particular matter is a public health concern. This research is the first study to link the water quality and air quality concerns for HABs, so further study is needed. Studies need to determine if the taste and odor compounds that attach to particulate matter undergo chemical changes as aerosols in the atmosphere, which could make air quality toxic. It's also crucial to recognize the threat of air quality concerns over HABs before pushing more disparate impacts on disadvantaged communities. The decisions made around flow standards and water projects tend to increase pressures on disadvantaged communities, and there is a need to plan for the future, even without all the answers.	
458	128	[Attachment 14] Closing Remarks To summarize, the flow standards set by many of the presented alternatives and the Voluntary Agreements will not protect the Delta and its residents from the increasing threat of HABs. The State Water Board needs to set Phase II flow standards for 65% unimpaired flows during drought years at a minimum to help prevent HAB formations throughout the Delta. The State Water Board needs to set a HAB standard that protects drinking and beneficial water uses with the USEPA 2019 HAB standard as a baseline. At some point, after further studies into the dangers of aerosolized compounds from HABs, the standard should adopt air quality concerns to account for those public health hazards, as well. There appears to be more concern from the Board about the impacts of HABs on water exports and water rights holders. This preference for water exporters contradicts the Mission Statement of the State Water Resources Control Board: "to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations." [Footnote 8: https://www.waterboards.ca.gov/about_us/water_boards_structure/mission.html] It's time that the Water Board focuses more on beneficial uses and public health when working with HABs	Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to cyanobacteria harmful algal bloom (HAB) formation, water quality standards for cyanotoxins, HABs and potential effects on air quality, and Delta HABs and California Native American Tribes. See also Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to tribal engagement and tribal beneficial uses.

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		concerns. Along with protecting the public, the State Water Board must build connections with tribes and treat them as sovereign nations. Water projects and the Voluntary Agreements that make changes that affect tribal beneficial uses while also excluding tribes from the decision-making process are discriminatory and need changing.	
458	129	[Exhibit 1: Graphic of a PowerPoint slide of three graphics and a table titled HAB Incidents]	This exhibit was included in the comment letter. The exhibit does not raise a specific environmental impact or economic effect of the project. Refer to Common Response 1.1, General Comments, for the approach to addressing exhibits.
458	130	[Attachment 15] General Comments Restore the Delta has reviewed various sections of the Draft Staff Report for the Phase II Update to the Bay-Delta Plan. The general purpose of the Bay-Delta Water Control Plan (Bay-Delta Plan) is to set water quality standards using flow and narrative measures to protect the various beneficial uses of water in the San Francisco -Sacramento Bay-Delta watershed. We conclude that the Staff Report's environmental impacts analysis for the protection of environmental justice communities is incomplete, it does not incorporate the best available science, it prioritizes impacts to water exporters as a negative consequence of increasing river flows, and inaccurately downplays and fails to document disparate impacts to tribal and environmental justice communities resulting from low flow scenarios. The baseline defined in the document as D-1641, 2019 Biological Opinions, and 2020 Incident Take Permit is inadequate [Footnote 1: Draft SED, Chapter 6, Sec-on 2.1, Table 6.2-1. SacWAM Baseline Model Assumptions, p. 6-6.]. Overall, the preferred flow plan of 55% and the voluntary agreements would increase disparate impacts to tribes and Delta communities.	The Staff Report adequately evaluates the environmental impacts of the Sacramento/Delta update to the Bay-Delta Plan in the analysis presented in Chapter 7, Environmental Analysis, Chapter 9, Proposed Voluntary Agreements, and Chapter 13, Revised Proposed Plan Amendments, including impacts relevant to DACs. Chapter 10, Economically Disadvantaged Communities, contains a summary of the other sections and chapters in the Staff Report that discuss issues of concern for DACs. Please see Common Response 1.2, Water Quality Control Planning Process, for information on the reasonable protection of fish and wildlife and consideration of other beneficial uses, and for information on State Water Board authorities related to the water quality control planning process. Please refer to Common Response 10.1, Economically Disadvantaged Communities, for responses to comments related to existing environmental conditions and the CEQA analysis. Please refer to Common Response 3.1, Fish Protection, for responses to comments related to the Staff Report's use of best available science. Staff Report Section 6.2.1, Baseline Assumptions, and Section 13.4.2.2, Baseline Condition, provide a detailed description of the approach used to simulate baseline conditions in SacWAM. Please refer to Common Response 6.2, Baseline and No Project Alternative, for more information about the project baseline.
