

Table 4-1. Responses to Comments

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1144	1	I. Introduction Seventeen years after initiating its update of the Bay-Delta Water Quality Control Plan, the State Water Board has not yet taken action to complete the adoption and begin the implementation of new, protective water quality standards. The purpose of this much delayed update is to protect fish and wildlife and related beneficial uses of water in the San Francisco Bay-Delta estuary and its Central Valley watershed that are in increasing danger of irreparable damage and complete loss. On top of this delay, the Board is now proposing to reject the evidence in its own extensive record regarding what is needed to provide reasonable protection of fish and wildlife and other beneficial uses, and instead to adopt voluntary agreements, a weak, ineffective regulatory backstop, and a Program of Implementation that will utterly fail to prevent further degradation and loss of these beneficial uses. The delay and the currently planned outcome are unlawful, unacceptable, and a failure of the Board to meet its legal and policy obligations to the public. The Board must abandon its current path and act urgently and decisively to materially improve conditions throughout the watershed. Absent this, the Board will be fostering in and ensuring extinguished instream beneficial uses, extinct native fish, and destroyed communities and economies that depend on them.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. To the extent that this comment summarizes other comments, please see the substantive responses to those comments.
1144	2	II. Native Fish Populations are Not Currently Viable; Existing Conditions and Current Regulations Do Not Reasonably Protect Instream Beneficial Uses of Water There is no dispute that native fish and wildlife populations, and the beneficial uses that support and/or depend on them, including estuarine habitat, commercial and recreational fishing, and Tribal beneficial uses, are not reasonably protected by current regulations, including existing current requirements of the Bay-Delta Plan, or existing conditions. As the State Water Board recognized in 2023,	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		“Native species in the Bay-Delta ecosystem are experiencing an ecological crisis. ... Indices of population abundance for multiple native estuarine species are at alltime low levels... Longfin smelt were once a common species in the San Francisco estuary, but the population has undergone several significant declines since the late 1980’s and is the lowest in the 40-year history of the Fall Midwater Trawl and Bay Study by California Department of Fish and Wildlife (CDFW) (USFWS 2022). Similarly, abundance indices of Delta smelt have declined, and the population is now about 1 percent of its historic abundance (Hobbs et al. 2019). Since restoration of the Yolo Bypass and Cosumnes River floodplain, Sacramento splittail catch rates have increased (Moyle et al. 2020), but the strong year classes are highly dependent on artificially maintained flows and unusually wet years to create widespread flooding for spawning habitat (Moyle et al. 2015) “Changes to the flow regime of Sacramento/Delta tributaries and changes in Delta outflows, cold water habitat, and interior Delta flow conditions contribute to the impairment of the ecosystem and native fish and wildlife beneficial uses... “Native species have continued to experience declines in abundance since implementation of Water Right Decision 1641 (D-1641) in 2000, including several species that are protected under the federal Endangered Species Act (ESA) and California Endangered Species Act (CESA)... “Anadromous salmonids, which use habitat in the Bay-Delta estuary and upstream tributaries, have also exhibited substantial declines in population abundance in recent decades. Many Sacramento/Delta tributaries provide critical habitat for Chinook salmon and steelhead populations (Figure 7.6.2-1a). ... It is estimated that the average annual natural production of Sacramento River winter-run Chinook salmon, Sacramento River spring-run Chinook salmon, Sacramento River fall-run Chinook salmon (mainstem), and Sacramento River late fall-run Chinook salmon (mainstem) decreased between 1967 and 1991 and between 1992 and 2015 by 89, 61, 43, and 52 percent, respectively (see Table 3.4-3 in Chapter 3). Available data also show a long-term decline in escapement of steelhead from the	

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		Sacramento and San Joaquin River basins (McEwan 2001). Hatcheries now provide most of the salmon and steelhead caught in the commercial and recreational fisheries.” 2023 Draft Substitute Environmental Document (“SED”) at 7.6.2-3 through 7.6.2-4. Indeed, many fish and wildlife populations are not currently viable due to their low abundance, persistent low productivity, limited geographic range, highly constrained life history diversity (e.g., migration timing), or some combination of these factors. Seven species of fish are listed under state and/or federal Endangered Species Acts (“ESA”). Estuarine habitat indicators, including food web productivity and water temperature, show ongoing and worsening degradation. See 2023 Draft SED (hereinafter referred to as “Draft SED”), Appendix G2 at 2-21 through 2-25 (“Final Draft Scientific Basis Report Supplement in Support of Proposed Voluntary Agreements...”). Commercial fishing seasons for Central Valley Chinook Salmon have been closed since 2023 and the recreational harvest fishery for White Sturgeon [Footnote1: When The California Fish and Game Commission elevated White Sturgeon to be a candidate for listing under the California Endangered Species Act, the estimated abundance of harvestable-sized individuals in the San Francisco Bay-Delta was approximately 30,000 fish; however, CDFW’s latest survey results (from a new monitoring program) reveal that estimated abundance of harvestable size fish is now below 6,500 fish (CDFW 2025). Thus, concern for the future of this population is much higher now than when the petition to list was submitted in 2023.] in the Bay-Delta has been closed since 2024. Toxic algal blooms, which jeopardize fish, wildlife, and public recreational use of waterways, proliferate in the Delta.	
1144	3	Decline and deterioration are the status quo for fish and wildlife and associated beneficial uses in the Bay-Delta. For example, the USFWS recently listed the Bay-Delta estuary’s population of Longfin Smelt as endangered, finding that: “...the probability of quasi-extinction for the Bay-Delta [Longfin Smelt] DPS exceeds 20% by 2035 and reaches 50% in thirty years. Applying the same assumptions over a longer time horizon (i.e., 2050-2065), the suite of surveys predicts that the	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. Please see Staff Report Section 7.1.3, Purpose and Goals of the Sacramento/Delta Update to the Bay-Delta Plan, for a discussion of the purpose and goals of the Sacramento/Delta Update to the Bay-Delta Plan.

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		probability of extinction for the Bay- Delta DPS under current conditions is roughly 55-75%.” USFWS 2024b at 85 (emphasis added). The Board’s record and findings are replete with evidence explaining how the failure of current regulations to reasonably protect beneficial uses is tied, directly and indirectly, to unsustainable diversion of river flows that would otherwise be destined to reach the San Francisco Bay estuary. For example, in listing Longfin Smelt as federally endangered, the USFWS stated: We consider reduced and altered freshwater flows resulting from human activities and impacts associated from current climate change conditions (increased magnitude and duration of drought and associated increased temperatures) as the main threat facing the Bay-Delta longfin smelt due to the importance of freshwater flows to maintaining the life-history functions and species needs of the DPS. However, because the Bay-Delta longfin smelt is an aquatic species and the needs of the species are closely tied to freshwater input into the estuary, the impact of many of the other threats identified above are influenced by the amount of freshwater inflow into the system (i.e., reduced freshwater inflows reduce food availability, increase water temperatures, and increase entrainment potential). USFWS 2024a at 61039 (emphasis added). The State Water Board has repeatedly acknowledged that hydrologic alteration as a result of water diversion is a primary driver of the unsustainable status quo and that river flows influence myriad mechanisms that affect population viability, water quality, and overall ecosystem productivity. In 2018, the State Water Board once again acknowledged the need for “...new and modified Delta outflow requirements to protect estuarine species and to contribute to protection of species in the Bay and near shore ocean,” finding that: The survival and abundance of many of these native species is closely related to Delta outflows. The dramatic declines in population size of these species, like longfin smelt, indicate that	Please see Common Response 3.1, Fish Protection, for a discussion of the flow-benefit analysis and longfin smelt.

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		current Delta outflows are not sufficient to protect the ecosystem. Freshwater outflow influences chemical, physical, and biological conditions through its effects on food, pollution, and the movement of flows not only in the Delta, but throughout the watershed and into the Bay and ocean. Outflows affect the location where freshwater from the rivers mixes with seawater from the ocean, referred to as the low salinity zone (the location of the 2 parts per thousand salinity isohaline or X2 position). The quality, location, and extent of habitat in the estuary fluctuates in response to outflows and other factors. Coastal and near-shore marine species also rely on flows to aid the migration of their young into the estuary. Generally, more downstream X2 locations past the confluence of the Sacramento and San Joaquin rivers benefit a wide variety of native species, including commercial seafood species, through improved habitat conditions for various life stages[.] These benefits extend all the way through the Bay and out into the ocean. SWRCB 2018 at 8 (emphasis added).	
1144	5	Analysis of the proposed voluntary agreements and 55w/WSA alternatives in the Revised Draft Plan must be conducted in the context of non-viable and declining populations of native fish and wildlife, deteriorating water quality conditions, and water quality requirements that do not even protect status quo conditions. [Footnote 2: As discussed infra, the Revised Draft Plan fails to ensure that the voluntary agreement or 55w/WSA alternatives increase Delta inflows and Delta outflows compared to the degraded baseline conditions, in light of climate change and future demands for water (including pending water right applications for Sites Reservoir and the Delta Conveyance Project).] In order to support and maintain viability of native fish and wildlife populations that are not currently viable and beneficial uses that are not reasonably protected, updated water quality standards must do more than re-enforce the status quo; even small “improvements” in environmental and biological conditions will not satisfy the State Water Board’s obligations. To achieve the proposed water quality objectives and reasonably protect fish and wildlife and related beneficial uses now and into the foreseeable future, the State Water Board must demonstrate that proposed updates to the Water Quality Control Plan and	Please see Common Response 1.3, Revised Proposed Plan Amendments, regarding water quality objectives for fish and wildlife uses. The revised proposed Plan amendments are focused on supporting and maintaining viable native fish populations. Indicators of viability include population abundance, spatial extent, distribution, structure, genetic and life history diversity, and productivity. See also Common Response 1.2, Water Quality Control Planning Process, for a discussion on reasonable protection of fish and wildlife beneficial uses. Please refer to Staff Report Section 13.5, Beneficial Environmental Effects, and the Scientific Basis Report Supplement (Appendix G2) for information on the benefits of the VA pathway and Common Response 1.3, Revised Proposed Plan Amendments, for information about the VA pathway, including enforceability. If the State Water Board finds that the VA pathway is not providing for reasonable protection of beneficial uses, the State Water Board may choose to modify or terminate the VAs prior to year 8. Finally, see also final Staff Report Section 13.7.6.2, Aquatic Biological Resources, regarding potential impacts on aquatic biological resources that may result from changes in hydrology or water supply under the revised proposed Plan amendments.

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		Program of Implementation will restore fish and wildlife populations to viability, including the ability to support Tribal, commercial, and recreational fisheries (where applicable), allow for recreational opportunities that are now foreclosed by poor water quality, and expand the temporal and spatial availability and functions of highly degraded coldwater and estuarine habitats. In other words, the State Water Board must demonstrate that the updates to the Bay-Delta Plan and Program of Implementation will reverse declines in the abundance and viability of native aquatic species, and the ecological processes and habitats that support them, such that these aquatic populations are increasing in abundance and are viable, supporting a broad range of ecosystem services, rather than merely declining in abundance at a slower rate. The Board has utterly failed to do so in the Revised Draft Plan.	
1144	6	III. The Revised Bay Delta Plan's Proposed New Narrative Objectives are Unlawful A. The Revised Draft Plan's Reliance on Narrative Objectives and Exclusion of Numeric Objectives is Unlawful In the Revised Draft Plan, the State Water Board has proposed to rely exclusively on narrative objectives for Delta inflow, Delta outflow, Cold Water Habitat, and Interior Delta Flows rather than numeric criteria for these objectives. This includes eliminating the previously identified numeric inflow objective. The Revised Draft Plan's reliance on narrative objectives, when numeric criteria are available, violates the Clean Water Act, and the failure to use numeric objectives – or narrative objectives that unambiguously correspond to numeric assessment criteria, and which provide clear levels or limits to evaluate compliance – violates the Porter- Cologne Act. Federal regulations implementing the Clean Water Act are unambiguous: narrative criteria (called "water quality objectives" under Porter-Cologne) may only be used "where numerical criteria cannot be established or to supplement numerical criteria." See 40 C.F.R. § 131.11(b)(2). The extensive record before the Board in this proceeding leaves no doubt that numeric objectives can be established for Delta inflow, Delta	As highlighted by this commenter, the State Water Board could promulgate numeric flow objectives as originally contemplated in the proposed Plan Amendments. That approach is valid and is the case for the numeric flow objectives that were adopted in the 2018 Lower San-Joaquin River/Southern Delta Salinity Update. However, adopting numeric flow requirements as objectives is not the only valid approach. The State Water Board can and does implement water quality objectives pursuant to its planning authorities and water right proceedings under state law. However, absent restraints imposed by the State Water Board itself, the State Water Board has discretion on how it chooses to implement objectives in the context of statutory and common water rights law. This is consistent with the US Supreme Court's narrow interpretation of Clean Water Act section 101(g), which allows regulation of water users by a state to protect water quality while avoiding a fundamental interference to a state's water allocation authority. (PUD No. 1 of Jefferson County v. Washington Dep't of Ecology (1994) 511 US 700, 720.) Here, the numeric flow requirements are equally enforceable whether included as water quality objectives or in the Plan's program of implementation. The numeric flow requirements in the program of implementation can be considered legally binding provisions that address designated uses, water quality objectives (narrative or numeric) to protect those uses, and

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		outflow, Cold Water Habitat, and Interior Delta Flows. This evidence includes, but is not limited to, a number of adopted or proposed numeric criteria, such as the 2018 Bay-Delta Plan amendments adopted by the Board at the end of the first phase of this Plan update, which include numeric objectives for Delta inflow (San Joaquin River), Delta outflow, and restrictions on Central Valley Project/State Water Project (“CVP/SWP”) operations; the Board’s 2023 Draft SED, which includes numeric criteria for Delta inflow [Footnote 3: See, e.g., Draft 2023 SED at 5-15 to 5-17.]; the Board’s 2017 Scientific Basis Report, which included draft numeric criteria [Footnote 4: See SWRCB 2017, Chapter 5.]; and the Board’s 2010 Public Trust Flow Report, which identified specific numeric flow criteria for Delta inflow, in-Delta flows, and Delta outflow. [Footnote 5: See SWRCB 2010, at p. 5; see also id., at §§ 5.1, 5.2, 5.3. (“Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem, Prepared Pursuant to the Sacramento-San Joaquin Delta Reform Act of 2009” by the State Water Resources Control Board, August 2010 [hereinafter, referred to as “SWRCB 2010”]. Available online at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf.)] The various California Regional Water Quality Control Boards have also adopted numeric water temperature objectives relevant to the update of the Plan. See, e.g., Water Quality Control Plan for the California Regional Water Quality Control Board, Central Valley Region, at 3-14 (“Central Valley Basin Plan”). The Bay-Delta Plan –including provisions regarding minimum instream flows, Delta outflow and salinity, and water temperature – must comply with the Clean Water Act. See, e.g., U.S. Environmental Protection Agency (“EPA”) Letter to the State Water Board dated September 3, 1991; [Footnote 6: See, e.g., Central Coast Regional Water Quality Control Board. 2024. Water Quality Control Plan for the Central Coastal Basin, June 2024. California Environmental Protection Agency. Available online at: https://www.waterboards.ca.gov/centralcoast/water_issues/programs/basin_plan/; see also Water Quality Control Plan for the North Coast Region. 2025. North Coast Basin Plan Amendment, June 2025 at 56. California Environmental Protection Agency (“When it is necessary to derive numeric values in order to	express or establish the desired conditions or instream level of protection. (See USEPA Memo, October 2012.) Water Code section 13247 requires state agencies, including the State Water Board, to comply with water quality control plans unless otherwise directed or authorized by statute. The Bay-Delta Plan includes both objectives and a program of implementation. The flow requirements will be implemented pursuant to the same authorities whether they are defined as water quality objectives or provisions contained in the program of implementation. The revised proposed Plan amendments were designed with considerable flexibilities to move within ranges and even pathways to adapt to changing circumstances and improve flow conditions over time. Please see Common Response 1.2, Water Quality Control Planning Process, for information on the consideration of other beneficial uses, the Clean Water Act, numeric versus narrative water quality objectives, public trust, and the reasonable protection of fish and wildlife beneficial uses. As described in Section 7.1.3, Purpose and Goals of the Sacramento/Delta Update to the Bay-Delta Plan, of the 2023 draft Staff Report, the underlying fundamental purpose of the project is to ensure the reasonable protection of fish and wildlife beneficial uses in the Sacramento/Delta. Please also see Common Response 1.3, Revised Proposed Plan Amendments, for more information on the provision to protect the flow base and the regulatory pathway implementation of the inflow objective, including the applicability of WSAs for new water supply projects. The inclusion of narrative water quality objectives in the Plan does not violate the Administrative Procedure Act’s clarity requirement. Water quality standards may be based on broadly defined goals expressed through narrative standards or designated uses of a water body, as the Board has done in other basin plans and in previous iterations of the Bay-Delta Plan. (PUD No. 1 v. Washington Dept. of Ecology (1994) 511 U.S. 700, 714-716.)

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		develop discharge limitations and cleanup levels that implement narrative water quality objectives, or to evaluate compliance with narrative water quality objectives, the North Coast Water Board may consider all relevant and scientifically valid evidence”) (emphasis added) Available online: https://waterboards.ca.gov/northcoast/board_info/board_meetings/06_2025/pdf/6/6-basin-cleandraft.pdf.] EPA Letter to the State Water Board dated September 26, 1995 [Footnote 7: This document is available online at: online at: https://www.epa.gov/sites/default/files/2017-05/documents/_0.pdf.]; see also City of Burbank v. State Water Resources Control Bd. 111 Cal.App.4th 245, 255-258 (2003), affirmed in relevant part by City of Burbank v. State Water Resources Control Bd. 35 Cal.4th 613, 619-621(2005). Because numeric criteria previously have been and clearly can be established for these water quality objectives, and because the Bay-Delta Plan must comply with the Clean Water Act, the Revised Draft Plan’s reliance on narrative objectives is unlawful. Similarly, the Porter-Cologne Water Quality Control Act (“Porter-Cologne”) defines water quality objectives as “the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.” Cal. Water Code § 13050(h) (emphasis added). The plain meaning of “limits or levels” indicates quantitative, rather than vague qualitative criteria, and there is no explicit statutory authorization for the State Water Board to adopt narrative, rather than numeric, water quality objectives – particularly narrative objectives like those proposed in the December 2025 Draft Bay-Delta Plan, which, as discussed infra, are vague, capable of multiple interpretations, and do not specify “limits or levels” [Footnote 8: While the State Water Board has asserted that water quality objectives may be stated in either narrative or numeric form, the State Water Board has also explained that narrative objectives are generally implemented through “an appropriate numeric threshold that meets the condition of the narrative objective.” State Water Board, A Compilation of Water Quality Goals – January 2016 edition, at 6, 9. This document is available online at: https://www.waterboards.ca.gov/water_issues/programs/water_quality	

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		_goals/ docs/wq_goals_text.pdf.] required by Porter-Cologne. In addition, because these narrative objectives are capable of multiple interpretations, they violate the California Administrative Procedure Act's clarity standard and are not valid regulations. The failure to include quantitative objectives in the Revised Draft Plan violates state and federal law, and the State Water Board must amend the Revised Draft Plan to incorporate numeric, rather than narrative, water quality objectives for Delta inflow, Delta outflow, Cold Water Habitat, and Interior Delta Flows.	
1144	7	B. The Narrative Fish Viability Objective and the Revised Draft Plan's Exclusive Reference to it in defining the Delta Inflow, Delta Outflow, and Interior Delta Flows Objectives are Unlawful As explained in prior comments to the State Water Board, the narrative fish viability objective is unlawfully vague and undefined. See Baykeeper Letter to the State Water Board dated January 19, 2024. Because the objective fails to adequately identify the "limits or levels" that constitute a viable population, and is capable of multiple interpretations, the objective is unlawful under Porter-Cologne and is not a valid regulation under the California Administrative Procedure Act's clarity standard. See Cal. Water Code § 13050(h). In ecological terms, "viability" refers to a low likelihood of population extirpation within a relatively long timeframe. Moreover, in terms of the State Water Board's obligations, we take "viability" to mean a low likelihood of loss of a designated fish and wildlife beneficial use within a relatively long timeframe. As discussed in our 2024 comments, to support sustainable fisheries or maintain estuarine habitat at levels sufficient to support ecosystem services, native fish populations must exceed the abundance, population growth, life history and genetic diversity, and spatial distribution levels that characterize minimum ecological viability. Thus, reasonably protecting beneficial uses at a threshold of viability – like commercial and recreational fishing, estuarine habitat, or tribal beneficial uses – requires the Plan to: (a) define "viability" in a clear and measurable way in order to set numerical water quality objectives as necessary to support the fish and wildlife relevant beneficial uses; and (b) identify	Please see the response to comment 1144-6. Also see Common Response 1.3, Revised Proposed Plan Amendments, for information on the water quality objectives for fish and wildlife and Common Response 1.2, Water Quality Control Planning Process, for information on the water quality objectives and reasonable protection of fish and wildlife.

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		additional objectives and additional actions in the Program of Implementation to ensure that these beneficial uses are reasonably protected. More than adequate information regarding methods and data exists in the record to allow the Board to quantify the abundance and other attributes of viability for target species associated with fish and wildlife and other beneficial uses; indeed, the Board has applied these methods and data to identify desired population outcomes numerous times during this update. See SWRCB 2010; SWRCB 2017; see also SEP 2019. Furthermore, viability must also be defined for important food web organisms such as zooplankton prey species that are critical for the productivity of estuarine habitat and the ecosystem services that depend on healthy estuarine habitat. Absent a clear definition of viability, the term is subject to multiple interpretations in contravention of the California Administrative Procedure Act. More, the Revised Draft Plan defines the new proposed narrative objectives for Delta Inflow (Sacramento River / Delta Tributary Flows), Delta Outflow, and Interior Delta Flows solely with respect to achieving the narrative fish viability objective. It does not require that these new proposed narrative objectives also achieve the Plan's salmon doubling objective, or increase abundance to support commercial and recreational fishing, estuarine habitat, and other beneficial uses that depend on abundant fish populations. See Revised Draft Plan at 17-19. As a result, the Revised Draft Plan could result in Delta inflows that achieve minimum viability but still lack the Delta inflows necessary to achieve the salmon doubling objective or protect enough salmon to sustain recreational and commercial fisheries. The Revised Draft Plan also proposes that the voluntary agreement will "contribute" to achieving these objectives but never explains how or whether the objectives will actually be met. See Revised Draft Plan at 64. The State Water Board has admitted that the parties to the voluntary agreement constitute most water rights in the watershed, and the State Water Board has not modeled or analyzed how much flow would be contributed by water rights holders who are not parties to the voluntary agreement. See Recirculated SED at 13-50. To the extent that the State Water Board argues that the voluntary agreement need not achieve the objectives, where the voluntary	

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		agreement constitutes the vast majority, if not entirety, of actions to implement the Revised Draft Plan, the Revised Draft Plan is unlawful because it fails to ensure that the program of implementation will achieve the Plan's water quality objectives. See Cal. Water Code §§ 13050(j), 13242, 13247. Because these objectives are solely tied to the fish viability objective, and they are not linked to achieving the salmon doubling objective or to maintaining abundant fish populations (rather than minimally viable fish populations), these objectives are not lawful.	
1144	8	C. The Narrative Cold Water Habitat Objective is Vague, Unsupported by the Evidence, and Therefore Unlawful The proposed Cold Water Habitat objective is unlawful because it is vague, lacks clear numeric criteria to assess compliance, is capable of multiple interpretations, and is not tethered to the best available science. In other words, the Revised Draft Plan unlawfully fails to define the "limits or levels" that would constitute adequate cold water habitat or "suitable temperatures." As currently drafted, the proposed objective reads: Maintain streamflows and reservoir storage conditions on Sacramento River/Delta tributaries to protect cold water habitat for sensitive native fish species, including Chinook Salmon, steelhead, and other native cold water fish species. Cold water habitat conditions to be protected include maintaining sufficient quantities of habitat with suitable temperatures on streams to support passage, holding, spawning, incubation, and rearing while preventing stranding and dewatering due to flow fluctuations. Revised Draft Plan at 18. The Revised Draft Plan describes a process for the State Water Board to evaluate long term temperature management strategies and annual temperature management plans submitted by water rights holders. See Revised Draft Plan at 51-55. However, while the Revised Draft Plan identifies procedural requirements (for instance, explaining that temperature management plans must include carryover storage levels, water temperature targets, and locations where	The State Water Board considered all comments requesting changes to the revised proposed Plan amendments and incorporated some of the suggested changes. Please see Common Response 1.3, Revised Proposed Plan Amendments, for a general summary of comments received and responses as well as a project description and a summary of the changes to the project since the December 2025 revised draft Plan. As discussed in Section 4.3.5, Temperature, Section 7.6.2, Aquatic Biological Resources, and elsewhere, under current conditions, temperature management is frequently a concern below reservoirs on many tributaries throughout summer and fall for the protection of salmon, especially during droughts and critically dry periods. Some reservoirs currently have cold water management requirements that are being implemented with varying degrees of success. However, comprehensive requirements do not exist for all tributaries where reservoirs are present or for tributaries without reservoirs, and the Bay-Delta Plan does not include any such requirements. Provisions for adaptive implementation of the numeric inflow requirements are provided to optimize flows to benefit native fish and wildlife while also minimizing water supply impacts, and for the numeric inflow requirements to be implemented in a coordinated fashion with the cold water habitat and inflow-based Delta outflow requirements. Adaptive implementation may be allowed on a seasonal, annual, or long-term basis as part of local cooperative solutions or may be required by the Executive Director or State Water Board. Adaptive implementation may also be used to integrate, as appropriate, Bay-Delta Plan requirements with water quality certification

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		those targets are to be measured), it fails to identify any quantitative standards, limits, or levels guiding the State Water Board's evaluation of whether a temperature management strategy or plan is adequate or consistent with the objective. The Revised Draft Plan wholly fails to define what specific water temperatures are "suitable" or what reservoir storage conditions are adequate. For instance, the Revised Draft Plan never identifies what constitutes adequately protective water temperatures for salmon or other species, based on the best available science. It is unclear from the Revised Draft Plan whether "suitable" water temperatures for spawning salmon below Shasta Dam must be less than 56 degrees Fahrenheit on a daily average (the current inadequate requirement), less than 55.4 degrees Fahrenheit as a 7-day daily maximum average, or some other water temperature standard, nor does it define how far below Shasta and Keswick Dam those temperatures must be maintained. Similarly, the Revised Draft Plan never identifies what levels or limits of temperature-dependent mortality of salmon would cause water temperatures to be "unsuitable," and as a result, it is unclear whether water temperatures that kill 10 percent, 50 percent, or 90 percent of the endangered winter-run salmon eggs constitutes unsuitable water temperatures. [Footnote 9: Appendix H1a1 includes some temperature thresholds for analysis, but the Plan does not include any numeric temperature criteria for the Cold Water Habitat objective, and the temperature thresholds identified in that appendix fail to use the best available science. See Recirculated SED, Appendix H1a1, at H1a1-12 to H1a1-13. As that table admits, "These indicators were chosen for a basic analysis that focuses on fish survival below the dams. Refinement of this analysis using different indicators and downstream locations will likely be necessary to best meet the cold water habitat objective." Id. at H1a1-13. Confusingly, Appendix H1b identifies different temperature thresholds for certain river segments. Id. at H1b-51 to H1b-65.] This failure is especially problematic given existing water temperature standards that have been approved by the State Water Board, including temperature standards in Order 90-5 and water temperature objectives in the Central Valley Water Quality	requirements, water right orders, or other existing environmental requirements. The cold water habitat objective is narrative by design in order to provide sufficient flexibility for implementation options. This includes the integration of existing environmental requirements to the extent possible. To the extent that existing measures are in place for temperature control, those requirements would be reviewed to determine whether additional or updated measures are necessary to ensure that they are protective and that measures are integrated with the inflow and outflow objectives and implementation measures. The revised proposed Plan amendments specify that any decision to approve or direct adaptive implementation must be informed by best available scientific information, including monitoring and evaluation of the effectiveness of the measures in meeting the narrative objectives, and biological goals when available. Identifying and taking the appropriate actions to meet the cold water habitat objective may not result in immediate improvements in some tributaries, and temperature concerns could occur until the tributary is in compliance with the objective. See Common Response 7.6.2, Aquatic Biological Resources and Cold Water Habitat, for more discussion on implementation of the cold water habitat objective. Also see Common Response 1.2, Water Quality Control Planning Process, for information on water quality objectives and the reasonable protection of fish and wildlife beneficial uses.

