



State Water Resources Control Board

November 1, 2024

Notice To: California Native American Tribes
Re: Draft Tribal-Related Sacramento/Delta Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed

Tribal Workshop Date: December 3, 2024
Comment Deadline: December 19, 2024
Contact: Robert.McCarthy@waterboards.ca.gov

The State Water Resources Control Board (State Water Board or Board) respectfully invites California Native American Tribes to participate in the processes to update the Sacramento River and Delta (Sacramento/Delta) portions of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed (Bay-Delta Plan).¹

On October 25, 2024, Board staff released a draft of potential Sacramento/Delta updates to the Bay-Delta Plan available on the [Board's website](#). The draft potential updates are focused on providing for the reasonable protection of fish and wildlife beneficial uses. The draft updates include potential provisions based on voluntary agreements (VAs) proposed by public water agencies and state and federal agencies known as the Healthy Rivers and Landscapes Proposal and referred to as the "VA pathway" or "VA provisions" that would also be regulatory provisions if incorporated into the Bay-Delta Plan.

This letter outlines the tribal-specific provisions included in the draft updates to the Bay-Delta Plan and includes information on the following topics:

- How tribal contributions were incorporated into draft potential updates
- Format of the draft updates to the Bay-Delta Plan
- Overview of tribal-related draft updates to the Bay-Delta Plan
- How to provide written comments
- How to participate in the December 3 tribal-focused workshop date
- State Water Board contact information

¹ The Bay-Delta Plan was last amended in 2018 when the State Water Board adopted updates relevant to Lower San Joaquin River flows and southern Delta salinity.

Acknowledging and Incorporating Tribal Contributions into the Bay-Delta Plan

The State Water Board appreciates the input received from tribes throughout the process of updating the Bay-Delta Plan. The Board has considered the input provided thus far related to Tribal Beneficial Uses (TBUs), the significance of the Bay-Delta watershed to tribal subsistence, spiritual, and cultural practices, and the importance of incorporating traditional ecological knowledge (TEK) into the Bay-Delta Plan update and implementation processes to ensure that tribal perspectives inform decision making. The Board has also heard and appreciates concerns raised by tribes regarding the impacts of harmful algal blooms (HABs) on tribal cultural practices and ways of life.

Chapter 11, *Tribal Engagement*, of the Board's 2023 draft Staff Report included consideration of inclusion of TBUs in the Bay-Delta Plan and a discussion of the Board's approach to tribal outreach and engagement and consideration of TEK in the Bay-Delta Plan update. State Water Board staff carefully reviewed and considered the written comments received from tribal members on Chapter 11 and other chapters of the draft Staff Report when developing the draft updates to the Bay-Delta Plan. Board staff also considered oral comments provided during the multiday public hearing on the draft Staff Report last year, at a VA workshop held earlier this year, and at other tribal-focused and public meetings leading up to the release of the draft Sacramento/Delta updates to the Bay-Delta Plan.

In response to tribal feedback, the draft updates to the Bay-Delta Plan include potential new provisions related to TBUs, tribal outreach and engagement, TEK, and HABs which the State Water Board is interested in tribal input on. These draft revisions are described further below and include:

- Chapter 1, Introduction, recognizes the importance of the Bay-Delta watershed to tribes.
- Chapter 2, Beneficial Uses, proposes inclusion of the definitions of TBUs in the Bay-Delta Plan and identifies an option for the Board to consider formal designation of Tribal Tradition and Culture (CUL) beneficial uses as part of the update to the Bay-Delta Plan or other subsequent appropriate process.
- Chapter 4, Program of Implementation, identifies provisions related to tribal outreach and engagement, incorporation of TEK, and formal consultation in Bay-Delta Plan update and implementation processes and related activities. This chapter also includes possible requirements for VA parties to meaningfully engage with tribes on VA matters.
- Chapter 4, Program of Implementation, includes possible actions to address HABs through required monitoring and other actions.

Overview of Sacramento/Delta Updates to the Bay-Delta Plan

The Bay-Delta Plan identifies (1) beneficial uses of water in the Bay-Delta; (2) largely flow-based water quality objectives to reasonably protect the beneficial uses; and (3) a program of implementation to achieve the objectives, including monitoring and reporting requirements. The draft updates to the Bay-Delta Plan are focused on the portions of

the plan relevant to the Sacramento River watershed, Delta eastside tributaries (including the Calaveras, Cosumnes, and Mokelumne Rivers), and Delta (Sacramento/Delta) for the reasonable protection of fish and wildlife beneficial uses.

