



Merced River  
Conservation Committee

July 24, 2018

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

**Subject:** Comment Letter – Revisions to the 2016 Draft Amendments, Appendix K, *Revised Water Quality Control Plan*, July 6, 2018

The Merced River Conservation Committee (hereinafter “MRCC”) appreciates the opportunity to comment on Appendix K, Revised Water Quality Control Plan amendments. This letter responds to the State Water Resources Control Board’s (hereinafter “Board”) July 6, 2018, *Notice of Public Meeting and Consideration of Adoption of Proposed Amendments to the Water Quality Control Plan for the San Francisco Bay/San Joaquin Delta Estuary and Final Substitute Environmental Document*. MRCC’s comments only addresses text in the appendix that were modified and identified in double strikeout or double underline in Appendix K, *Revised Water Quality Control Plan*, in conformance with the procedures of the hearing notice.

## Chapter 2. Beneficial Uses (Page 10)

As the document points out, the 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 remain in effect, and this plan includes measures to protect those uses.

Habitats and beneficial uses of our special interest on the lower Merced River are: Cold Freshwater Habitat (COLD); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN) and Rare, Threatened, or Endangered (RARE). These beneficial uses have been identified by all California federal and state fisheries agencies as habitats and populations that are limited or threatening anadromous fish species in the lower Merced River.<sup>1</sup> As discussed below, the proposed changes in the plan may not allow the restoration of sufficient habitat and populations to **fully** protect (or restore) these currently-compromised beneficial uses of the lower Merced River.

State flow objectives must *fully* protect – not “reasonably protect” or balanced against some other use or factor (i.e., economic) - beneficial uses. The CWA does not allow protection of these uses to be balanced away. Application of Porter-Cologne Section 13241 factors, or a misuse of balancing

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<sup>1</sup> National Marine Fisheries Service, 2014 Recovery Plan, Pgs. 299-306; ESA Listing Status: California Central Valley Steelhead, Threatened on January 5, 2006, updated April 14, 2014; Critical Habitat, September 2, 2005. Accessed on 7/16/2018 – Available at: [http://www.westcoast.fisheries.noaa.gov/protected\\_species/salmon\\_steelhead/salmon\\_and\\_steelhead\\_listings/steelhead/california\\_central\\_valley/california\\_central\\_valley\\_steelhead.html](http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/salmon_and_steelhead_listings/steelhead/california_central_valley/california_central_valley_steelhead.html)

between public trust assets and economic interests, cannot result in beneficial use protections that are less than those that the CWA mandates. The 2018 draft SED does only slightly better than the previous flawed SED in protecting beneficial uses and public trust assets in the Bay-Delta. As a result of the Board's mistaken application of both the law and the facts, the 2018 SED proposes a flow requirement of 30-50% of February-June unimpaired flow that will not protect beneficial uses of the lower Merced River.

**Table 3 (continued). Water Quality Objectives for Fish and Wildlife Beneficial Uses (Page 18).**

The objective for the Merced River is to “maintain 40% of the unimpaired flow with an allowed adaptive range of 30-50% inclusive . . . . from February through June.” MRCC is concerned that the preponderance of scientific evidence has found that 40% and a range of 30 to 50% is inadequate for the protection of Merced River anadromous fish public trust resources. The Board's 2010-flow report found that 60% February through June unimpaired flow is minimally necessary to protect public trust resources. The Department of Fish and Game's (now Department of Fish and Wildlife, DFW) 2010 Quantifiable Biological Objectives and Flow Criteria Report echoed this conclusion.<sup>2</sup> MRCC recommends that the Board adopt a higher average unimpaired flow of 50%, with an allowed adaptive range of 40-60% inclusive.

**Footnote 14 (Page 20).**

This footnote essentially describes how compliance with the unimpaired flow objective for the Merced River should be calculated: “Compliance with the unimpaired flow from February through June in each river is determined by dividing the 7-day average observed flow at the compliance stations [i.e., Stevenson Gage or Department of Water Resources (DWR) MST] by the 7-day average calculated Full-Natural-Flow (FNF) at the FNF stations.” There are no existing or reliable stream Gages for the Merced River, upstream of the confluence of the upper Merced River and Lake McClure. Current DWR estimates of unimpaired flow of the Merced River are either calculations of the volume of water captured in Lake McClure<sup>3</sup> or snow pack estimates.<sup>4</sup> MRCC questions the reliability of those estimates as accurate and real-time measures of unimpaired flow of the upper Merced River into Lake McClure and Merced Irrigation District Hydroelectric Project. MRCC recommends that an accurate gage be installed in the upper Merced River between the upper Lake Storage level of Lake McClure and the North Fork of the Merced River to measure the unimpaired flow of the Merced River.

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<sup>2</sup> California Department of Fish and Game, Quantifiable Biological Objectives and Flow Criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta, November 23, 2010. Hereinafter, DFW 2010 Flow Report. Available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=25987>; accessed on July 17, 2018.

<sup>3</sup> CDEC data base indicates that the “full natural flow” of the Merced is calculated at the “MRC” Gage. This is downriver from both New Exchequer and McSwain dams, which regulate and divert the unimpaired flows with reservoir storage.

<sup>4</sup> DWR. 2007. California Central Valley Unimpaired Flow Data. Fourth Edition. Draft. Department of Water Resources, Bay-Delta Office. 52 p. Available at: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/bay\\_delta\\_plan/water\\_quality\\_control\\_planning/docs/sjrf\\_sprinfo/dwr\\_2007a.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/docs/sjrf_sprinfo/dwr_2007a.pdf); accessed on July 17, 2018.

**Biological Goals (Page 33).**

MRCC strongly supports the development of salmonid biological goals for this program of implementation which will be specific to the Merced River and will contribute to meeting the overall **doubling goals** for each population, including the salmon doubling objective established in state and federal law. The development of those biological goals to be specific, measurable, achievable, result-focused, and include a time frame for when they will be achieved is the proper way forward and scientifically supportable. Biological goals for salmonid populations should be consistent with best available scientific information, including information regarding viable salmonid populations, recovery plans for listed salmonids, or other appropriate information.

Sincerely,

A handwritten signature in black ink that reads "Michael Martin". The signature is written in a cursive, slightly slanted style.

Michael Martin, Ph.D., Director  
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**From:** Michael Martin <mmartin@sti.net>  
**Sent:** Tuesday, July 24, 2018 7:00 AM  
**To:** LSJR-SD-Comments@waterboards.ca.gov; WQCP1Comments  
**Subject:** Comment Letter-Revisions to Proposed Bay Delta Plan Amendments  
**Attachments:** MRCC Comments SWRCB July 2018.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Please find attached the Merced River Conservation Committee comments on the Bay Delta Plan Revisions. Thank you.

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