



Sent via email to: Comments@waterboards.ca.gov

Ms. Jeanine Townsend, Clerk to the Board
 California Water Resources Control Board
 1001 I St.
 Sacramento, Ca. 95814

July 18, 2018

Subject: Proposed amendments to the "Bay-Delta Plan" (Phase I) and Substitute Environmental Document

The Chicken Ranch Rancheria of Me-Wuk Indians of California are a federally recognized Tribe¹ and as such a sovereign nation (Pub. L. 103-454; 108 Stat. 4791, 4792) and is so listed in compliance with the duties delegated to the Assistant Secretary-Indian Affairs pursuant to 25 U.S.C. 2.

It is our understanding that the State Water Resources Control Board (Board) has prepared the proposed Water Quality Control Plan (Plan) under the Porter-Cologne Water Quality Control Act and the Clean Water Act. The Board has issued a notice of a public meeting for consideration of adoption of the proposed amendments to the Plan and approval of a final substitute environmental document. Should the Board adopt the Plan, the document must be submitted to the US Environmental Protection Agency (EPA) for consideration and possible approval under the Clean Water Act. (33 U.S.C. §1251 et seq.)

The current draft plan was updated/completed in 2018 and specifically addressed San Joaquin River flow objectives (Phase I) to protect fish and wildlife beneficial uses. The Plan also updated programs to implement the objectives and monitoring studies to inform future updates.

A water quality plan must identify and protect beneficial uses of water (CWC §13050(j)). The beneficial uses of the waters of the State² serve as the foundation to establish water quality objectives. One of the more important beneficial uses are Municipal and Domestic Supplies (MUN) which means community, military, individual water supply systems including but not limited to drinking water supplies. Agricultural Supplies (AGR) to provide water for farming, horticulture, or ranching are also beneficial uses. A balancing is required by the State and implicitly the Board under the Public Trust Doctrine of California. That means a balancing of the various and sometimes competing beneficial uses identified in the Plan.

Through this planning process the Board is acting on behalf of the EPA in creating a Plan. In short, the Board under Clean Water Act (CWA) authority, prepares a plan for

¹ 81 Fed. Reg. 5019-5025, 1/29/2016

² CWC §13050(f)

ultimate adoption or rejection by the EPA. Therefore, the key to the Plan content rests (primarily) through the actions and the process for obtaining input by the Board. The Board by preparing the Plan, may not ignore, nor fail to follow the requirements of the EPA regarding procedures given its role in assuming EPA's responsibilities.

It is EPA policy to consult on a government-to-government basis with federally recognized Tribal governments when their actions and decisions may affect Tribal interests. Consultation is a process of meaningful communications and coordination between EPA and Tribal officials prior to EPA taking actions or implementing decisions that may affect Tribes.

"Today, there is nothing more important in Federal-Tribal relations than fostering true government-to-government relations to empower American Indians and Alaska Natives to improve their own lives, the lives of their children, and the generations to come...So, in our Nation's relations with Indian tribes, our first principle must be to respect the right of American Indians and Alaska Natives to self-determination. We must respect Native Americans' rights to choose for themselves their own way of life on their own lands according to their time honored cultures and traditions."³

For communications and coordination between the Board and a Sovereign Nation Tribe to be effective in addressing issues related to Tribal values, natural resources and lands, it must occur early in a process and not after the fact. The government to government communications and coordination process should include all relevant issues for a Tribe and its lands. Indian lands include all land within the limits of any Indian Reservation⁴ under the jurisdiction of the United States government, notwithstanding the issuance of any patent. This includes all dependent Indian communities⁵ within the borders of the United States and means "Indian Country".

Any Federal policies (and this would be work carried out by the Board to implement federal law) that have Tribal implications⁶ must comply with Executive Order 13175. The Board may not defer, or otherwise bypass the EPA's procedures when in fact the Board is assuming the lead in CWA EPA planning functions. The EPA ensures close

³ Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, Administration of William Jefferson Clinton, November 6, 2000

⁴ EPA's definition of "reservation" encompasses both formal reservations and "informal" reservations, i.e. trust lands set aside for Indian Tribes. *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114, 123 (1993); 56 Fed. Reg. 64876, 64881 (1991); or 63 Fed. Reg. 7254, 7258 (1998)

⁵ US EPA Policy on Consultation and Coordination with Indian Tribes, May 4, 2011

⁶ *"Policies that have tribal implications refers to regulations, legislative comments or proposed legislation and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes..."* Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, Administration of William Jefferson Clinton, November 6, 2000

involvement of Tribal governments and gives special consideration to their interests whenever EPAs' actions may affect Indian Country or other Tribal interests. That standard and duty passes to the Board when it assumes the responsibility to prepare the Plan.