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		Control Plan, fail to use the best available science and authorize water temperatures that cause massive mortality of salmon eggs, failing to provide reasonable protection of fish and wildlife. See, e.g., Martin et al. 2016; Martin et al. 2020; SEP 2019; San Francisco Baykeeper and Friends of the River2026. In recent years, the State Water Board has identified the need to use more protective water temperature standards for spawning and rearing salmon, citing peer reviewed scientific research including Martin et al. 2016, and the Draft SED admits that “similar shortcomings existing for regulatory requirements for temperature management and protection of cold water habitat.” Draft SED at 7.6.2-5; see id. at 5-21 (admitting existing regulations fail to provide comprehensive temperature protection in the basin and that “temperature control below reservoirs remains a significant concern”); Draft SED at 9-109 (“many reservoirs have existing problems with temperature for which existing temperature controls may not be sufficient.”) However, the Revised Draft Plan wholly ignores these existing, inadequate standards in existing Basin Plans and water rights orders, and does not require that those plans and orders be revised; instead, the Draft SED explains that under the Plan, temperature management processes that currently exist on some reservoirs and tributaries “could be used to implement the cold water habitat objective.” Draft SED at 5-25 Moreover, the Revised Draft Plan does not identify other temperatures, locations, or times where “suitable” cold water conditions must exist downstream of the reservoirs and through the Delta to support passage or rearing of native fish species dependent on coldwater habitat. As a result, the objective violates Porter-Cologne because there is not substantial evidence that the objective will reasonably protect the COLD, SPWN, WILD, COMM, T-Cul, or MIGR beneficial uses. In addition, while the Revised Draft Plan includes a table identifying potential storage target ranges for carryover storage below rim reservoirs, the Revised Draft Plan does not require these default reservoir carryover storage levels, as was previously proposed. Similarly, the Revised Draft Plan allows temperature management strategies to include carryover storage requirements that are outside of the proposed range of	

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		storage levels solely for water supply purposes, stating that: Water right holders may develop proposed carryover storage requirements outside of this range (including the dates for meeting carryover storage levels) based on evidence and documentation that carryover storage requirements outside of these ranges will provide for protection of cold water habitat and other critical purposes, including health and safety supplies. Id. at 54 (emphasis added). And as discussed infra, the Revised Draft Plan admits that the carryover storage thresholds that are identified will not maintain suitable water temperatures during drier conditions. Because the coldwater habitat objective lacks clear “limits or levels” that define adequate water temperatures [Footnote 10: Moreover, the coldwater habitat objective does not ensure “suitable” temperatures or habitats to those that would support fisheries and public trust resources, making it weaker and vaguer than the existing, albeit inadequate, Order 90-5 based temperature requirements.] and otherwise define how the State Water Board would determine whether temperature management plans and strategies adequately protect cold water habitat, this element of the regulation violates Porter-Cologne and fails to meet the clarity standard of the California Administrative Procedures Act.	
1144	9	D. The Interior Delta Flows Objective is Unlawful The Revised Draft Plan’s proposed narrative Interior Delta Flows Objective violates Porter-Cologne because it does not identify “limits or levels” in the Interior Delta Flows Objective that are necessary to protect water quality and beneficial uses, and it is not a valid regulation under the Administrative Procedures Act because it violates that statute’s clarity standard. See Cal. Water Code §13050(h). The Revised Draft Plan defines this objective to mean, Maintain water quality conditions, including flow conditions in the interior Delta, together with other measures in the watershed, sufficient to support and maintain the natural	The State Water Board considered all comments requesting changes to the revised proposed Plan amendments and incorporated some of the suggested changes. Please see Common Response 1.3, Revised Proposed Plan Amendments, for a general summary of comments received and responses as well as a project description and a summary of the changes to the project since the December 2025 revised draft Plan. Please see Common Response 1.2, Water Quality Control Planning Process, for information on reasonable protection of fish and wildlife beneficial uses and narrative vs. numeric water quality objectives. Also see Common Response 1.3, Revised Proposed Plan Amendments, regarding comments about the 2025 Record of Decision and 2025 Incidental Take Permit and

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		production of viable native fish populations. Conditions and measures that reasonably contribute toward maintaining viable native fish populations include the relative magnitude, duration, timing, quality, and spatial extent of flows. Indicators of viability include population abundance, spatial extent, distribution, structure, genetic and life history diversity, and productivity. Revised Draft Plan at 19. However, neither the objective nor the Program of Implementation defines the “limits or levels” of flow conditions in the interior Delta necessary to support viable fish populations. Instead, the program of implementation asserts that this objective is met by implementing state and federal ESA permit requirements and other criteria in the Plan. Id. at 61. The Plan’s approach of relying on state and federal ESA permit requirements to achieve the Interior Delta Flow objective is unlawful, for at least two reasons. The objective relies entirely on actions by other agencies to control reverse flows in Old and Middle River (“OMR”) and related Interior Delta flows, but the State Water Board neither requires that these permit conditions remain unmodified for the duration of the Bay-Delta Plan, nor does the State Water Board require or even suggest any actions if these permit conditions change in the future. As discussed infra, during the 18-plus years the State Water Board has spent updating the Bay-Delta Plan, state and federal agencies have repeatedly weakened OMR flow requirements, resulting in far less protective interior Delta flows and Delta outflows, even though the State Water Board has repeatedly found that the then-existing protections were inadequate to reasonably protect fish and wildlife and the public trust. See infra. Indeed, two-and-a-half months ago the State Water Board asserted that the Biological Opinions for the CVP/SWP amended and adopted by the Trump Administration in 2025 through “Action 5” would further increase pumping in the Delta by weakening OMR reverse flow limits, causing additional harm to native fish and wildlife, stating that, Action 5 proposes to reduce or remove Old and Middle River (OMR) flow limitations and would result in more negative	Common Response 1.1, General Comments, regarding comments about and the federal and state endangered species acts.

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		reverse flows which can lead to greater entrainment of fish into the interior Delta and direct and indirect mortality to California fish species, including possible population level effects. In addition, action 5 OMR changes contain requirements for triggering that lack specificity, are subjective, and establish criteria that may never be met. State Water Board Letter to the U.S. Bureau of Reclamation re: Action 5 Assumptions and Environmental Compliance, dated Nov. 10, 2025, at 3; see id. at 4-7; see Recirculated SED at 13-44 (Admitting that changes to resulting from the 2024 biological opinions “would substantially increase CVP exports in April and May, with a concurrent decrease in Delta outflow and increase in net negative (reverse) Old and Middle River (OMR) flows.”). [Footnote 11: The Recirculated SED fails to consider how Action 5 changed CVP operations and how it would change the results modeled with respect to the Interior Delta Flows, Delta Outflow, Cold Water Habitat, and Delta Inflow objectives, thereby failing to consider the whole of the action under CEQA.] Because the criteria in state and federal ESA permits are subject to change during the duration of the Bay-Delta Plan, and because there is no obligation for the State Water Board to evaluate those changed permit criteria before they are deemed to achieve the objective, the Interior Delta Flows objective would be “achieved” regardless of the criteria in those state and federal permits. For instance, the proposed narrative objective would be the same if the CVP/SWP Biological Opinions require OMR flows not to exceed -2,500 cubic feet per second, -9,000 cubic feet per second, or eliminated requirements for OMR flows entirely. As the State Water Board recently noted, the Trump Administration’s new coordinated project operations would at a minimum increase entrainment and loss (mortality) of fall-run Chinook Salmon by an additional 5 percent. See id. at 6. The California Department of Fish and Wildlife (“CDFW”) expressed concern that the changed operations could increase loss of winter-run Chinook Salmon by as much as an order of magnitude. See CDFW Letter re Action 5 at 4 (noting potential risk of exceedance of Table 184 limits for salmonids which are approximately ten times higher than documented take during water year 2025). In addition to the potential shifting nature of these	

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		requirements, impacts to fall-run Chinook Salmon demonstrate why reliance on ESA standards to reasonably protect beneficial uses is inappropriate. The state and federal ESA compliance documents do not purport to protect nonlisted species like fall-run; yet increased mortality of fall-run undoubtedly impacts viability, COMM, T-CUL, and the public trust. Yet the Plan fails to consider the effects of changes to the CVP/SWP state and federal ESA permits or require any future consideration or action in the face of further degradation of the protections those permits provide. In addition, the SED notes that if the voluntary agreement is approved, under the incidental take permit the State Water Project could increase pumping in the months of April and May, resulting in more negative OMR flow conditions (and less Delta outflow) than what was analyzed in the recirculated SED. As a result, adoption of the Plan would eliminate interior-delta flow protections necessary to support the objective and reasonably protect beneficial uses. Because neither the objective nor the Plan provides a “limit or level” of flow conditions in the Interior Delta, the objective violates Porter-Cologne. The Revised Draft Plan is unlawful because the program of implementation for this narrative objective only considers the minimum actions required by other agencies to protect endangered and threatened fish species. As a result, the narrative objective fails to consider what Interior Delta Flows are necessary to protect fall-run Chinook Salmon or other species that are not listed under the Endangered Species Act. While federal and state ESA compliance documents for the CVP and SWP can provide some incidental protection for fall-run Chinook Salmon, these restrictions are not intended to protect fall-run Chinook Salmon, do not include mortality limits for fall-run Chinook Salmon, do not include triggers that require more restrictive pumping to protect fall-run Chinook Salmon, and do not necessarily cover the entire migration period for fall-run Chinook Salmon. Finally, while the narrative objective assumes that meeting minimum ESA protections in the Interior Delta would achieve a viable fish population, it fails to consider whether these	

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		protections would be adequate to achieve the greater abundance, productivity, and other fish population parameters that are necessary to achieve the Plan's objectives for salmon doubling, to support commercial and recreational fishing beneficial uses, or to support Tribal beneficial uses. Because the narrative objective ignores achieving the Plan's salmon doubling objective and the reasonable protection of the recreational and commercial fishing beneficial uses, and Tribal beneficial uses, it is unlawful.	
1144	10	IV. The Revised Draft Plan is Unlawful Because it Fails to Adequately Consider Future Uses of Water and Fails to Adopt Objectives that Reasonably Protect Fish and Wildlife in Light of these Future Uses of Water The Revised Draft Plan violates Porter-Cologne because the State Water Board has failed to establish water quality objectives that adequately consider future uses of water and that reasonably protect fish and wildlife (and other) beneficial uses given known or reasonably foreseeable future uses of water. Instead of adopting water quality limits or levels that apply to existing water rights and to new or modified future water rights as required by law, the Revised Draft Plan defers the determination of what water quality objectives should apply to certain potential future water diversions to future proceedings.	Please see Common Response 1.2, Water Quality Control Planning Process, regarding the State Water Board's water quality control planning authorities and duties pursuant to the Porter-Cologne Water Quality Control Act, discussion of the State Water Board's consideration of factors pursuant to Water Code Section 13241, and regarding reasonable protection of fish and wildlife beneficial uses. See also Common Response 1.3, for a discussion of other supply projects. See response to comment 1144-11 regarding consideration of past, present, and probable future beneficial uses of water, and how future proceedings could impact the responsibilities of water rights obtained after December 31, 2025. In response to comments received, the revised proposed Plan amendments have been modified to include a provision stating that water supply adjustments (WSAs) will by default not apply to water rights obtained after December 31, 2025 or water right change petitions that would substantially increase diversions from the Delta watershed; however, WSAs for new supply projects (including changes in existing rights) could be considered as part of the periodic review process, based on necessary supporting environmental and scientific documentation pursuant to Health and Safety Code section 57004.
1144	11	When establishing water quality objectives, the State Water Board must consider "probable future beneficial uses of water," such as water supply projects like Sites Reservoir or the Delta Conveyance Project. Cal. Water Code § 13241(a). However, instead of establishing water quality objectives that ensure protection of beneficial uses in light of future water supply projects like Sites Reservoir, the Delta Conveyance Project, or groundwater recharge projects, [Footnote 12: Similarly, the	Beneficial uses of water are listed in Section 13.6.2, Water Code Section 13241 Analysis, of the 2025 partially recirculated draft Staff Report. Please refer to Common Response 1.2, Water Quality Control Planning Process, regarding the Board's consideration of factors under Water Code Section 13241, the Porter-Cologne Water Quality Control Act and Clean Water Act, and the reasonable protection of fish and wildlife and consideration of other beneficial uses.

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		Revised Draft Plan fails to adequately consider other future uses of water, including actions by the Trump Administration to increase water diversions from the Bay-Delta watershed by the Central Valley Project, including the 2025 biological opinions and President Trump's executive orders calling for water diversions from the Bay-Delta watershed to be maximized. As discussed supra, the Plan's narrative Interior Delta Flow objective fails to establish levels or limits that would provide reasonable protection of fish and wildlife in light of these actual future uses of water.] the Revised Draft Plan fails to determine whether the proposed water supply adjustments (WSAs) that reduce Delta inflow and outflow requirements in two-thirds of all years would apply to Sites Reservoir, the Delta Conveyance Project, or other future water supply projects. See Revised Draft Plan at 46. Instead, the Revised Draft Plan proposes to defer to future proceedings which water quality objectives in the Plan would apply to these potential future water rights, stating that, Whether, and to what extent, WSAs are applied to water rights obtained after December 31, 2025, including any permits issued after that date pursuant to applications filed by the State under Water Code section 10500, will be addressed as part of the processing of those water right applications consistent with section 4.4.9.1. Id. As a result, the new narrative objectives in the Revised Draft Plan fail to establish a "level or limit" that applies to these and other future water supply projects, which both violates section 13050(h) of the California Water Code and which is also unlawful because it fails to ensure that the Bay-Delta Plan reasonably protects fish and wildlife in light of future uses of water. The Draft SED and Recirculated SED demonstrate that approval of these and other future water supply projects could cumulatively reduce Delta inflow and outflow below baseline conditions, directly contradicting claims in the Recirculated SED that approval of the voluntary agreement or 55w/WSA alternatives would increase Delta outflow compared to baseline conditions. The Draft SED shows that approval of these and other water supply projects could cumulatively reduce Delta inflow	Please see Common Response 1.3, Revised Proposed Plan Amendments, regarding comments about the 2025 ROD and 2025 ITP. The revised proposed Plan amendments direct the State Water Board to consider imposing requirements on new water supply projects to ensure that future authorizations for the diversion and use of water are consistent with and support the salmon protection, fish viability, inflow, inflow-based Delta outflow, and interior outflow objectives of the Bay Delta Plan. Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on the protection of base flows applicable to new water supply projects.

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		and outflow by 900,000 acre feet (AF) per year on average – more than the purported additions to Delta inflow and outflow from the voluntary agreement pathway. See Draft SED at 7.24-7 to 7-24-8 and Table 7.24-1. Similarly, the Recirculated SED finds that the Delta Conveyance Project could reduce Delta outflow by 477,000 acre feet per year compared to the baseline for that project, and that the incidental take permit issued by CDFW for the Sites Reservoir Project would reduce Delta outflow by 190,000 acre feet compared to the baseline for that project. Approval of these projects in the absence of adequate and relevant water quality objectives which apply to them will significantly reduce or eliminate any potential increase in Delta outflow (and Delta inflow, in the case of Sites Reservoir) from adoption of the voluntary agreement or 55w/WSA alternative. Because the Bay-Delta Plan fails to establish levels or limits for Delta inflow, Delta outflow, and other narrative objectives that adequately consider future uses of water and apply to all water rights, it is unlawful under Porter-Cologne. Indeed, the Recirculated SED admits that these and other new water diversions “could affect interior Delta, Delta outflows, and water quality to varying degrees compared to baseline that could result in potentially significant cumulative impacts.” Recirculated SED at 13-408. However, the Plan does not adopt specific levels or limits that would apply to future water diversions or adopt other requirements which ensure that the flow and water quality conditions modeled in the SED are reasonably certain to occur in light of potential future uses of water. Instead, the Plan would allow for continued declines in Delta inflows and outflows beyond those analyzed in the SED and Recirculated SED.	
1144	12	By failing to adequately consider future uses of water and future water diversions, the State Water Board’s analyses assume without foundation that unregulated flows above minimum regulatory requirements will exist in the future—flows that provide substantial and necessary environmental benefits. However, as the State Water Board has explained repeatedly for over a decade, one of the primary impetuses for amending the Bay-Delta Plan was to address lack of regulatory requirements to ensure flows and water quality objectives that protect beneficial uses under existing conditions as well as in the future with new	The revised proposed Plan amendments include proposed updates to the program of implementation to achieve Plan objectives (Section 13.2.6 Revised Draft Bay-Delta Plan (July 2025)). The proposed updates include enforceable, numeric flow requirements for the Sacramento/Delta Tributary inflow objective that are applicable within the regulatory pathway and require 55 percent unimpaired flow (UIF) within an adaptive range of 45 to 65 percent. Early implementation is adjusted to reduce immediate water supply impacts by allowing more water to be stored in reservoirs at the outset of Plan implementation,

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		potential water diversions and climate change. In its supplemental 2012 Notice of Preparation the State Water Board explained that, In considering potential changes to the Bay-Delta Plan, the State Water Board will be reviewing changes that should be made to water quality objectives and the program of implementation to protect beneficial uses in the Bay-Delta in the immediate future under existing conditions and in the longer term with and without changes to the environment that may occur as the result of current planning efforts such as the BDCP. State Water Board, 2012 Supplemental Notice at 3 (emphasis added). In 2017, the State Water Board explained that, With respect to flows, the Science Report explains how drastically the hydrology in the Bay-Delta watershed has been modified and how much further flows could be reduced without additional flow requirements... Additionally, because existing Bay-Delta Plan flow requirements are far below current flow levels most of the time, additional regulatory requirements are needed to prevent flows from being substantially reduced in the future. State Water Board, Fact Sheet: Phase II Update of the Bay-Delta Plan: Inflows to the Sacramento River and Delta and Tributaries, Delta Outflows, Cold Water Habitat and Interior Delta Flows, Oct. 4, 2017 (emphasis added); [Footnote 13: Document available online at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/201710_phaseII_notice.pdf] see id. at 7 (“In some tributaries where flows are currently significantly impaired (reduced below unimpaired levels), these new inflow requirements are needed to improve conditions for fish and wildlife in those tributaries and to provide for connection with the Delta and contribution of flow to the Delta. In other tributaries where flows are less impaired, new inflow requirements are needed to ensure that those flows are not	referred to as water supply adjustments. Enforceable flow levels are therefore incorporated in the revised proposed Plan amendments. Figure 5.3-2 through Figure 5.3-6 in the 2017 Scientific Basis Report (Appendix B of the Staff Report) illustrate the frequency of required Delta outflows under the 55 percent UIF scenario for meeting the baseline outflows to support the reasonable protection of fish and wildlife. Similarly, Section 3.14.1.1, Achievement of Flow Thresholds, of the 2023 draft Staff Report presents modeling (Figure 3.14-6), showing the frequency of expected resulting exceedance of minimum required delta outflows (MRDO). Figure 3.14-6 indicates that modeled outflows under the 35 percent UIF scenario, which represents 55 percent UIF with water supply adjustments, rarely fall near MRDO during the driest years, except in roughly 10 percent of years, resulting in Delta outflows under the 55 percent UIF scenario meeting Delta outflow baseline (Figure 3.14-6). The regulatory pathway therefore generally produces flows above MRDO in most years. The proposed program of implementation also allows for the voluntary agreement (VA) pathway over an initial 8-year period, with the possibility of modification, termination, or extension. VA flow commitments are provided in addition to flows needed to meet senior water right demands; and in addition to base flows, including flows required by D-1641, other regulatory requirements, and other non-regulatory flows that would be present absent HRL flow commitments. The regulatory assumptions of the baseline are listed in Table 6.2-1 of Section 6.2, SacWAM Model Assumptions, of the 2023 draft Staff Report. Under the VA pathway, the revised proposed Plan amendments require that all VA flows, except where otherwise stated, must be additive delta outflow above defined base delta outflows as approved by the State Water Board. Existing baseline flows are already typically higher than MRDO, as discussed in Chapter 3, Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, of the 2023 draft Staff Report. Therefore, the addition of VA flows should generally keep Delta outflows above MRDO in most years, except under the driest conditions. This is further supported by exceedance plots (Figures 3.14-6 through

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		reduced in a way that is harmful to native fish.”). The State Water Board’s Final 2017 Scientific Basis Report repeatedly emphasizes that flows resulting from then-existing conditions were far greater than the flows generally required by the Bay-Delta Plan, and that a major purpose of this proceeding was to adopt new water quality objectives that protect at least some of these flows into the future given that then-existing conditions failed to reasonably protect fish and wildlife. See, e.g., State Water Board, Final 2017 Scientific Basis Report at 1-5 to 1-6, 5-1 to 5-2, 5-7 to 5-8. Similarly, in 2018, the State Water Board explained that, Though various state and federal agencies have adopted requirements to protect the Bay-Delta ecosystem, the best available science indicates that the existing requirements are insufficient and that a comprehensive regulatory strategy addressing the watershed as a whole is needed. Many of the current requirements in the Bay-Delta watershed are the sole responsibility of the Projects, including water quality objectives implemented by D-1641, two BiOps addressing Delta smelt and salmonids, and an ITP addressing longfin smelt. These existing requirements address only portions of the watershed and there are a number of tributaries that do not have any requirements to protect fish and wildlife, or that have minimal requirements. Current conditions may be protective of fish and wildlife in some locations, but action is needed to ensure that conditions are not degraded in the future, and that conditions in the Bay-Delta improve based on more complete and coordinated watershed management. State Water Board, July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan, at 6 (emphasis added). [Footnote 14: Document available online at: https://www.waterboards.ca.gov/bay_delta/docs/sed/sac_delta_framework_070618.pdf.] The State Water Board reached the same conclusion in 2010, in its Public Trust Delta Flows Report, which utilized a similar baseline and concluded that, “The best available science suggests that current flows are insufficient to protect public trust resources.” State Water Board, Development	3.14-10) which show that resulting baseline flows and additive VA flows exceed required baseline flows shown in Figures 5.3-2 through 5.3-6. The revised proposed Plan amendments direct the State Water Board to consider imposing requirements on new water supply projects to ensure that future authorizations for the diversion and use of water are consistent with and support the salmon protection, fish viability, inflow, inflow-based Delta outflow, and interior outflow objectives of the Bay-Delta Plan. The intention of this provision is to avoid losses resulting from diversions from new water supply projects. Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on the protection of base flows applicable to new water supply projects. Please see Common Response 3.1, Fish Protection, regarding the use of best available science and adequacy of modeling to support the related benefit analyses. Please see Common Response 6.2, Baseline and No Project Alternative, for information on the Staff Report baseline.

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		of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem, at 2. [Footnote 15: Document available online at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf.] The Draft SED likewise explains that, Existing regulatory minimum Delta outflows would not be protective of the ecosystem, and without additional instream flow protections, existing flows may be reduced in the future, particularly with climate change and additional water development absent additional minimum instream flow requirements that ensure flows are preserved in stream when needed for the reasonable protection of fish and wildlife. Draft SED at 1-9 (emphasis added). Since the State Water Board began this regulatory proceeding in 2009, water diversions have increased and regulatory requirements to protect ecosystem services and water quality have been weakened and/or repeatedly waived resulting in less unregulated flow and worsening conditions for native fish species. [Footnote 16: As discussed infra, the analyses in the Draft SED and Recirculated SED have used a shifting – and unlawful – baseline, rather than using the conditions that existed in 2009 when the State Water Board first issued a Notice of Preparation under CEQA. As state and federal agencies weakened environmental protections and increased water diversions, the State Water Board included those weakened protections in the baseline condition.] Altered hydrology due to climate change has, and will likely continue, to exacerbate this loss. See, e.g., Draft SED at 1-9. However, the Revised Draft Plan fails to address the problem of relying on uncontrolled flows (flows in excess of minimum regulatory requirements), and the instream flows modeled in the SED are not “minimum instream flow requirements that ensure flows are preserved in stream when needed for the reasonable protection of fish and wildlife.” Id. Indeed, the Recirculated SED never identifies the minimum required Delta outflow under the proposed plan amendments, and it never explains or considers how much of the Delta inflow and Delta outflow described in the Recirculated SED is actually	

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		required, and how much of that flow is considered uncontrolled flows that could be reduced in the future. Instead, the State Water Board blithely asserts that the Revised Draft Plan “would prevent Delta outflow levels from being reduced to levels close to [the Minimum Required Delta Outflow].” Recirculated SED at 13-213. There is no evidentiary basis for this statement. As the Draft SED explains, Delta outflow under baseline conditions is millions of acre feet greater than the minimum required Delta outflow, explaining that “average regulatory minimum Delta outflows are only about 5 MAF, or about a third of current average outflows and less than 20 percent of average unimpaired outflows.” Draft SED at 1-9. Moreover, the State Water Board has repeatedly concluded that Delta outflow under baseline conditions fails to reasonably protect fish and wildlife, see, e.g., Draft SED at 7.6.2-39, let alone that Delta outflow under the minimum regulatory Delta outflow would wholly fail to provide reasonable protection of fish and wildlife. See, e.g., id. at 1-9. Indeed, the existing required minimum Delta outflow would fail to achieve nearly all of the ecological flow thresholds for fish relating to Delta outflow with sufficient frequency to support viability or the reasonable protection of beneficial uses. See Recirculated SED at 13-204; see also Table 1, <i>infra</i>. Throughout this proceeding the State Water Board emphasized that the combination of new water diversions, changing environmental regulations, and the lack of an adequately protective Bay-Delta Plan mean that existing unregulated and environmentally beneficial flows – particularly the Delta inflows and Delta outflows that resulted from the 2008 and 2009 CVP/SWP Biological Opinions, which were far greater than the minimum flows required by the Bay-Delta Plan – were likely to decrease over time, further harming fish and wildlife beneficial uses. And the State Water Board has repeatedly concluded that the best available science demonstrated that those then-existing conditions failed to provide reasonable protection for fish and wildlife and the Public Trust. Those existing protections are being reduced permit by permit, and the Plan would do nothing to replace them, despite the overwhelming evidence demonstrating the need to do so.	

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		The State Water Board has failed to provide a reasoned explanation why it has not adopted levels or limits for the objectives in the Bay-Delta Plan that apply to new and modified water rights as well as existing water rights, helping to ensure that flows identified and relied upon in the SED and Recirculated SED are reasonably certain to occur. Nor has the State Water Board explained why it has reversed its position and is deliberately ignoring its own findings, based on best available science, as it documented in detail in SWRCB 2010, 2012, 2017, 2018, and 2023. The science and evidence regarding the likely outcome of failing to dramatically improve freshwater flow conditions in the Bay-Delta have only become more alarming since this proceeding began; yet the State Water Board's proposed Revised Draft Plan and Recirculated SED ignore its own extensive record showing that this is so.	
1144	13	Instead of establishing objectives that apply to new and modified water rights as well as existing water rights, the Revised Draft Plan proposes to defer to a future discretionary proceeding the determination of what minimum Delta inflow and Delta outflow objectives to apply to these and other future water supply projects. Because the Bay-Delta Plan fails to adequately consider future uses of water, fails to establish levels or limits that apply to all water rights, including future uses of water, and fails to provide a reasoned explanation why it continues to rely on unregulated flows (which it admits are likely to be diverted in the future), the Revised Draft Plan violates Porter-Cologne. The failure to consider the conditions necessary to ensure that the Plan, including existing and future water projects (including the two major projects currently pending before the State Water Board and other water supply projects, including groundwater recharge projects), would not unreasonably harm fish and wildlife, is arbitrary and capricious and inconsistent with the State Water Board's obligations under Porter-Cologne to ensure that the Plan provides reasonable protection of beneficial uses in light of probable future beneficial uses of water. See Cal. Water Code § 13241.	Please see the response to comments 1144-10, 1144-11, and 1144-12. The State Water Board considered all comments requesting changes to the revised proposed Plan amendments and incorporated some of the suggested changes. Please see Common Response 1.3, Revised Proposed Plan Amendments, for a general summary of comments received and responses as well as a project description and a summary of the changes to the project since the December 2025 Revised Draft Plan.
1144	14	V. The Record Fails to Demonstrate that the Program of Implementation Will Achieve the Plan's Objectives and Provide Reasonable Protection of Fish and Wildlife, as Required by Law	To the extent that this comment summarizes other comments, please see the substantive responses to those comments.