458	131	[Attachment 15] Additionally, the report is missing a plan of implementation outlining how an adaptive unimpaired flow range would be used and an implementation plan for the	The 2023 draft Staff Report includes a sufficiently detailed description of the proposed program of implementation for the purposes of the analysis. However, drafts of the Bay-Delta Plan

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		proposed voluntary agreements. Assuming that the lower adaptive range would be used during drought years and the upper range during wet years would be irresponsible management as it would extend and permanently codify the Water Board's pattern and practice of relying on Temporary Urgency Change Petitions as the management system of the Delta tributaries. We remind the Board of its responsibility to protect beneficial uses for all Californians and ensure the achievement of objectives and not favor water exporters' greed.	were subsequently released for public review and comment in October 2024, July 2025, and December 2025. Adaptive implementation of the inflow objective was described in Section 5.4.2.4, Implementation, and the VA pathway was described in Chapter 9, Proposed Voluntary Agreements. Please see Common Response 1.2, Water Quality Control Planning Process, for information on the consideration of beneficial uses and Common Response 1.3, Revised Proposed Plan Amendments, for information on the regulatory pathway implementation of the inflow objective and the VA pathway.
458	132	[Attachment 15] We are deeply disappointed with the State Water Board for choosing to continue to support and promote the voluntary agreement program and incorporating it into the current update to the Bay-Delta Plan despite the plan being incomplete. It is concerning that the report speaks of the voluntary agreements as if they were a done deal. Not providing a complete package for the voluntary agreements that includes a program of implementation is causing unnecessary additional processes that further muddle public participation and perpetuate inequalities because Water Board processes are difficult to access and complicated for everyday Californians. Voluntary Agreements were founded through an exclusionary process, leaving out communities most impacted by the decisions being made.	Please see the response to comment 458-131. Also see Common Response 1.1, General Comments, for information on public engagement and Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for information on Tribal engagement.
458	133	[Attachment 15] The Staff Report's analysis of impacts on Economically Disadvantaged Communities is used as a substitute for an analysis of impacts on environmental justice communities making its analysis inadequate. Although most environmental justice communities are economically disadvantaged, not all disadvantaged communities are environmental justice communities. Environmental justice communities are disproportionately impacted by environmental stressors that impact their quality of life. Communities like Stockton that have been historically redlined are more susceptible to environmental distress. We remind the Board of its duty to implement the Racial Equity Action Plan through policy [Footnote 2: State Water Resource Control Board. (2023). Racial Equity Action Plan].	The analysis provided in the Staff Report is adequate and is appropriately detailed for the scope of the project. Please see Common Response 7.1, General CEQA and Approach to the Analysis, for a discussion of the level and scope of the analysis. Please refer to Common Response 10.1, Economically Disadvantaged Communities, for responses to comments related to existing environmental conditions and the CEQA analysis, and the State Water Board's Racial Equity Resolution and Racial Equity Action Plan.
