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Public Comment
2016 Bay-Delta Plan Amendment & SED
Deadline: 3/17/17 12:00 noon



March 16, 2017

via email: commentletters@waterboards.ca.gov

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814-0100

Subject: Comment Letter—2016 Bay-Delta Plan Amendment & RSED

Dear Ms. Townsend and Members of the State Water Resources Control Board:

Restore the Delta advocates for local Delta stakeholders to ensure that they have a direct impact on water management decisions affecting the water quality and well-being of their communities, and water sustainability policies for all Californians. We work through public education and outreach so that all Californians recognize the Sacramento-San Joaquin Delta as part of California's natural heritage, deserving of restoration. We fight for a Delta with waters that are fishable, swimmable, drinkable, and farmable, and able to support the health of the San Francisco Bay-Delta estuary, and the ocean beyond. Our coalition envisions the Sacramento-San Joaquin Delta as a place where a vibrant local economy, tourism, recreation, farming, wildlife, and fisheries thrive for future generations as a result of resident efforts to protect our waterway commons.

The Environmental Justice Coalition for Water (EJCW) works within a Community-to-Capital framework, connecting the most pressing needs of our disadvantaged community partners to our network of partners and agencies statewide. Since 1999, EJCW's work has been rooted in the communities most affected by environmental injustice. Issues and solutions are identified through regional chapters and statewide work groups. EJCW is positioned in the state capital, in order to connect communities

with state agencies to bring about change multilaterally through advocacy, education, training, litigation, community organizing, and capacity-building, and by providing technical assistance. EJCW aims to effectively influence the intersections of water justice and environmental justice, community health, and human rights issues from community to global levels.

This letter conveys to the State Water Resources Control Board (SWRCB) our comments on the above referenced 2016 Bay-Delta Plan Amendment and Recirculated Substitute Environmental Document (SED). Our comments are summarized below.

Our comments incorporate by reference recent comment letters filed in the public record regarding the 2016 Bay-Delta Plan Amendment and RSED by South Delta Water Agency, California Sportfishing Protection Alliance, The Bay Institute, California Water Impact Network, and AquaAlliance.

The Bay-Delta Plan Amendment and RSED Present Mixed Messages

Restore the Delta finds that the draft recirculated substitute environmental document (Draft RSED) and its accompanying draft water quality control plan amendments to San Joaquin River flow and south Delta salinity objectives (Appendix K of the Draft RSED) present a bundle of mixed messages.

First and foremost, we find it difficult to read the Draft RSED and Appendix K without relating it in some fashion to the California WaterFix's water right change petition (Petition) request by the California Department of Water Resources and the United States Bureau of Reclamation to the State Water Board seeking north Delta points of diversion for State Water Project and Central Valley Project water rights. If granted these new diversions would result in fundamental changes to in-Delta hydrodynamics, water quality, Delta inflow, Delta outflow, and exports by the Petitioners. But despite the dramatic artificial changes to the Bay-Delta Estuary that would be caused by a decision to grant the Petition, the Draft RSED and Appendix K treat the WaterFix as merely one of many "cumulative" projects relegated to its sole mention and micro-second scale analysis in Appendix K and the Draft RSED.

Such treatment is an insult to the California public in general, and the Delta's public in particular. From the standpoint of CEQA law, this insult is a failure to fully disclose the impacts of the proposed action in this instance because it all but ignores the largest water facility planned for the Delta, along with the facility's ability to remove substantial volumes of water from the Delta. The Draft RSED and Appendix K fail to explain the relationship between these two actions and, in so failing, render the impact analyses valueless as decision making tools. They fail to inform the public about the relationship of the Board's proposed changes to San Joaquin River flow and south Delta salinity objectives in light of Tunnels operations that would occur under California WaterFix.

A second mixed message stems from the Board's bifurcation of the two amendments in the Draft RSED and Appendix K from the rest of Bay-Delta Estuary water quality control planning. We are aware this decision was made many years ago, but it is proving now to be a fateful one in which the Board piecemeals its own water quality control planning process for reasons that are at best hazy and unexplained and at worst fatuous. This is the first time in the Water Board's history that it has treated planning for Delta water quality in segmented fashion; the 1978, 1995, and 2006 plans each treated the Delta as a comprehensive whole for planning purposes. The logic of separating Delta flows from various sources at this time escapes us as the public is left with a truly incomplete picture of outcomes and potential impacts on water quality.