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		State law requires that the program of implementation achieve the water quality objectives identified in a water quality control plan. See Cal. Water Code §§ 13050(j), 13242, 13247; see also In Re SWRCB Cases (2006) 136 Cal.App.4th 674, 726-729, 775, 778. The State Water Board has failed to demonstrate that the Program of Implementation is likely to achieve the Revised Draft Plan's water quality objectives, the State Water Board has failed to provide a reasoned explanation supporting its conclusions, and the administrative record demonstrates that the Program of Implementation will not achieve the Revised Draft Plan's water quality objectives.	
1144	15	A. The SED Fails to Accurately Assess Potential Effects of Adopting the Revised Draft Plan The modeling used in the SED fails to accurately assess the hydrological and biological effects if the Revised Draft Plan is adopted, biasing the analysis and violating the State Water Board's legal obligations. In particular, the State Water Board has failed to adequately consider the effects of future water diversions, climate change, Temporary Urgency Change Petitions ("TUCPs"), and elements of the voluntary agreements, as well as using baseline conditions that are less protective than those that existed in 2009 when the State Water Board began this regulatory proceeding (and which were used in the State Water Board's 2010 Public Trust Report and 2017 Final Scientific Basis Report). First, as discussed supra, the modeling in the SED assumes no future water diversions are approved, even though pending water rights could increase water diversions by more than 900,000 acre feet per year, significantly reducing Delta inflows and Delta outflows. Because the modeling assumes continuing unregulated flows, much of the potential environmental benefits from either the voluntary agreements or proposed alternatives that include water supply adjustments are not likely to occur when future water diversions are approved, such as Sites Reservoir, Delta conveyance, and additional diversions for groundwater recharge.	The revised proposed Plan amendments direct the State Water Board to consider imposing requirements on new water supply projects to ensure that future authorizations for the diversion and use of water are consistent with and support the salmon protection, fish viability, inflow, inflow-based Delta outflow, and interior outflow objectives of the Bay Delta Plan. Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on the protection of base flows applicable to new water supply projects. Section 7.23.1, Cumulative Impact Analysis, of the 2023 draft Staff Report and Section 13.7.21.1, Cumulative Impact Analysis, of the 2025 partially recirculated draft Staff Report address cumulative impacts of past, present, and reasonably foreseeable probable future projects, including the Sites Reservoir Project and Delta Conveyance Project. Please refer to Common Response 7.23, Cumulative Impact Analysis, regarding the scope and adequacy of the cumulative impact analysis. Please refer to Common Response 6.1, Sacramento Water Allocation Model and Changes in Hydrology and Water Supply, regarding the SacWAM scope, scale and application, and model assumptions. Please refer to Common Response 6.2, Baseline and No Project Alternative, regarding the Staff Report baseline.

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			Please see Common Response 1.3, Revised Proposed Plan Amendments, regarding comments about TUCPs.
1144	16	Second, the State Water Board has failed to adequately consider the effects of climate change, because the modeling uses historical hydrological and meteorological data which does not adequately account for the existing effects of climate change over the past century, as well as the increasing effects of climate change over the coming decades. As the model documentation for SacWAM admits, SacWAM uses a historical sequence of 94-years inflow hydrology and historical climate data to simulate both water supply and water demands. Currently, no climate change scenarios have been developed for the model. State Water Board, Sacramento Water Allocation Model, Model Version 2023.06.12 Documentation, Draft, September 2023, at 11-5 The December 2025 model documentation shows that climate change was considered in determining the water supply adjustments, but does not show that climate change was used to modify the historical climate and hydrological data as is done with other models, like CalSIM 3: “The years 1992 through 2021 were used to represent current climate and hydrological conditions, based on the contemporary reference period used by the DWR to calculate adjusted historical hydrology for CalSim 3 (Schwarz et al. 2025).” Recirculated SED, Appendix H1a, at H1a3-13. However, as the State Water Board is aware, climate change has already significantly altered hydrological and climatic conditions compared to the historic conditions that existed over the past century, including earlier snowmelt and earlier runoff, changed air and water temperatures, more severe droughts, and increased evapotranspiration. State and Federal agencies no longer use historical hydrology and climate data in modeling but instead use climate-transformed data (“adjusted historical hydrology”), because using historical hydrology and climate data fails to use the best available science and fails to accurately assess likely effects of changes in water diversions and water project operations. As a result, the modeling in both the Draft	Please see Common Response 4.2, Drought and Climate Change, for further information regarding the consideration of climate change in Staff Report modeling.

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		SED and Recirculated SED significantly underestimates water temperatures and likely impacts to salmon and other species that require cold water habitat, overestimates Delta inflows and Delta outflows under drier conditions, and fails to accurately assess water project operations.	
1144	17	Third, the Revised Draft Plan and SED fail to adequately consider the effect of TUCPs that have frequently been used over the past twelve years to waive water quality requirements by reducing Delta inflows and Delta outflows, especially during drought conditions. The State Water Board has established a pattern of waiving its water quality standards, granting temporary urgency change petitions (TUCPs) to Reclamation and DWR in six of 10 years between 2014 and 2023, despite the State Water Board's acknowledgement that these weakened water quality standards harm native fish populations, including those that are listed under the State or federal Endangered Species Acts (see, e.g., SWRCB 2016 at 39-40; SWRCB 2022 at 22-34). Part of the purpose identified in this update of the Bay-Delta Plan was to address the problems caused by reliance on only the state and federal water projects to meet the requirements of Decision 1641. See, e.g., State Water Board 2018 at 5. However, rather than addressing this problem, the Revised Draft Plan simply assumes that the state and federal water projects would continue to bear sole responsibility for meeting the requirements of D-1641, even during drought conditions – where the evidence plainly demonstrates that the state and federal water projects repeatedly fail to meet them. The Revised Draft Plan's only discussion of TUCPs is with respect to future periodic reviews, where it identifies "methods to reduce the incidence of temporary urgency change petitions related to Bay-Delta Plan requirements" as a topic for discussion in the future. Revised Draft Plan at 120. As State Water Board members articulated during their January 21, 2026 meeting, there is currently no process for addressing how to stop the State Water Board's reliance on TUCPs because it is not part of this update of the Bay-Delta Plan. See Jan. 21, 2026 State Water Board Meeting, Agenda Item 6. The terms "Temporary Urgency Change Petitions" and "TUCP" do not appear in the Recirculated SED. The State Water Board has failed to consider this important aspect of	Please see Common Response 1.3, Revised Proposed Plan Amendments, for a discussion of temporary urgency change petitions.

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		the problem, and the Revised Draft Plan fails to demonstrate that water quality objectives will be achieved in light of the use of Temporary Urgency Change Petitions, as we discuss infra.	
1144	18	Fourth, the voluntary agreements include numerous provisions that allow for releasing less water for Delta inflow and outflow than what is modeled in the SED. For instance, the voluntary agreements allow some flows to not be released to improve reservoir storage. See, e.g., Revised Draft Plan at 68 (the proposed 100,000 acre feet of additional instream flow can instead remain in reservoir storage for temperature control in dry years and not be released that year). Other provisions in the voluntary agreements authorize shifting the timing of flow releases, which could substantially reduce instream flows in any given month, season, or year below what has been analyzed. See id. at 73-74 (providing that while the default schedule for the voluntary agreements would release 50 percent of the flows to the Sacramento River in April and 50 percent in May, flow flexibility allows for 0% of the water to be released in March, April, or May).	The analysis of environmental impacts for the VAs is available in Section 9.7, Environmental Analysis, and Section 13.7, Environmental Analysis. Some shifting of the Sacramento VA flow commitment into the Summer based on end-of-March Shasta storage was modeled, as described in Section G3a.2.5.1, Sacramento River. However, as described in Staff Report Section 9.5.2, VA Modeling Approach, the VAs actual operation could vary to some degree from modeled outcomes and there could be additional changes in streamflows and reservoir levels beyond the modeled changes. In particular, the proposed VAs include flexibility in the timing of flow commitments, so streamflows and reservoir levels could deviate to some degree from modeled results. The environmental analysis often considers a range of potential outcomes, including the most conservative for evaluating potentially significant effects on the physical environment. For each resource area, the analysis assumes a worst-case scenario. Thus, the impacts presented in the Staff Report cover the reasonably foreseeable methods of compliance. In addition, the possible effects of the flow flexibility brackets on the benefits provided by the VAs are analyzed in the Scientific Basis Report Supplement (Appendix G2 to the Staff Report).
1144	19	Fifth, the Recirculated SED fails to analyze or model changes in flows within the adaptive range, which would allow the State Water Board to further reduce Delta inflow and outflow requirements to 45 percent of unimpaired, even in the wettest one-third of years under the water supply adjustment alternative, rather than 55 percent of unimpaired. See Recirculated SED at 13-16 to 13-17. This could result in flows that are even lower than analyzed in the Recirculated SED.	The analysis presented in the Staff Report covers a range of unimpaired flow scenarios in intervals of 10 percent from 35 to 75 percent of unimpaired flow as described in Section A1.1.5.2, Operational Flow Scenarios. The analysis for a 45 percent of unimpaired flow scenario has already been provided in the Staff Report. See Appendix A1, Sacramento Water Allocation Model Methods and Results, for results.
1144	20	Finally, the Draft SED and Recirculated SED both use baseline conditions that significantly underestimate the Delta inflows and Delta outflows that occurred in 2009, when this regulatory proceeding began, biasing the analysis. These issues are discussed in further detail in section IV and VIII of these comments.	Please see Common Response 6.2, Baseline and No Project Alternative, for the response to comments that raise issues with the project baseline.

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1144	21	For all of these reasons, the modeling in the Recirculated SED fails to accurately assess the likely effects of adopting the Revised Draft Plan, overstating potential environmental benefits and the likelihood of achieving the objectives, and understating the likely adverse effects on native fish species, and the communities that depend on them. This violates the State Water Board's duties under Porter-Cologne and the Public Trust, as well as CEQA.	As required by CEQA, the Staff Report discloses environmental impacts associated with the project in Chapter 7, Environmental Analysis, Chapter 9, Proposed Voluntary Agreements, and Chapter 13, Revised Proposed Plan Amendments. Additionally, the Staff Report does consider alternatives and also considers a VA pathway. The Staff Report includes impact analyses which can be found in Chapter 7, Environmental Analysis, where significant impacts are described, disclosed, and associated mitigation measures are discussed. Additional detail and explanation of the revised proposed Plan amendments have been provided in Chapter 13. Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion on State Water Board authority as it relates to water rights and the Porter-Cologne Water Quality Control Act. Additionally, please see Common Response 7.1, General CEQA and Approach to the Analysis, for general CEQA issues raised by commenters and Common Response 3.1, Fish Protection, on use of best available science in the Staff Report.
1144	22	B. The Record Fails to Demonstrate that the Program of Implementation will Achieve the Delta Inflow and Delta Outflow Objectives The Recirculated SED's analysis of the Delta inflow and Delta outflow objectives focuses on two metrics: (1) the frequency of exceeding ecological flow thresholds; and (2) population responses to flow. As discussed below, neither analysis demonstrates that the Program of Implementation will achieve these narrative objectives, and the State Water Board fails to provide a reasoned explanation supporting its conclusion. Instead, the evidence demonstrates that neither the voluntary agreements nor the 55w/WSA alternatives will achieve the Revised Draft Plan's narrative Delta inflow and narrative Delta outflow objectives. In addition, as discussed briefly below, the voluntary agreements are unlawful because this alternative fails to provide the "relative magnitude, duration, timing, quality and spatial extent of flows as they would naturally occur" necessary	To the extent that this comment summarizes other comments, please see the substantive responses to those comments.

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		to achieve the Delta inflow objective and because it does not achieve the Inflow Based Delta Outflow objective.	
1144	23	1. The State Water Board's Analysis of the Frequency of Exceeding Ecological Flow Thresholds Fails to Demonstrate that the Program of Implementation will Achieve the Plan Objectives As part of its analysis, the State Water Board identified "ecological flow thresholds" [Footnote 17: See Recirculated SED Table 13.5-1 at 13-197.] and analyzed how frequently these thresholds would be exceeded under the voluntary agreements [Footnote 18: See Recirculated SED Table 13.5-5 at 13-204.] and 55w/WSA alternatives [Footnote 19: See Recirculated SED Table 13.5-8 at 13-211.] compared to baseline conditions. Unfortunately, the State Water Board failed to consider how frequently these thresholds must be exceeded in order to support or maintain viable native fish populations or achieve the salmon doubling objective. Because most of these fish populations are declining under baseline conditions, merely showing that an alternative increases the frequency of exceeding a flow threshold does not demonstrate that populations will be viable; instead, the State Water Board must demonstrate that the increased frequency is sufficient to reverse the decline and lead to population growth characteristic of viable populations. In addition, because the Recirculated SED fails to compare results from the voluntary agreements and 55w/WSA alternatives to each other or with the alternatives presented in the 2023 SED, we combined these results, along with additional documented ecological flow thresholds and exceedance frequencies for each threshold under the Board's other unimpaired flow alternatives (see Table 1, <i>infra</i>), as estimated based on modeling performed by the State Water Board. [Footnote 20: Table 1 omits several metrics offered as "flow thresholds" in the Draft SED and Recirculated SED. Whereas we appreciate the incorporation of updated thresholds (e.g., for Chinook Salmon and Delta Smelt) that reflect new scientific findings, several of the State Water Board's previously identified thresholds are no longer considered to be ecologically significant metrics, including those supposed to indicate "Georgiana Slough Flow Reversal" and those relating Rio Vista Flow levels to	Please see Staff Report Section 13.5, Beneficial Environmental Effects, for the expected benefits of the regulatory pathway (55 w/WSAs) and VA pathway compared to baseline conditions. See Appendix H1c, Beneficial Environmental Effects, of the final Staff Report for frequency of achieving updated ecological flow thresholds for updated unimpaired flow scenarios. Please see Common Response 3.1, Fish Protection, on the use of best available science, updates to the literature and flow thresholds, and the discussion on data sources, flow benefit analyses and frequency of flows. Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion on reasonable protection of fish and wildlife and the consideration of beneficial uses. The Sacramento River at Freeport flow threshold of 35,000 cfs incorporated in Chapter 13, Revised Proposed Plan Amendments, is the flow rate at which the probability of outmigration, or through-Delta, survival of juvenile Chinook salmon is maximized along all the migratory routes. The flow threshold is a result of peer-reviewed scientific research (Perry et al. 2018, Hance et al. 2022) and reflects current scientific knowledge. The thresholds in Table 13.5-1. Ecological Flow Thresholds used to Evaluate Benefits to Native Indicator Aquatic Species Populations (see Section 13.5.2.3, Flow Threshold Analysis), reflect the evolution of scientific findings over time.

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		survival of outmigrating Chinook Salmon (see Perry et al. 2018; Hance et al. 2022). Inclusion of these outdated threshold frequencies in the State Water Board's analysis of the voluntary agreements' and WSA's potential to achieve Plan objectives is inappropriate, though it does not change the fundamental finding that proposed alternatives fail to significantly improve upon the status quo.] We also provide biological context for the frequency of flow thresholds that might plausibly be consistent with attainment of the State Water Board's objectives and other requirements.	
1144	24	The analysis of Delta flow threshold frequencies provides no evidence that the voluntary agreements will support and maintain natural production of viable native Chinook Salmon or other fish populations. In fact, the analysis shows that in many cases, the voluntary agreements and/or 55w/WSA alternatives would achieve the flow thresholds only as frequently as under the degraded baseline, meaning these alternatives would maintain the status quo of declining fish populations, rather than fish populations that can grow at rates consistent with viability. See Recirculated SED at 13-211 (explaining that the frequency of exceeding these flow thresholds under the voluntary agreements "would generally remain unchanged" in many cases). Examples of key flow thresholds that are exceeded at only the same frequency as under baseline conditions include: • high rates of in-river or through-Delta survival for Chinook Salmon smolt of any of the four Chinook Salmon runs (Wilkin's Slough flow $\geq 10,700$ cfs from Mar-Jun; Delta inflow at Freeport $\geq 35,000$ cfs between Dec-May); • population growth of Delta Smelt (Delta outflow 10,200 cfs from Jun-Aug); • Sacramento Splittail abundance (both the "low estimate" of Delta outflow (30,000 cfs) and the "high estimate" of Delta Outflow (47,000 cfs) during Feb-May); • reproductive success for Green Sturgeon and White Sturgeon (Delta outflow 37,000 cfs between Mar-Jul).	Please see Staff Report Section 7.1.3, Purpose and Goals of the Sacramento/Delta Update to the Bay-Delta Plan for a discussion of the purpose and goals of the Sacramento/Delta Update to the Bay-Delta Plan. Please see Staff Report Section 13.5, Beneficial Environmental Effects, for the expected benefits of the regulatory pathway (55 w/WSAs) and VA pathway compared to Baseline conditions. Please see Common Response 3.1, Fish Protection, on the use of best available science and updates to the literature, flow thresholds, and the benefits analyses in the Staff Report. Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion on reasonable protection of fish and wildlife and the consideration of beneficial uses.

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		Even worse, the frequency of exceeding some important threshold flows is expected to decrease under the voluntary agreements relative to baseline. Id. at 13-211. This means the voluntary agreements are expected to provide the flows necessary to support viability of native fish populations and other beneficial uses less often than (already inadequate) baseline flows for: • Longfin Smelt population growth (Delta outflow 43,000 cfs from Jan-Jun); • abundance of the key invertebrate fish prey, <i>Eurytemora affinis</i>, in the open waters of the estuary that are habitat for pelagic fish species and waterbirds (Delta outflow 30,000 cfs during Mar-Jun). Furthermore, that flows that support the estuarine food web (i.e., Bay Shrimp and other estuarine zooplankton) – a key element of estuarine habitat – will occur only marginally more frequently, and in at least one case, less frequently, under the VAs than under baseline conditions. This indicates that the VAs will not protect estuarine habitat better than baseline conditions.	
1144	25	In the San Francisco Bay-Delta estuary, Delta inflows and Delta outflows under the status quo result in numerous fish species that are not currently viable and a failure to reasonably protect beneficial uses. Reductions in the frequency of achieving protective flow conditions, or simply maintaining baseline conditions, is not consistent with attaining the State Water Board's objectives or reasonable protection of beneficial uses. Even in those cases where the voluntary agreements are expected to increase the frequency of protective flows, these "improvements" are tiny (almost always $\leq 2\%$, see Table 1) and extremely unlikely to result in achieving the Plan's objectives or providing reasonable protection of fish and wildlife and other related beneficial uses of water in light of the ongoing declines under baseline conditions. In general, ecologically relevant flow thresholds under the 55w/WSA alternative will occur less frequently than needed to support and maintain the natural reproduction of viable native	Please see Staff Report Section 7.1.3, Purpose and Goals of the Sacramento/Delta Update to the Bay-Delta Plan, for a discussion of the purpose and goals of the Sacramento/Delta Update to the Bay-Delta Plan. Please see Staff Report Section 13.5, Beneficial Environmental Effects, for the expected benefits of the regulatory pathway (55 w/WSAs) and VA pathway compared to Baseline conditions. Please see Common Response 3.1, Fish Protection, on use of best available science and updates to the literature, flow thresholds, and the benefits analyses in the Staff Report. Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion on reasonable protection of fish and wildlife and the consideration of beneficial uses.

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		fish populations. Although the proposed 55w/WSA alternative is projected to attain most key ecological thresholds at higher frequencies than the voluntary agreements alternative, [Footnote 22: See Recirculated SED at 13-204 (Table 13.5-5).] the State Water Board provides no evidence that estimated improvements over baseline will be sufficient to attain the Plan's objectives or reasonable protection of beneficial uses. That is because the State Water Board fails to identify how frequently these ecological flow thresholds must be exceeded in order to support a viable fish population (or to achieve the narrative salmon protection objective), which is particularly critical in light of the continued decline of these fish populations under baseline conditions. Instead of considering this important aspect of the problem, the State Water Board appears to simply equate any improvement from baseline conditions with achieving fish viability and reasonable protection of fish and wildlife beneficial uses. As a first approximation, flows that support viability (i.e., those associated with relatively high survival, reproduction, abundance, and spatial distribution; McElhaney et al. 2000) should occur, on average, at least once within the average spawning interval [Footnote 23: Spawning interval is the time between episodes of female reproductive readiness, or generation length for organisms that die after their first spawning (i.e., semelparous organisms).] of the relevant organism. But this is not the case for the proposed 55w/WSA flow regime (or the voluntary agreements flow regime). For example, flows that support successful reproduction of Green Sturgeon and White Sturgeon would still occur in less than 1 out of 5 years, on average, under the 55w/WSA alternative (and voluntary agreement) -- too infrequently to support viability of a population in which adult females prepare to spawn every 2-4 years (Moyle 2002; Baykeeper et al. 2024 comments). Similarly, the Recirculated SED indicates that flows which support high survival of outmigrating juvenile late-fall run Chinook Salmon and endangered winter-run Chinook Salmon (35,300 cfs at Freeport) will occur less than once a generation [Footnote 24: Chinook Salmon populations in California's Central Valley have an average generation length of 3 years. Because these fish spawn only once (adults die soon after spawning), it is	

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		particularly important that conditions that support reproductive success occur relatively frequently – any prolonged, multi-year gap in suitable conditions would soon lead to extinction. It is highly unlikely that a Chinook Salmon population would naturally persist in an ecosystem where good spawning and rearing conditions did not occur with reliably high frequency.] on average under the proposed 55w/WSA alternative – the same as under baseline conditions and the voluntary agreements. See Recirculated SED at 13-204. The frequency of supportive flow conditions is inadequate under both the voluntary agreements and 55w/WSA alternatives despite the fact that the Recirculated SED overestimates the frequency of exceeding ecologically important thresholds. As discussed herein, the Revised Draft Plan fails to ensure that the Delta outflows and Delta inflows modeled in the Recirculated SED are likely to result, given the effects of climate change and future diversions of water. For example, modeling of Delta Conveyance Project operations reveals that it is expected to reduce the frequency of threshold flows associated with Chinook Salmon smolt survival through the Delta, habitat use by Chinook Salmon fry, estuarine habitat formation, White Sturgeon and Green Sturgeon reproductive success, and Delta Smelt and Longfin Smelt population growth, among others, as the attached exhibit demonstrates. See Baykeeper 2025 at 45. The difference between flow exceedance frequencies for key ecological thresholds under the assumptions modeled by the State Water Board (which include flows in excess of required limits, e.g., due to flood control operations) and a system in which unregulated flows are diverted by existing and new facilities is illustrated by contrasting the State Water Board’s previous analyses of ecological threshold flow frequency. See Scientific Basis Report (SWRCB 2017 at 5-31), Table 5.3-3 compared to Table 7.6.2-5 in the Draft SED (SWRCB 2023); see also Baykeeper et al. 2024 at 85).	
1144	26	2. The State Water Board’s Analysis of Population Responses to Flow Fails to Demonstrate that the Voluntary Agreements or 55w/WSA Alternatives Achieve the Narrative Objectives Fish and wildlife and their habitat often respond linearly to	Please see Staff Report Section 7.1.3, Purpose and Goals of the Sacramento/Delta Update to the Bay-Delta Plan, for a discussion of the purpose and goals of the Sacramento/Delta Update to the Bay-Delta Plan.

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		changes in flow above or below threshold levels. See SWRCB 2010, 2017. For example, Longfin Smelt, Starry Flounder, Sacramento Splittail, and Bay Shrimp populations (and others) respond positively to increases in winter-spring flow above and below thresholds for net population growth presented by the State Water Board. The Recirculated SED estimates the response of these four Bay-Delta populations to flow changes under the voluntary agreement and 55w/WSA alternatives using well documented flow-abundance relationships. See Kimmerer 2002; see also SWRCB 2017, 2023 appendix g2 at 5-21. Again, the Recirculated SED presents these results separately; [Footnote 25: See Figures 13.5-4 for the WSA alternative and 13.5-8 for the VAs.] we compiled them below to facilitate direct comparisons (Table 2). Although the Recirculated SED does not analyze population abundance response to previously described unimpaired flow alternatives (e.g., 55% and 65% of unimpaired flow) of these four estuarine-dependent organisms, earlier modeling results by the State Water Board show dramatic increases in median abundance in the 65% UIF alternative relative to the 55% alternative (and again as flows increase under the 75% UIF alternative). See Draft SED, Appendix B Table 5.3-4 at 5-32; see also, e.g., Recirculated SED at 13-538 (“Under the starting point for the regulatory pathway (55 w/WSAs), the flow-related ecological benefits and associated beneficial fishery related economic effects could be lower compared to the 55 scenario”). Indeed, the Recirculated SED admits that beneficial effects under the 55w/WSA alternative are most similar to effects under the Low Flow Alternative and would be less than the ecological benefits under the 55 percent of unimpaired flow alternative. See, e.g., Recirculated SED at 13-538, 13-540; id. at 13-540 (“Under the starting point for the regulatory pathway (55 w/WSAs), since changes in hydrology would be generally less than the 55 scenario and more similar to the Low Flow Alternative, the beneficial economic effects associated with ecosystem services would also be expected to be similar to the Low Flow Alternative.”) The Recirculated SED presents results of its abundance effect analysis as the median population response to flow alternatives	Please see Staff Report Section 13.5, Beneficial Environmental Effects, for the expected benefits of the regulatory pathway (55 w/WSAs) and VA pathway compared to Baseline conditions. Please see Common Response 3.1, Fish Protection, on use of best available science and updates to the literature, flow thresholds, and the flow benefit analyses in the Staff Report. Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion on reasonable protection of fish and wildlife and the consideration of beneficial uses.

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		by DWR's water-year type classification. This is misleading for many reasons, including because DWR water year types do not occur with equal frequency, and because populations must persist through a time series with different water year types. For example, Table 2 reveals that the geometric mean of annual projected population changes for the 1980-2014 period would have been only 3.74% for Longfin Smelt and 2.76% for Starry Flounder under the voluntary agreements. Note that the smallest projected effects (i.e., 0% change from baseline, for the voluntary agreements) occur in the Wet year type, which is the single most frequent year-type category. Also, improving population abundance implies that average population growth rate could increase (or become less negative) under the proposed alternatives via the compounding effect of serial increases in spawning stock.	
1144	27	To evaluate project level impacts on abundance using results presented in the Recirculated SED, we first compared the implied average change in abundance indices for two populations, Longfin Smelt and Starry Flounder, [Footnote 26: Longfin Smelt Fall midwater trawl index data are from CDFW, available here: https://apps.wildlife.ca.gov/FMWT. Starry Flounder Bay Study otter trawl index data obtained from CDFW's San Francisco Bay Study and the Interagency Ecological Program for the San Francisco Estuary, January 13, 2026 email from K. Heib.] [Footnote 27: Longfin Smelt and Starry Flounder are estuarine pelagic species that are unlikely to be affected by non-flow "habitat" measures described in the proposed Plan updates. Issues with data quality and availability prevented analysis for Sacramento Splittail and Bay Shrimp. For example, the CDFW has not updated its Bay Shrimp indices for approximately a decade (K. Hieb, CDFW, personal communication).] if expected improvements associated with the voluntary agreement and 55w/WSA alternatives had been applied in 1995 (the onset of current Bay-Delta Water Quality Control Plan requirements, and the first 15 years of sampling by the Bay Study). This backward-looking analysis involved simply adjusting empirical abundance indices reported by CDFW by the percentage change associated with each year's water-year type (Recirculated SED Figures 13.5-4 & 13.5-8; Table 2) and calculating a new average for the most	Please see Staff Report Section 13.5, Beneficial Environmental Effects, for the expected benefits of the regulatory pathway (55 w/WSAs) and VA pathway compared to baseline conditions. Please see Common Response 3.1, Fish Protection, on use of best available science and updates to the literature, flow thresholds, and the benefits analyses in the Staff Report. Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion on reasonable protection of fish and wildlife beneficial uses.

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		recent 15-year period, 2009-2024 (Figure 1). This method does not address the potential compounding effect of increased population growth, and (assuming the abundance increases projected in the Recirculated SED materialize) should be considered a low bound on the estimated effect of the voluntary agreements and 55w/WSA alternatives. The results of this analysis show that Longfin Smelt and Starry Flounder abundances would still have declined precipitously relative to historic (1980-1994) levels under the voluntary agreement or 55w/WSA alternatives, resulting in negligible differences in recent average abundance compared to empirical results for the recent period. See Figure 1. It does not provide evidence that any of the flow scenarios considered in the Recirculated SED would be likely to reverse the catastrophic declines in Longfin Smelt and Starry Flounder that have been observed over the last 45 years, or that they would do so in the future if adopted by the State Water Board. .	
1144	28	Secondly, to place the projected “improvement” in population abundance in the context of the ongoing trend of rapid decline in these two populations, we estimated the average change in population growth rate represented by the population level effects described in the Recirculated SED. [Footnote 28: Recirculated SED Figures 13.5-4 and 13.5-8; see Table 2] For both the Longfin Smelt and Starry Flounder populations, this involved calculating: 1) changes in abundance (“λ”) at a time step equal to the species’ spawning interval (roughly 2 years for Longfin Smelt (Moyle 2002; SWRCB 2017) and roughly 3 years for Starry Flounder (Ralston 2005)) 2) historical average instantaneous population growth rates (“$r_{\text{historical}}$”) for each species using the relationship: $r = \ln(\text{geometric mean}(\lambda))$ 3) expected incremental changes in average population growth (“Δr”) for the voluntary agreements, proposed WSA, and WSA+ SJR(40% UIF) scenarios [Footnote 29: The WSA + 40% SJR flow scenario is not a specific alternative under consideration in this	Please see Staff Report Section 7.1.3, Purpose and Goals of the Sacramento/Delta Update to the Bay-Delta Plan, for a discussion of the purpose and goals of the Sacramento/Delta Update to the Bay-Delta Plan. Please see Staff Report Section 13.5, Beneficial Environmental Effects, for the expected benefits of the regulatory pathway (55 w/WSAs) and VA pathway compared to Baseline conditions. Please see Common Response 3.1, Fish Protection, on use of best available science and updates to the literature, flow thresholds, and the benefits analyses in the Staff Report. Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion on reasonable protection of fish and wildlife and the consideration of beneficial uses.