458	134	[Attachment 15] In addition, we would like to impress upon the Board that the 55% proposed flow alternative and the voluntary agreements will extend poor environmental conditions along the	Flow standards for the Lower San Joaquin River were adopted but have not been implemented. Please see Common Response 1.2, Water Quality Control Planning Process, for information on

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		Sacramento River watershed, especially in Delta rural communities, that are presently experienced by Delta residents residing adjacent to the San Joaquin River. The present Board has been left with a heavier lift to compensate for the adoption of a low 40% unimpaired flow standard on the San Joaquin River standards [Footnote 3: State Water Resource Control Board. (2018). Water Quality Control Plan for the San Francisco Bay/Sacramento San Joaquin Delta Estuary.]. The Board must adopt standards that are restorative for Phase I and Phase II project area. A higher flow percentage in the Sacramento River is required for adequate mixing of waters at the confluence of the Sacramento and San Joaquin River to ensure that water quality standards are met further out into the estuary past the confluence. Although Stockton is not directly impacted by flow standards from Phase II, we are seeing the negative impacts that come with adopting insufficient flow standards. Inadequate flow standards set in the San Joaquin River (Phase I) coupled with the proposed plan amendments in the Sacramento River (Phase II), will deplete the Delta of flows necessary to protect recreation, fish and wildlife, municipal and small drinking water systems, tribal beneficial uses, and Delta agriculture. Consequently, rural Delta communities previously not experiencing environmental stressors will be made into environmental justice communities.	the consideration of beneficial uses and the relationship with the lower San Joaquin River and southern Delta salinity update to the Bay-Delta Plan in 2018. Also see Staff Report Chapters 3, 4, 9, and 13 and Common Response 3.1, Fish Protection, for information on the benefits of the revised proposed Plan amendments; Chapters 6, 7, 8, 9, and 13 for an analysis of the impacts of the revised proposed Plan amendments; Chapter 10 and Common Response 10.1, Economically Disadvantaged Communities; and Chapter 11 and Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses.
458	135	[Attachment 15] Preferred Unimpaired Flow Framework The Staff Report has greenwashed low flow and high flow to convey a lesser than actual impact. The "low" 55% unimpaired flow alternative merely delays fish extinction, and the "high" 65% unimpaired flow is only the bare minimum. Referring to it as a "high" flow alternative would suggest that it exceeds what is required to enhance estuary recovery when in fact it should be the standard. The best available science from species-specific flow criteria provides evidence to support 65% unimpaired flow with an adaptive range of 60-70% to support fish recovery, mitigate for the formation HABs, and support water temperature management upstream for fish species [Footnote 4: State Water Resources Control Board. (2010). Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem.]. Adequate flow is needed to protect groundwater for drinking	The impacts of the low and high flow alternatives are analyzed in Chapters 6, 7, and 8 of the Staff Report and the benefits of the flow scenarios are analyzed in Chapters 3 and 4 of the Staff Report. The benefits and impacts of the revised proposed Plan amendments are analyzed in Chapter 13 of the Staff Report. See Common Response 1.1, General Comments, for information on the Delta Flow Criteria Report; Common Response 1.2, Water Quality Control Planning Process, for information on the reasonable protection of fish and wildlife beneficial uses; and Common Response 4.1, Harmful Algal Blooms, for information on harmful algal blooms.

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		water. As rivers deliver more freshwater, it percolates through the soil, replenishing the groundwater reservoirs that many communities rely on for drinking water. Adequate aquifer recharge is crucial for preventing saltwater intrusion and ensuring a sustainable supply of clean groundwater. With the increasing challenges posed by climate change, maintaining robust river flow becomes even more critical. Changes in precipitation patterns and rising temperatures can impact estuarine ecosystems. Adequate freshwater flow acts as a buffer, helping our estuary adapt to changing conditions and ensuring the long-term sustainability of groundwater resources.	