The draft updates to the Bay-Delta Plan include options based on alternatives described in the Board's September 2023 [draft Staff Report](#) in support of possible Sacramento/Delta updates to the Bay-Delta Plan. The draft updates to the Bay-Delta Plan include options for incorporating either a regulatory pathway that would not include VAs, or a pathway that would include VAs with the regulatory options applying to parties not covered by the VAs and to VA parties if the VAs are approved but later discontinued.

Format of Draft Updates to the Bay-Delta Plan

State Water Board staff has released a complete draft of potential updates to the Bay-Delta Plan, including substantive Sacramento/Delta updates and other minor updates and edits to improve readability. Due to the extent of the draft Sacramento/Delta updates to the Bay-Delta Plan and reorganization of information, a redline version (e.g., underline and strikeout) is not provided.

This draft plan amendments refer to a "regulatory pathway" that describes a suite of potential numeric and narrative requirements for tributary inflows, cold-water habitat, Delta outflows, interior Delta flows, and monitoring. It is important to note, however, that any amendments adopted by the State Water Board, including amendments that incorporate VAs, would constitute regulatory requirements.

Regulatory pathway provisions and VA pathway provisions under consideration are presented in a single document. The draft updates to the Bay-Delta Plan include "notes to reader" that explain options that are under consideration or provide context for some of the potential draft changes. These notes are depicted in bracketed italics labeled "note to reader" throughout the document. One of these "notes to reader" identifies an option for the Board to consider formal designation of CUL beneficial uses through the Sacramento/Delta updates to the Bay-Delta Plan or another subsequent appropriate process. Additionally, the draft updates to the Bay-Delta Plan include boxes that denote various options for implementation. Some of these options are based on regulatory provisions developed by staff, while others are based on VA proposals. The notes to reader and boxes are intended to explain options and other issues under consideration in the draft for which the Board is seeking input on.

The State Water Board has not yet made any decisions on the options identified and is seeking input from Tribes and others to inform its decisions. Information is provided at the bottom of this letter about opportunities to provide written and oral comments and to participate in the multiday public workshop on the draft updates to the Bay-Delta Plan, including a tribal-focused workshop date. Below is a summary of the tribal related draft updates that the State Water Board is specifically interested in receiving tribal input on.

Summary of Tribal Related Draft Updates to the Bay-Delta Plan

Tribal Beneficial Uses

The draft updates to the Bay-Delta Plan includes the definitions of Tribal Beneficial Uses (TBUs), including Tribal Tradition and Culture (CUL) and Tribal Subsistence Fishing (T-SUB), as well as the Subsistence Fishing (SUB) beneficial use in Chapter 2, Beneficial Uses, and includes a description identifying that TBUs are incorporated in the context of providing reasonable protection of fish and wildlife.

As mentioned above, the draft updates to the Bay-Delta Plan include a note to reader that the State Water Board will consider formal designation of CUL as part of the Sacramento/Delta update process or another subsequent appropriate process and is requesting input on that issue. Designation of individual stream segments for T-SUB and SUB beneficial uses would occur on a case-by-case basis by the Regional Water Quality Control Boards. The draft revised Bay-Delta Plan includes a commitment to coordinate with tribes and the Central Valley and San Francisco Bay Regional Water Quality Control Boards to expedite designation of stream segments for TBUs in the Bay-Delta watershed.

Tribal Engagement and Traditional Ecological Knowledge

Section 4.5.3 of the draft program of implementation for the Bay-Delta Plan proposes that the State Water Board develop and regularly update a tribal engagement plan in coordination with California Native American Tribes. The tribal engagement plan would inform consultation, outreach, and engagement efforts to incorporate tribal knowledge and perspectives into the Board's processes to update and implement the Bay-Delta Plan. The draft program of implementation also identifies that the State Water Board will hold annual tribal listening sessions to receive input from tribes on the Bay-Delta Plan update and its implementation. Board staff would also continue to engage more frequently with tribes outside of formal meetings to provide updates and hear feedback. In addition, the draft updates to the Bay-Delta Plan identify that the State Water Board will form a Bay-Delta Tribal Advisory Group in coordination with tribes to provide input to the Board on its Bay-Delta Plan update and implementation efforts.