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		proceeding, and neither the Draft SED nor Recirculated SED provide results for all alternatives that include the flow that would result from implementing the 2018 Bay-Delta Plan amendments. Results are presented for reference.] based on water-year type estimates presented in the Recirculated SED (Figures 13.5-4 and 13.5-8; see Table 2 [Footnote 30: Geometric means for (“Δr”) were calculated as the geometric mean of: [1+median change projected in in the Recirculated SED] for each year. Adding 1 to the projected incremental change reflects that these are changes in population growth rate from an existing level and avoided issues related to use of zeros in calculation of the geometric mean.]) and the distribution of year types over the 45-year period from 1980-2014, 4) new expected average instantaneous population growth rates (“r_{new}”), by adding the empirical rate, $r_{historical}$, to the incremental increase in r (Δr) resulting from each scenario. This analysis assumes a compounding effect of annual increases in population associated with each flow alternative, i.e., strong stock-recruit effects. Because stock-recruit effects, when detected at all in fish populations, are often weak and may be negative (e.g., Nobriga and Rosenfield 2016), this method very likely overestimates the true effect on average population growth rates of incremental annual increases in abundance projected for each flow scenario. Assuming the projected abundance increases in the Recirculated SED materialize, this method provides an upper bound of the estimated potential effect of the voluntary agreement and 55w/WSA alternatives. Each flow scenario studied resulted in a negative estimated r_{new}. Negative values of r_{new} reflect ongoing population decline trends under the associated alternatives; persistent negative population growth indicates lack of population viability. See McElhany et al. 2000; Lindley et al. 2007. For both Starry Flounder and Longfin Smelt, the effect of increasing Delta outflows is apparent; the population trends associated with r_{new} become less negative under scenarios that result in greater Delta outflow. But none of the scenarios was estimated to reverse or even halt historical population declines for either Longfin Smelt or Starry Flounder, and the method of estimating	

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		cumulative effects of annual improvements represents a generous upper bound to the actual effect on “r”. In other words, there is no indication from the Recirculated SED’s population impact estimates that the voluntary agreement or 55w/WSA alternatives would achieve Plan objectives or prevent the elimination of beneficial uses associated with these two fish populations.	
1144	29	These analyses clearly illustrate, applying the State Water Board’s own results, that simply “improving” conditions is not necessarily sufficient to attain the proposed Delta inflow and outflow objectives or the fish viability narrative objective. This is true for the comparison of the voluntary agreement alternative to the baseline, and for the proposed 55w/WSA approach relative to the baseline. To achieve viability, Plan updates will need to improve population growth rates enough to actually reverse declines and increase abundance in a reasonable time frame. The analyses we present here can be used to evaluate whether a given flow alternative is likely to result in positive population growth. Alternatives that produce more Delta outflow in the appropriate season than the WSA+SJR(40%) scenario would be expected to show further reductions in the rate of population decline. But neither the VA nor the proposed WSA alternatives are expected to achieve population growth rates that would lead to viability – at best, they will simply delay extinction of these native fishes and elimination of associated beneficial uses. Furthermore, our analyses clearly indicate that neither alternative would result in attainment of the State Water Board’s own goals for the Bay-Delta’s Starry Flounder and Longfin Smelt populations. The State Water Board previously declared its population abundance goal for Starry Flounder as: “... to maintain the starry flounder population abundance index, as measured by the San Francisco Otter Trawl Study, in half of all years above the long term population median index value of 293” (SWRCB 2010 at 82). For Longfin Smelt, the State Water Board previously declared: “The immediate goal is to stabilize the longfin smelt population, as measured by the FMWT index, and to begin to grow the population. The long-term goal is to achieve the objective of the Recovery Plan for the Sacramento/San	Please see Staff Report Section 7.1.3, Purpose and Goals of the Sacramento/Delta Update to the Bay-Delta Plan, for a discussion of the purpose and goals of the Sacramento/Delta Update to the Bay-Delta Plan. Please see Common Response 1.2, Water Quality Control Planning Process for a discussion on reasonable protection of fish and wildlife and consideration of beneficial uses. Please see Common Response 3.1, Fish Protection, on use of best available science and updates to the literature, flow thresholds, and the benefits analyses and frequency of flows in the Staff Report. Common Response 1.1, General Comments, discusses the differences between recommendations in the Staff Report and the 2010 Delta Flow Criteria Report.

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		Joaquin Delta Native Fishes (USFWS 1996). The plan states that longfin smelt will be considered recovered when its abundance is similar to the 1967 to 1984 period” (SWRCB 2010 at 68) [Footnote 32: For reference, the 1967-1994 average fall midwater trawl abundance index for Longfin Smelt was ~18,700.]. Results presented in Figure 1 and Table 3 demonstrate that neither of these previously stated goals will be attained under the voluntary agreement or 55w/WSA alternatives. Other analyses provide further evidence that the voluntary agreements will not meaningfully improve conditions for native fish and wildlife populations and could worsen conditions compared to the status quo. The 2024 federal environmental impact statement for long-term operations of the Central Valley Project (“2024 LTO FEIS”) analyzed the proposed voluntary agreement as part of its preferred alternative. Biological analyses in the 2024 LTO FEIS indicated that the proposed CVP operations (which were subsequently adopted) plus flows pledged in the VA alternative, would result in [Footnote 33: Reference to the 2024 FEIS analyses does not indicate agreement with that modeling. We present these results to illustrate that other analyses of the voluntary agreements – including analyses by a necessary party to the voluntary agreements – have not produced evidence that this alternative would achieve Water Quality Control Plan objectives or to reasonably protect beneficial uses.]: • abundance declines for White Sturgeon, a result of reduced Delta outflows during Wet years [Footnote 34: See 2024 LTO EIS Appendix J Attachment J. 2, Table J.2-5, available at https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=55291. The 2024 LTO FEIS actually underestimates the negative impact to White Sturgeon under the VAs because it incorrectly models the flow-abundance relationship for White Sturgeon across all water year types despite the fact that White Sturgeon reproduce successfully only in high flow years (SWRCB 2017; Fish and Game Commission 2024), the very years in which the VA results in reduced Delta outflows. See Recirculated SED Table 13.4-89 at 13-115. This means that the analysis incorrectly assumes a positive effect of small increases in Delta outflow projected for non-Wet years (an erroneous positive effect that	

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		still fails to mitigate for the (artificially low) negative effect in Wet years estimated by the FEIS).] • negative population growth for Delta Smelt, the combined effect of a slight improvement in population growth in drier years and reduction in wetter years relative to the 2024 LTO FEIS' baseline, the 2019 Biological Opinion [Footnote 35: See Appendix F, Lines of Evidence Modeling Attachment F.4 Table F.5-12; see also Figure 2, below.] • reductions in returns of winter-run Chinook Salmon in most years relative to both the No Action Alternative and a variant of the same alternative that excluded VA flowshttps://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=55306 [Footnote 36: See 2024 LTO FEIS Appendix F Modeling Attachment F.5 5 Table F.5-12, available at: https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=55306.] It is not surprising that the voluntary agreement and 55w/WSA alternatives are not projected to result in positive population growth for native fish species. The proposed voluntary agreements are expected to result in Delta inflow (Figure 13.4-29, Table 13.4-74) and Delta outflow (Figure 13.4-37) during ecologically critical periods of most years that do not differ substantially from the status quo (assuming that current unregulated outflows remain undiverted). On average, outflows under the VA are projected to increase by just 0.8% overall, and only 1.1% during winter-spring months, when most native fishes reproduce and/or migrate through the Delta. See Recirculated SED Tables 13.4-89 and 13.4-91; see also Table 4. Indeed, median flows are expected to be lower under the voluntary agreement than under baseline in Wet year types, which represent 30% of years. These are the only years in which White Sturgeon are likely to spawn successfully; reproductive success in those years when conditions support spawning is flow-dependent. Similarly, Longfin Smelt are likely to experience positive population growth (which again, is flow-dependent) mainly in Wet year types, but the proposed voluntary agreements would reduce flows that support successful reproduction during those years. In addition, reductions in Delta	

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		outflow in the summer and fall months, particularly under the voluntary agreements, would likely worsen the proliferation of harmful algal blooms, particularly in drier years, and harm Delta Smelt. See Recirculated SED at 13-115.	
1144	30	The State Water Board's analysis (and the 2024 LTO FEIS) also likely overestimates any positive population level effects of flow modifications under the voluntary agreement and 55w/WSA alternatives because of the failure to protect all flows that currently provide benefits to native fishes. The Recirculated SED acknowledges: "...If implemented, [new water development projects] would be expected to reduce the benefits shown for the 55 w/WSAs scenario; the 45, 55, and 65 scenarios ...; and the VA pathway. A higher proportion of Delta outflow is unprotected in wetter years, and these projects, as proposed, would generally reduce Delta outflow the most in wetter year types. ... The extent to which new projects could affect the benefits would depend on the constraints imposed on those projects and the resulting levels of increased diversions and decreased Delta outflows." Recirculated SED at 13-213 (emphasis added). There is no question that further declines in Delta inflows and outflows during ecologically critical periods, which would be expected to result from climate change and additional water supply projects, would cause further harm to fish and wildlife and further prevent attainment of the Delta inflow, Delta outflow, and fish viability objectives. Similarly, the State Water Board's analysis fails to consider the effects of temporary urgency change petitions that waive Delta outflow and other water quality objectives. As discussed elsewhere herein, the Bureau of Reclamation plans to continue and expand the use of TUCPs under the voluntary agreement or other alternatives, and there is no question that granting such petitions would result in a significant reduction in Delta inflow and Delta outflows especially in dry and critically dry years, and fish and wildlife population outcomes (e.g., abundance and survival) would not be protected to the extent estimated by the Recirculated SED. Analysis of the flows required under the	As mentioned by the commenter, Section 13.5, Beneficial Environmental Effects, acknowledges that flows could be reduced below the modeled results for the scenarios and that this would result in reduced benefits. Please see Common Response 1.3, Revised Proposed Plan Amendments, for a response to comments about TUCPs. Regarding the Salmon Protection Objective, please see the response to comment 1144-51. Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion on reasonable protection of fish and wildlife beneficial uses. As described in Section 13.3, Revised Proposed Plan Amendments, the regulatory pathway still includes an inflow requirement of 55 percent of unimpaired flow, within an adaptive range of 45 to 65 percent. At the outset of implementation, water supply adjustments would apply and reduce the flow requirement below 55 percent and at times below 45 percent. However, the Board would have the ability to move the requirement within the 45 to 65 percent range, so the 55 and 65 scenarios are still included in the regulatory pathway. Please see the Scientific Basis Report Supplement (Appendix G2 to the Staff Report) and Common Response 3.1, Fish Protection, for information on the benefits of the VA pathway.

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		proposed voluntary agreement and 55w/WSA alternatives, and the flows that are not required by those alternatives but which the modeling projects will occur with today's infrastructure, further demonstrate that flows under these alternatives at best would largely maintain the unacceptable status quo, and more likely would result in reduced Delta inflows and Delta outflows. Table 5 shows Delta outflows that are required and those that are projected to occur under current constraints between January-June (e.g., infrastructure constraints such as reservoir flood control curves), expressed as a percentage of unimpaired flows for the years 1995-2021. The VA results in seasonal flows that are nearly identical to baseline conditions with respect to the percentage of available winter-spring runoff expected to become Delta outflow under current constraints. Importantly, the VA (and the baseline) protect from diversion and storage only about one-fifth of available runoff, and only 8% in some years – the remaining flows would be available for diversion and/or storage. CDFW's critique of a State Water Board proposal in an earlier phase of this proceeding (setting flow objectives for three tributaries to the lower San Joaquin River) is relevant here; the agency wrote: The SED's analysis does not show how the Preferred Alternative of 35% unimpaired flow will contribute to the salmon doubling objective or will sustain ecosystem functions and services even with the support of all other proposed non-flow restoration measures in the basin. Instead, the analysis in the SED shows that the flow regime in the Preferred Alternative is only slightly better than existing conditions, which have consistently been found to be negatively impacting aquatic ecosystem functions and services. CDFW 2013 at 2. [Footnote 38: The agency went on to conclude "[s]ubstantial evidence demonstrates that 50% - 60% unimpaired flow is necessary to meet Department recommendations for juvenile fall- run Chinook Salmon though it emphasized that this recommendation was only for the protection of fall-run Chinook Salmon and might not serve all fish and wildlife needs or other ecosystem services in other locations in the watershed. CDFW 2013 at 10.]	

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		Similarly, the State Water Board now proposes a voluntary agreement flow regime that is largely indistinguishable from the status quo and fails to show how this alternative will achieve Plan objectives or reasonably protect fish and wildlife or related beneficial uses. The 55w/WSA requires (i.e., protects from future expansion of diversion and storage capacity) a greater share of available runoff becoming Delta Outflow compared to the VA and baseline conditions; however, it results in only slightly more flow than the baseline, under current infrastructural constraints. This explains why this alternative's presumed flow-related ecological benefits are relatively small and inadequate to achieve the Plan's objectives. The 55% UIF scenario that the State Water Board previously considered, but omitted as an alternative from the Recirculated SED, would result in a considerably larger fraction of available runoff reaching San Francisco Bay than other scenarios and would actually prevent diversion of a larger percentage of unimpaired runoff by future water development; the 65% flow alternative protects from diversion even more of the unimpaired flow needed to support and maintain fish and wildlife beneficial uses. Peer-reviews of the voluntary agreement science plan also observe that, whereas the goals of the science plan are laudable, the overall assets pledged in the voluntary agreement proposal are unlikely to produce discernable responses in target fish and wildlife populations. See, e.g., 2025 Delta Science Program Independent Peer Review (reviews by Korman and by Brandt).	
1144	31	3. The Program of Implementation Fails to Achieve the Narrative Inflow Objective Because It Fails to Provide the "Relative Magnitude, Duration, Timing, Quality and Spatial Extent of Flows as they would Naturally Occur" In addition, the Program of Implementation under the voluntary agreement alternative fails to achieve the narrative Delta inflow objective because it fails to provide the "relative magnitude, duration, timing, quality and spatial extent of flows as they would naturally occur." Revised Draft Plan at 17 (emphasis added). As the State Water Board explained in 2018,	Please see Common Response 1.2, Water Quality Control Planning Process, regarding the consideration of beneficial uses. Also see the evaluation of the benefits of the VA pathway in the Scientific Basis Report Supplement (Staff Report Appendix G2) and Staff Report Section 13.5, Beneficial Environmental Effects, and Common Response 3.1, Fish Protection, for a discussion of the peer review of the Scientific Basis Report Supplement.

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		The Science Report presents evidence indicating that native fish and other aquatic species require more flow of a more natural pattern than is currently required under the Bay-Delta Plan to provide appropriate quantities of quality habitat and to support specific functions needed to protect these species. State Water Board, July 2018 Framework, at 7 (emphasis added); see id. at 5-6; see also Draft SED at 7.6.2-35. The State Water Board has explained that “While unimpaired flow is not the same as natural flow, it is generally reflective of the frequency, timing, magnitude, and duration of the natural flows to which fish and wildlife have adapted.” State Water Board, Final 2017 Scientific Basis Report, at 1-16. In contrast, Chapter 2 of the Final 2017 Scientific Basis Report documented how the existing flow regime has severely decreased the magnitude of flows and disrupted the natural pattern of flows. While the Draft Plan’s unimpaired flow requirements required “more flow of a more natural pattern than is currently required under the Bay-Delta Plan,” the voluntary agreements largely maintain the unnatural flow patterns and magnitudes of the existing Bay-Delta Plan (Decision 1641), while pledging a modicum of additional flow, with most of the “new” flow occurring in one or two months of the spring. The voluntary agreements do not provide the “relative magnitude, duration, timing, quality and spatial extent of flows as they would naturally occur.” The State Water Board has failed to demonstrate that that voluntary agreement would achieve the narrative Delta inflow objective, including the “relative magnitude, duration, timing, quality and spatial extent of flows as they would naturally occur.”	
1144	32	4. The Program of Implementation Fails to Achieve the Inflow-Based Delta Outflow Objective under the Voluntary Agreements Alternative Finally, the voluntary agreements fail to ensure that the Inflow-Based Delta Outflow Objective is achieved. That objective requires that, “the inflows required for the Sacramento/Delta	VA flows not intended to contribute to additional outflow would not be counted toward the inflow-based Delta outflow objective. In addition, the Friant VA is included as a voluntary contribution to Delta outflow in the VA pathway. The inclusion of the Friant HRL flow contributions in the VA pathway does not constitute compliance with the Bay-Delta Plan or prevent the Board from considering Bay-Delta requirements for the Upper San Joaquin

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		tributaries and San Joaquin River tributaries are required as outflows with adjustments for downstream natural depletions and accretions.” Revised Draft Plan at 18. However, the voluntary agreement pathway excludes numerous inflows from this objective, allowing them to instead be diverted by the Central Valley Project and State Water Project. See, e.g., Revised Draft Plan at 67 (explaining that “Some or all of these flow commitments may not be accounted for as contributing to additive Delta outflows above base conditions as specified below and in Appendix B.1.”). The Revised Draft Plan effectively exempts the majority of Delta inflows required under the Mokelumne River voluntary agreement from the Inflow-Based Outflow Objective, id. at 69, and it has not yet decided whether to require all of the American River flows to comply with the Inflow-Based Outflow Objective, id. at 68. The same is true with respect to the upper San Joaquin River (Friant VA). See id. Appendix B.1, at B-10. Moreover, the Revised Draft Plan also does not require that the inflows and Delta outflows promised by the Sacramento River voluntary agreement actually be released into the river, instead allowing those flows to instead remain in reservoir storage. Id. at 67. Because the Program of Implementation does not require that all of the flows under the voluntary agreement pathway achieve the Inflow-Based Outflow Objective, the Revised Draft Plan is unlawful. See Cal. Water Code § 13242.	River in the future. Please see Common Response 1.2, Water Quality Control Planning Process, for more information about Porter-Cologne and discretion to achieve objectives over time.
1144	33	C. The Record Fails to Demonstrate that the Program of Implementation will Achieve the Cold Water Habitat Objective Rather than adopting a Program of Implementation that would achieve the Cold Water Habitat objective as required by law, the Revised Draft Plan and record demonstrate that: (1) the measures identified in the program of implementation fail to ensure suitable water temperatures and levels of carryover storage necessary to achieve the Cold Water Habitat objective under either the voluntary agreement or the 55w/WSA alternative; (2) under the voluntary agreement alternative, the majority of dam operators are entirely exempt from these requirements and the Revised Draft Plan unlawfully allows “alternative” measures that do not achieve the coldwater habitat objective; and (3) the State Water Board has failed to adequately	The VA pathway includes a cold water habitat provision requiring that it be implemented in a manner to improve temperatures to the extent possible and avoid redirected impacts to water temperatures. The State Water Board considered all comments requesting changes to the revised proposed Plan amendments and incorporated some of the suggested changes. Please see Common Response 1.3, Revised Proposed Plan Amendments, for a general summary of comments received and responses as well as a project description, and a summary of the changes to the project since the December 2025 revised draft Plan. Also see Common Response 1.2, Water Quality Control Planning Process, for information on reasonable protection of fish and wildlife and water quality objectives; Common Response 7.6.2,

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		analyze and consider whether existing water temperature objectives are adequate to protect fish and wildlife, COLD beneficial uses, and other beneficial uses, and whether COLD beneficial uses in the Delta would be protected. First, the record fails to demonstrate that the program of implementation would achieve adequate “reservoir storage conditions” and “suitable” water temperatures as required by the Cold Water Habitat Objective. Maintaining adequate cold water in reservoir storage is critical to ensuring that “suitable” water temperatures are achieved below dams. However, the Revised Draft Plan has substantially weakened the reservoir storage thresholds proposed in earlier versions of the Draft Plan, as Table 6 below demonstrates: [Footnote 39: In assessing the impacts of the proposed storage amounts in the Revised Draft Plan, there is no evidence that anything above the minimum identified in the range would occur, making the “top end” illusory.] Not only did the State Water Board significantly weaken the reservoir storage thresholds in the Revised Draft Plan, but as noted supra, the Revised Draft Plan also does not require that these storage thresholds be achieved, instead allowing agencies to implement reservoir storage levels below these ranges. See Revised Draft Plan at 54 (“Water right holders may develop proposed carryover storage requirements outside of this range”), id. at Table 8 fn. 2 (authorizing even lower carryover storage levels during droughts). Yet the Revised Draft Plan admits that these revised reservoir storage thresholds are not designed to maintain adequate coldwater habitat and are unlikely to achieve suitable water temperatures under drier conditions: These ranges are designed to prevent reservoir depletion for multiple purposes (health and safety, meeting other minimum flows, etc.) and provide some level of protection for cold water habitat in the fall. In most cases, at the low end ranges additional actions would likely be needed to protect cold water habitat.	Aquatic Biological Resources and Cold Water Habitat, regarding implementation of the cold water habitat objective; and Common Response 1.3, Revised Proposed Plan Amendments, for a discussion of temporary urgency change petitions.

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		Revised Draft Plan at 54 and footnote 1 (emphasis added). Unsurprisingly, these reservoir storage ranges are generally significantly lower than the levels that the State Water Board, National Marine Fisheries Service, and other agencies have determined are necessary to protect coldwater habitat for endangered salmon in the Sacramento River and other tributaries. See, e.g., NMFS 2017 (identifying Shasta Reservoir minimum end of September carryover storage requirements ranging from 1.9 million acre feet in critically dry years to 3.2 million acre feet in wet years). [Footnote 40: National Marine Fisheries Service, Proposed Amendment to the Reasonable and Prudent Alternative of the 2009 biological opinion, January 19, 2017, online at: https://media.fisheries.noaa.gov/dammigration/nmfs_s_draft_proposed_2017_rpa_amendment_-_january_19_2017.pdf. NMFS' storage requirements were solely designed to protect cold water habitat for endangered Chinook salmon, and do not include water temperature or reservoir carryover storage requirements to protect fall-run Chinook salmon, which are not listed under the ESA and are the backbone of the State's salmon fishery, which remains almost entirely closed this year due to the State's failure to protect beneficial uses in the Bay-Delta watershed. For instance, in 2015 there was nearly complete mortality of fall-run Chinook salmon that spawned on the Sacramento River below Keswick Dam. In order to comply with Porter-Cologne, the Bay-Delta Plan must also provide adequate coldwater habitat for fallrun Chinook salmon as well as endangered salmon runs.] In recent years, reservoir carryover storage levels at the low end of the range identified in the Revised Plan have resulted in failure to adequately protect coldwater habitat, significant temperature dependent mortality, and temporary urgency change orders that waived water quality objectives. [Footnote 41: In recent decades, these lower levels of carryover reservoir storage have contributed to numerous Temporary Urgency Change Petitions that waived water quality objectives and harmed fish and wildlife beneficial uses, including the year 2015. As discussed infra, the State Water Board has failed to consider the environmental impacts of future waivers of water quality objectives as a result of TUCPs if the voluntary agreement is approved.] See id., Enclosure 3 at Table 3 (showing	

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		in 2015, end of September carryover storage of 1.6 million acre feet resulted in temperature dependent mortality of 85.4% of endangered winter-run Chinook, with total egg to fry survival of only 4.2%, the lowest ever recorded). Indeed, with respect to Shasta Dam, the Recirculated SED admits that “[y]ears with carryover storage less than 2,000 TAF have been associated with elevated mortality of winter-run Chinook Salmon.” Recirculated SED, Appendix H1a1 at H1a1-13. [Footnote 42: Similarly, at Oroville Reservoir, the Recirculated SED admits that carryover storage of 1,000 TAF may provide suitable water temperatures if power bypasses are utilized, and that 1,600 TAF is necessary to meet water temperatures and avoid power bypasses. See Recirculated SED, Appendix H1a1, at H1a1-31.] In fact, the Recirculated SED admits that the lower carryover storage levels for Shasta Dam were included not because they ensure suitable water temperatures, but simply because that is how Reclamation plans to operate the reservoir. Id. (“However, a lower range value of 1,500 TAF is an acknowledgement that there have been and likely will continue to be times when storage in Shasta Reservoir will fall below 2,000 TAF”). The State Water Board’s deferral to Reclamation’s planned operations is inconsistent with Porter-Cologne’s requirement that the Program of Implementation achieve water quality objectives. Regulated entities are required to comply with the Plan, and the Plan must comply with the law.	
1144	34	Modeling in the SED demonstrates that under baseline conditions, carryover storage falls below the inadequate carryover storage thresholds identified in the Revised Plan in critically dry years, particularly in the driest years. See Recirculated SED at 13-122 (Table 13.4-95); id., Appendix H1b, at H1a3-225 (Folsom), H1a3-280 (Shasta), and H1a3-269 (Oroville). While the modeling shows that carryover storage at these reservoirs generally improves compared to baseline conditions under the 55w/WSA alternatives, carryover storage levels generally fail to achieve the inadequate carryover storage thresholds in the driest conditions (0%), and there is little or no improvement in carryover storage in the driest conditions under the voluntary agreement. Id.; see also Appendix H1a2 at H1a2-226 (Folsom), H1a2-270 (Oroville), H1a2-280 (Shasta). In	The impact assessment in the Staff Report focuses on changes in water temperature conditions for fish relative to baseline conditions. As discussed in Section 7.6.2, Aquatic Biological Resources, most tributaries with reservoirs have existing temperature management concerns at certain times under baseline conditions. These existing temperature issues do not represent a temperature impact, although the cold water habitat objective is intended to remedy that over time. While the VA pathway includes discussion of water temperature improvements for fish, it does not have the same cold water habitat objective as the regulatory pathway and is not subject to the same carryover target ranges as the flow scenarios. Carryover storage for the VA pathway was modeled with the

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		addition, the modeling fails to demonstrate that the 55w/WSA alternative would achieve the carryover storage targets in the Program of Implementation in all critically dry years – even though the Plan admits that those storage levels are inadequate to protect suitable water temperatures during droughts and dry year sequences. More importantly, a similar analysis using the storage thresholds identified in the 2024 Draft Plan – which the 2024 Draft Plan never identifies as inadequate to maintain suitable water temperatures – shows that reservoir storage fails to achieve the carryover storage thresholds identified in the 2024 Draft Plan in dry conditions. Id.; see also Appendix H1a2 at H1a2-226 (Folsom), H1a2-270 (Oroville), H1a2-280 (Shasta). In particular, in more than the driest 10 percent of years, the voluntary agreement fails to achieve the storage thresholds at Shasta, Oroville, and Folsom, as shown in Tables 7a-c below. Id. Indeed, carryover storage under the 55 percent scenario without a water supply adjustment is higher than carryover storage under the voluntary agreement in drier conditions, particularly at Shasta and Folsom. The modeling also shows that the voluntary agreement generally would not meaningfully improve carryover storage compared to baseline conditions in critically dry years, despite that fact that baseline carryover storage levels are generally inadequate to protect suitable water temperatures during these years. See Recirculated SED at 13-135.	same methodology as for baseline with the exception of reservoirs that have specific VA-related provisions for modifying storage. The carryover storage target ranges associated with the cold water habitat objective is just one component of the regulatory pathway and the cold water habitat objective. As described in Appendix H1a1, Assessment of Effect of Reservoir Storage on Reservoir Release Temperatures, attainment of carryover storage target ranges may not by itself be sufficient to protect water temperature, especially at downstream locations where flow may have a strong influence on water temperature. The carryover storage target ranges presented in the December 2025 draft Bay-Delta Plan acknowledge that there will be times of low water availability when it might not be possible to meet the target ranges as indicated by the inclusion of the provision that states that under the most extreme drought circumstances, lower carryover storage levels could also apply on a temporary one-year basis as approved by the Executive Director. The goal of the cold water habitat objective is to improve temperatures, not just prevent impacts, but implementation will take time and will need to balance priorities during times of water scarcity. Please see Common Response 7.6.2, Aquatic Biological Resources and Cold Water Habitat, for discussion of implementation of the cold water habitat objective and flexibilities included in the revised proposed Plan amendments related to long-term temperature management strategy.
1144	35	Water temperature modeling [Footnote 43: As noted supra, because the modeling fails to account for the existing and likely effects of climate change, the Recirculated SED appears to significantly underestimate water temperatures below these reservoirs and fails to accurately assess whether the Plan would achieve “suitable” water temperatures. In addition, the Recirculated SED admits that water temperatures could be higher than modeled because the State Water Board has not modeled potential water purchases under the voluntary agreement, which could lead to lower reservoir storage and higher water temperatures on the Sacramento, Feather, Yuba, and American Rivers. See Recirculated SED at 13-353.] also	Please see response to comment 1144-34. In addition, please see Common Response 4.2, Drought and Climate Change, regarding climate change. Existing flows and temperatures are often unsuitable for fish in baseline conditions. Climate change would affect the baseline and all scenarios similarly and would increase the difficulty in maintaining temperatures and flow conditions suitable for fish. The narrative cold water habitat objective offers flexibility in compliance that can be adapted as conditions change due to climate change. Please see also Common Response 1.2, Water Quality Control

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		demonstrates that neither the voluntary agreement nor the 55w/WSA alternative would provide the water temperatures necessary to achieve the Cold Water Habitat objective. Currently, baseline conditions fail to provide suitable water temperatures for salmon and other species. The Draft SED admits that under baseline conditions, water temperatures exceed protective temperature criteria for winter-run Chinook Salmon spawning, egg incubation, and alevins in the Sacramento River at Clear Creek 34.8 percent of the time. See Draft SED at 7.6.2-61. Similarly, temperature modeling in the Recirculated SED likewise shows that under baseline conditions, water temperatures for salmon and other fish in the Sacramento River at Clear Creek in the months of September, October and November – critical months for managing water temperatures for winter-run salmon – exceed 56 degrees Fahrenheit in the driest 10 percent of years (90% exceedance). See Recirculated SED, Appendix H1b, at H1b-28. All of the unimpaired flow alternatives (35 to 65 percent) generally reduce water temperatures compared to baseline conditions in the months of September, October and November in those years. Id. Under all of the unimpaired flow alternatives, water temperatures in the months of September and October would be less than 56 degrees in those years, although water temperatures still exceed the suitable daily average water temperature threshold of 53.5 degrees Fahrenheit (or 55.4 degrees Fahrenheit 7DADM), which is based on the best available science. Id.; see also Martin et al. 2016; Martin et al. 2020. In contrast, under the voluntary agreement, water temperatures in the Sacramento River at Clear Creek (below Shasta Dam) increase in the months of October and November in the driest 10 percent of years compared to baseline conditions, and water temperatures in these dry conditions would exceed 56 degrees Fahrenheit on average in the months of September, October, and November. Id. This would worsen temperature-dependent mortality of salmon compared to baseline conditions and fails to ensure “suitable” water temperatures. Id. The voluntary agreement not only fails to ensure “suitable” water temperatures below Shasta Dam, it actually worsens water temperatures in these key months compared to baseline conditions. With respect to other dams and reservoirs, as noted supra,	Planning Process, regarding a discussion of Fish and Game Code section 5937.