458	136	[Attachment 15] We are concerned that the Staff Report has appropriated fish habitat and drinking water concerns to support the diversion of flows for water promoting an unsustainable reliance on Delta flow. In Chapter 7 of the Staff Report, the proposed flow framework is supported because "55 percent unimpaired flow is the flow level at which more significant improvements to fish and wildlife beneficial uses are expected, and cold-water supplies can still be maintained." [Footnote 5: Draft SED, Chapter 7.1, p. 7-7.] However, at 55%, fish extinction is only delayed but not prevented. If the goal of the Board is to do the bare minimum, then 55% may work but in the probable scenario of increased exports, excessive use of Temporary Urgency Change Petitions, and the construction of new water infrastructure projects, extinction of native fish is guaranteed. The Board needs to look at its Salmon Doubling Objective and Fish Viability Objective and prioritize the achievement of those objectives in a timely matter.	The benefits of the 55 scenario are documented in Staff Report Chapter 3, Scientific Information to Inform Fish and Wildlife Flow Recommendations, and further explained in Common Response 3.1, Fish Protection. Please see Common Response 1.2, Water Quality Control Planning Process, for information on reasonable protection of fish and wildlife beneficial uses.
458	137	[Attachment 15] According to the Staff report, an adaptive range framework is used to "address the unique circumstances of different tributaries." [Footnote 6: Draft SED, Chapter 7.1, p. 7.1-7.] A system as diverse and complex as the Bay-Delta needs to have a plan of implementation that strikes a balance to protect its diversity. The Staff Report suggests a voluntary implementation plan as a framework for the implementation of an adaptive flow framework but does not provide an implementation plan to review or parameters for managing an adaptive flow framework. Currently, the Staff Report only provides two reasons for which the lower range of the adaptive framework would apply. The upper range of the proposed	The 2023 draft Staff Report includes a sufficiently detailed description of the proposed program of implementation for the purposes of the analysis. Adaptive implementation of the inflow objective was described in Section 5.4.2.4, Implementation, and the requirements for voluntary implementation plans (now referred to as local cooperative solutions) were described in Section 5.4.1.1, Processes and Requirements for Voluntary Implementation Plans. However, drafts of the Bay-Delta Plan were subsequently released for public review and comment in October 2024, July 2025, and December 2025. Expected effects of the flow scenarios on water exports are analyzed in Chapter 6, Changes in Hydrology and Water Supply, of the 2023 Staff

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		framework would only be applied if there were flows to support that range. There is no discussion of possibly limiting exports to meet community and ecosystem beneficial uses. It is widely known that Delta flows are exported at an unsustainable rate supporting an unrealistic reliance on the Delta. The watershed must be repaired, and balance needs to be restored to be able to continue providing support to other regions in California. We understand that with climate change, reasonable water exports from the watershed will be needed to support community needs. We will continue to support small farmers who are actively engaging in sustainable agriculture practices tailored to enhance natural ecosystem functions.	Report. For example, Table 6.4-3 details the expected effects on south of Delta exports. Please see Common Response 1.3, Revised Proposed Plan Amendments, for additional information on regulatory pathway implementation of the inflow objective.
458	138	[Attachment 15] Proposed voluntary agreement program The Voluntary Agreements program is an exclusionary process that was introduced during the vote for adoption of the Phase I Update to the Bay-Delta plan and has since served as a mechanism to further delay an adequate updated Bay-Delta plan. Since 2018, VA parties have claimed the Voluntary Agreements are ready for implementation. It is now 2023, the Board is entertaining an incomplete Voluntary Agreement package, and the VA parties are running a "Healthy Rivers and Landscapes" greenwashing campaign. The Staff Report's analysis of the voluntary agreements contains no analysis to support their claims of being superior to a science-based percent flow framework and does demonstrate that they will protect beneficial uses. The report claims that under the proposed Voluntary Agreements, water temperatures would be expected to remain the same as the baseline and in some cases increase. The current fragility of fisheries would not withstand an increase in water temperature. The Vas are claiming to give about 1.5% more flow on average, however, that is not sufficient flow for what the system needs. In chapter 7, No Project Alternative: "No Project Alternative conditions differ from the existing condition baseline because existing flows in the Sacramento/Delta watershed, including baseline	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project; Common Response 1.2, Water Quality Control Planning Process, for information on the consideration of beneficial uses; Common Response 1.3, Revised Proposed Plan Amendments, for information on the VA pathway; and Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses.

