

State Water Resources Control Board

TO: File

FROM: 
Eileen Sobeck
Executive Director
EXECUTIVE OFFICE

DATE: February 22, 2019

SUBJECT: RESOLUTION NO. 2018-0059, ADOPTION OF AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY/SACRAMENTO-SAN JOAQUIN DELTA ESTUARY (BAY-DELTA PLAN) AND FINAL SUBSTITUTE ENVIRONMENTAL DOCUMENT: MINOR, NON-SUBSTANTIVE MODIFICATIONS

On December 12, 2018, the State Water Resources Control Board (State Water Board) adopted amendments to the Bay-Delta Plan (Plan Amendments). The State Water Board's Division of Water Rights transmitted the Plan Amendments and the administrative record to the Office of Administrative Law (OAL) as required by Government Code section 11353. Division of Water Rights staff has identified minor clerical errors that are appropriately addressed through a non-substantive modification.

The State Water Board approved the Plan Amendments via Resolution No. 2018-0059. Resolved paragraph 4 of the adoption resolution authorizes the Executive Director to "make minor, non-substantive modifications to the language of the Plan Amendments or the supporting documentation, if the State Water Board, State Water Board staff, or OAL determines that such changes are needed for clarity or consistency...." Consistent with resolved paragraph 4, the Plan Amendments shall be modified as indicated below.

The Plan Amendments language is contained in Appendix K of the State Water Board's Substitute Environmental Document (SED). Every page number referenced below is the page of Appendix K of the Final SED considered by the State Water Board on December 12, 2018.

- Page ii, -- An underline was mistakenly added in the Table of Contents to the heading "D. Monitoring and Special Studies Program." Since the language is not a revision to the Bay-Delta Plan, the underline will be removed as follows:

D. Monitoring and Special Studies Program

The removal of the underline, as depicted above has no substantive effect, is minor, and provides clarity.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

- Pages iii, 67, 68, and 70 - "Table 7" should be renumbered as "Table 5." Using **bold-double underline** to show the addition and ~~**bold-double strikethrough**~~ to show the deletion, the modified table number is:

Table ~~7~~5

This table number will be underlined in the corrected Appendix K, as it is new plan amendment language. The modification has no substantive effect, is minor, and provides clarity.

- Page iv – An ampersand was inadvertently shown as both added and ~~deleted~~ in the name of the "California Department of Fish&and Wildlife" in the list of Acronyms and Abbreviations. The addition of the name of the California Department of Fish and Wildlife is wholly new, so there should be no deleted ampersand within the text. The modified acronym is:

DFG or DFW California Department of Fish and Wildlife (formerly
California Department of Fish and Game)

Since the acronym text is correctly identified as new, and the addition and then deletion of the ampersand has no effect, the modification is minor, and provides clarity.

- Page 1 – In the first sentence of the last paragraph, "control the" was inadvertently double-underlined as if it were a change, even though it is the original language. The modified language is:

The State Water Resources Control Board (State Water Board) has previously adopted water quality control plans and polices to protect ~~the~~ water quality and ~~to~~ control the water resources that affect the beneficial uses of the Bay-Delta Estuary.

Only "the" and "to" will be shown as deleted in the corrected Appendix K, as they are the only changes to the sentence. The removal of the underline beneath "control the" has no substantive effect, is minor, and provides clarity that no change was made.

- Page 1 – In the fifth and sixth sentences of the last paragraph, "plan" was capitalized as "Plan," but the change from a lowercase to an uppercase P was not identified in ~~strikeout~~ and underline. To maintain internal consistency in Appendix K, "plan" will be reverted to lower case as follows:

The State Water Board periodically will review this plan pursuant to Water Code section 13240 to ensure that it provides reasonable protection for the designated beneficial uses.¹ 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.

This reversion of the "p" to lowercase has no substantive effect, is minor, and provides clarity.

- Page 4 – An “A” was added to the second sentence of the first full paragraph. Using **bold double-underline** to show the addition, the modified sentence is:

~~Like all~~ **A** water quality control plans, ~~this plan~~ consists of: (1) beneficial uses to be protected; (2) water quality objectives for the reasonable protection of beneficial uses; and (3) a program of implementation for achieving the water quality objectives.

The addition of a determiner has no substantive effect, is minor, and provides proper sentence structure.

- Page 4 – A comma was added in the first sentence of the last paragraph. Using **bold double-underline** to show the addition, the modified sentence is:

Most of the objectives in this ongoing plan are being, **and will continue to be,** implemented by assigning responsibilities to water right holders because the parameters to be controlled are primarily impacted by flows and diversions.

The addition of a comma has no substantive effect, is minor, and provides clarity.

- Pages 5 and 6 – After a new footnote number 2 was added, Microsoft Word automatically renumbered the subsequent footnotes of existing text. Using ~~bold double-strikeout~~ to show the deletions and **bold double-underline** to show the additions, the modified superscript numbers in the body of the text and the corresponding footnotes are:

Page 5, second sentence under *C. Legal Authority* and bottom of the page:

The Regional Water Boards have primary responsibility for formulating and adopting water quality control plans for their respective regions (Wat. Code § 13240), but the State Water Board also is authorized, under Water Code section 13170, to adopt water quality control plans in accordance with the provisions of section 13240 et seq^{~~23~~}.