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		Appendix H1a1 includes water temperature indicators that were “were chosen for a basic analysis that focuses on fish survival below the dams. Refinement of this analysis using different indicators and downstream locations will likely be necessary to best meet the cold water habitat objective.” Recirculated SED, Appendix H1a1 at H1a1-12 to H1a1-13. Yet the analysis in the Recirculated SED demonstrates that even these, often inadequate, water temperature indicators are frequently exceeded. For instance, for the American River below Folsom Dam, modeling indicates that water temperatures under baseline conditions exceed the temperature indicators for the American River at Hazel Avenue for the months of October (50 percent and 90% exceedance), November and December (all water year types shown), and exceed the temperature indicators for the American River at Watt Avenue for the months of May to October under the 90% exceedance, for the months of July through October for the 50% and 90% exceedance, and for the month of September under the 90% exceedance. Recirculated SED, Appendix H1b, at H1b-43 to H1b-44. Under both the voluntary agreement and the 55w/WSA alternatives, water temperatures would continue to exceed these temperature thresholds in most of those months and water year types. Id. Similarly, for the Yuba River at Smartsville, baseline conditions already exceed the temperature thresholds in the month of September, and the voluntary agreement would slightly increase water temperatures in the months of August and September. Id. at H1b-45. The resulting water temperatures from implementing the voluntary agreement or the 55w/WSA scenario plainly fails to protect salmon, exceeds the inadequate water temperature standards identified in the Central Valley Basin Plan and Order 90-5, and fail to achieve “suitable temperatures” necessary to protect salmon based on peer reviewed scientific information published over the past decade. See, e.g., Martin et al. 2016; NMFS 2017; Draft SED at 7.6.2-22 and 7.6.2-61; Martin et al. 2020.	
1144	36	Second, the Revised Draft Plan fails to ensure that the Cold Water Habitat objective is achieved because the Program of Implementation exempts parties to the voluntary agreements from any requirement to take actions to maintain suitable water	The VA parties are required to take actions to meet the cold water habitat objectives, as described in the provision quoted by the commenter regarding implementing the VAs in a manner to improve temperatures to the extent possible and avoid

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		temperatures, implement reservoir carryover storage targets, or adopt temperature management plans subject to State Water Board approval. See Revised Draft Plan at 5 (“All water rights not covered by approved VAs that affect temperature management are subject to the cold water habitat requirements of this section and rim reservoir owners/operators identified in Table 7 will be required to undertake specific implementation actions identified below.”); id. at 52 (“The State Water Board will require the water right holders and reservoir owners/operators identified in Table 7 that are not part of approved VAs to develop long-term temperature management strategies for operations of the rim reservoirs and associated facilities identifying how the reservoirs and related facilities will be operated to meet the cold water habitat requirements based on the best available scientific and technical information.”). Indeed, under the voluntary agreement pathway the only requirement identified in the program of implementation to implement the Cold Water Habitat objective is that, The VAs are required to be implemented in a manner to improve temperatures to the extent possible and avoid redirected impacts to water temperatures. As part of the annual and periodic review processes, the VA parties will be required to report on measures they have undertaken to address temperature impairments in their stream systems in coordination with VA implementation measures. Id. at 66 (emphasis added). The Recirculated SED confirms that the parties to an approved voluntary agreement would not have to implement any of the specific cold water habitat measures identified in the Plan: During implementation of an approved VA pathway, HRL water rights would not be required to contribute to the regulatory pathway cold water habitat implementation requirements. However, there is a cold water provision included under the VA pathway, and, to some degree, habitat restoration measures of the VA pathway could help offset temperature impacts by expanding habitat in areas that have cooler temperatures. Recirculated SED at 13-302 (emphasis added).	redirected impacts to water temperatures. Please see Common Response 1.2, Water Quality Control Planning Process, regarding Porter-Cologne and the ability to include staged implementation in a program of implementation, and Common Response 1.3, Revised Proposed Plan Amendments, for information on the cold water habitat objective and the VA pathway.

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		Porter-Cologne requires that objectives be achieved. In contrast, the Plan proposes a VA pathway that hopes objectives will be achieved “to the extent possible” and relies on habitat restoration that “could help offset” the failure to do so. As discussed infra, these vague exemptions from objectives are illegal, prevent the Program of Implementation from achieving objectives, eliminate any hope that beneficial uses are protected, and will cause significant harm to temperature-dependent fish species. The owners or operators of the majority of the reservoirs identified in Table 7 of the Revised Draft Plan are currently identified as parties to the voluntary agreement and would therefore be excluded from the requirements to implement the Cold Water Habitat objective in section 4.4.2.3. As a result, the largest reservoirs in California are exempt from these requirements, including Shasta, Whiskeytown, Oroville, New Bullards Bar, Camp Far West, Folsom, Pardee, and Comanche reservoirs. This would continue and likely exacerbate, rather than solve, problems that exist now. Over the past several decades significant temperature-dependent mortality of salmon and other fish and wildlife has occurred below some of these reservoirs because of the failure to adequately manage water temperatures and protect cold water habitat, particularly Shasta Reservoir. The Cold Water Habitat objective requires maintaining reservoir storage conditions “to protect cold water habitat,” including providing “sufficient quantities of habitat with suitable temperatures on streams to support passage, holding, spawning, incubation and rearing,” In contrast, the voluntary agreement pathway merely requires that these parties “improve temperatures to the extent possible and avoid redirected impacts to water temperature.” Revised Draft Plan at 67. Because the Program of Implementation fails to achieve “sufficient quantities of habitat with suitable temperatures” under the voluntary agreement pathway, the Revised Draft Plan fails to ensure that the Cold Water Habitat objective is achieved as required by law.	

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1144	37	In addition, the Revised Draft Plan suggests that the Cold Water Habitat objective could be achieved by implementing “alternative protection measures to ensure that fish below dams are kept in good condition consistent with Fish and Game Code 5937.” Revised Draft Plan at 51-52; see Draft SED at 7.6.2-57 (explaining that many dam operators “would take advantage of the provided flexibility” and implement actions that contribute “toward achieving the overall goal of improving conditions for fish and wildlife in the Sacramento/Delta”). To the extent that these measures do not actually achieve suitable water temperatures and adequate cold water habitat, even if they resulted in equivalent levels of future abundance of fish, while those actions might achieve other narrative objectives, they could not achieve the cold water habitat objective and thus would be unlawful. See Cal. Water Code § 13241. [Footnote 44: The Draft SED also identified the need to adopt mitigation measures regarding water temperature control and reservoir management to avoid potentially significant impacts under CEQA. See Draft SED at 7.6.2-103. However, the Recirculated SED excludes the VA parties from having to implement these mitigation measures, and the Revised Draft Plan therefore is reasonably certain to cause significant harmful environmental impacts.]	Please see the response to comment 1144-33. Also see Common Response 7.6.2, Aquatic Biological Resources and Cold Water Habitat, regarding cold water habitat as part of the project and implementation of the cold water habitat objective. See Staff Report Section 13.7.6.2, Aquatic Biological Resources, for the analysis of impacts to water temperature, including a discussion of the VA pathway.
1144	38	Finally, the State Water Board has failed to adequately consider whether the proposed voluntary agreement or other alternatives would achieve existing water temperature objectives in the watershed (which have been previously adopted by the State Water Board to ensure reasonable protection of fish and wildlife and other beneficial uses), nor has the State Water Board evaluated whether existing water temperature objectives and standards provide reasonable protection of salmon and other fish and wildlife beneficial uses. The Draft SED also fails to provide a reasoned explanation supporting its conclusion that the Revised Draft Plan would provide reasonable protection for COLD beneficial uses in the Delta. For instance, neither the Revised Draft Plan nor the Draft SED demonstrate the State Water Board has evaluated whether the proposed voluntary agreement would achieve certain existing water quality objectives identified in the Central Valley Basin	As acknowledged in Section 7.6.2 and 13.7.6.2, Aquatic Biological Resources, most waterways in the Central Valley downstream of reservoirs have existing temperature management concerns at certain times under existing conditions. For an evaluation of impacts, project conditions are compared to existing conditions, not pre-dam conditions. The question being evaluated is whether the scenarios would make temperatures better or worse for fish compared to existing conditions. As a result, the methodology compares the ability to maintain temperatures below index values between the scenarios and existing conditions. Therefore, a scenario that provides the same temperatures as existing conditions would be considered to have no impact, even though existing temperature problems would continue to exist. Many temperature indices were used in the temperature

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		Plan, including the requirement to maintain water temperatures below 68 degrees Fahrenheit in the Sacramento River between Hamilton City and the I Street Bridge. See Central Valley Basin Plan at 3-14. And while the Revised Draft Plan asserts that it provides reasonable protection of COLD beneficial uses in the Delta, [Footnote 45: See Revised Draft Plan at 13.] the Draft SED fails to conduct any quantitative modeling and analysis of water temperatures in the Delta. See Draft SED at 7.12.1-66 (explaining how the Draft SED only modeled water temperatures in three rivers upstream from the Delta). However, it is clear that water temperatures in the Delta and in the downstream sections of rivers that flow into the Delta can be adversely affected by the diversion and storage of water upstream and other activities, including discharges from agricultural lands. See Burford et al. 2025; Michel et al. 2023; Bashevkin and Mahardja 2022; Vroom et al. 2017. And there is ample scientific evidence that COLD beneficial uses in the downstream reaches of the Sacramento River as it drains into the Delta and the Delta itself are not currently being protected. See, e.g., Lehman et al. 2017; Munsch et al. 2019; Nobriga et al. 2021. Nor has the State Water Board adequately considered whether achieving these existing water quality objectives and permit conditions for water temperature provides “suitable” water temperatures or provide reasonable protection of fish and wildlife. Given the scientific information regarding the effects of water temperatures, particularly with respect to temperature impacts on winter-run Chinook Salmon eggs and fry, that has been developed over the past decade or more, it is clear that many of these existing water quality objectives and permit conditions for temperature, including Order 90-5 and the Central Valley Regional Water Quality Control Board’s temperature objectives for the Sacramento River, fail to provide reasonable protection of fish and wildlife. See, e.g., Myrick and Cech 2004, 2005; NMFS 2017; Lehman et al. 2017; Munsch et al. 2019 SEP 2019; Nobriga et al 2021.; see also Baykeeper 2024. Because the administrative record fails to demonstrate that the Program of Implementation under the 55w/WSA alternative would achieve the Cold Water Habitat objective and makes	assessment as described in Appendix H1b, Water Temperature Modeling and Fish Assessment for the Sacramento, Feather, American, and Yuba Rivers. For the Sacramento River reach between Hamilton City and the I Street Bridge, many of the indices used in the assessment were more stringent than 68 °F. For example, for the Sacramento River at Hamilton City, a 7DADM index of 64 °F and average indices of 63 °F, 66 °F, and 73 °F were used in the evaluation and for Knights Landing a mean temperature index of 66 °F was used in the evaluation (see Table H1b-60, Water Temperature Index Values Used for Water Temperature Index Value Analyses, Sacramento River). Because implementation of the cold water habitat objective is complex, methodology for individual tributary implementation will take time. Please see Common Response 7.6.2, Aquatic Biological Resources and Cold Water Habitat, regarding implementation of the cold water habitat objective and flexibility included in the revised proposed Plan amendments related to long-term temperature management strategy and refinement of the carryover storage target ranges. Please see pages 7.6.2-90 through 7.6.2-92 of the 2023 draft Staff Report for an analysis of the possible effects of the flow scenarios on water temperatures in the Delta. The analysis was qualitative because there is no readily available methodology for translating water temperature effects in the Sacramento/Delta tributaries through the Delta. As described in Section 7.6.2, Aquatic Biological Resources, overall, it is important to note that water temperature-related effects on aquatic species associated with changes in Delta inflow are expected to be very minor because water from upstream reservoirs approaches equilibrium with atmospheric conditions by the time it reaches the Delta.

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		achieving the objective optional under the voluntary agreement, approval of the Revised Draft Plan would be unlawful.	
1144	39	D. The Record fails to Demonstrate that the Program of Implementation will Achieve the Interior Delta Flows Objective The Revised Draft Plan fails to ensure that the Interior Delta Flows narrative objective is achieved as required by law because the Program of Implementation: (1) fails to require measures within the State Water Board's jurisdiction to implement this objective, instead relying on measures by other agencies that are likely to change in the near future and are not reasonably certain to occur; (2) fails to consider, let alone adopt, any measures specifically designed to protect fish and wildlife, including fall-run Chinook Salmon, that are not listed under the state and/or federal Endangered Species Act, or to improve conditions for fish and wildlife beyond the minimum required by the state or federal Endangered Species Act. The State Water Board recognizes that net reverse flows in the Interior Delta cause ecological harm, including the entrainment and loss of salmon and other fish species in the SWP and CVP export facilities, indirect mortality and migratory delays, reductions in spawning and rearing habitat for native species like Delta Smelt, all of which impact the abundance and survival of native salmon and estuarine fish species. See Recirculated SED at 13-303. However, as the Revised Draft Plan explains, The narrative objective for interior Delta flows is implemented through compliance by SWP and CVP with the numeric interior Delta flow objectives described below and the USFWS and NMFS BiOps and DFW ITP requirements for the operations of the CVP and SWP export facilities. Revised Draft Plan at 61. There are two fatal flaws with this approach. First, instead of requiring specific, numeric interior Delta flow objectives, such as specifying maximum reverse flows in OMR, the Revised Draft Plan fails to specify a "level or limit" for this objective. Instead, the Revised Draft Plan proposes to rely on	The commenter has not provided a basis for the claim that the Staff Report ignores changes to Biological Opinions and Incidental Take Permit (ITP) requirements from 2009 to 2025. In fact, changes to I:E requirements were modeled as described in Staff Report Section 13.4, Changes in Hydrology and Water Supply. Please see Common Response 1.2, Water Quality Control Planning Process, for information on reasonable protection of fish and wildlife beneficial uses and water quality objectives and Common Response 1.1, General Comments, regarding comments about the federal and state endangered species acts. Also see Common Response 1.3, Revised Proposed Plan Amendments, for information on the interior Delta flow objectives and requirements, and regarding comments about the 2025 Record of Decision and 2025 ITP.

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		other state and federal permitting requirements (2024 CVP/SWP biological opinions under the federal Endangered Species Act, and the incidental take permit issued to the State Water Project under the California Endangered Species Act). Id. [Footnote 46: Because those biological opinions and incidental take permits are not incorporated as part of the regulation, and because they are subject to change without any action by the State Water Board – effectively amending the regulatory standard without action by the State Water Board in compliance with the California Administrative Procedures Act – this element of the proposed regulation is unlawful. See, e.g., Cal. Code Regs., tit. 1, § 20; Office of Administrative Law, Decision of Disapproval of Regulatory Action, OAL Matter Number: 2024-0314-01S, at 8, available online at: https://dfpi.ca.gov/wp-content/uploads/2024/05/2024-0314-01S-Disapproval-Decision.pdf; Office of Administrative Law, Decision of Disapproval of Regulatory Action, OAL Matter Number: 2025-0112-01, March 13, 2025, at 3-4, available online at: https://www.cdfa.ca.gov/oars/cap/docs/oals_disapproval_text2_0250423.pdf.] However, federal and state ESA requirements have repeatedly been modified – weakening protections for fish and wildlife, reducing flows into and through the Delta, and resulting in more negative OMR flows – during the course of the State Water Board’s regulatory proceeding to update the Bay-Delta Plan. As the Recirculated SED admits, As discussed in Section 13.4, Changes in Hydrology and Water Supply, changes to other regulatory requirements have affected Delta outflows and OMR flows compared to the baseline for this project. Specifically, changes to the Long-Term Operations (LTO) of the CVP and SWP have resulted in reductions in Delta outflows and increase in negative OMR flows at times relative to the baseline for this project (Reclamation 2019; NMFS 2019; USFWS 2019; DWR 2020; CDFW 2020; DWR 2024; Reclamation 2024; USFWS 2024; NMFS 2024; CDFW 2024). Recirculated SED at 13-405. The Recirculated SED ignores the changes to baseline conditions that occurred between 2009 and 2025, which also resulted in reductions in Delta outflows and	

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		increases in negative OMR flows compared to conditions in 2009 when the Notice of Preparation (“NOP”) was first issued. The current interior Delta flow requirements of the 2024 ITP and biological opinions are significantly less protective than the conditions required by the 2008 and 2009 biological opinions, resulting in greater reverse OMR flows that harm fish and wildlife. if adopted by the State Water Board, the voluntary agreement triggers elimination of provisions of the current CESA incidental take permit (requiring DWR to maintain its “share” of the Vernalis inflow-to export ratio), which will lead to much more negative levels of OMR flow. See 2024 SWP Long-Term Operations ITP at §8.12. The State Water Board has long been aware that these permit conditions were subject to change. In the Draft SED, the State Water Board recognized that, For the most part, the proposed changes to the interior Delta flow objectives and implementation measures involve incorporation of existing BiOp and ITP requirements into the Bay-Delta Plan, including requirements contained in the USFWS and NMFS BiOps and CDFW ITP. While these requirements already exist, it is possible that they will change. Draft SED at 5-36. And the Draft SED further explained that, If there are changes to the BiOp provisions, the State Water Board may approve those changes provided that they are no less protective than the existing requirement in the Bay-Delta Plan, changes would meet the narrative interior Delta flow objective, and CDFW concurs with that determination. Short-term (one season or less but not sequentially) or long-term changes could be made. Changes could be approved after the opportunity for public comment and consideration of those comments. Id. However, the Revised Draft Plan eliminates any requirements for the State Water Board to approve changes to existing biological opinions or incidental take permits, and it eliminates the incorporation of similar numeric limits as objectives in the Bay-Delta Plan. See Revised Draft Plan at 61. And as discussed supra, the recent biological opinion adopted by the Trump	

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		Administration caused more negative OMR flows than what was analyzed in the 2023 SED, and will increase the salvage and loss of salmon, Longfin Smelt, and other fish species in the Delta, including likely causing further population declines of native fish and wildlife species. See, e.g. 2024 LTO FEIS Appendix I, Attachment I.4, Table I.4-2. [Footnote 47: Document available online at: available at: https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=55300].] Modeling demonstrates that both the voluntary agreement and 55w/WSA scenarios result in more negative OMR flows in the critical months of December to June on average than under occur under existing conditions which have already degraded from baseline. See Recirculated SED at 13-107 to 13-109. Under the voluntary agreement, Interior Delta Flow conditions are even further degraded because of provisions in the ITP that waive specific pumping limits in April and May if the voluntary agreement is adopted, resulting in even more negative OMR flows. Id. at 13-109; Table 13.4-84 (reproduced below). Instead of improving Interior Delta Flows, both the voluntary agreement and 55w/WSA scenarios worsen Interior Delta Flows compared to baseline conditions. The State Water Board has the authority to impose limits on export operations of the Central Valley Project and State Water Project; the existing Bay-Delta Plan includes limits, such as the San Joaquin River inflow:export ratio, and the Delta export:inflow ratio, and the Courts have previously upheld water quality objectives that limited water exports of the state and federal water projects. See <i>United States v. State Water Resources Control Board</i>, 182 Cal. App. 97 (1986). However, instead of imposing any “limits or levels” under its authority, the State Water Board assumes implementation of other measures that are not reasonably certain to be achieved and are unlikely to be protective. The Revised Draft Plan does not require the State Water Board to reevaluate or impose additional measures if those measures in state and federal permits are modified, and the SED demonstrates that Interior Delta Flows will be further degraded if the voluntary agreement or 55w/WSA scenario is adopted. As a result, the program of implementation fails to	

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		ensure that the Interior Delta Flow objective is achieved as required by law.	
1144	40	Second, the State Water Board has failed to consider whether these requirements provide reasonable protection for fish species that are not listed under the state or federal Endangered Species Acts (including fall-run Chinook Salmon, late fall-run Chinook Salmon, Starry Flounder, and Sacramento Splittail), nor has the State Water Board considered whether these minimum protections for species listed under the state or federal endangered species achieve reasonable protection of fish and wildlife and achieve the salmon doubling objective. These permits and biological opinions only directly protect species listed under the state or federal Endangered Species Acts. Because of the diverse life histories of salmon, protections for endangered springrun Chinook Salmon and winter-run Chinook Salmon do not necessarily protect fall-run Chinook Salmon or other species that are not listed; for instance, juvenile fall-run Chinook Salmon frequently migrate through the Delta later in the year than winter-run Chinook Salmon. In addition, these permits and biological opinions are only intended to prevent jeopardizing the continued existence of these species, and they are not necessarily sufficient to achieve the greater abundances of salmon and other fish species necessary to achieve the salmon doubling objective or protect other beneficial uses, like commercial and recreational fishing or Tribal Beneficial Uses. Instead of ensuring that the Program of Implementation for Interior Delta Flows protects all fish and wildlife, the State Water Board has conflated the minimum requirements of the state and federal Endangered Species Acts with the State Water Board's much broader authority to protect the Public Trust, ensure reasonable protection of fish and wildlife, and ensure achievement of the salmon doubling objective. These are distinct legal standards, and the State Water Board's failure to consider, let alone impose, any protections for fall-run Chinook Salmon or to require more than the minimum requirements of the state and federal Endangered Species Acts to achieve the Interior Delta Flow objective is arbitrary and capricious.	Please see the response to comment 1144-39.
1144	41	E. The Record Fails to Demonstrate that the Program of Implementation will Achieve the Narrative Fish Viability	Please see Staff Report Section 7.1.3, Purpose and Goals of the Sacramento/Delta Update to the Bay-Delta Plan, for a discussion

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		Objective The Revised Draft Plan proposes a narrative fish viability which reads, Maintain water quality conditions, including flow conditions in and from tributaries and into and out of the Delta, together with other measures in the watershed, sufficient to support and maintain the natural production of viable native fish populations. Conditions and measures that reasonably contribute toward maintaining viable native fish populations include, but may not be limited to: (1) flows that support native fish species, including the relative magnitude, duration, timing, temperature, and spatial extent of flows; and (2) conditions within water bodies that enhance spawning, rearing, growth, and migration in order to contribute to improved viability. Indicators of viability include population abundance, spatial extent, distribution, structure, genetic and life history diversity, and productivity. Flows provided to meet this objective shall be managed in a manner to avoid causing significant adverse impacts to fish and wildlife beneficial uses at other times of the year. Revised Draft Plan at 21. The administrative record fails to demonstrate the Program of Implementation will achieve the narrative Delta Inflow, Delta Outflow, Interior Delta Flow, and Cold Water Habitat objectives. In fact, as discussed above, the record demonstrates that the voluntary agreement and 55w/WSA scenarios would: 1) Fail to provide “suitable” cold water habitat to adequately protect salmon, and that approval of the voluntary agreement would worsen water temperatures below Shasta Dam and other upstream reservoirs compared to the degraded baseline, harming winter-run Chinook Salmon, spring-run Chinook Salmon, fall-run Chinook Salmon, Central Valley Steelhead, and other species; 2) Worsen Interior Delta Flow conditions compared to baseline conditions, increasing the loss of salmon, Central Valley Steelhead, and Longfin Smelt and further reducing the survival	of the purpose and goals of the Sacramento/Delta Update to the Bay-Delta Plan. Please see Common Response 1.3 Revised Proposed Plan Amendments for a discussion of the program of implementation. Please also see Common Response 7.6.2 Aquatic Biological Resources and Cold Water Habitat, Common Response 1.2 Water Quality Control Planning Process, for a discussion of reasonable protection of fish and wildlife beneficial uses, and Common Response 3.1 Fish Protection, on use of best available science and updates to the literature, flow thresholds, and the benefits analyses in the Staff Report. Please see Staff Report Section 13.5, Beneficial Environmental Effects, for the expected benefits of the regulatory pathway (55 w/WSAs) and VA pathway compared to Baseline conditions. Please see Common Response 1.2, Water Quality Control Planning Process for a discussion on reasonable protection of fish and wildlife beneficial uses. And please refer to the response to comment 1144-42 for a discussion on the narrative viability objective and biological goals.

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		and abundance of species including Delta Smelt; 3) Fail to meaningfully improve Delta outflow compared to baseline conditions, and for some species like White Sturgeon and Delta Smelt, approval of the voluntary agreement would worsen ecological conditions and likely lead to further declines in abundance; 4) Fail to meaningfully improve Delta inflow compared to baseline conditions. Similarly, the Recirculated SED demonstrates that habitat restoration proposed under the voluntary agreement would contribute little to no improvement in habitat indicators such as spawning habitat, meaningful flood events, and instream and floodplain rearing habitat.	
1144	42	Under baseline conditions, the State Water Board admits that native fish species are in “ecological crisis” and that most of these species have substantially declined in abundance since the adoption of the 1995 Bay-Delta Plan, including Longfin Smelt, Delta Smelt, winter-run Chinook Salmon, spring-run Chinook Salmon, fall-run Chinook Salmon, Starry Flounder, White Sturgeon, Bay Shrimp, and native zooplankton. See, e.g., Draft SED at 3-134. Unless these declines are reversed in the coming years, multiple species – including Longfin Smelt, Delta Smelt, and winter-run Chinook Salmon – are likely to go extinct. Thus, conditions must substantially improve compared to the degraded baseline conditions to halt the ongoing declines. However, neither the Plan nor the administrative record provide a reasoned explanation for how much species must increase in abundance, productivity, and other parameters to be viable, given the existing and ongoing declines. For example, the Recirculated SED identifies numerous ecologically important flow thresholds, but while it compares the frequency that different alternatives would achieve those flow thresholds, neither the Revised Draft Plan nor the record demonstrate how frequently these flow thresholds must be exceeded to achieve the narrative Fish Viability Objective. See Recirculated SED at 13-204. In fact, the best available science indicates it must be far	Please see Staff Report Section 7.1.3, Purpose and Goals of the Sacramento/Delta Update to the Bay-Delta Plan, for a discussion of the purpose and goals of the Sacramento/Delta Update to the Bay-Delta Plan. Please see Common Response 3.1, Fish Protection, on the updates to the literature and flow thresholds in the Staff Report and frequency of flows. Please also see Common Response 1.2, Water Quality Control Planning Process for a discussion on reasonable protection of fish and wildlife beneficial uses under the revised proposed Plan amendments including the narrative fish viability objective. Viability assessment metrics for specific fish species have not been developed yet as part of the Biological Goals process and are therefore not included in the Staff Report analyses as suggested by the comment. Please see Common Response 1.3, Revised Proposed Plan Amendments, for a description of the requirement for the Board to develop biological goals, including measures to assess the four primary viability parameters: abundance, productivity, genetic and life history diversity; and the population spatial extent, distribution, and structure for native species. Biological goals will be used to assess the

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		more frequent than the modelling indicates will occur or than the Plan's regulations require. Similarly, for species like Longfin Smelt for which there is a strong abundance-to-outflow relationship, the Recirculated SED (and Draft SED) estimate potential changes in abundance under the different flow scenarios but fail to explain how much these populations must increase in abundance and productivity to fully offset the ongoing declines and attain and maintain viability. For instance, if Longfin Smelt have declined at an annual rate of five percent per year on average since the Bay-Delta Plan was adopted in 1995, and the Bay-Delta Plan was estimated to increase the population by 3 percent compared to baseline conditions, Longfin Smelt would continue to decline and would not be viable. Given the ongoing, severe declines in abundance for numerous species in the Bay-Delta, merely showing some improvement compared to baseline conditions is insufficient to demonstrate that the Revised Draft Plan would achieve viability. Yet for many species, that is all that the State Water Board has done: evaluate conditions compared to the degraded baseline, without analyzing how much populations have declined under baseline conditions, nor whether projected increases in population growth are greater than the decline in population growth under baseline conditions. See, e.g., Recirculated SED at 13-205 and Fig. 13.5-4. This comparative analysis fails to demonstrate that the Revised Draft Plan will achieve viability given that these species are not currently viable under baseline conditions.	effectiveness of the Bay-Delta Plan including whether the narrative fish viability objective is being achieved.
1144	43	The voluntary agreements do not meet minimum needs for improved flow conditions. Instead, the voluntary agreements exchange adequate flows for "habitat assets." However, the State Water Board's analysis of habitat restoration under the voluntary agreements fails to demonstrate that the alternative would achieve the Narrative Fish Viability objective. First, there is no evidence offered in the record or the voluntary agreement proposal that would allow for the quantification of the purported value of the proposed non-flow habitat to make up for the greatly reduced flows offered by the voluntary agreements as compared to an evidence-based and scientifically	Please see the response to comment 1144-31.