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		Sacramento/Delta flows, are generally substantially higher than the minimum flows required under the current Bay-Delta Plan and D-1641 and other regulatory requirements." [Footnote 7: DraftSED, Chapter 7.24, p. 7.24-3.] If the system is performing above minimum requirements and is continuing to experience a deteriorating ecosystem, a Voluntary Agreement program that would provide similar flows would give the same inadequate results. Improvements to the system are not sufficient in a stressed system. It is required to implement changes that are change is protective of beneficial uses and that it will meet defined objectives. New requirements and standards must achieve the goals and objectives set forth by the Board. When the Voluntary Agreements demonstrate that they can be a tool to achieve the Board's objectives and they change the exclusionary system under which they were founded and are currently operating and meaningfully engage with tribes and communities, then they may receive fair consideration. That has not been the case during the Phase II Update of the Bay-Delta Plan. We urge the Board to proceed with the Phase II update without the incorporation of voluntary agreements.	
458	139	[Attachment 15] Environmental Justice: Impacts from low flow standards and voluntary agreements The Staff Report's analysis of economically disadvantaged communities does not have a complete analysis of impacts to environmental justice communities that reside within the Sacramento-Delta and that may be impacted by updates made to Phase II of the Bay-Delta Plan. Failure to provide a complete analysis promotes disparate impacts. Inadequate standards are devastating our ecosystems and the communities we serve. In 2018, our colleague, Anthony Robinson, courageously spoke truth to power when he told the Board how our degraded environment becomes internalized degradation for the people. There is a direct link between environmental justice and mass incarceration. The 2021 Yale Review documented this overlap between environmentally toxic communities and mass incarceration. [Footnote 8: Pellow, D.N.	The analysis provided in the Staff Report is appropriately detailed for the scope of the project. Please see Common Response 7.1, General CEQA and Approach to the Analysis, for a discussion of the level and scope of the analysis. The Staff Report adequately evaluates the environmental impacts of the Sacramento/Delta update to the Bay-Delta Plan in the analysis presented in Chapter 7, Environmental Analysis, Chapter 9, Proposed Voluntary Agreements, and Chapter 13, Revised Proposed Plan Amendments, including impacts relevant to DACs. Chapter 10, Economically Disadvantaged Communities, contains a summary of the other sections and chapters in the Staff Report that discuss issues of concern for DACs. Section 8.6.1, Recreational and Commercial Fisheries, in the 2023 draft Staff Report, (Section 8.6.2, Commercial Fisheries, and Section 8.6.3, Recreational Fishing, in the final Staff Report), addresses potential economic effects concerning commercial and

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		(2021), Struggles for Environmental Justice in US Prisons and Jails. Antipode, 53: 56-73. https://doi.org/10.1111/an-12569] Degraded waterways are creating a cultural change in communities that are affected by poor water quality. Community members are being deterred from recreating in and around the water due to the presence of harmful algal blooms. Fisheries closures are causing disparate impacts. The failure to complete a proper analysis demonstrates that to the Board, EJ communities do not matter, marginalized communities don't need recreational opportunities, and fishing for sustenance and culture don't need protection. We are witnessing our community and its youth become alarmingly more disconnected from the natural environment. Communities depend on healthy waters and fisheries for their livelihood. In the Your Delta, Your Voice report prepared by the Department of Water Resources, 90 percent of Delta Environmental Justice respondents disclosed that they rely on Delta fish to feed their families on a nearly costless basis. [Footnote 9: Ag Innovations. 