^{~~23~~} The State Water Board also has authority to adopt State policy...

Page 5, last sentence and bottom of the page:

Assuming the USEPA has authority under the Clean Water Act to approve the objectives for flow and operations, the State Water Board believes that the USEPA could not adopt standards for these parameters under the Clean Water Act.^{~~34~~}

^{~~34~~} The State Water Board reserves its arguments regarding the USEPA's...

Page 5, last sentence continuing to Page 6, first sentence, and bottom of page 6:

If the USEPA attempted to adopt such standards, it could fundamentally interfere with the State's water allocation authority under section 101(g) of the Clean Water Act.^{~~54~~}

⁴⁵ The Supreme Court, in *PUD No. 1 of Jefferson County v. Washington...*

Members of the public would not have been misled as the new footnote was properly identified as new text and the subsequent renumbering of existing text has no substantive effect, is minor, and provides clarity.

- Page 6 – A new footnote number 6 was added and correctly shown, in underline, as new text. However, the underline of the new text inadvertently excluded the superscript footnote number. Using **bold double-underline** to show the addition, the modified footnote is:

⁶The 2009 Delta Reform Act declared that State policy for the Delta must serve two “coequal goals”: providing...

Members of the public would not have been misled as the new footnote was properly identified as new text and the identification of the superscript footnote number as also being new text has no substantive effect, is minor, and provides clarity.

- Page 8 – A period at the end of the first full paragraph was not shown as an addition. Using **bold double-underline** to show the addition, the punctuation is:

Future State Water Board activities therefore should be responsive to the impacts of climate change and provide timely response and guidance to water resources agencies, consistent with the Water Quality Control Plan, as they submit plans and requests to process applications for water conveyance facilities and flow control structures, ~~such as the current South Delta Improvements Project or potential future conveyance structures such as a Delta peripheral canal.~~

The addition of the period has no effect as it replaces the period at the end of the deleted phrase.

- Pages 13, 28, 34, and 56 – After the new footnote number 6 was added (as discussed above) and the previous footnote 6 was deleted as shown in ~~strikeout~~ on page 9, Microsoft Word continued to automatically number the subsequent footnotes as if deleted footnote 6 was footnote 7, etcetera. Using **bold double-underline** footnotes 8, 9, 10 (which are footnotes to new text correctly identified in either underline or double-underline in Appendix K) are corrected to 7, 8, and 9, respectively, in both the body of the text and footnotes as follows:

Page 13, first paragraph, second sentence, under *C. Water Quality Objectives for Fish and Wildlife Beneficial Uses*, and bottom of the page:

They also provide reasonable protection of fish and wildlife beneficial uses designated in the “Water Quality Control Plan for the Sacramento River Basin and San Joaquin River Basin” for the Stanislaus River, Tuolumne River, Merced River, and the San Joaquin River from the mouth of the Merced River to Vernalis, as well as those presumed to exist under the Clean Water Act.⁷

⁷ See 40 C.F.R. § 131.10(j).

Page 28, first sentence under *Implementation of February through June LSJR Flow Objectives* and bottom of the page:

By 2022, the State Water Board will fully implement the February through June LSJR flow objectives through water right actions or water quality actions, such as Federal Energy Regulatory Commission (FERC) hydropower licensing processes.⁸

⁸ To refine the implementation actions and provide for coordination...

Page 34, first full sentence and bottom of the page:

It shall also identify how unimpaired flows are calculated and adjustments to be made as updated information becomes available, such as DWR's Bulletin 120.⁹

⁹ Bulletin 120 is a publication issued four times a year...

Page 56, third sentence under *4. Narrative Objective for Brackish Tidal Marshes of Suisun Bay* and bottom of page:

In 2001 the Suisun Marsh Charter Group (SMCG⁴⁶¹⁰) was formed to develop a plan to balance the competing needs in Suisun Marsh.

⁴⁶¹⁰ The SMCG Principle Agencies include Suisun Resource Conservation...

Members of the public would not have been misled as the text in the body of Appendix K was properly identified as either new or existing and the renumbering of the superscript footnote numbers has no substantive effect, is minor, and provides clarity.

Page 17 – In Table 3, the last Interagency Station Number column entry for Western Suisun Marsh Salinity erroneously capitalizes the “s” in “Specified” and does not indicate the change in ~~bold double-strikeout~~ and bold double-underline. The Interagency Station Number language will be reverted as follows:

<i>Water supply intakes for waterfowl management areas on Van Sickle and Chipps islands</i>	<i>No locations specified</i>
---	-----------------------------------

This reversion of the “s” to lowercase has no substantive effect, is minor, and provides clarity.

Staff are directed to make the conforming changes to the language prior to transmittal to the Office of Administrative Law. Consistent with resolved paragraph 4, Board members are provided a copy of this memorandum.

cc: Board Members, Exec (all via email only)
Erik Ekdahl, DWR
Erin Foresman, DWR
Erin Mahaney, OCC
Tina Cannon Leahy, OCC
David Coupe, OCC