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		supported unimpaired flow regime. In part, the lack of evidence for benefits from the VA proposal to restore shallow water environments (“habitat”) results from the lack of evidence-based quantitative relationships showing significant effects of past habitat restoration efforts on population viability for most of the species of concern. [Footnote 48: In using the term “habitat” here, it is important to note the distinction between its limited meaning under the voluntary agreements, as the physical component of an organism’s environment, and its specific meaning in the “Estuarine Habitat [EST]” sense, which refers to the hydrological component of estuarine processes and habitats.] Second, and more fundamentally, the offered exchange is a false equivalency: there is no habitat accounting that could demonstrate that any earth-moving habitat modification can replace water in the river. Among other reasons, this is because aquatic habitat cannot be created by a one-time fix-it-and-forget-it approach; it is a dynamic feature that depends on adequate flows providing the foundation and physical work to maintain it over time. There is no scientific basis to the claim that the VA alternative can succeed in reversing the decline of public trust environmental and fisheries resources. Only the sustained provision of adequate flows in the rivers and through the Bay-Delta estuary will restore this once vibrant ecosystem. The State Water Board fails to demonstrate that other, non-flow measures proposed under the voluntary agreements, including proposed restoration of shallow water environments (which the Recirculated SED optimistically refer to as “habitat”), will alter conditions in a way that allows the voluntary agreements to achieve the Plan’s Delta inflow, Delta outflow, or narrative fish viability objectives. The State Water Board has previously cautioned that, “flow and physical habitat interact in many ways, but they are not interchangeable.” SWRCB 2010 at 1. Indeed, the proposed Plan updates and Recirculated SED fail to acknowledge that four decades of implementing similar “habitat restoration” projects (e.g., under the CALFED program and the Central Valley Project Improvement Act’s anadromous Fish Restoration Program), which have affected thousands of acres (e.g., Chapple et al. 2025), have not reversed, stopped, or noticeably slowed	

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		declines in Bay-Delta Estuary fish populations. Yet the State Water Board has failed to provide a reasoned explanation how the relatively small habitat restoration proposed under the voluntary agreement would, in combination with flows proposed under the voluntary agreement, achieve the newly proposed narrative objectives, including the native fish viability objective, or the salmon doubling objective. Instead, the Recirculated SED asserts – without a reasoned explanation – that the non-flow measures under the voluntary agreement “could result in fisheries-related ecological benefits,” Recirculated SED at 13-539, or that these non-flow measures “are expected to contribute towards” achieving the fish viability objective. Neither conclusion is supported by the evidence, and neither conclusion fulfills the State Water Board’s obligation under Porter-Cologne.	
1144	44	The State Water Board’s analysis of “habitat” that the voluntary agreement alternative proposes to create focuses on Chinook Salmon spawning and rearing areas upstream of the Delta. Pledged “habitat” improvements are compared to the area estimated to be necessary to support the Plan’s salmon protection objective. Chinook Salmon populations across the Central Valley have failed to attain the salmon protection objective, and instead natural spawned Chinook Salmon populations in Central Valley tributaries have mostly declined (in some cases, dramatically) since the objective was adopted. As we have noted repeatedly, evidence is lacking that shallow water environments (“spawning habitat” or “rearing habitat”) currently limit Central Valley Chinook Salmon population abundance or that these populations can be restored without significant improvement in river flow regimes. See Baykeeper et al. 2024 at 48; see also Presentations to the State Water Board by: Dr. Julie Zimmerman of The Nature Conservancy (Zimmerman 2023) Dr. Bronwen Stanford of The Nature Conservancy (Stanford 2023); Dr. Jonathan Rosenfield of San Francisco Baykeeper (Baykeeper and FOR 2023). For example, while more spawning habitat may be beneficial if significantly greater numbers of adult salmon return to spawn in the future (e.g., reducing density-dependent effects), the Recirculated SED fails to explain how additional spawning or rearing habitat would benefit species at their currently depressed population	Please see the Scientific Basis Report Supplement (Staff Report Appendix G2) for a comprehensive discussion of the benefits of habitat restoration and estimates of the amount of habitat needed to support the doubling goal population. Also see Common Response 3.1, Fish Protection, for information on the habitat benefit analyses and Common Response 1.2, Water Quality Control Planning Process, regarding the consideration of beneficial uses.

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		levels. Indeed, the Recirculated SED never identifies how much habitat restoration is necessary to achieve viability of salmon or other native fish populations. For instance, Munsch et al. 2020 concluded that restored wetland habitats in the lower Sacramento River, Delta, and Suisun Bay are frequently not densely populated, and often not occupied at all by rearing Chinook Salmon fry under the status quo flow regime and existing low abundances of salmon. Yet Delta inflows associated with Chinook Salmon fry presence in available tidal habitats (17,700 cfs at Freeport) and those associated with relatively high density of fry (26,500 cfs at Freeport) are projected to occur in just 1% more years under the voluntary agreement relative to baseline. [Footnote 49: The VA alternative would create 5,227.5 acres of “tidal wetland and associated floodplain habitat”. Design criteria for these acres have not been developed (Recirculated SED at 13-28); thus, there is no way to know whether this area will be developed in a way that is intended to serve as “habitat” for salmon (much less when and whether the restoration is successful at producing actual habitat). To the extent that VA parties intend to restore tidal wetlands for the benefit of rearing Chinook Salmon fry, that benefit must be interpreted in the context of previously restored tidal wetlands that are frequently not fully, or even minimally, occupied under current flow regimes or flow regimes anticipated under the VA.] See Recirculated SED at 13-211. Without significant increases in flow and abundance, existing shallow water habitat in the Delta and vicinity will remain unutilized or underutilized in a large proportion of years under the State Water Board’s proposed Program of Implementation, and there is little evidence that such habitat restoration by itself would benefit salmon. The Recirculated SED fails to explain habitat restoration would benefit salmon or other species without substantially increased flows and higher abundance levels, consistent with the findings of Munsch et al 2020. Even if the proposed “habitat” restoration performed exactly as the voluntary agreement proponents suggest, the proposed “habitat” creation measures fail to satisfy the assumed need. The voluntary agreement arbitrarily seeks to result in only 25% of the presumed need for Chinook Salmon rearing and spawning	

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		“habitat” on the Sacramento River, its tributaries, and the Mokelumne River. This target is facially inconsistent with attaining the salmon protection objective. The 2023 Draft SED’s estimate that the VA will increase Chinook Salmon juvenile “rearing habitat” by 2-3% above baseline conditions, provides no reason to expect that the voluntary agreement alternative will succeed in restoring viable Chinook salmon populations as required by the Revised Draft Plan’s objective. See Draft SED at Table ES-4. The Recirculated SED reveals that the voluntary agreements will not result in availability of Chinook Salmon spawning habitat necessary to achieve the narrative salmon doubling objective or, in some cases, even 25% of the “habitat” presumed to be necessary to support attainment of that objective. See Recirculated SED, Tables 13.5-6 and 13.5-7. Furthermore, the voluntary agreement proposal to create salmon “habitat” is arbitrary, untethered to the estimated need for such environments, and not likely to result in attainment of the salmon doubling objective, or even 25% of that objective. The Recirculated SED reveals that estimated spawning “habitat” already exceeds 25% of the assumed need on 4 of the 5 rivers studied; nevertheless, the voluntary agreement would fail to reach its 25% target on the one remaining waterway, the American River. See Recirculated SED at 13-206. Similarly, the VA proposes to create “rearing habitat” on Yuba River and Mokelumne Rivers, even though both rivers exceed the arbitrary 25% threshold (indeed, rearing habitat availability is estimated to far exceed 100% of the assumed need on the Mokelumne). Id. at 13-208. Meanwhile, the VA proposal fails to hit its own inadequate 25% target for rearing habitat on the American and Sacramento River (for fall-run Chinook Salmon). Id. With respect to instream rearing habitat, the Recirculated SED shows that the voluntary agreement would fall far short of achieving 25 percent of the instream rearing habitat area necessary to achieve the salmon doubling objective on the American River (increased from 5% to 7%), Feather River (10% under baseline and voluntary agreement), and Sacramento River (fall-run, increased from 4% to 7%), and would reduce instream rearing habitat on the Mokelumne River. See Recirculated SED, Appendix H1c, at H1c-38.	

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1144	45	In addition, under the voluntary agreement it appears that there would be little change in the frequency of meaningful floodplain inundation events on most tributaries, and floodplain inundation events would fail to achieve the area and frequency of floodplain habitat inundation that the Recirculated SED identifies as necessary to achieve the salmon doubling objective. Id., Appendix H1c, at H1c-39 to H1c-41. [Footnote 50: Appendix H1c only provides results for the Feather, Mokelumne, and Yuba Rivers, and it fails to provide results for the Sacramento River and all other tributaries, making it impossible for the public to evaluate statements made in the Recirculated SED.] With respect to the 55w/WSA alternative, the State Water Board's analysis shows that, "in most tributaries there are no differences between the 55w/WSA scenario and baseline" with respect to the frequency of meaningful floodplain inundation events. See Recirculated SED at 13-201 to 13-202. For both alternatives, as with spawning and rearing habitat, the Recirculated SED fails to identify how frequently meaningful floodplain inundation events must occur to achieve viability of salmon, steelhead, or other native fish species, and both alternatives fail to achieve the meaningful floodplain inundation events at the frequency and acreage that the State Water Board asserts is necessary to achieve salmon doubling.	Please see the response to comment 1144-31. The MFE analysis for the VA pathway was only presented for the VA tributaries that included floodplain habitat restoration commitments, since those are the tributaries in which floodplain benefits are expected. Also see Common Response 3.1, Fish Protection, for information on the habitat benefit analyses.
1144	46	The Recirculated Draft SED provides little analysis of the effect of the proposed voluntary agreements on habitats used by estuarine pelagic species such as Longfin Smelt, Delta Smelt, or Starry Flounder – these species would not be expected to benefit from habitats created upstream for Chinook Salmon. Figures 13.5-3 and 13.5-7 in the Recirculated SED portray estimated estuarine area suitable for Longfin Smelt, Delta Smelt, and salmonids. Although the Recirculated SED describes these changes as "small relative to total region size," no discernible change in estuarine "habitat" is visible in modeling of the voluntary or the WSA alternative. The 2023 Draft SED estimated changes to estuarine environments used by pelagic fishes under the VAs, including a range from -11% (decrease) to +11% (increase) in the area used by Delta Smelt larvae. See Draft SED at Table ES-4. These results do not suggest that "habitat" improvements for pelagic fishes will overcome the ongoing negative effects of inadequate flows that lead to persistent	Please see Common Response 3.1, Fish Protection, for information on the habitat benefit analyses. Also see Common Response 1.2, Water Quality Control Planning Process, regarding the consideration of beneficial uses.

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		decline in estuarine species illustrated above. The Recirculated SED fails to document or explain: • that available space with suitable environmental conditions ("habitat" as crudely estimated in the SED) is limiting for any of these species; • the level of increase in "habitat" area required to restore and maintain viability for native fish species (and doubling of natural production for Chinook Salmon), if physical habitat were limiting; • that any gap between existing habitat area and what is needed to reasonably protect beneficial uses will be bridged by measures in the proposed Plan updates. While it is clear that existing flows fail to reasonably protect the estuarine habitat beneficial use and native estuarine fish and wildlife like Longfin Smelt, the Recirculated SED fails to demonstrate that physical habitat restoration in the Delta would benefit these estuarine species in the absence of meaningful improvements in Delta flows, including Delta outflows. Indeed, the modeling of the location of X2 shows that the voluntary agreements would not meaningfully change the median X2 location or the X2 location during critically dry years. See Recirculated SED at 13-315 to 13-316. Under the 55w/WSA alternative, the median and critical year X2 location would shift downstream by 1 km. Id. at 13-313 to 13-314. In summary, the Recirculated SED fails to demonstrate that proposed creation of shallow water "habitats" will substitute for the lack of adequate river flow in the voluntary agreement proposal and achieve the narrative native fish viability objective.	
1144	47	F. The Record Fails to Demonstrate that the Program of Implementation will Achieve Reasonable Protection of the Plan's Commercial and Recreational Fishing Beneficial Use (COMM) The administrative record also fails to demonstrate that the Plan will provide reasonable protection of commercial and sport fishing beneficial uses in the Delta. As discussed supra and in	It is unclear why the commenter believes the State Water Board is defining viability as "minimally viable" since it is not defined in this manner in the revised proposed Plan amendments. Please see Common Response 1.2, Water Quality Control Planning Process, for information on the reasonable protection of fish and wildlife beneficial uses, consideration of other beneficial uses, and achievement of the objectives. Also see Common Response

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		prior comment letters, the State Water Board has failed to adequately define what constitutes a viable fish population under this objective. See Letter from Baykeeper et al to State Water Board dated January 19, 2024. Because viability appears, in the State Water Board's interpretation, to mean the minimum population necessary to avoid extinction, with the minimum necessary attributes (abundance, population growth rate, diversity, and spatial distribution), by definition a minimally viable population would not support commercial or recreational fisheries or the related beneficial uses. The commercial salmon fishery in the State of California has been completely closed for three consecutive years, and there have been just six days of recreational salmon fishing in the ocean allowed in 2025. Recirculated SED at 13-535; see also Draft SED at 3-134 (calculating population declines for the four runs of salmon). The collapse of the Central Valley fall-run Chinook Salmon runs, which are the backbone of the State's salmon fishery, and the closure of the fishery makes clear that the Bay-Delta Plan has failed to provide reasonable protection for commercial and recreational fishing beneficial uses in the Bay-Delta. Similarly, the recreational fishery for White Sturgeon was recently severely restricted, and then harvest was completely prohibited, because of significant populations declines, which also resulted in the California Fish and Game Commission's decision to elevate the Bay's population to candidate status for CESA listing. The Revised Draft Plan asserts – without analysis – that meeting the narrative fish viability objective and other objectives in the Plan would achieve the COMM beneficial use. Revised Draft Plan at 13. Stating this as a tautology neither makes it true nor complies with the law. In reality, a viable fish population, as understood by the State Water Board, would not support any commercial or recreational fishing. While the Revised Draft Plan admits that, “a thriving fish population could support fishing at higher consumptive rates” in the context of discussing beneficial uses of subsistence fishing, Revised Draft Plan at 11, the record fails to demonstrate that the State Water Board has considered that the abundance and population growth rates of salmon – or other native fish species in the watershed – must be greater than	1.3, Revised Proposed Plan Amendments, for information on the water quality objectives for fish and wildlife, including the definition of viability. Section 8.6.1, Recreational and Commercial Fisheries, in the 2023 draft Staff Report, (Section 8.6.2 Commercial Fisheries, and Section 8.6.3 Recreational Fishing, in the final Staff Report), addressed potential economic effects concerning commercial and recreational sport fisheries, with an emphasis on Chinook salmon. In addition, in response to comments received on the economic analysis presented in the Staff Report, Chapter 8, Economic Analysis and Other Considerations, has been updated in the final Staff Report to include a new Section 8.6, Fisheries Economic Analysis, that addresses potential economic benefits from implementation of the flow scenarios and subsequent aquatic ecosystem improvements and benefits for native fish species, including subsistence fishing and tribal uses of fish. This new section also provides a discussion on economic losses resulting from recent ocean salmon fishery closures and the benefits of increased instream flow. This new section provides additional context and information concerning beneficial fisheries and ecosystem economic effects, but does not change the conclusions of the Staff Report's economic analysis. In addition, Section 13.8.4, Fisheries Economic Effects, summarizes previous economic analyses described in Chapters 8, Economic Analysis and Other Considerations, and 9, Proposed Voluntary Agreements, of the 2023 draft Staff Report and discusses fisheries economic effects under the revised proposed Plan amendments.

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		minimum viability to support a commercial and recreational fishery. Instead, the record emphasizes potential benefits of various flow scenarios, without demonstrating how much ecological benefit is necessary to meet viability, let alone sustain commercial and recreational fishery beneficial uses. For instance, Chapter 7.6.2 of the Draft SED (aquatic biological resources) never considers whether the draft Plan would protect commercial or recreational fisheries (the words “fishing” and “harvest” each appear once in this chapter, in the description of the environmental setting). [Footnote 51: Effects of the proposed project and alternatives on sport and commercial salmon fishing were also not analyzed in Chapter 17 of the SED, which analyzed potential effects on recreational fishing of non-native species.] Instead, the Draft SED asserts that the Draft Plan’s unimpaired inflow objective is intended to “support and maintain the natural production of viable native fish populations.” Draft SED at 7.6.2-45. Similarly, while Chapter 7.6.2 of the Draft SED repeatedly finds benefits for salmon from the proposed project analyzed in the Draft SED, it never evaluates whether those improvements to salmon would be sufficient to support a sustainable fishery. See id. at 7.6.2-36 to -37 (concluding that that Delta inflows and outflows of 45 to 65 percent of unimpaired flow would “benefit” salmon and improve survival through the Delta); id. at 7.6.2-45 (concluding that the changes in tributary flows could “benefit” salmon); id. (concluding that the increased floodplain inundation would “likely result in positive population responses” by salmon).	
1144	48	The Recirculated SED also fails to provide a reasoned explanation supporting a conclusion that the voluntary agreement or 55w/WSA scenario would reasonably protect recreational and commercial fisheries and those beneficial uses. The document concludes that the Plan is “expected to result in economic benefits from increases in native fish populations,” and that a “more natural flow regime would benefit Chinook Salmon populations by improving spawning, rearing, and migratory conditions, thereby boosting harvests and reducing commercial fishery closure risks.” Id. at 13-535, 13-536. But “reducing ... closure risks” from certain to some unknown amount less than	As described in Staff Report Section 7.1.3, Purpose and Goals of the Sacramento/Delta Update to the Bay-Delta Plan, the underlying fundamental purpose of the project is to establish water quality objectives, a program of implementation, and monitoring and special study measures for the reasonable protection of fish and wildlife beneficial uses in the Sacramento/Delta. As documented in Staff Report Section 13.5, Beneficial Environmental Effects, benefits are expected for Chinook salmon, starry flounder, and other native species. The regulatory pathway provides the backstop that is supported by scientific evidence that the 55 scenario, within a range of 45 to

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		certain is a far cry from providing evidence that the beneficial use will be reasonably protected. The record demonstrates that the Revised Draft Plan is unlikely to achieve the narrative viability objective, and it fails to show that any improvements in the populations of fishery resources such as salmon or Starry Flounder will be greater than ongoing population declines for these species, resulting in a population that is actually growing – let alone increasing in abundance sufficient to sustain commercial and recreational fisheries. Because the administrative record fails to demonstrate that the Program of Implementation will achieve the narrative Fish Viability objective for salmon, starry flounder, and other species that are commercially and recreationally harvested, the record also fails to demonstrate that the Plan will reasonably protect commercial and recreational fishing beneficial uses.	65, will provide reasonable protection to fish and wildlife beneficial uses. The WSAs and alternative VA pathway are properly provided as components of staged implementation toward fully achieving the new water quality objectives in the Plan. Please see Common Response 1.2, Water Quality Control Planning Process, for information on the reasonable protection of fish and wildlife beneficial uses and consideration of other beneficial uses. In addition, in response to comments received on the economic analysis presented in the Staff Report, Chapter 8, Economic Analysis and Other Considerations, has been updated to include a new Section 8.6, Fisheries Economic Analysis, in the final Staff Report, that addresses potential economic benefits from implementation of the flow scenarios and subsequent aquatic ecosystem improvements and benefits for native fish species. This new section provides additional context and information concerning beneficial fisheries and ecosystem economic effects, but does not change the conclusions of the Staff Report's economic analysis.
1144	49	The Recirculated SED also admits that fishery benefits are greater for the 55 percent unimpaired flow alternative analyzed in the Draft SED, with significantly reduced fishery benefits for the 55w/WSA scenario (which would likely provide fishery benefits similar to the low flow alternative analyzed in the Draft SED), and that fishery benefits would be even smaller for the voluntary agreement alternative. Id. at 13-538 to 13-539, 13-198. Numerous analyses demonstrate the voluntary agreement is unlikely to meaningfully improve conditions for salmon compared to the degraded baseline. For instance, the “frequency of achieving ecological flow thresholds would generally remain unchanged or increase under the VA pathway, although there could be a slight decrease for longfin smelt.” Id. at 13-211. Similarly, the voluntary agreements do not appear to meaningfully increase the frequency of meaningful floodplain events compared to baseline or to achieve the frequency for floodplain inundation necessary to achieve salmon doubling. Id. at 13-208 to 13-209. In addition, the Recirculated SED fails to provide results for meaningful floodplain inundation under the voluntary agreement alternative for most rivers, including the	Please see the Scientific Basis Report Supplement (Appendix G2 to the Staff Report) and Staff Report Section 13.5, Beneficial Environmental Effects, for analyses of the benefits of the VA pathway. As explained in Table 13.5-7 of the 2025 partially recirculated Staff Report, meaningful floodplain event results for the VA pathway are only presented for tributaries with HRL floodplain habitat commitments, which do not include the Sacramento and American Rivers. See Common Response 1.2, Water Quality Control Planning Process, for information on the consideration of beneficial uses and the reasonable protection of fish and wildlife.

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		Sacramento River and American River. Id., Appendix H1c at H1c-39 to H1c-41. While the document concludes that the adoption of the 55w/WSA alternative is “expected to provide benefits to native fish species, including increases in abundance indices,” id. at 13-518, and that adoption of the voluntary agreements “would be expected to provide... some increases in abundance indices of key indicator species under certain hydrological conditions,” id. at 13- 519, the Recirculated SED fails to demonstrate, given the long term declines in salmon and other native fish species, that any increases in abundance of salmon or other native fish species under the Plan will be sufficient to reverse these declines, support and maintain viable populations, or provide the greater abundance levels necessary to support recreational and commercial fisheries for wild salmon.	
1144	50	Finally, as discussed supra, the Revised Draft Plan’s narrative objectives for Delta inflow, Delta outflow, and Interior Delta Flows are all defined in part by providing the conditions necessary to “support and maintain the natural production of viable native fish populations.” Revised Draft Plan at 17-19. None of these objectives explicitly reference the Salmon Doubling objective, protection of recreational and commercial fishing, Tribal Cultural uses, or any level of fish abundance greater than the minimum of viability – which is already required by the California Endangered Species Act and far less than what is required by the Public Trust. As a result, the State Water Board has failed to demonstrate that the program of implementation will achieve reasonable protection of commercial or recreational fishing beneficial uses, and the State Water Board has unlawfully conflated native fish viability with the healthy and abundant native fish populations necessary to sustain recreational and commercial fisheries. The conclusion in the Revised Draft Plan that the Plan would reasonably protect commercial and recreational fishing beneficial use is arbitrary and capricious.	It is unclear why the commenter believes the State Water Board is defining viability as the “minimum of viability” since it is not defined in this manner in the revised proposed Plan amendments. Please see Common Response 1.1, General Comments, for information on the federal and state endangered species acts; Common Response 1.2, Water Quality Control Planning Process, for information on the reasonable protection of fish and wildlife beneficial uses and the consideration of other beneficial uses; and Common Response 1.3, Revised Proposed Plan Amendments, for information on the water quality objectives for fish and wildlife.
1144	51	G. The Record Fails to Demonstrate that the Program of Implementation Will Achieve the Salmon Protection Objective (Salmon Doubling)	The Bay-Delta Plan recognizes that achievement of the salmon protection objective will require actions not just by the State Water Board, but other entities as well. The revised proposed

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		The administrative record also fails to demonstrate that the Program of Implementation will achieve the salmon protection objective, [Footnote 52: While this objective is also a narrative objective, it contains the requisite levels or limits to comply with the law, unlike the other narrative objectives in the Plan, as described in section III, supra.] and the State Water Board lacks a reasoned explanation supporting its conclusions. In addition, the State Water Board lacks a reasoned explanation for how it assigns responsibility to achieving this objective, and to the extent that the Revised Draft Plan proposes to delay achievement of this objective for several decades, doing so would violate state and federal anti-degradation policy. As the Court of Appeal explained two decades ago, “[d]etermining what actions were required to achieve the narrative salmon protection objective was part of the Board’s obligation in formulating” the Bay-Delta Plan. In re State Water Board Cases (2006) 136 Cal.App.4th 674, 775. However, in this proceeding, the State Water Board has failed to do so. For instance, while the Recirculated SED identifies important flow thresholds for salmon, it fails to identify how frequently these flow thresholds must be achieved to achieve the salmon doubling objective. See Recirculated SED at 13-195 to 13-197, 13-204, 13-211. As discussed supra, the record demonstrates that the Program of Implementation fails to achieve the Revised Draft Plan’s narrative fish viability objective, as well as the narrative objectives for Delta inflow, Delta outflow, Cold Water Habitat, and Interior Delta Flows, and that the State Water Board lacks a reasoned explanation supporting its conclusions to the contrary. Because achieving the salmon doubling objective requires achieving a larger salmon population than what is required for viability, the administrative record likewise demonstrates that the Program of Implementation will not achieve the salmon protection objective.	Plan amendments state that the narrative objectives for salmon protection and fish viability are implemented by the collective actions identified in the Bay-Delta Plan for the protection of fish and wildlife beneficial uses, including flow and water quality actions taken by the State Water Board and Regional Water Boards, and actions by other entities to improve habitat and other conditions for the protection of salmon. The revised proposed Plan amendments are focused on supporting and maintaining viable native fish populations. Indicators of viability include not only population abundance, but also spatial extent, distribution, structure, genetic and life history diversity, and productivity. In contrast, the salmon protection objective is expressed in terms of abundance only and does not address the other factors needed to achieve a viable self-sustaining salmon population. Overall, the record supports that 55 percent of unimpaired flow under the regulatory pathway of the revised proposed Plan amendments is expected to provide reasonable protection of fish and wildlife beneficial uses including progress toward achieving the salmon protection objective (See Section 13.5.3, Regulatory Pathway). The State Water Board has discretion to be flexible with the time needed to achieve reasonable protection of fish and wildlife beneficial uses with the WSAs in the regulatory pathway and recognizing uncertainty in the VA pathway experimental approach. As part of the periodic review process, the State Water Board will evaluate progress toward implementation of the narrative salmon protection and fish viability objectives and whether changes to the Bay-Delta Plan or its implementation are needed to achieve the objectives. See Common Response 1.2, Water Quality Control Planning Process, for additional discussion.
1144	52	Rather than demonstrating that the Revised Draft Plan would achieve the salmon doubling objective, the Revised Draft Plan seeks to unlawfully delay the full achievement of this existing	It is unclear how the revised proposed Plan amendments could be delaying achievement of the salmon protection objective if, as the commenter states, the Bay-Delta Plan does not currently

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		narrative objective. Because the 1995 Bay-Delta Plan did not identify a time schedule for achievement of this objective, the Plan was required to include the actions necessary to achieve this objective. See In Re State Water Board Cases, supra, 136 Cal.App.4th at 703, 727, and 776. In contrast, the Revised Draft Plan unlawfully delays the achievement of this objective until the year 2050. See Revised Draft Plan at 94, 95, 96; Recirculated SED at 13-6 (explaining that voluntary agreement “participants propose to contribute to achieving by 2050” the salmon protection objective); Draft SED at 9-7 (voluntary agreements intended to “provide the participating parties’ share, during implementation of the VAs, to contribute to achieving the Narrative Salmon Objective by 2050.”). To the extent that this reference to the year 2050 in the Revised Draft Plan is treated as a time schedule for implementation, delaying achievement of this objective to the year 2050 – when this narrative objective was originally intended to be achieved in the 1995 Bay-Delta Plan – at a minimum, violates the Public Trust and Anti-Degradation policies under the Clean Water Act. See, e.g., 40 C.F.R. § 131.12(a)(1); Fish and Game Code § 2052. However, while the Revised Draft Plan references time schedules for implementation, it does not include the year 2050 as a time schedule for implementation of the salmon protection objective. Revised Draft Plan at 63. Therefore, it appears that this reference to the year 2050 is not a valid time schedule for implementation of this Plan Objective. See also id. at 27 (“Implementation measures incorporate time schedules and flexibilities where appropriate”). Equally important, even assuming that it could be lawful for the State Water Board to delay achieving the salmon doubling objective until the year 2050, the Program of Implementation must identify the actions necessary to achieve the objective on that time schedule. Cal. Water Code § 13242. Here, however, the Program of Implementation fails to identify the actions necessary to achieve the objective and fails to demonstrate that the Revised Draft Plan will achieve the salmon doubling objective. Instead, the Revised Draft Plan only identifies certain actions to be undertaken in the next 8 years, which it asserts may be sufficient to achieve 25 percent of the objective. The	identify a time schedule for achievement of this objective. In addition, the commenter concedes that the revised proposed Plan amendments “[do] not include the year 2050 as a time schedule for implementation of the salmon protection objective.” Regardless, the revised proposed Plan amendments do not set a deadline for 2050 for achieving the salmon protection objective. This date is only used to evaluate the effectiveness of the VA pathway. Please see Common Response 1.2, Water Quality Control Planning Process, for information on the reasonable protection of fish and wildlife beneficial uses and Common Response 1.3, Revised Proposed Plan Amendments, for information on the water quality objectives for fish and wildlife.

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		Draft Plan never identifies the actions necessary to achieve the objective at any time in the future. This is plainly unlawful.	
1144	53	Finally, the State Water Board lacks a reasoned explanation why the parties to the voluntary agreement would only need to “contribute” to achieving 25 percent of the salmon doubling objective. For instance, the Recirculated SED analyzes whether habitat restoration under the voluntary agreement would achieve “the spawning habitat threshold of 25 percent of the doubling goal habitat area. Recirculated SED at 13-206; see, e.g., Draft SED at 9-5 (“Tributary physical restoration actions are meant to restore spawning and rearing habitats sufficient to support approximately 25% of the offspring of the salmon doubling goal populations for each tributary.”). However, the parties to the voluntary agreements encompass the vast majority of the water rights holders and water diversions from the watershed, and on at least some tributaries, the voluntary agreements cover all non de minimis water rights holders and water diversions. Recirculated SED at 13-50. It is arbitrary and capricious to assign 75 percent of the responsibility to achieve the salmon doubling objective to other water rights holders when those other water right holders constitute significantly less than 75 percent of the water diversions from the watershed. Yet the State Water Board has failed to model how much water would actually be provided by nonparties to the voluntary agreement if the Revised Draft Plan is adopted, and the State Water Board therefore lacks a reasoned explanation for how it would assign responsibility for achieving this objective between the voluntary agreement parties and non-parties.	Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on the water quality objectives for fish and wildlife. As stated in Staff Report Section 13.4.2.4, Voluntary Agreement Pathway, the VA water rights identified in Appendix B.1 of the revised proposed Plan amendments constitute the majority of the water diverted and used within the Sacramento/Delta watershed. While some additional flows would be expected under the VA pathway from water rights not included in Appendix B.1 that are on the regulatory pathway, the resulting flows and effects would fall between the results of the VA pathway and the regulatory pathway and would be much closer to the VA pathway results.
1144	54	H. The Record fails to Demonstrate that the Program of Implementation Will Reasonably Protect Estuarine Habitat (EST) Beneficial Uses The State Water Board fails to provide a reasoned explanation supporting its conclusion that the Revised Draft Plan provides reasonable protection of estuarine habitat. See Revised Draft Plan at 13. Estuarine habitat is already severely degraded by altered hydrological conditions, driven primarily by unsustainable water management practices that contribute to	The 2017 Scientific Basis Report (Appendix B to the Staff Report), the Scientific Basis Report Supplement (Appendix G2 to the Staff Report), Staff Report Chapter 3, Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, and Staff Report Section 13.5, Beneficial Environmental Effects, include a combination of quantitative and qualitative analyses of the expected benefits of the flow scenarios and the VA pathway. The results for expected changes in estuarine habitat area as defined by temperature, salinity, and turbidity show improvements under both the 55 w/WSAs and VA scenarios. However, this

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		low inflows and low outflows, which necessarily reduce the volume and extent of estuarine habitat, exacerbate high water temperatures, and the facilitate proliferation of Harmful Algal Blooms and the spread of their toxins downstream. As discussed supra, under existing conditions estuarine habitat is not reasonably protected. See, e.g., Draft SED at 3-112 (“existing Bay-Delta Plan and BiOp flow requirements are not adequate to ensure Delta outflow conditions necessary for the reasonable protection of fish and wildlife beneficial uses”); SWRCB 2018 at 8. Yet under the voluntary agreements, the condition of estuarine habitat would largely remain the same as degraded baseline conditions; the median and critical year X2 location would remain the same. Recirculated SED at 13-315 to 13-316. Delta outflow would decrease on average, and in most years, during the July through December period, harming Delta Smelt and worsening toxic algal blooms. Id. at 13-115. According to the modeling in the Recirculated SED there would be no or “small” effect on degraded baseline conditions, especially in drier years and for salmonid species. Id. at 13-210. The 55w/WSA objective would likewise not meaningfully improve estuarine habitat conditions compared to the degraded baseline. The location of X2 would shift downstream only 1 km on average. Id. at 13-313. Delta outflow would be reduced during the July through September period and in some years during the July through December period compared to the baseline, harming Delta Smelt and worsening toxic algal blooms. Id. at 13-112 to 113. Overall, there would be no or “small” effect on degraded baseline conditions, especially in drier years and for salmonid species. Id. at 13-203. Again, estuarine conditions would be expected to deteriorate further if unregulated Delta outflows were diverted (e.g., by new diversion and storage facilities).	definition of habitat area does not encompass the full suite of benefits that are expected to result from the revised proposed Plan amendments. For example, additional results are presented in Staff Report Section 13.5, for the expected increase in estuarine species abundance increases and the scientific basis reports include more detailed discussion of the expected benefits for estuarine species and habitat. Please see Common Response 1.2, Water Quality Control Planning Process, regarding the consideration of other beneficial uses; Common Response 1.3, Revised Proposed Plan Amendments, regarding the water quality objectives for fish and wildlife; and Common Response 4.1, Harmful Algal Blooms, for a discussion of HABS.
1144	55	Not only does the Recirculated SED fail to demonstrate reasonable protection of estuarine habitat, the State Water Board has failed to evaluate changes in water temperatures in the upper estuary, failed to consider the effects on estuarine habitat conditions of waiving Plan requirements under future	Please see the response to comment 1144-54. Possible effects on estuarine water temperature are discussed in Staff Report Sections 7.6.2, Aquatic Biological Resources, 7.12.1, Surface Water, and 9.7.12.1, Surface Water. Also see Common Response 1.2, Water Quality Control Planning Process, regarding the

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		Temporary Urgency Change Orders, and failed to consider the effects of future water diversions and of climate change resulting in reductions to Delta inflows and outflows. The State Water Board has also failed to define viability for organisms that underpin estuarine habitat and drive the productivity of the estuarine food web, and the ecosystem services it provides (e.g., estuarine zooplankton prey species), and to identify what water quality objectives will protect and restore estuarine habitat and the organisms that drive its productivity. Because the Plan and Program of Implementation do not describe how the EST beneficial use will be reasonably protected, the objectives that will support it, or how those objectives will be achieved, it is unlawful.	consideration of other beneficial uses; Common Response 1.3, Revised Proposed Plan Amendments, regarding the water quality objectives for fish and wildlife and temporary urgency change petitions; and Common Response, 4.1, Harmful Algal Blooms, for a discussion of HABs.
1144	56	VI. The Revised Draft Plan Attempts to Provide Unlawful Regulatory Assurances and Effectively Eliminates the Regulatory Backstop, Violating Porter-Cologne The Revised Draft Plan unlawfully attempts to provide regulatory assurances to the parties to voluntary agreements, and it fails to provide a regulatory backstop if in the future the State Water Board determines that the voluntary agreement is modified, fails to be implemented, or fails to provide reasonable protection of fish and wildlife and other beneficial uses. The Revised Draft Plan must be further revised to comply with state and federal law. Consistent with prior comments submitted to the State Water Board, the Revised Draft Plan attempts to unlawfully provide regulatory assurances to the parties to the voluntary agreements and attempts to unlawfully limit the discretion of the State Water Board in the future. See Friends of the River et al. Letter to the State Water Board dated January 10, 2025; see also Baykeeper et al. Letter to State Water Board dated October 17, 2025. The State Water Board lacks the legal authority to constrain its discretion in the future. Yet the Revised Draft Plan effectively proposes to do by establishing limits on the timing of periodic or triennial review, imposing procedural requirements for what must be	Please see Common Response 1.3, Revised Proposed Plan Amendments, for more information on continuation, modification, or termination of the Voluntary Agreements and on annual and periodic review.

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		considered by the Board in evaluating whether to modify or disapprove the voluntary agreements, and failing to include objectives, standards, and actions if the voluntary agreements end, either before or at year 8. Id. For instance, the Revised Draft Plan attempts to impose new discretionary findings that the State Water Board must make before determining whether to continue, modify, or terminate the voluntary agreements, even though those findings are not required by law before the State Water Board adopts a water quality control plan. Compare Revised Draft Plan at 94-95 with Cal. Water Code § 13241.	
1144	57	Equally important, in the Revised Draft Plan the State Water Board effectively eliminated the regulatory backstop that was included as part of the Draft Plan, such that there are no water quality objectives that would apply to the parties to an approved voluntary agreement upon the end of the initial eight year term or prior termination of the voluntary agreement. As a result, the State Water Board cannot adopt term-limited voluntary agreements like that which is currently proposed. Specifically, the Revised Draft Plan now requires, prior to the State Water Board taking action to terminate the voluntary agreements, that the State Water Board conduct a new scientific review and make a new, discretionary finding regarding the consistency of the Bay-Delta Plan with section 13241 of the Water Code, which is subject to judicial review as a quasi-legislative determination, even if the State Water Board determines that no changes to the regulatory provisions in the Bay-Delta Plan are necessary or appropriate. See Revised Draft Plan at 95. [Footnote 53: The Revised Draft Plan proposes these additional requirements if the State Water Board seeks to impose the “regulatory pathway,” but these actions are not required if the State Water Board chooses to continue the voluntary agreements. Such an approach misconstrues and attempts to bias the State Water Board’s statutory obligations to conduct periodic and triennial review.] Rather than default objectives that would apply when the voluntary agreements terminate, these provisions effectively require the adoption of a new Bay-Delta Plan. Like any other update of a water quality control plan, this exercise of discretion triggers a requirement to comply with CEQA, it requires the State Water Board to complete	Please see Common Response 1.3, Revised Proposed Plan Amendments, for more information on continuation, modification, or termination of the VA pathway.

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		a valid rulemaking under the APA, and it requires the State Water Board to use accurate and updated scientific information to inform its decision. Because there is not a regulatory backstop that would automatically go into effect if the voluntary agreements were modified, terminated, or not implemented, the State Water Board cannot approve term-limited voluntary agreements to achieve the Bay-Delta Plan. State law requires that a water quality control plan include a “program of implementation for achieving water quality objectives” that describes the actions necessary to achieve the objectives. See Cal. Water Code § 13242. However, without a valid regulatory backstop, at the end of the term of the voluntary agreements, the Bay-Delta Plan fails to identify any actions to achieve the water quality objectives. Instead, it would require a new proceeding to update the Bay-Delta Plan, and until that new Bay-Delta Plan is adopted and implemented, none of the parties to the voluntary agreements would be required to implement any of the Bay-Delta Plan’s water quality objectives.	
1144	58	In contrast, while the 1995 Bay-Delta Plan included a voluntary agreement known as the Vernalis Adaptive Management Plan, the Plan also included a regulatory backstop requiring the U.S. Bureau of Reclamation to implement the Lower San Joaquin River Flows required by the Bay- Delta Plan, without requiring any action by the State Water Board to amend the Bay-Delta Plan: The USBR is assigned responsibility under its water right permits, on an interim basis until the Board assigns permanent responsibility, to ensure that all of these objectives are met. During the Spring pulse flow period in April and May while the SJRA is in effect, however, the experimental target flows in the VAMP will be implemented in lieu of the Spring flow objectives for the April-May period. After the SJRA terminates or adequate information is otherwise received, the State Water Board may review or consider amending the objectives in a water quality proceeding or may immediately conduct a water right proceeding to decide how to assign responsibility for implementing these objectives.	The revised proposed Plan amendments would not relax any of the flow requirements from D-1641 nor exempt VA parties from complying with any of those requirements. Please see Common Response 1.2, Water Quality Control Planning Process, for more information about the reasonable protection of fish and wildlife and Common Response 1.3, Revised Proposed Plan Amendments, for more information on continuation, modification, or termination of the VA pathway.

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		2006 Bay-Delta Plan at 24 (emphasis added). [Footnote 54: Despite the end of the voluntary agreement known as the Vernalis Adaptive Management Plan, and the Bay-Delta Plan's backstop requiring the Bureau of Reclamation to implement the lower San Joaquin River flows at Vernalis required by the Bay-Delta Plan, the State Water Board has allowed the Bureau of Reclamation to fail to implement these water quality objectives (particularly the pulse flow objective) in nearly every year over most of the past decade.] The Revised Draft Plan, however, exempts parties to the voluntary agreements from the regulatory provisions of the Plan, and it requires that if the State Water Board concludes it is appropriate to terminate the voluntary agreement pathway, the State Water Board must: (1) consider numerous factors beyond those required by law; (2) prepare an updated scientific basis report, including public review and review by the Delta Independent Science Board; (3) determine whether any changes to the existing water quality objectives are appropriate; and (4) either "commence an update to the Bay-Delta Plan" or adopt new findings supporting the adoption of the existing Plan, subject to judicial review. See Revised Draft Plan at 64; see also id. at 94-95. In other words, the State Water Board has to either commence a new update to the Bay-Delta Plan – a process that has thus far taken 18 years – or readopt the existing Bay-Delta Plan with new findings, a decision that is subject to judicial review, and compliance with CEQA. In neither case would the Plan's water quality objectives be implemented and achieved until those processes are completed. This is particularly problematic since the vast majority of water rights are covered by the voluntary agreements, such that the State Water Board concludes that little to no significant additional flow would occur under the regulatory pathway if the voluntary agreements were adopted: The SacWAM modeling of the VA scenario is focused on the HRL flow commitments and does not explicitly model the provision of additional flows from water right holders on the regulatory pathway that are not part of the VA pathway. The water rights identified in Appendix B.1 constitute the majority of the water diverted and used within the Sacramento/Delta watershed.	

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		While some additional flows would be expected under the VA pathway from water rights not included in Appendix B.1 that are on the regulatory pathway the resulting flows and effects would fall between the results of the VA pathway and the regulatory pathway and would be much closer to the VA pathway results. Recirculated SED at 13-50 (emphasis added). Indeed, as that text explains, the State Water Board did not even model the potential additional flow that would result from non-parties to the voluntary agreement, apparently because it was so minimal. As a result, it appears that if the voluntary agreements expire or are terminated, the only flows that would be required under the Revised Bay Delta Plan, potentially for years or decades, would be partial implementation of Decision 1641 – which the State Water Board has repeatedly concluded fails to provide reasonable protection of fish and wildlife, and which fails to achieve the objectives of the Bay-Delta Plan. The State Water Board cannot approve a Bay-Delta Plan where the Program of Implementation does not ensure that the water quality objectives are achieved until an amended Bay-Delta Plan is adopted. But that is what the Revised Draft Plan does. Because the program of implementation in the Revised Draft Plan fails to demonstrate how water quality objectives will be achieved after the term of the voluntary agreements expires, it is unlawful. Cal. Water Code §§ 13242, 13247.	
1144	59	VII. The Revised Draft Plan's Program of Implementation Overlooks Serious Impediments to the Successful Implementation of the Proposed Voluntary Agreements (VAs), and VA Actions Cannot Be Reasonably Assured to Occur The voluntary agreements as designed will not support reasonable protection of beneficial uses and are therefore unlawful. But even if, for the sake of argument, they could do so, it is highly unlikely that the actions will be implemented as described. This too is unlawful. A number of serious and likely insurmountable implementation challenges will prevent the voluntary agreements from meeting the requirements of Porter	If the VA flow, habitat, science, and other commitments are not provided, the VA pathway could be modified or terminated. See Common Response 1.3, Revised Proposed Plan Amendments, for more information on the continuation, modification, or termination of the VA pathway. Also see Common Response 1.2, for information on the reasonable protection of fish and wildlife beneficial uses.

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		Cologne if the Board adopts them as part of the Bay-Delta Plan update.	
1144	60	A. Adequate Funding for VA Habitat Restoration Projects is Far from Assured The VA MOU relies on \$740 million in “New Federal Funding,” particularly to support habitat restoration. See 2022 MOU, Attachment 2, Table 4. The Board cannot reasonably assume the Bureau of Reclamation will provide these funds. Reclamation signed the VA MOU under the previous federal administration. The Trump Administration has never stated its support for the VAs and there is no reason to assume that they will commit in the future to provide \$740 million in new federal funds to implement VA actions. Indeed, President Trump recently vetoed a bill by Congresswoman Lauren Boebert to fund a (far less costly) water project in Colorado on the basis that state beneficiaries should bear the cost. See “Congressional Bill H.R. 131 Vetoed”, The White House, December 30, 2025. [Footnote 55: Document available online at: https://www.whitehouse.gov/briefings-statements/2025/12/congressional-bill-h-r-131-vetoed/.] Whatever the level of federal funding that is provided, it is very likely that long-standing federal funding for habitat restoration in the Bay-Delta watershed (e.g. the Central Valley Project Improvement Act [“CVPIA”] Restoration Fund and ongoing federal flood management funds) will be credited as “new” federal funds against the proposed VA commitment. Of course, these are not new federal funds, and the existing funded programs could not accurately be credited as a “new” VA contribution. See Presentations by Ashley Overhouse with Defenders of Wildlife to State Water Board on April 22 and 23, 2024; Presentations by Chris Shutes with California Sportfishing Protection Alliance to State Water Board on April 22, 2024; Presentations by Barry Nelson with Golden State Salmon Association to State Water Board on April 22, 2024. Absent adequate accounting and oversight mechanisms, the result would actually be that the VAs would repackage ongoing habitat restoration efforts instead of expanding habitat above the current and projected baseline – in other words, an exercise in	If the VA flow, habitat, science, and other commitments are not provided, the VA pathway could be modified or terminated. See Common Response 1.3, Revised Proposed Plan Amendments, for more information on the HRL habitat commitments and the provisions for the continuation, modification, or termination of the VA pathway.

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		futility that can only “succeed” through the use of creative bookkeeping. There is no reason to assume that water users will commit to make up the full difference in funding needed for the voluntary agreements. More likely the funds will never arrive, or crediting previous double accounting of existing legal obligations and spent funds will be used to pretend to fill the gap.	
1144	61	B. Promised VA Flows are Unlikely to Materialize or will Substitute for Baseline Environmental Compliance Requirements As discussed supra, a significant amount of the flow proposed under the voluntary agreements is expected to be used simply to meet the SED’s environmental baseline, rather than actually increasing Delta inflows and Delta outflows to improve conditions for fish and wildlife. In 2017, the voluntary agreement flows were proposed to sit on top of D-1641 and the 2008/2009 ESA compliance requirements. In 2022, that changed to rest on the 2020 ESA compliance requirements. And in 2025, that changed again to rest on the 2024 ESA compliance requirements. Each of those changes represented a reduction in the total water promised (baseline plus theoretical voluntary agreement additions) under the proposal. Recent and pending changes to operations by Reclamation (“Action 5”) will further reduce the real effects of promised VA flows. In addition to the ESA rollbacks discussed above, the Bureau of Reclamation has indicated that it will seek to weaken or waive compliance with baseline requirements in D-164. In July of 2025, Acting Bureau Regional Director Adam Nickels told an audience of agricultural interests that “We will be targeting D-1641, consistent with the support from the White House under Executive Order 14181. We will be working hard to make those changes.” Valley Ag. Voice, July 11, 2025. [Footnote 56: See “Reclamation Says It’s Time for a New Delta Strategy” by Natalie Willis, Valley Ag Voice, July 11, 2025. Available online at: https://www.valleyagvoice.com/reclamation-says-its-time-for-a-new-delta-strategy/] Violating or seeking waivers of D-1641 requirements will further reduce the effect of promised voluntary agreement flows or even include waiving voluntary	The flows expected to result from the VA pathway are presented in Staff Report Section 13.4, Changes in Hydrology and Water Supply. Please see Common Response 1.3, Revised Proposed Plan Amendments, regarding comments about the 2025 ROD and 2025 ITP. For additional information regarding the 2019 BiOp and 2024 BiOp, please refer to Staff Report Section 13.4.2.4, Voluntary Agreement Pathway. The VA flow commitments are required to be provided in addition to base flows, including flows required by D-1641, other regulatory requirements, and other non-regulatory flows that would be present absent HRL flow commitments. The revised proposed Plan amendments do not include any relaxations of D-1641 flow requirements. If the VA flow, habitat, science, and other commitments are not provided, the VA pathway could be modified or terminated. See Common Response 1.3, Revised Proposed Plan Amendments, for more information on the HRL flow commitments and the continuation, modification, or termination of the VA pathway.

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		agreement flow commitments. In addition, water purchases for the environment (e.g., the CVPIA level 4 refuge supplies) have a long record of failing to meet expectations – and even legal requirements. The failure of VA water purchases is made more likely by the foreseeable funding problems the VAs will face. It is extremely unlikely that all of the anticipated VA purchases will be completed by January 2027, as required under the proposed VAs. Furthermore, some VA flows will be paper water, not real water. Under the proposed VAs, the Board will need to review hundreds of reference operation plans, which will be submitted on a weekly basis. The Board will struggle with those reviews and to ensure acceptable reference operations plans. [Footnote 57: The Board is already struggling to even staff or fund increased legal obligations as a result of federal Supreme Court decisions, requiring the Board to request millions from the California state budget. See “Impacts of United States Supreme Court’s decision in Sackett v. Environmental Protection Agency (2023) 598 U.S. 651”, State Water Resources Control Board, January 1, 2026. Document available online at: https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/2026/sackett-report-2026.pdf] The opportunities for confusion and manipulation in those plans will reduce VA flow benefits in a manner similar to, but perhaps much greater than, that experienced by the discredited CALFED Environmental Water Account. Areas for likely conflict include reference operations regarding OMR flows, planned water deliveries, flood releases, end of year storage conditions and more. Establishing objective, enforceable reference operations for some of these operational parameters is necessary to ensure the voluntary agreement approach provides the flow assets it offers—it is also likely impossible. Without objective, enforceable reference operations to serve as the foundation of VA flow accounting, the Board cannot determine if promised VA environmental water is real, or just paper water (for instance, see discussion of Friant VA water above, where the VA would be credited with providing water it has not previously captured and is constrained from capturing under current agreements).	

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		The above concerns reflect a simple fact. Operators and lawyers are hired by water agencies to maximize the benefits for those projects under the rules regulatory agencies adopt. If the Board adopts a Bay-Delta Plan allowing those same entities to set the rules, the result will be a Swiss cheese of unenforceable and unmeasurable requirements with loopholes, ambiguity and confusion. And rather than being operating to maximize their own benefits within constraints, water agency operators and attorneys will work to maximize project benefits with no limits, and with disastrous impacts on the environment and taxpayer funds.	
1144	62	C. The Voluntary Agreements are a Badly Designed Experiment and Poorly Prepared to Evaluate Biological Outcomes Developed haphazardly and lacking an intentional plan, the voluntary agreement approach leaves many details about the development of flow and non-flow assets to be determined later, potentially after approval. For example, the VA flow accounting protocols clearly state: "Some provisions are still under development and refinement as indicated in notes to reader and will be included in a subsequent draft of this appendix prior to consideration of adoption, or for some provisions, after adoption as appropriate." Revised Draft Plan, Appendix B1 at B1.1. Similarly, the Recirculated SED admits at 13-28, 29 that "Bypass floodplain and tidal wetland habitat projects do not have pre-defined criteria and instead HRL participants would be required to submit proposed design criteria for approval by the Executive Director and CDFW." Recirculated SED at 13-28 to 13-29. The failure of the Program of Implementation to fully and accurately describe the proposed voluntary agreement actions leaves it open to interpretation and alternative development, and the fact that the actions are poorly defined means that it is difficult or impossible to execute a well-planned approach to designing, monitoring and evaluating VA actions as tests of specific hypotheses. What is clear from the Recirculated SED and other analyses is that the VA assets are inadequate to provide reasonable protection of fish and wildlife populations or to achieve Plan objectives, regardless of their specific configuration in space and time.	The VA flow and non-flow habitat commitments are clearly described and enforceable in the revised proposed Plan amendments. The flexibilities in the accounting allow for variations in the precise methods of implementation but do not modify the fundamental commitments from how they are analyzed in the Staff Report. In addition, the revised proposed Plan amendments include appropriate State Water Board oversight over provided flexibilities. The VA parties will be required to develop proposed hypothesis, metrics, targets, and monitoring for consideration of approval. If the VA flow, habitat, science, and other commitments are not provided, the VA pathway could be modified or terminated. Please see Common Response 1.2, Water Quality Control Planning Process, for more information about the reasonable protection of fish and wildlife and Common Response 1.3, Revised Proposed Plan Amendments, for more information on State Water Board oversight, the VA flow and non-flow habitat accounting, VA supplemental science and monitoring, and the enforceability of the VA pathway.

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1144	63	The lack of intentional and science-based planning of the non-flow commitments is apparent in the distribution of proposed projects, which shows that “habitat” improvement projects are proposed in some places where the Recirculated SED acknowledges that “habitat” availability already exceed the estimated need (Tables 13.5-6 and 13.5-7) and there is no evidence that non-flow commitment is addressing the limiting factor for salmon population recovery. For example, both spawning and rearing habitat modifications are proposed where no population response to increasing these habitat areas is expected because the population is below existing carrying capacity. This is because when: “...current abundances of fish are below the current carrying capacity of the habitat, then increasing habitat capacity further via restoration is unlikely to increase population size.” Stephen Katz, CalEPA independent peer-reviews 2024, at 31. Similarly, non-flow assets are proposed that are ineffective at improving population abundance of native fish species. For example, predator removals are proposed despite “a general lack of evidence in the scientific literature for predator control as a management strategy for recovery of strong, positive, population-level responses in target species.” Draft Scientific Basis Report for Tuolumne Voluntary Agreement, September 2025, at 6-6. [Footnote 58: State Water Resources Control Board, California Department of Water Resources, and California Department of Fish and Wildlife. 2025. Draft Scientific Basis Report Supplement for the Tuolumne River Voluntary Agreement Proposal. Sacramento, CA (hereinafter referred to as “Tuolumne VA Draft Scientific Basis Report”). Document available online at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/2025/draftreport-tvasbr.pdf.] Furthermore, a scientific study on predator removal and its effects on predation on juvenile salmonids in the lower San Joaquin River found that large scale predator removal provided only temporary reductions in predator density and found no statistically significant evidence that these predator manipulations influenced salmonid survival at even a localized	The Sacramento/Delta VA pathway in the revised proposed Plan amendments does not include commitments for predator removal. Please see the Scientific Basis Report Supplement (Staff Report Appendix G2) for an evaluation of the benefits of the VA pathway.