A third mixed message is that the Draft RSED leaves highly ambiguous just which beneficial uses the State Water Board is planning for. We ultimately think, however, that this Draft RSED and Appendix K are about benefiting exporters at the expense of senior water right holders upstream and downstream in the San Joaquin River watershed, with both increased flows and improved water quality. We are deeply suspicious that this outcome is perhaps cynically intended under the guise of improving flows for Fall Run Chinook Salmon and Central Valley Steelhead. At key times of year, the San Joaquin River downstream of Vernalis is almost entirely exported from the Delta. There is no assurance whatsoever that the ecological benefits of proffering and enforcing inflow criteria at Vernalis would provide any contribution to Delta outflow and that indicator's known ecological benefit. What is to stop all or much of fresher and larger San Joaquin flows from just being exported at Banks and Jones pumping plants? Put another way, there are no comparable instream flow criteria for the San Joaquin, Old, and Middle rivers that ensure that such flows will reach Antioch and Chipps Island in the western Delta. While Appendix K indicates that outflow decisions will fall later in the bifurcated process, a later proposal and hearings are not a substitute presently for ensuring that needed freshwater flows put into the system will not be exported but will rather provide much needed outflow for the estuary.

Adding to our suspicion is the Board's now long-standing proposal to relax south Delta salinity objectives by about 42 percent (from 700 to 1000 dS/cm). The RSED fails to justify relaxation of these objectives as either appropriate or necessary. It merely recounts a partial chronology of events describing the challenge of managing south Delta salinity before briefly outlining the proposed relaxation and the Board's proposal to regulate south Delta river *segments* as average values rather than continue with enforcement at compliance point locations applicable uniformly throughout river reaches. This relaxation is tantamount to permitting degradation and has not been justified as required, either as a reasonable action, or as a matter of benefits of the action exceeding costs.

The fourth mixed message we find relates to the Water Board's approach to this process. Now that the Board has bifurcated the water quality control plan, what process will the Board use to put the pieces back together in a coherent comprehensive whole? When will that occur? Will this recombination be part of Phase 2, and, if so, at what

point would interrelationships between Phases 1 and 2 not already evaluated under the California Environmental Quality Act be reviewed? Or will they be reviewed at all?

The State Water Board Fails to Incorporate and Apply California's Statewide Water Policy Framework in Developing the Revised and Recirculated Phase 1 Flow and Salinity Objectives

In general, we observe a persistent unwillingness of state water agencies to acknowledge and apply the broad policy principles that the State Legislature has adopted, and sitting governors have signed into law, that make up statewide water policy. The principles informing these policies are intended to guide actions of state water agencies. Yet the agencies persist, if they acknowledge these policies at all, in applying them narrowly. Or, if they do not acknowledge them in their policy and planning documents, they interpret statutory language using narrow economic or engineering criteria. By doing so, these agencies often wind up employing methodologies or proposing and advocating actions that on their face conflict with these clear and protective statewide water policies.

These statewide water policies, taken as a unified whole and guide to state agency action, provide agencies with authority to establish, implement, construct, and operate a range of solutions to California's water problems. In many cases, by applying the policies California has, at least some of these problems may yet be solved.

The Bay-Delta Estuary is an over-appropriated common pool resource plagued by California's abject failure to protect all beneficial uses of water—human and non-human alike—according to the needs of its most sensitive beneficial uses.¹ This failure violates the state's public trust obligations, and the present amendments in Appendix K of the RSED would continue this record of failure. The proposed amendments fail to plan for all beneficial uses through and in the Delta (and called for in the Delta Reform Act) by ignoring the overarching framework of state water policy. This framework includes:

- Achieving the coequal goals of Water Code Section 85054 of enhanced ecosystem health and water supply reliability.

¹ State Water Resources Control Board, *Water Rights Within the Bay-Delta Watershed*, September 26, 2008, presented to Delta Vision Blue Ribbon Task Force, October 17, 2008. Accessible at http://deltavision.ca.gov/BlueRibbonTaskForce/Oct2008/Response_from_SWRCB.pdf; California Water Impact Network, California Sportfishing Protection Alliance, and AquAlliance, *Testimony on Water Availability Analysis for Trinity, Sacramento, and San Joaquin River Basins Tributary to the Bay-Delta Estuary*, submitted by Tim Stroshane, October 26, 2012, accessible at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/comments111312/tim_stroshane.pdf; and Theodore E. Grantham and Joshua H. Viers, "100 Years of California's water rights system: patterns, trends and uncertainty," *Environmental Research Letters*, 9(2014), accessible at https://watershed.ucdavis.edu/ciles/biblio/WaterRights_UCDavis_study.pdf.