The draft Bay-Delta Plan also includes proposals for incorporating TEK into the Board's Bay-Delta planning and implementation processes. Any use of TEK would follow the Collective benefit, Authority to control, Responsibility, Ethics Principles for Indigenous Data Governance (CARE principles).

Tribal Consultation

The State Water Board welcomes requests for government-to-government consultations on the draft updates to the Bay-Delta Plan directly from your tribal leadership by December 19, 2024, if possible. Section 4.5.3 of the draft Bay-Delta Plan also describes that the State Water Board will continue to offer opportunities for formal Government-to-Government consultation on actions, policies, and processes that may affect tribes. In addition, Board staff will continue engaging with tribes outside of formal consultation.

Board staff are available to discuss the draft updates to the Bay-Delta Plan with tribal leaders at any time outside of the formal consultation process.

Voluntary Agreements

Section 4.4.10.8 of the draft Bay-Delta plan proposes that if VAs are approved, VA water right holders would be required to develop a tribal engagement plan in coordination with California Native American Tribes. The VA tribal engagement plan would be required to describe specific tribal engagement opportunities related to VA milestones and would be required to be approved by the State Water Board Executive Director prior to year one of the initial eight-year term of the VAs. The plan would also be required to include regular tribal engagement meetings and opportunities for tribal representatives to contribute feedback on implementation and adaptive management of the VAs. The draft program of implementation also directs VA parties to designate a VA tribal coordinator to engage with tribes on VA matters and serve as a liaison with the State Water Board on tribal and VA matters and to create a TEK subcommittee of the VA Science Committee with seats for tribal members.

Harmful Algal Blooms

Section 4.5.4 of the draft Bay-Delta Plan includes proposed commitments to address HABs. The draft updates propose that the State Water Board will continue taking actions to implement the Freshwater Harmful Algal Bloom Monitoring Strategy and will coordinate with tribes, the Regional Water Quality Control Boards, other agencies, and other interested parties to implement the Delta Cyanobacterial Harmful Algal Bloom Monitoring Strategy to improve HAB science, research, and monitoring, develop HAB predictive models, and identify possible management and mitigation measures that could be used to control HABs in the Delta.

The draft program of implementation also proposes requirements for HAB monitoring in the Delta, including phytoplankton measurements and cyanobacterial toxin testing. The specific HAB monitoring requirements are described in Table 5 “Water Quality Compliance and Baseline Monitoring” in Appendix A of the draft Bay-Delta Plan. In addition to requirements for HAB monitoring, the draft program of implementation proposes requirements for VA parties to contribute to HAB monitoring in the Sacramento/Delta tributaries and in the Delta.

Invitation for Tribal Feedback on Draft Potential Bay-Delta Plan Updates

The State Water Board is seeking input from tribes on the draft potential updates to the Bay-Delta Plan. No final decision has been made on the Sacramento/Delta updates to the Bay-Delta Plan, and your tribe’s feedback is important in shaping the plan. After reviewing the comments on the current draft, a revised version will be released for further public review and comment. The State Water Board will carefully consider comments received on the potential updates to the Bay-Delta Plan before considering specific changes to the plan at a future date. State Water Board staff are available to work with tribes to hear feedback and to facilitate tribal engagement in the Board’s Bay-Delta planning and implementation efforts.

Submitting Written Comments

The State Water Board invites your tribe's engagement in this important matter. Written comments are due by December 19, 2024. Comments should be submitted via email to SacDeltaComments@waterboards.ca.gov with the subject "Comment Letter – Draft Sacramento/Delta Bay-Delta Plan Updates."

Public and Tribal Workshop

The Board will receive comments on the draft Sacramento/Delta updates both in writing, and orally at a multiday public workshop that includes a tribal specific workshop date.

- The public workshop will be held on: November 20 and 22, 2024; December 3 and 12, 2024; and January 23, 2025.
- **The workshop date on December 3, 2024 will cover tribal-focused topics** in the second half of the day and will include an option to organize panel presentations in front of the Board. If you are interested in organizing a panel presentation, please contact Rob McCarthy using the contact details below.

For more information on submitting written comments and participating in the workshop, please refer to the Notice of Opportunity for Public Comment and Workshop that is attached to this email. Tribal leaders and members can also contact Board staff directly for assistance.

State Water Board Points of Contact

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