2021. Survey Findings: Your Delta, Your Voice: Environmental Justice Community Survey.] The Delta is home to a large population of tribes, and Southeast Asian and Latino communities who traditionally rely on fisheries for cultural ceremonies, cultural preservation, consumption, sports, and leisure. Migrant families have found a piece of home within the Delta waterways that allows them to nurture cultural practices from their country of origin. However, the mismanagement of California water, the lack of regulations on water diversions, and outdated water quality standards have resulted in declining fish populations causing a cultural ethnocide. There are nearly 80 drinking water systems in the Delta and there is no analysis on how flooding and drought will impact water quality in these rural areas that either rely on groundwater as a whole or in part for their water supply. Meanwhile, disadvantaged communities struggle to respond to water quality emergencies due to insufficient infrastructure and funding. The water board's approach has been predominantly reactive rather than proactive in safeguarding the quality of drinking water systems.	recreational sport fisheries, with an emphasis on Chinook salmon. Section 13.8.4, Fisheries Economic Effects, provides supplemental economic information relevant to recreational and commercial fisheries and discusses fisheries economic effects under the revised proposed Plan amendments. In addition, in response to comments received on the economic analysis presented in the Staff Report, Chapter 8, Economic Analysis and Other Considerations, has been updated to include a new Section 8.6, Fisheries Economic Analysis, that addresses potential economic benefits from implementation of the flow scenarios and subsequent aquatic ecosystem improvements and benefits for native fish species. This new section provides additional context and information concerning beneficial fisheries and ecosystem economic effects but does not change the conclusions of the Staff Report's economic analysis. Please refer to Common Response 10.1, Economically Disadvantaged Communities, for responses to comments related to existing environmental conditions and the CEQA analysis, responses to comments related to the State Water Board's Racial Equity Resolution and Racial Equity Action Plan, and responses to comments related to small drinking water systems in the Delta.

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		From 2020 to 2022, the Delta's water quality challenges intensified, with a 30% rise in contaminant combinations according to the updated 303(d) list. These issues pose threats to crucial activities like agricultural and municipal water supply, as well as the well-being of native habitats and wildlife. The Delta Tribal Environmental Coalition, requested in their Civil Rights Complaint filed with the US EPA that federal permits and approvals for major water export infrastructure, such as the Delta Conveyance Project, in the Bay-Delta and its headwaters until the State Water Board achieves compliance with Title VI and the CWA. That includes a Bay-Delta Plan with flow-based and temperature water quality criteria that are protective of Beneficial Uses. The current approach lacks this safeguard, especially without an analysis of drinking water systems. In conclusion, the imperative for the water board is clear: a steadfast commitment to enhancing water quality in underserved communities. This necessitates a strategic shift towards targeted, intentional research that addresses the pressing water quality challenges faced by these communities. Rather than pursuing projects that may inadvertently exacerbate disparities, the water board must prioritize directly addressing and rectifying existing water quality issues. By adopting a focused and community-centric strategy, the water board can play a pivotal role in rectifying historical injustices and fostering a future where water quality is a universal right.	
458	140	[Attachment 15] Meaningfully engage tribes as partners in the process of adopting true Tribal Beneficial Uses and in addressing and quantifying tribal water rights.	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses, tribal outreach and engagement, and tribal reserved water rights.
458	141	[Attachment 15] Adopt a HABs standard that is protective of cultural and recreational uses for tribes and environmental justice communities. Integrate new and emerging air quality HABs science in the next iteration of the Staff Report.	Please see Common Response 4.1, Harmful Algal Blooms, for responses to comments related to water quality standards for cyanotoxins, potential cyanobacteria harmful algal blooms (HABs) effects on air quality, and HABs and California Native American Tribes and economically disadvantaged communities.