- Water Code Section 85023, stating: “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 Delta.”
- Water Code Section 85021 requiring reduced reliance on the Delta in meeting California’s future water supply needs (and whose strategy specifies “investing in improved regional supplies, conservation, and water use efficiency”).
- Water Code Section 12200 *et seq.*, (the Delta Protection Act of 1959) requiring that neither state nor federal water projects should divert water from the Delta to which Delta users are entitled.
- Achieving the fish, and specifically salmonid, abundance goals of California Fish and Game Code Sections 5937, 5946, and 6902(a), and the Central Valley Project Improvement Act of 1992, Section 3406(b)(1).
- The federal Clean Water Act requiring that the chemical, physical and biological integrity of the nation's waters (including those of the Bay-Delta Estuary) be protected, that the navigable waters of the United States (including those of the Estuary) not be degraded, and that the water quality standards for the Estuary be based on the “most sensitive” beneficial use among those occurring in a particular water body.
- The state Porter-Cologne Water Quality Control Act.
- State and federal Endangered Species Acts.

While the coequal goals are identified in Appendix K and the RSED, no evidence is provided to show that proposed inflow standards or a relaxing of South Delta salinity standards will enhance ecosystem health. As water exports are not addressed in these documents, and water rights hearings will occur after Phase I is completed, issues regarding the reasonable use of water by water exporters are not addressed. Furthermore, Water Code Section 85021 requiring reduced reliance on the Delta in meeting California’s future water needs is not discussed in depth as a strategy for enhancing ecosystem health within the Delta. In addition, that the regulation of water quality standards for the Estuary is to be based on the “most sensitive” beneficial use, as required by the federal Clean Water Act, seems to have been ignored in the proposed resetting of the South Delta salinity standard.

Environmental Justice, Human Right to Water, Beneficial Uses of Water

Other statewide policies to be carried out by state water agencies have been intended by the Legislature to supplement statewide water policy, including the Human Right to

Water and statewide environmental justice policies. These policies have been completely ignored in Appendix K.

Additionally, a water quality control plan must establish beneficial uses, water quality objectives, and a program of implementation to achieve those objectives. (Water Code § 13050(j).) The proposed amendment to the 2006 Bay-Delta Plan incorporates the 2006 Plan's beneficial uses, which were carried over from the 1978 Delta Plan, the 1991 Bay-Delta Plan, and the 1995 Bay-Delta Plan. (2006 Bay-Delta Plan, p. 8.) Further, the State Board is subject to Water Code section 13241, which provides in part that the Board must consider "past, present, and probable future beneficial uses of water" when establishing water quality objectives that ensure the reasonable protection of all beneficial uses. (see, *City of Tracy v. California State Water Resources Control Board* (Sacramento Superior Court Case No. 34-2009-80000392).)

The State Board is concurrently considering statewide adoption and establishment of three new beneficial uses: subsistence (SUB), tribal subsistence (T-SUB), and tribal cultural use (T-CUL) in Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California. Although these beneficial uses may be adopted statewide, they would still need to be recognized within regional or state Basin Plans, where the Regional Water Board or State Water Board may designate waters within the respective region as having one or more of the beneficial uses. (Draft Staff Report, Part 2 of The Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries Of California, SWRCB Division of Water Quality, January 3, 2017.)

In recognition of this on-going process, we urge the State Board to recognize and adopt the three proposed beneficial uses (subsistence [SUB], tribal subsistence [T-SUB], and tribal cultural use [T-CUL]) into the current amendment to the 2006 Bay-Delta Plan. However, even if the Board chooses not to formally adopt the new beneficial uses, these new beneficial uses fall within the Water Code's instruction that all "probable future beneficial uses of water" be considered in the establishment of water quality objectives to ensure the reasonable protection of those uses. So far, no evidence of a reasonable protection determination has been offered, especially in light of the probable future beneficial uses of subsistence, tribal subsistence, and tribal cultural use.

Further, the new beneficial uses specifically target environment justice communities that rely on fish populations for daily consumption, as well as long-standing cultural use. Existing State policies protect EJ communities through encouraging the identification of problems and solutions of affected communities—this update, so far, has missed an opportunity to identify and correct these disproportionate impacts.

Appendix K fails to identify, adhere to, or incorporate the Human Right to Water or California environmental justice policies. Water Code Section 106.5 states that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. The domestic use of water as the highest human beneficial use of water is linked to the Human Right to Water. Adhering

to and including these statewide policies is also directly tied to the Board's recent climate change resolution as it relates to the domestic use of water. The Board's climate change responses and actions can help all California residents adapt as smoothly as possible to inevitable impacts of climate change, including continuous provision of safe, clean, affordable, and accessible water for human uses and public health. Addition of the state's Human Right to Water Policy in the findings should result in parallel planning and policy opportunities where the State Water Board is to ensure that the human right to water applies. Such opportunities should include all water quality control plan updates (including that for the Bay-Delta Estuary), new and revised beneficial use designations, National Pollutant Discharge Elimination System programs, and any drinking water-related plans the Board works on.

The State of California defines "environmental justice" as: "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." (Cal. Gov. Code Sec. 65040.12, subd. (e).) The State Attorney General's office states that "fairness in this context means that the benefits of a healthy environment should be available to everyone, and the burdens of pollution should not be focused on sensitive populations or on communities that already experience its adverse effects." The State Attorney General adds, "environmental justice requires an ongoing commitment to identifying existing and potential problems, and to finding and applying solutions, both in approving specific projects and planning for future development." (California Government Code [C.G.C.] Sec. 11135(a).)

California's anti-discrimination statute further states:

"No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state." (*Id.*)

The State Attorney General's office states that, while this policy does not expressly include the phrase "environmental justice," in certain circumstances it can require agencies to undertake the same consideration of fairness in the distribution of environmental benefits and burdens called for in the state's definition of environmental justice. In addition, the State Attorney General's office notes that agencies "should evaluate whether regulations governing 'equal opportunity to participate' and requiring 'alternative communication services' (e.g., translations) apply. (See Cal.Code Regs., tit.22, secs. 9801, 98211.)" This will be essential in communicating Board programs and their climate change practices to an increasingly diverse California populace.

These laws and policies should be central to the overarching policy framework by which the SWRCB conducts its water quality control planning processes and its assessment of plan impacts and mitigation measures.

However, discussion of the Delta environmental justice community and the Human Right to Water is missing from Appendix K and the RSED. There is no identification of the Delta environmental justice community, discussion of potential impacts on the environmental justice community in relation to the proposed weakening of South Delta salinity standards, and no plan for mitigation of potential environmental or economic impacts.

According to the American Community Survey, 2010–2014, over 19% of all residents in San Joaquin County are living at the poverty level or below compared to 15% of the United States population. According to this same survey, 37% of San Joaquin County residents identify as race other than white, and 18% of San Joaquin County residents speak English less than well.² Roughly about 20% of San Joaquin County's population can be identified as part of the environmental justice community with pockets in or near the Delta, like zip code 95206, approaching environmental justice community percentages of nearly 50%. San Joaquin County's population in this period was roughly 650,000 people. Thus, roughly estimated, 120,000 San Joaquin residents could be identified as being members of the environmental justice community who would be impacted by water quality changes in the Delta as a result of implementation of proposed San Joaquin flows standards and relaxing of the South Delta salinity standards found in Appendix K and the RSED.

Moreover, Appendix K and the RSED do not consider, examine, or address water quality impacts for environmental justice community members who: 1) come in contact with Delta waters, such as subsistence fishers; 2) consume well water in the Delta or from adjacent aquifers; 3) consume Stockton municipal water from the Delta supply project; 4) or lose farmworker income from decreased crop yields due to increases in South Delta water salinity as described in comments by South Delta Water Agency.

Table 20 from the Delta Protection Commission's 2011 Economic Sustainability Plan shows that a 25% increase in salinity in the Delta will result in an 11% decrease in revenue per acre, and a 50% increase in salinity in the Delta will result in a 25% decrease in revenue per acre³. The proposed 42% relation of salinity standards for the South Delta will likely result in revenue decreases per acre that will fall within a range from 11% to 25%. Appendix K and the RSED do not examine the relationship between decreases in revenue per acre and job numbers for farmworkers, who are part of the Delta environmental justice community. No economic analysis has been completed as to what the financial impacts would be on the poorest segment of the population in the South Delta.

² American Community Survey, 2010-2014, Tables DP-02, DP-03, DP-05.
http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2016_sed/docs/sfb_ssjde_bay_delta/12162016_stroshane.pdf

³ October 10, 2011 Public Draft: Economic Sustainability Plan for the Delta. Page 131. Table 20

The State Water Board Fails to Justify Relaxation of the Interior South Delta Salinity Objectives

Attached, you will find a detailed chronology completed by Tim Stroshane to document key passages from 40 years of SWRCB rulings (and others, including two court decisions) concerning public discussion on South Delta salinity issues. This attachment confirms what Mr. John Herrick, General Manager of the South Delta Water Agency, told the Board at the December 16, 2017 public meeting in Stockton: that the SWRCB has not followed a process, or justified analytically why South Delta salinity objectives should be relaxed.

From our perspective, this lack of justification is troubling for a number of reasons. First, the Delta community at large is being told essentially to accept on blind faith that water quality will not be degraded, because a science-based justification for relaxing the standard has not been provided. But the provided drafts do not prove or justify that no significant degradation to South Delta water quality will occur. The lack of any scientific basis does not provide the type of transparency that constitutes good citizen-government interactions: trust with verification.

Second, the sizeable South Delta environmental justice community, which has not been identified in Appendix K or the RSED, would experience a disproportionate environmental and economic burden resulting from negative water quality impacts, as thousands of these residents fish for sustenance, work in farm-related employment, recreate in or near Delta waters, and/or drink water from groundwater wells fed by Delta waters or municipal water systems that draw water from the Delta.

Third, as a result of relaxation of South Delta salinity objectives, salinity, one of the primary growth factors for harmful algal blooms, will increase in the South Delta where such blooms became more prevalent during the recent drought.

Harmful Algal Blooms

Salinity, nutrient concentrations and ratios, light access and water clarity, temperature, and water stratification and residence time are all contributing growth factors in the production of toxic algal blooms. Health impacts from microcystis bacteria found in algal blooms ranges from stomach aches to pneumonia, while other toxic bacteria can lead to liver and kidney inflammation in humans, and even death in animals.

At a September 16, 2016 Delta Protection Commission meeting, Dr. Peggy Lehman, with the California Department of Fish and Wildlife, presented her more recent findings regarding harmful algal blooms in the Delta and answered audience questions regarding the recent proliferation of such blooms. During her presentation, Dr. Lehman presented research that microcystins exceeded safe levels for drinking water for

children under the age of three starting in 2014 near Delta toxic algal bloom sites.⁴ When asked by the audience if surface water contaminated with microcystins could percolate into groundwater, contaminating those supplies, Dr. Lehman answered that such studies had not yet been completed. Consequently, it is not known if microcystins can contaminate groundwater wells adjacent to the Delta. It is known, however, that drinking water supplies contaminated with microcystins cannot be treated for safe consumption.

Dr. Lehman also indicated that microcystins present in irrigation water can contaminate crops and that farmers in other western states have had to switch to alternative irrigation water. Switching irrigation water supplies would be impossible for South Delta farmers who pump water directly from the Delta to irrigate their crops.

Dr. Lehman also described how microcystis blooms adversely affect phytoplankton, zooplankton, fish biomass and community composition of fish population in the Delta.

Appendix K and the DSED do not thoroughly examine the conditions for the proliferation of toxic algal blooms when Delta inflows would be at the lower 30% range, or when temporary change petitions are used again during times of extreme drought to override San Joaquin River flow standards set in the revised Delta Water Quality Plan Update. When flows are at their lowest, nutrient ratios, water clarity, temperature, and residence time increase, thereby contributing to the production of algal blooms. This coupled with a weakened salinity standard in the South Delta could increase the frequency of blooms of microcystis and other harmful toxic bacteria.

As with its treatment of a weakened South Delta salinity standard, Board staff have failed to produce science-based documentation that during times of low inflows from the San Joaquin River and a weakened salinity standard, toxic algal blooms will not proliferate. In fact, if the Board wanted to ensure that enhanced ecosystem health and water supply reliability were to be met as required under Water Code Section 85054, the RSED and Appendix K would contain flow criteria and salinity reductions for water quality improvements so as to reduce the number of toxic algal blooms during dry periods.

As with a weakened salinity standard for the South Delta, the sizeable South Delta environmental justice community, which has not been identified in Appendix K or the RSED, will experience a disproportionate environmental burden resulting from water quality impacts that could lead to the proliferation of toxic algal blooms. Microcystis can create a public health threat for the thousands of these residents who fish for sustenance, work in farm related employment, recreate in or near Delta waters, or drink water from groundwater wells adjacent to Delta waters.

Governor Brown and Voluntary Agreements

⁴ Microcystis in the Delta. Peggy Lehman, Ph.D. Report to the Delta Protection Commission, September 2016. http://www.delta.ca.gov/files/2016/10/091516_Item_8_DrLehman.pdf

In a letter to SWRCB Chair Felicia Marcus⁵, Governor Brown urged the State Water Resources Control Board to fast track flow agreements between water users on the San Joaquin and Sacramento River watersheds as a way to bypass the public process which the Delta Water Quality Plan Update entails.

Presently, a voluntary agreement process is underway as described on pages 36 and 37 of Appendix K.

While Restore the Delta has pushed for a comprehensive update to the Delta Water Quality Plan for the both the San Joaquin and Sacramento Rivers before moving forward with any further processes for permitting the Delta Tunnels, Governor Brown's request to the State Water Resources Control Board was disingenuous at best. The water needed to fill the tunnels will have to come from the watersheds of both rivers upstream of the Delta. Without additional water from these river systems, the tunnels do not pencil out economically, requiring multi-billion dollar Federal and State tax subsidies reported on over the last six months.

While representatives involved in the voluntary agreement process are charged with considering and negotiating inflows for the Delta without consideration for the Delta tunnels, such negotiations are problematic at best, if not truly impossible. First, Friant Water Authority is not at the table and upper San Joaquin River flows above the confluence with the Merced River have been omitted from the Water Quality Plan Update. Second, water exporters are not being asked by the Board to participate in any shared sacrifice to account for past harms from water exports to Delta ecosystems. Consequently, a limited group of tributary water users are burdened with making the Delta environmentally whole, thereby generating resistance on their part to ensure adequate inflow for the Delta. Third, Delta interests are not at the table because such secret settlement processes generally result in the most powerful groups dictating the negotiations – a losing position for smaller Delta water districts.

Moreover, the Governor's letter to Chair Marcus continues a long and problematic tradition of governors interfering with State Water Board deliberations and decisions. Pete Wilson rejected a draft water rights decision in 1993 after water contractors complained about its effects on them. A voluntary agreement to promote salmon friendly flows on the San Joaquin River for 12 years failed to protect salmon.

On the surface, Governor Brown's letter elucidated an understanding that Delta flow and water quality objectives should be considered as a unitary whole, unlike what the Board has proposed. On this narrow point, Restore the Delta actually agrees with the Governor. But our agreement ends there.

The Governor's motivations to accelerate voluntary agreements, now embraced in

⁵Governor Brown's Letter to State Water Resources Control Board Chair, Felicia Marcus.
<http://www.restorethedelta.org/wp-content/uploads/2016/09/SWRCB-gov-letter.pdf>

Appendix K, go beyond his stated wish to urgently “improve our aquatic ecosystems” and are truly a mechanism to benefit his treasured tunnels project.


Chair Marcus and Board Member Tam Doduc have stated their willingness to consider voluntary agreements for appropriate flow objectives in the Tunnels proceeding now under way—but only after all the evidence submitted by all parties to the proceeding is in and has been vetted.

Clearly, Governor Brown hoped to short-circuit the water board’s vetting process with this letter as have California’s governors before him. The resulting “voluntary agreement” negotiations will become a water grab from all the rivers of the Central Valley for the water exporters. It is a shame that Governor Brown does not recognize the true environmental and economic value of a healthy San Francisco Bay-Delta estuary, but only the value of water exported for profit. The Delta Water Quality Plan Update should only be conducted as a public process held up to scrutiny by concerned Californians and the press.

Conclusion

Appendix K and the Draft RSED fail to address adequately two key questions for this plan update: 1) What are the Delta’s needs for good water quality for its many beneficial uses, and to meet various state water policy objectives for the Delta, including environmental justice policies and mandates? 2) How should the Delta’s beneficial needs be met through establishment and enforcement of water quality objectives that protect the environment, and all Delta communities, including environmental justice communities?

Sincerely,

 Barbara Barrigan-Parrilla Executive Director Restore the Delta	 Tim Stroshane Policy Analyst Restore the Delta
 Colin Bailey Executive Director The Environmental Justice Coalition for Water	 Randy Reck Legal Fellow The Environmental Justice Coalition for Water

Attachments:

1. Chronology of SWRCB and Others' Statements About and Actions
Concerning South Delta Salinity Objective

cc: Katheryn Landau
Timothy Nelson
Thomas Howard
Les Grober
Dianne Riddle
Colin Bailey, Environmental Justice Coalition for Water
Randy Reck, Environmental Justice Coalition for Water
Yana Garcia, Earthjustice
Trent Orr, Earthjustice
Dante Nomellini, Central Delta Water Agency
John Herrick, South Delta Water Agency