A government-to-government relationship between the Tribe and the State is not a dominant/subordinate one. Federally recognized Tribes are sovereign nations and are not a political subdivision of the State of California, or "stakeholders". A request by a federally recognized Tribe for a government to government consultation and coordination to the Board is not a discretionary matter for the Board, it is mandatory.

Important issues relative to river flows, and many beneficial uses of water within the San Joaquin River Watershed are being framed and analyzed for a decision by the Board through its planning process. Any decision by the Board on the Plan, will (absent a choosing of the "no project alternative") alter the amounts of water available for beneficial uses within the Stanislaus River.

The Chicken Ranch Rancheria of Me-Wuk Indians historic and current lands are located in the San Joaquin Watershed and adjacent to New Melones Reservoir. The Chicken Ranch Rancheria of Me-Wuk Indians of California do not have an adequate water supply for either municipal or agricultural use on their lands. This is a demonstrated unmet Tribal water need within the Plan area and has not been incorporated into the Board's analysis.

The Chicken Ranch Rancheria of Me-Wuk Indians are carrying out engineering and hydrology analysis of the Stanislaus River. The purpose of the analysis is to inform the Tribal Council on how best to proceed to acquire/develop the necessary water supplies to fulfill unmet Tribal water needs. The only viable source for that water is the Stanislaus River and New Melones reservoir, both of which will be impacted by the Board's action on the Plan. Such action could result in a substantial direct adverse effect on the future of the Chicken Ranch Rancheria of Me-Wuk Indians, not only for the present, but for generations to come.

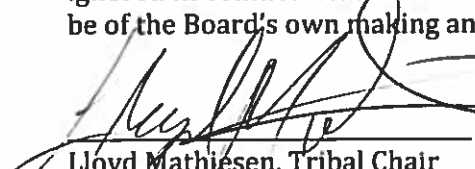
The Board is preparing to take an action under the authority of the CWA in a fashion that is in conflict with EPA and other federal requirements regarding a federally recognized Tribe.

The Board has thus far failed to meet its obligations in the Plan process to consult on a government to government basis with the Chicken Ranch Rancheria of Me-Wuk Indians. It is clear that the Board's actions and decisions may affect Tribal interests and frustrate, if not make impossible, their efforts to resolve their unmet water supply needs for their lands for generations to come.

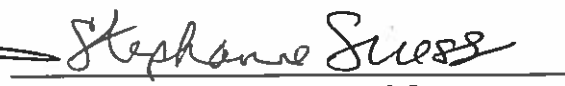
It is the intent of our Tribe to achieve self-determination, in part, by securing a long-term sustainable and reliable water supply for our people and our lands from the Stanislaus River at New Melones Reservoir. As we are sure the Board can appreciate, no nation, no people and no Tribe can ever enjoy self-determination absent a secure water supply.

The Chicken Ranch Rancheria of Me-Wuk Indians of California, therefore request that the Board immediately agree to, and engage in, a formal government to government consultation with the Tribe. This will enable a timely and fact based discussion of unmet Tribal water supply needs as a beneficial use heretofore left out of the Plan. It will also enable compliance with EPA requirements regarding government to government consultation and coordination which would be best complied with now and not after the plan was completed.

Alternately, should the EPA have to meet the requirements for government to government consultation and coordination to address our unmet Tribal water supply needs after the Board's has already adopted the Plan, it will be prima facie that the Board failed to meet statutory requirements. Therefore, unless the requirements for government to government consultation and coordination are complied with, the Plan could not be approved by EPA as unmet Tribal water needs would have been ignored in conflict with federal law.⁷ Such an unfortunate sequence of events would be of the Board's own making and could be avoided by complying with our request.



Lloyd Mathiesen, Tribal Chair



Stephanie Suess, Community & Resources
Development Director

For all future correspondence and communications on this matter please contact or representative:

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Andrew Wheeler, Acting Administrator U.S. EPA
Ryan Zinke, Secretary U.S. Department of the Interior
Honorable Diane Feinstein, Senator United States Senate
Honorable Tom McClintock, Member U.S. House of Representatives
Honorable Jeff Denham, Member U.S. House of Representatives

⁷ Winters v. United States, 207 U.S. 564 (1908)

From: John Mills <sixbit@comcast.net>
Sent: Wednesday, July 18, 2018 1:48 PM
To: LSJR-SD-Comments@waterboards.ca.gov; commentletters@waterboards.ca.gov; WQCP1Comments
Cc: Felicia Marcus; Steven Moore; Dorene D'Adamo; Tam.Dudoc@waterboards.ca.gov; Joaquin.Esquivel@waterboards.ca.gov
Subject: Comment Letter - Revisions to Proposed Bay Delta Plan Amendments (Phase I)
Attachments: CRRLetter 07-18-2018.pdf

Dear Ms. Townsend:

Please accept these comments on behalf of the Chicken Ranch Rancheria Me-Wuk Indians of California.

Sincerely,

John S. Mills

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