458	142	[Attachment 15] Lastly, set aside political agendas. Dismiss the proposed Voluntary Agreements that turn water quality standard-setting and attainment over to water agencies and irrigation districts that are driving an unsustainable use of Delta flow.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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458	143	[Attachment 16] Intro Good morning Chair Esquivel and members of the Board, my name is Zach Gigone I am an environmental scientist with the Shingle Springs Band of Miwok Indians Past Issues I was initially brought on to work for the tribe this past March. Over the past few years, there had been HABs observed at several of the tribe's ancestral sites in the past few years and the health of elders and youth was of major concern. Sacramento River Flows I began testing for HABs in April. Over the past summer, the presence of HABs was minimal due to the high flows in the Sacramento River. However, several incidents did occur. First, a language camp was cancelled in June due to cyanotoxins being detected in the river. This prevented cultural knowledge from being able to be passed down on the tribe's ancestral land, creating significant harm to this tribal beneficial use. Additionally, HABs were detected in September.	This is a PowerPoint presentation script from a presentation at the November 17th, 2023 public hearing for the Sacramento/Delta Update to the Bay-Delta Water Quality Control Plan. This presentation script was submitted as an attachment to the comment letter. Refer to Comment Letter 413 for responses to oral comments related to this presentation.
458	144	[Attachment 16] Flows - 2023 Here is a graph showing flows on the Sacramento River. This is from a USGS station near Verona Marina. The flows from 2023 are seen in yellow, showing the significantly higher flows present during this year compared to those between 2020 and 2022 Flows - 2023 This graph shows a bit more detail for the flows in 2023. Note that the flows reached a peak of over 66,000 Cubic feet per second, and remained quite high throughout the summer, staying above 20,000 CFS through mid-June Flows - 2022	This is a PowerPoint presentation script from a presentation at the November 17th, 2023 public hearing for the Sacramento/Delta Update to the Bay-Delta Water Quality Control Plan. This presentation script was submitted as an attachment to the comment letter. Refer to Comment Letter 413 for responses to oral comments related to this presentation.

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		This graph shows the flows from 2022, note the significantly lower peak, below 11,500. Levels averaged around 7,000 CFS throughout the summer, about half of what was seen in 2023 Flows - 2021 The flows for 2021 had a large spike in late October, but otherwise stayed between 5,000 and 12,000 during the HABs season Flows - 2020 The flows for 2020 peaked just below 20,000. They were higher than 2021 or 2022 but still significantly lower than 2023 HAB Incidents Now I'm going to get into the number of reported harmful algal blooms. The table on the right shows the number of reported blooms each year in Sacramento County, excluding those where no cyanotoxins were detected. 2023 is notable, as it had significantly fewer blooms than the previous two years, likely due to the significantly higher flows this year. 2020 had fewer reports than the two following years, likely due to there being less awareness of this issue, as well as slightly higher flows than the two following years.	
458	145	[Attachment 16] E.coli In addition to HABs, I would also like to touch on the threat posed by e.coli contamination. These plots show E.coli levels for four tribal locations. The red lines show the geometric mean at each location. Although the geometric mean for many of these is below the EPA recommendation of 100 CFU per 100 mL, there was a significant spike that occurred in late July at several locations.	The State and Regional Water Quality Control Boards are committed to preserving, enhancing, and restoring the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations. The State Water Board and the nine regional water quality control boards (regional water boards) administer the Porter-Cologne Water Quality Control Act to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of

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		One impact of these high e.coli levels was that an event for tribal elders was not able to take place on the tribe's ancestral territory, once again causing an impact to a Tribal Beneficial Use.	the waters of the state. Under the Porter-Cologne Water Quality Control Act, the State and regional water boards formulate and adopt basin plans that designate beneficial uses and a program of implementation to meet the objectives. Please see Section 7.12.1.2, Environmental Setting, of the Staff Report which contains a discussion on the role of basin plans and protecting beneficial uses designated in those basin plans, including the Central Valley Regional Water Quality Control Plan for the Sacramento and San Joaquin River Basins. That plan contains specific numeric water quality objectives for constituents such as bacteria (E. coli). Please also see the Central Valley Regional Water Board's Surface Water Ambient Monitoring Program (SWAMP) and the Lower American River Bacteria Study on their efforts related to identifying bacteria sources. Please refer to Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses.