



July 27, 2018

Felicia Marcus, Chair  
 (c/o Jeanine Townsend, Clerk)  
 State Water Resources Control Board  
 1001 I Street, 24<sup>th</sup> Floor  
 Sacramento, CA 95814-0100

*Submitted via email to:* [LSJR-SDComments@waterboards.ca.gov](mailto:LSJR-SDComments@waterboards.ca.gov)

RE: PROPOSED BAY-DELTA WQCP AMENDMENTS AND FINAL SED

Dear Chairwoman Marcus:

On behalf of the Bay Institute, San Francisco Baykeeper, the Natural Resources Defense Council and Defenders of Wildlife, we have reviewed the State Water Resources Control Board's (SWRCB's) July 6, 2018 final proposed amendments to the Water Quality Control Plan (WQCP) for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, and the revisions supporting the proposed Final Substitute Environmental Document (SED).

The final proposed amendments will not provide adequate protection of fish and wildlife beneficial uses in the Estuary or its watershed, and the analysis in the final SED does not support a finding that they will. The final proposed amendments do not cure the numerous deficiencies that we described in greater detail in our 2013 comments on the Draft SED and our 2017 comments on the Revised Draft SED (TBI et al 2013; NRDC et al 2017). We incorporate by reference all of those prior comments here. Further, we explain in these comments regarding the July 6, 2018 revisions that the final, proposed amendments are deficient for the following reasons:

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- The best available scientific evidence indicates that San Joaquin inflows to the Delta must be in the range of 50-60% of unimpaired flows (UIF) from the entire San Joaquin basin in order to stabilize declining salmonid populations and recover them to viable levels (e.g., SWRCB 2010; CDFW 2013), whereas the proposed amendments would cap the required percentage of UIF at 50% and require initial flows of 40% UIF from three of the San Joaquin's tributaries. There is no basis for finding that flows below 50% UIF will result in anything but declining populations – and the resulting adaptive range is set too low to elucidate the benefits of flow conditions for native fish populations, including salmonids (CDFW 2013; USDOJ 2013).

**Accordingly, and as we have noted numerous times in our prior comments, the SWRCB should require initial flows of at least 50% of unimpaired flows and modify the range to include flows above 50%. Table 3 and the Program of Implementation in Appendix K should be revised to incorporate this minimal level of protection for the natural production of viable native fish populations in the San Joaquin River watershed, including as those fish migrate through the Delta.**

- There are no proposed flow or other water quality requirements for the July – September or November – January period. The proposed amendments and Final SED anticipate that temperature may be a concern in the summer period, but instead of setting minimum requirements for those months, the SWRCB proposes to further degrade flow conditions during the February – June period by allowing a portion of the required winter – spring flows to be shifted to later in the year, on the recommendation of the Stanislaus, Tuolumne and Merced Working Group. The updated statement in Table 3, that “[f]lows provided to meet these numeric objectives shall be managed in a manner to avoid causing significant adverse impacts to fish and wildlife beneficial uses at other times of the year,” is insufficient to achieve this purpose and insufficient to actually protect fish species.

**As a result, having acknowledged that flow and other water quality conditions throughout the year may prevent attainment of Plan objectives, the SWRCB should adopt minimum flow requirements for all months, and not allow a portion of required February – June flows to be shifted outside of those months. The SWRCB should also prioritize the development and adoption of coldwater habitat protection objectives for the Stanislaus, Tuolumne and Merced Rivers and a Program of Implementation to achieve those objectives.**

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- The adaptive management process is insufficiently developed and will not ensure that the beneficial uses are protected and that decisions are based on sound science and input from the full range of affected parties. As proposed, the Stanislaus, Tuolumne and Merced Working Group (STMWG) would lack necessary expertise, participation by important stakeholders, and opportunities for public input.

