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California Water Alliance
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Hanford, CA 93232

TO: commentletters@waterboards.ca.gov

Dear California Water Resources Control Board:

RE: Comment Letter – 2016 Bay Delta Plan Amendment & SED

The full Board of the State Water Resources Control Board (“Board”) should require staff to terminate and begin anew its work on the Substitute Environmental Document of the 2016 Bay Delta Plan (“SED”) issued for public comment.

Ample public and expert testimony have been offered to impeach the justifications cited by staff to the Board regarding their recommendation and the draft language of the SED.

Specifically, the staff and head of the California Department of Water Resources (“DWR”) South Delta Branch provided the board compelling reasons to reject the draft SED. DWR testified in January’s hearing that the board’s SED proposal was “without evidence, [contained] incomplete scientific information, [was] ill-suited for real-time operations, and [was based on] unverified assumptions.” DWR further testified that net flow direction, not flow rate or water levels, was the only causative factor in salinity of Delta waters and that the SED’s stated benefits related to salinity factors in fish survival and habitat impacts were scientifically untenable.

DWR also identified a significant gap created by the order with respect to management and achievement of groundwater goals in areas affected by the SED, namely that the SED’s flow action would transfer to SGMA authorities groundwater depletion problems that do not currently exist and would aggravate existing groundwater depletion in various critically depleted or marginally depleted aquifers.

Further, DWR noted that the SED relied on real-time flow management data and decision-making criteria that is not presently available from either existing or future

proposed stream-flow measurement systems in the impacted area.

We concur with DWR's recommendation that the only reasonable action is withdrawal of the SED draft and starting anew with a fresh, accurate, and complete scientific basis.

DWR's testimony, conclusions and recommendations received significant and previously unavailable support upon publication in the *North American Journal of Fisheries Management*, a scientifically respected biosciences journal, of an independently peer-reviewed, 12-year study that staff did not consider as it wrote the SED draft.

The study, conducted with real stream-flow measurement data and actual fish counts on the Stanislaus River demonstrates that the SWRCB's SED proposal would provide no significant overall increase to fish populations. Rather, flows at the prescribed level required by the SED would kill target species or limit their migration as they traveled upriver to reach their spawning grounds or, for emerging smolt, descended the rivers to the ocean.

The study further notes that existing unimpaired stream flow requirements ordered by the board were instituted prior to completion of any scientific study of benefit in response to the authors' own initiation of pulse-flow regimens on the Stanislaus by their sponsor, a local irrigation district. In consequence, the Board's prior orders implemented on many rivers in Northern California, now becoming the subject of proposed changes under the SED, lacked necessary scientific basis for imposition and were, instead speculative and assumptive in nature.

The Board should note that, since those orders were made and pulse flow releases initiated, the populations and diversity of target species have declined further rather than reversed their negative trends, a result that concurs with the present study's findings.

These are serious discrepancies. They contradict the SED's named benefits intended from new actions, and they further demonstrate that even the Board's existing orders concerning unimpaired stream flows maintained by dam releases may be harming rather than helping threatened and endangered species, even contributing to their decline.

In combination with the testimony of DWR fisheries experts, the Board should order staff to withdraw the SED draft and start again with proper scientific justification to determine whether existing unimpaired stream flow management practices are beneficial to target species and are fairly applied in light of the harm done to fish, habitats, other wildlife and waterfowl, and to other users of water from the rivers affected by the SED.

We recommend that the Board reject the SED draft and call for a full CEQA-compliant environmental review that properly considers all environmental impacts of the proposed unimpaired flow requirements.

We further recommend that the Board reconsider its existing pulse-flow orders in light of the peer-reviewed and published FishBio study results and seek staff response regarding appropriate modifications to the Board's pulse flow and unimpaired stream flow orders that may be appropriate to avoid harm to target species and prevent further declines in threatened or endangered fish populations.

Respectively submitted,

A handwritten signature in black ink, appearing to read "Aubrey Bettencourt". The signature is fluid and cursive, with the first name being more prominent.

Aubrey Bettencourt
Executive Director
California Water Alliance