Accordingly, the STMWG should include **a chair, and independent scientific experts** with relevant expertise and experience in aquatic ecosystems, hydrology, water quality, and operations, appointed by the SWRCB (in consultation with the Delta Science Program and considering nominations by interested parties), as well as dedicated representation of both environmental and fishing stakeholder groups. Any recommendations by the STMWG to adjust the required percentage of UIF in a given year must be based on **findings that the proposed change would better achieve the biological goals adopted by the SWRCB for the Bay-Delta WQCP, and would not harm fish and wildlife beneficial uses.**

In light of this major deficiency, the language on page 30 of Appendix K should be revised to read:

*The State Water Board may approve adaptive adjustments to the flow requirements as set forth in (a) – (d) below on an annual or long-term basis if information produced through the monitoring and review processes described in this program of implementation, or other best available scientific information, indicates that the change for the period at issue will satisfy the following criteria for adaptive adjustments: (1) it will be sufficient to support and maintain the natural production of viable native San Joaquin River watershed fish populations, including as those fish migrate through the Delta, and the doubling of natural production of Chinook salmon from the average of 1967-1991, consistent with provisions of State and federal law; (2) it will meet any existing biological goals approved by the State Water Board; and (3) it will not degrade conditions for fish and wildlife beneficial uses from conditions existing at the time of the proposed adaptive adjustments.*

The language on page 32 of Appendix K should be revised to read:

Stanislaus, Tuolumne and Merced Working Group

*The State Water Board will establish a STM Working Group to assist with assessment of the implementation, monitoring and effectiveness of the February through June LSJR flow requirements. Specifically, the State Water Board will seek recommendations from the STM Working Group on biological goals; procedures for implementing the adaptive methods described above in order to*

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*most effectively achieve the biological goals; annual and long-term adaptive operations plans; and the SJRMEP, including special studies and reporting requirements. Each of these activities is described in more detail below.*

*The State Water Board will appoint a chair and members with expertise in fisheries management, hydrology, operations, and/or monitoring and assessment needs, who are not affiliated with stakeholders in the San Joaquin basin. Local expertise in these topics as they concern the LSJR, Stanislaus, Tuolumne, and Merced Rivers will also be considered in appointing STM members. Similarly, the Board will seek participation in the STM Working Group by representatives of the following entities who possess expertise and experience in one or more of the topical areas identified above: the DFW; NMFS; USFWS; US EPA; water districts on the Stanislaus, Tuolumne, and Merced Rivers; and NGOs representing environmental, recreational fishing, and commercial salmon fishing interests. The STM Working Group will also include State Water Board staff and may include any other persons or entities the Executive Director determines to have appropriate expertise. Subgroups of the STM Working Group may be formed as appropriate and State Water Board staff may also initiate activities in coordination with members of the STM Working Group.*

- The Final SED anticipates that actual inflow from the San Joaquin basin to the Delta will significantly exceed the minimum flows required in the proposed amendments in certain years; in other words, flow conditions – and benefits to fish and wildlife beneficial uses – are expected to be better than what would occur if only the minimum requirements were achieved (Final SED at F.1-75, F.1-76, F.1-77). This is certain not to be the case unless specific actions are taken to prevent diminishment of actual flows. Past experience shows that changes in operations, diversions, and storage capacity will occur during the implementation period, increasing the frequency with which actual inflows approach levels at or near the minimum requirements. The Final SED is deficient in not anticipating these changes and addressing their potential impacts on the desired level of protection of fish and wildlife beneficial uses.

**The SWRCB must develop a minimum long-term average flow requirement in order to maintain the actual flows and associated benefits for fish and wildlife beneficial uses that modeling in the Final SED anticipates will occur during implementation of the WQCP.** For instance, if the minimum annual flow requirement for the February – June period is 40% of unimpaired flow, as currently proposed, then the minimum six year average requirement would be 47% for the Tuolumne River and 44% for the Merced and Stanislaus Rivers (see 1922-2003 average percent of UIF, from “Feb-Jun Flow Comparison” sheet in the State Water Board’s Water Supply Effects Model output file WSE\_Model09132016.xlsm, September 2016). A six-year average is

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recommended because it (a) approximates the length of two generations of Chinook salmon; (b) is long enough to allow a reasonable range of hydrological conditions; and (c) provides ample flexibility for the STM Working Group, the Executive Director and the Water Board to determine how water should be applied to environmental and other uses across years.

For example, such a new requirement might be expressed in the following terms:

Table 3, Lower San Joaquin: Maintain average annual flows, on a six year rolling average, of [x]% of unimpaired flow from the Stanislaus River, [y]% from the Tuolumne River, and [z]% from the Merced River.

Program of Implementation, Flow Requirements for February through June, page 29: In addition to providing the required annual minimum flows in every year, the six year rolling average February – June proportion of unimpaired flow may not be less than the 1922-2003 average of the WSE-modeled average actual February – June flow divided by the unimpaired February – June flow. Nothing in this provision is intended to increase required annual flows above the top end of the adaptive range specified in Table 3.

To ensure that such a requirement is developed, the following language should be added to Appendix K:

*Actual inflows from the San Joaquin basin, and the benefits to fish and wildlife uses associated with them, are anticipated to significantly exceed the regulatory minima for San Joaquin inflow to the Delta established in Table 3. Changes in operation, storage and diversion capacity, and other management actions could substantially diminish these flows. Prior to the next triennial review, the SWRCB will consult with the Delta Science Program, the STM Working Group, and other interested parties regarding the development of new objectives and tools, including a long-term average requirement, to ensure that fish and wildlife beneficial uses are not degraded by diminishment of actual flows below levels anticipated in the modeling analysis in the Final SED. Until such new objectives are developed and adopted, any significant decrease in actual flows, relative to those anticipated in the Final SED, as a result of operational or capacity changes shall serve as a trigger for adaptive management recommendations by the STM Group, including changes within the adaptive flow range to offset such decreases.*

In summary, the final proposed amendments and final proposed SED do not cure the many deficiencies we noted in our prior comments and will not maintain viability or achieve required restoration of salmonid populations, or protect downstream water quality, habitat values, or populations of other native fishes in the lower San Joaquin, Stanislaus, Tuolumne, and Merced Rivers or downstream. Furthermore, the adaptive

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management decision-making process lacks critical detail, participation, and expertise, and the impacts of changing operations and capacity on expected flow benefits need to be directly addressed. In order to adequately protect fish and wildlife beneficial uses, we urge the SWRCB to require a higher minimum annual percentage of UIF, set minimum flow requirements in all months, improve the adaptive management process, and develop measures, such as a long-term average flow requirement, to ensure that actual flows are not significantly decreased relative to those that serve as inputs into the Water Board's evaluation of biological benefits. Because the changes to Appendix K proposed in this letter are within the range of alternatives that the Board has analyzed in the SED, no additional analysis should be required for the Board to adopt these changes.

In light of these deficiencies, and as described in detail in our prior comments, the proposed final amendments and SED are arbitrary and capricious and violate the Porter-Cologne Water Quality Control Act, Section 5937 of the California Fish and Game Code, the California Endangered Species Act, and the public trust, among other laws critical to protecting the our state's water quality, fisheries, imperiled species, and ecosystems.

Sincerely,



Gary Bobker  
The Bay Institute



Ben Eichenberg  
San Francisco Baykeeper



Doug Obegi  
Natural Resources Defense Council



Rachel Zwillinger  
Defenders of Wildlife

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U.S. Department of Interior (USDO I). 2013. Comments regarding the Substitute Environmental Document in Support of Potential Changes to the Bay-Delta Water Quality Control Plan: San Joaquin River Flows and Southern Delta Water Quality.

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**From:** Gary Bobker <bobker@bay.org>  
**Sent:** Friday, July 27, 2018 11:42 AM  
**To:** LSJR-SD-Comments@waterboards.ca.gov; WQCP1Comments  
**Subject:** Comment Letter – Revisions to Proposed Bay-Delta Plan Amendments  
**Attachments:** TBI et al comments on Phase 1 amendments and final SED 72718.pdf

**Categories:** Red Category

Jeanine,

attached are the comments of the Bay Institute, San Francisco Baykeeper, the Natural Resources Defense Council, and Defenders of Wildlife on the revisions to the proposed Phase 1 Bay-Delta WQCP amendments.

cheers,

Gary

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