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		scale, let alone functional effects basin wide at the population level (Michel et al. 2019).	
1144	64	The voluntary agreements are framed as an experiment, with the implied potential to evaluate the results and outcomes after eight years and to use that information to decide if the experiment should be continued. However, as proposed, they are a flawed experiment with little to no chance of detecting measurable effects for meaningful population-level biological or ecological responses. Scientific evaluation of the biological response to voluntary agreement actions is limited by the program's short timeframe. See e.g., J. Korman 2025 Delta Science Program Independent Peer Review at 2 ("The 8-year time frame of the HRLSP is insufficient to provide even a moderate level of inference about hypotheses evaluated based on annual data/estimates"). Key among the failings of the VAs as an "experiment" is that the positive effects of the proposed measures are likely to be too small to detect. In a peer-review of the VA science plan, Korman cautioned: "The extent of contrast provided by flow actions, and potential for replication of actions over time, is highly uncertain but likely limited, owing to the complexity of voluntary flow agreements (offramps, hydrologic conditions, multiple decisionmakers). I expect that the magnitude of effects of flow and habitat changes will most often result in a low signal-to-noise ratio, making it difficult to discern their effects..." J. Korman 2025 Delta Science Program Independent Peer Review at 2-3 (emphasis added). Another peer reviewer echoed this observation, stating: Perhaps the fundamental challenge of the monitoring program is to ensure that the monitoring has sufficient (statistical) power to detect the level of changes anticipated. For some of the metrics such as acreage, this is not an issue. But it is clearly an issue for most of the biological outcomes which have a high degree of variability in estimates due to patchy distributions, unknown	The default process for considering continuation, modification, or termination of the VA pathway at the end of the initial 8-year period will provide a process for the Board to consider the effectiveness of the VA pathway and determine next steps through a public process. The VA hypotheses, metrics, targets, and monitoring would be submitted to the Board for consideration of approval after adoption of the revised proposed Plan amendments. The VA parties are required to solicit input from California Native American Tribes, non-governmental organizations, and other interested parties in the development of the targets. Please see Common Response 1.3, Revised Proposed Plan Amendments, for more information on the VA supplemental science and monitoring and the continuation, modification, or termination of the VA pathway.

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		and variable catchability, and ecological dynamics. The current Science Plan largely just requires sufficient sampling power to detect an increase or a decrease rather than to detect progress toward a specific target. However, many of the expected biological outcomes are predicted to be small and may even take time/years to evolve. For example, some of the anticipated outcomes illustrated in Chapter 6 of the Scientific Basis Report are on the order of a few percentage points. Can this level of change be detected? S. Brandt 2025 Delta Science Program Independent Peer Review at 35 (emphasis added). Furthermore, the Science Plan fails to explain how the connection will be made between voluntary agreement flow and non-flow contributions and any metric of success or testable potential outcomes. CalEPA External Scientific Peer Review Program in October 2023 [Footnote 59: All documents generated by this program are available online at: https://waterboards.ca.gov/bay_delta/draftsupplement-report-peer-review.html.]; Delta Stewardship Council “Healthy Rivers and Landscapes Science Plan Independent Peer Review”, July 2025 [Footnote 60: All letters are available online at: https://deltacouncil.ca.gov/delta-science-program/healthy-rivers-and-landscapesscience-plan-independent-peer-review.]; National Academies of Sciences, Engineering, and Medicine. 2025. Review of the Long-Term Operations of the Central Valley Project and the State Water Project. Washington, DC: The National Academies Press. [Footnote 61: DOI: https://doi.org/10.17226/29130.] Moreover, the proposed science plan lacks any attempt to quantify how viability of salmon or other fish populations will be determined. See Revised Draft Plan, 4.4.9.8 at 91.	
1144	65	We understand that VA parties have been engaged in early implementation habitat restoration work since 2018. In other words, habitat actions pursuant to VAs have been underway for the same period – 8 years – as is proposed for VA implementation in the Revised Draft Plan. Before finalizing the Plan, the Board should consider whether any demonstrable benefits from these early implementation habitat projects for	The scientific basis for the VA pathway is provided in the Scientific Basis Report Supplement (Appendix G2 to the Staff Report). Please see the response to comment 1144-64.

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		native aquatic species at risk can be documented. Failure to do so would indicate that the VA assumptions about the benefits of these actions is faulty and/or the habitat restoration would not be sufficient to generate population level benefits within the 8 year term of the VAs is insufficient to either create or show results. It is also unclear how the timeline for individual projects will be considered relative to the overall timeline of the VAs, but it is apparent that many projects will have been implemented for far less than eight years before the end point assessment, with some non-flow assets not being completed until years six, seven, and eight. Furthermore, the unknown mix of future water year categorizations over the eight-year period will confound the evaluation of project success and make correlations between biological response variables and specific voluntary agreement projects tentative at best. More likely, if we experience a wet eight year period, where natural hydrology provides benefits to fish, the voluntary agreement parties will claim credit for “working”; while if we enter a dry period, where weather and climate provide challenging conditions for fish and wildlife, those same parties will say that the failure was not their fault. Neither statement will be true or scientifically defensible because of the arbitrary and nonscientific design of the voluntary agreement experiment.	
1144	66	Because the VAs do not substantially change river flow relative to the current baseline, the hypothesis set up to test the success of the VAs is backwards: from a science perspective, the null hypothesis should be that there will be no biological response after eight years that can be attributed to the VAs rather than flow conditions. In a properly designed experiment, the burden would be on the voluntary agreements to disprove the null hypothesis. And if that null hypothesis is not rejected, then we will accept what we already suspected to be true, the voluntary agreements should end, and regulated flows should be implemented. The actual structure is the reverse—planning extension of the VA pathway unless there is “significant evidence that continuing implementation of the VA pathway will not provide reasonable protection of beneficial uses or will jeopardize the continued survival of native fishes.” See Revised	Please see the response to comment 1144-64. Also see Common Response 1.2, Water Quality Control Planning Process, for information on the reasonable protection of fish and wildlife beneficial uses.

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		Draft Plan at 96-97. This is backwards. The best available science today shows that the VAs will not protect beneficial uses—in fact, the VAs continue the status quo, and the status quo is ongoing ecosystem collapse. In a properly designed experiment, the burden would be on the voluntary agreements to disprove the null hypothesis.	
1144	67	Finally, the purpose of the updates to the Bay-Delta Plan is to achieve the existing and new Plan objectives, including those related to population viability and salmon doubling, while reasonably protecting beneficial uses. So, the question, “Will the proposed VA have a positive biological effect?” is the wrong question to ask. Rather, the relevant legal and management question is: “Will the proposed VA achieve Plan objectives and reasonably protect beneficial uses in a reasonable time frame, as required under law?” The State Water Board’s analyses fail to attempt to answer this most important of questions. Nevertheless, the information provided clearly demonstrates that the answer for this VA proposal and the 55w/WSA alternative is “no”. Populations of fish and wildlife that continue to decline towards extinction will not become viable and will not double under these alternatives. Increasingly non-existent beneficial uses, as evidence by closed fisheries, cannot be considered reasonable protection of beneficial uses because they do not represent any protection at all. See discussion supra. Unfortunately, the proposed updates do not describe or provide metrics for success. However, the State Water Board has previously described some population outcomes relevant to attainment of Plan objectives (SWRCB 2010, 2017), and other agency efforts provide a template for how such benchmarks can be developed for fish populations native to the Central Valley. See Lindley et al. 2007; SEP 2019. Successful updates to the Bay-Delta Water Quality Control Plan must demonstrate that they protect beneficial uses and support viable populations. If those outcomes are not projected to be achieved in pre-adoption analyses, or are not actually achieved in postadoption implementation, the “experiment” must end. See discussion supra.	Please refer to Staff Report Section 13.5, Beneficial Environmental Effects, and the Scientific Basis Report Supplement (Appendix G2) for information on the benefits of the VA pathway and Common Response 1.3, Revised Proposed Plan Amendments, for information about the VA pathway, including enforceability. If the Board finds that the VA pathway is not providing for reasonable protection of beneficial uses, the Board may choose to modify or terminate the VAs prior to year 8. Also see Common Response 1.2, Water Quality Control Planning Process, for information on the consideration of beneficial uses and see the response to comment 1144-64.
1144	68	D. The Program of Implementation Is Unlawful Because VA Outcomes and Commitments are Not Assured	To the extent that this comment summarizes other comments, please see the substantive responses to those comments. If the

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		In summary, the Program of Implementation must ensure that the Plan objectives will be achieved. The inclusion of the VA commitments in the Plan is unlawful because: • There is no requirement or mechanism to ensure that VA flow commitments are adjusted to offset erosion of the regulatory baseline to guarantee that the proposed level of improvement over existing conditions from VA flow implementation (nominal though it may be) is actually realized. • There is no federal commitment to provide \$740 million in new funding. Indeed, any federal commitment to participating in the VAs at all – or even an agreement not to violate existing regulatory requirements under D-1641 – is uncertain. • There are no objective, enforceable reference conditions (e.g., for OMR flows and planned water deliveries, flood releases and end of year storage conditions) to serve as the foundation of VA flow accounting in the POI and defining such conditions for some parameters may not be possible. • There are no objective, enforceable reference conditions for projects already authorized, required, being implemented and/or otherwise part of the baseline of existing conditions) in the POI to serve as the basis for assuring that VA habitat projects are actually additive to the baseline and not just repackaging existing efforts. • There are no specific, measurable and enforceable milestones for VA habitat, funding and flows in the POI. • Many of the VA actions are poorly defined, of relatively short duration, limited in scope, and untethered to limiting factors, and therefore do not lend themselves to the evaluation of biological outcomes assumed by the Revised Draft Plan.	VA flow, habitat, science, and other commitments are not provided, the VA pathway could be modified or terminated. Reference conditions are defined in Appendix B.1 to the revised proposed Plan amendments. The Scientific Basis Report Supplement (Appendix G2 to the Staff Report) includes the analysis of benefits of the VA pathway. Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on the protection of base flows; VA pathway flow accounting; HRL habitat commitments; the provisions for the continuation, modification, or termination of the VA pathway; and VA pathway enforceability.
1144	69	VIII. The State Water Board's Public Trust Analysis Is Perfunctory, Fails to Adequately Protect the Public Trust, Fails to Follow Legislative Direction, Lacks Evidentiary Support, and Fails to Provide a Reasoned Explanation Supporting Adoption of	The State Water Board considered other beneficial uses of water in accordance with legal requirements. Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion of the State Water Board's responsibilities regarding

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		the Revised Draft Plan. The comments of CSPA et al. (incorporated by reference) on the 2023 Draft SED found the Draft SED flawed because it failed to contain a Public Trust analysis. See letter from CSPA et al. to State Water Board, January 19, 2024 at 4-6. Section 13.6.1 of the Recirculated SED (“Public Trust Analysis”) fails in its attempt to correct this omission. Section 13.6.1 is a recitation of the legal authorities and responsibilities of the State Water Board under the Public Trust Doctrine and a list of elements the State Water Board states that it considered. The Recirculated SED does not state, either methodologically or substantively, how it balanced these elements. Instead, the Recirculated SED announces its intent that the Revised Draft Plan fulfill Public Trust requirements: “As described in this section, the revised proposed Plan amendments are intended to satisfy the public trust doctrine and reasonably protect fish and wildlife beneficial uses in consideration of other beneficial uses of water.” Recirculated SED at 13-218. Then the Recirculated SED announces its conclusion: “Through the analyses and balancing efforts described above, the State Water Board has duly considered the public trust and concluded that the revised proposed Plan amendments will protect public trust uses to the extent feasible.” Id. A list of the elements necessary to balance is not a description of the balancing process, the weight given to various elements, or the reasons for assigning such weight. A claim of having “duly considered” legal responsibilities and the Public Trust does not provide a reasoned explanation for the State Water Board’s determination of what is feasible to protect Public Trust resources and what is not. The conclusory statement does not provide a reasoned explanation of how the amendments protect Public Trust resources or why greater protection of Public Trust resources is infeasible. The Delta Reform Act states at § 85023: “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	the Public Trust Doctrine and its consideration of beneficial uses throughout the water quality control planning process. As stated in Section 13.6.1, Public Trust Analysis, of the 2025 partially recirculated draft Staff Report, neither a precise quantification of potential water uses and impacts nor an explicit cost-benefit analysis is required to meet the State Water Board’s water quality control planning obligations. (United States v. State Water Resources Control Bd. 91986) 182 Cal.App.3d 82, 118-119.) Further, the Porter-Cologne Act is a codification of the State Water Board’s public trust duty regarding water quality. (See e.g., State Water Board Order WQ 2023-0081, at p. 35.) Thus, the State Water Board’s analysis under the Porter-Cologne Water Quality Control Act and its balancing under the Public Trust Doctrine are necessarily intertwined. As required under the July 17, 2020 Settlement Agreement between the State Water Board and California Sportfishing Protection Alliance et al, the State Water Board has included a public trust analysis in Section 13.6.1 of the Staff Report. Nothing in California law or in the July 17, 2020 Settlement Agreement requires the level of analysis requested by this commenter. As discussed in Section 13.5, Beneficial Environmental Effects, of the 2025 partially recirculated draft Staff Report, the VA pathway is expected to provide ecological benefits in the form of increases in the area of different habitat types, increased food production and other habitat improvements, and some increases in abundance indices of key indicator species under certain hydrologic conditions. Please see Common Response 7.24, Alternatives Analysis, for more information regarding the analyses of alternatives considered. As discussed in Section 13.3.4.10, Continuation, Modification, or Termination of the VA Pathway, of the final Staff Report, the VA pathway contains a regulatory backstop such that HRL water rights may be subject to the regulatory pathway if HRL participants do not meet the flow and non-flow commitments of the VA pathway. A separate process for terminating or modifying the VA pathway based on significant evidence that continuing implementation will not provide reasonable protection of beneficial uses or will jeopardize the continued survival of native fishes. Please see Common Response 1.3, Revised Proposed Plan

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		Delta.” Far from being foundational to its analysis, the Recirculated SED’s discussion of the Public Trust in Section 13.6.1 is little more than a box-checking exercise that affirms that, in allegedly balancing beneficial uses under Porter-Cologne, the Revised Draft Plan has simultaneously complied with the Public Trust doctrine. The analysis of benefits to Public Trust resources demonstrates that 55w/WSA alternative: • Provides a small change from the existing ecological crisis in the Delta (see, e.g., id., Table 13.5-5) and substantially less benefit than the 55 without WSA (55without/WSA) alternative (compare SED, Table 7.6.2-5). • Is supported with modeling that overestimates the benefits of the alternative because new diversions and climate change will reduce flows. • Fails to demonstrate that the Alternative will meet objectives including the salmon doubling goal, tribal beneficial uses, and sport and commercial fishing objectives, all of which are expressions of the public trust. And the analysis also demonstrates that the voluntary agreements: • Provide no change from, or worse conditions than, the existing ecological crisis in the Delta. See, e.g., Recirculated SED Table 13.5-8. • Are supported with modeling that overestimates the benefits of the VAs because new diversions and climate change will reduce flows. • Fail to demonstrate that the Alternative will meet objectives including the salmon doubling goal, tribal beneficial uses, and sport and commercial fishing objectives, all of which are expressions of the public trust. The Recirculated SED admits at 13-218: “[T]here is some	Amendments for further information regarding continuation, modification, or termination of the VA pathway. As noted in Section 13.6.1, Public Trust Analysis, this ability to pivot from the VA pathway to the regulatory pathway, along with other adaptive provisions contained in the Plan, gives the State Water Board flexibility to make adjustments to better protect public trust resources and ensure reasonable protection of fish and wildlife beneficial uses without having to start the water quality control planning process over.

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		uncertainty as to what the actual benefits of the VA pathway will be and as such whether those benefits will fully protect public trust resources and fully provide for the reasonable protection of fish and wildlife beneficial uses. Given this uncertainty, the regulatory pathway provides a necessary backstop ...” However, the Revised Draft Plan eliminates the regulatory backstop, because as written it requires additional discretionary approvals and CEQA compliance before imposing regulatory flow requirements. Thus, the Revised Draft Plan fails to adequately protect Public Trust resources.	
1144	70	A. The Recirculated SED Demonstrates that neither the 55w/WSA Alternative nor the Voluntary Agreements Adequately Protect the Public Trust. As discussed in detail in this letter, the available evidence demonstrates that neither the voluntary agreement alternative nor the 55w/WSA alternative would achieve the Revised Draft Plan’s objectives, reasonably protect beneficial uses, or protect the Public Trust. The State Water Board has previously recognized that numerous fish species in the Bay-Delta watershed “are in crisis” under baseline conditions. Draft SED at 3-134. The Board has also recognized that harmful algal blooms are increasing and threatening human health and safety, and that recreational and commercial salmon fisheries have been severely curtailed or completely closed in recent years. Yet the State Water Board’s proposed approval of the voluntary agreements or the 55w/WSA alternative would not achieve the Revised Draft Plan’s narrative objectives, including fish viability and salmon doubling, nor would it meaningfully improve water quality in the Delta or lead to healthy, abundant populations of native fish species. At best, these alternatives would largely maintain the degraded status quo, under which native fish species go extinct. In 2010, the State Water Board determined, based on the best available science, that Delta inflows and Delta outflows of 75 percent of unimpaired flow from the Sacramento Valley watershed are necessary to fully protect Public Trust resources.	The commenter references a 2010 Delta Flow Criteria Report released by the State Water Board that states that 75 percent of unimpaired flows would be expected to fully protect fish and wildlife resources. However, this report only considered fish and wildlife beneficial uses, whereas the Porter-Cologne Water Quality Control Act (Porter-Cologne Act) and Water Code 13241 require the State Water Board to consider other beneficial uses as well as anticipated economic effects of the proposed plan. Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion of the Porter-Cologne Act, Water Code section 13241, and the Public Trust Doctrine. The proposed Plan amendments were developed and revised to improve flow and water quality conditions over a large geographic area, and particularly for fish and wildlife beneficial uses in the Sacramento River watershed, Delta eastside tributaries, and Delta regions. As such, conditions for recreational and commercial fisheries that are supported by healthy rivers and a functioning watershed are, overall, expected to improve. The 2023 draft Staff Report and the 2025 partially recirculated draft Staff Report show that inflows (and corresponding outflows) of various scenarios would be expected to provide marked improvements in protection of fish and wildlife beneficial uses, including achievement of the flow thresholds associated with protection of various aquatic species and achievement of floodplain inundation acreage. Results in Tables 3.14-7, 7.6.2-5, 13.5-3, and 13.5-7 focus on the benefits of

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		The scientific evidence remains clear that increased flows into and through the Delta would significantly benefit Public Trust fisheries. The Recirculated SED states that the 55 percent of unimpaired flow alternative considered in the Draft SED “would be expected to provide considerable improvement in protection of fish and wildlife beneficial uses, including achievement of flow thresholds associated with the protection of aquatic species,” while the 65 percent of unimpaired flow alternative would provide even greater ecological benefits but raised concerns regarding water supply and cold water habitat. Recirculated SED at 13-216 (emphasis added). These ecological benefits would be significantly greater than any benefits under either the voluntary agreements or the 55w/WSA alternative. See, e.g., id. at 13-216, 13-518 to 13-519, 13-538 to 13-539. Yet the State Water Board never provides a reasoned explanation to justify selecting the proposed plan amendments.	increased flow to estuarine habitat and species. Other sections assess benefits of increased flow to specific fish species (e.g., Section 3.4, Chinook Salmon (<i>Oncorhynchus tshawytscha</i>) and Central Valley Steelhead (<i>Oncorhynchus mykiss</i>), through Section 3.9, Starry Flounder (<i>Platichthys stellatus</i>); Section 13.7.6.2, Aquatic Biological Resources). However, as discussed in Chapter 3 of the Staff Report, Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, the benefits to fish and wildlife beneficial uses associated with higher unimpaired flow requirements were also associated with both considerable water supply impacts and challenges in conserving cold water storage to avoid temperature impacts later in a given year. Given the State Water Board’s obligations under the Porter-Cologne Act to consider other beneficial uses, the proposed project has been revised to include both regulatory and voluntary agreement implementation pathways system and default instream flow requirements under the regulatory pathway of 55 percent unimpaired flow with water supply adjustments for water rights obtained before December 31, 2025 at the outset of Plan implementation. The revised proposed Plan amendments also direct the State Water Board to consider imposing requirements on new water supply projects to ensure that future authorizations for the diversion and use of water are consistent with and support the salmon protection, fish viability, inflow, inflow-based Delta outflow, and interior outflow objectives of the Bay Delta Plan. Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on the protection of base flows applicable to new water supply projects. See also Common Response 7.24, Alternatives Analysis, regarding the analysis of alternatives.
1144	71	B. The Recirculated SED’s Standard of Review for Balancing Competing Interests Fails to Follow Legislative Direction. Section 13.6.1 of the Recirculated SED begins with a recitation from the Audubon decision: “The State Water Board ‘has an affirmative duty to take the public trust into account in planning and allocation of water resources, and to protect the public trust	Please see the response to comment 1144-69. As discussed in Chapter 2.1 of the revised draft Bay-Delta Plan, the beneficial uses of water to be protected through the Plan were established in the 1978 Delta Plan and the 1991 Bay-Delta Plan, and include a balance of municipal, agricultural, fish and wildlife, and other beneficial uses. Under Water Code Section

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		uses whenever feasible.’ (National Audubon Society v. Superior Ct. (1983) 33 Cal.3d 419, 446.)” Id. at 13-214. Section 13.6.1 then qualifies how the public interest limits the State Water Board’s Public Trust responsibilities: “In determining whether it is “feasible” to protect public trust values like fish and wildlife in a particular instance, the State Water Board must determine whether protection of public trust values and the degree of protection to be provided are ‘consistent with the public interest.’ (State Water Resources Control Bd. Cases (2006) 136 Cal.App.4th 674, 778.)” Recirculated SED at 13-214. The section continues that, in determining the public interest, the State Water Board must “balance ‘competing interests’...” Id. In juxtaposing the Public Trust with the public interest, the stated standard of review in Section 13.6.1 thus sets up water supply as the sole expression of the public interest. As such, a decision by the State Water Board on how much a water quality control plan and program of implementation can diminish water supply would become purely discretionary. However, the Legislature in 2009 weighed in with the Delta Reform Act. It has directed that the State Water Board give equal weight to the restoration of the Delta and water supply. It has defined the co-equal goals for the Delta: “‘Coequal goals’ means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.” Cal. Water Code § 85054. In the context of “restoring” the Delta ecosystem, the legislature has defined restoration: “‘Restoration’ means the application of ecological principles to restore a degraded or fragmented ecosystem and return it to a condition in which its biological and structural components achieve a close approximation of its natural potential ...” Cal. Water Code § 85066. In the Delta Reform Act, the legislature has also clearly stated the public interest in restoring the Delta. “The Legislature finds and declares that the Sacramento-San Joaquin Delta, referred to as ‘the Delta’ in this division, is a critically important natural resource for California and the nation. It serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South	13241, the State Water Board must consider a number of factors when determining reasonable protection of fish and wildlife beneficial uses, including other beneficial uses of water Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion of the Board’s consideration of beneficial uses and the Public Trust Doctrine. Contrary to this commenter’s assertions, the language included in Section 13.6.1, Public Trust Analysis, of the Staff Report is not intended to establish water supply as the sole expression of public interest, nor is it intended to set up public trust resources and “public interest” on opposite ends of a scale. Plainly, there is a significant public interest in protecting public trust resources; in fact, as described in Section 1.3.1, Purpose and Need for Bay-Delta Update, and Section 13.2, Planning Process, of the Staff Report, counteracting declines in public trust resources (native aquatic species and their ecosystems) in the Bay-Delta watershed is the driving purpose behind the current update to the Bay-Delta Plan. This commenter also references the Delta Reform Act and its coequal goals for the Delta. The Sacramento-San Joaquin Delta Reform Act was adopted in 2009 (Delta Reform Act) (Wat. Code, § 85000 et seq.) and codified two coequal goals for the Delta: (1) providing a more reliable water supply for California and (2) protecting, restoring, and enhancing the Delta ecosystem— both of which are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. To achieve this, the Delta Reform Act established the Delta Stewardship Council (DSC) and tasked the DSC with developing, adopting, and implementing an enforceable long-term plan for the Delta. DSC’s Delta Plan (^DSC 2013) includes policies that are legally binding on covered activities as well as advisory recommendations. While the DSC has authority to ensure that covered actions – projects, plans, or programs that occur in the Delta and have a significant impact on achievement of the coequal goals – are consistent with the Delta Plan, the State Water Board’s regulatory actions, including its water quality and water right proceedings, are exempt from the definition of covered actions and the DSC’s consistency determinations. (Wat. Code, §§ 85225,

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		America.” Cal. Water Code § 85002 Moreover, as part of the Delta Reform Act, the Legislature adopted state policy to reduce reliance on the Delta as a source of water supply and to emphasize investments in local and regional water supply solutions including improved water use efficiency and water recycling. Cal. Water Code § 85021. In short, the Legislature has provided clear guidance about the values in play in balancing Public Trust resources and water supply. But, as described, supra, the Revised Draft Plan will not restore the Delta ecosystem. At best, the Revised Draft Plan may slow the ecosystem’s decline. At worst, it will expedite it. The balancing the State Water Board must perform is not simply to weigh the Public Trust against the public interest. It is also to weigh the public interest in protecting the Public Trust and in restoring Public Trust resources. Finally, the Legislature, in the Delta Reform Act finds and declares that the Delta is in crisis. Cal. Water Code § 85001. Multiple documents the State Water Board has released in developing the Bay-Delta Plan since 2009 have said the same. Yet the Revised Draft Plan appears to give no weight to the Delta’s Public Trust resources in consideration of the Legislature’s declaration that these resources are in crisis. The Recirculated SED provides no description that suggests that the balancing of beneficial uses gave any additional weight to resources in crisis versus resources not in crisis. Rather, Section 13.6.1 discusses Public Trust resources as though they are unremarkable among many “competing uses.”	§ 85057.5, subd. (b)(1).) In spite of this, the Plan amendments still further the coequal goals by proposing flow objectives and an alternative implementation pathway to provide flow and non-flow commitments in order to reasonably protect fish and wildlife, while also continuing to protecting the water supply available for other beneficial uses.
1144	72	C. The Recirculated SED Proposes without Adequate Justification or Reasoned Explanation to Limit the Average overall Water Cost of the Regulatory Path to 5% or to Adopt the VAs with a 1% Water Cost. The State Water Board also failed to fulfill its obligation to reconsider prior water allocation decisions in evaluating what protections for the Public Trust are feasible, as well as to further State policy of reducing reliance on the Delta. See National	Please see the response to comments 1144-69, 1144-70, and 1144-71. Additionally, as discussed in Section 13.3.3, Regulatory Pathway, of the final Staff Report, the water supply adjustments included in the 55 w/WSA Alternative used for the regulatory pathway apply at the outset of the Bay-Delta Plan’s implementation and are a temporary feature to ease water users into water supply impacts. The Plan includes flexibility to provide for adaptive

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		Audubon Society, 33 Cal.3d at 426; see also Cal. Water Code § 85021. Pages 13-146 through 13-192 of the Recirculated SED summarize the water costs of the 55w/WSA Alternative and the voluntary agreements, as calculated by the SacWAM modeling. Table 9 below shows the comparative reduction in water supply from the Delta, across the entire Bay-Delta watershed and by region, of three alternatives: the 55without/WSA alternative, the 55w/WSA alternative, and the VA alternative. The SacWAM modeling shows that overall, across all affected regions of the state in all water year types, the 55 percent unimpaired flow alternative from the Draft SED would have a water cost (reduce water available for water supply) of 14%. Table 9 at Cell D8. Across all affected regions of the state in all water year types, the 55w/WSA Alternative would have a water cost of 5% (Cell F8), and that the VAs would have a water cost of 1% (Cell H8). See Recirculated SED at 13-150, 13-151. The Recirculated SED does not explain why a 14% water cost is not in the public interest. It also does not explain why additional targeted adjustments in flow requirements would not be appropriate to reduce water supply impacts to particularly sensitive uses, while maintaining a flow level more consistent with the overall flow regime of the 55 percent of unimpaired flow Alternative analyzed in the Draft SED, or greater. Importantly, however, most regions and water districts that obtain water from the Delta rely on multiple water supply sources, meaning that the total impact to water supply will be smaller than depicted or analyzed by the State Water Board. In its 2018 Framework document, the State Water Board recognized that water diversions from the Bay-Delta only account for approximately one third of the total water supply in those regions, meaning that the then- estimated 17 percent reduction in water diversions from the Delta resulting from the 55 percent of unimpaired flow alternative would mean a 5-6 percent reduction in total water supply for those regions. See State Water Board 2018 at 12-13. The Recirculated SED includes information showing how different regions differ in their	implementation in order to optimize benefits to fish and wildlife while simultaneously minimizing impacts to water supply.

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		dependence on water diversions from the Bay-Delta watershed. Recirculated SED at 13-149. However, the Recirculated SED never puts the reduction in water supply in that context.	
1144	73	The Recirculated SED does not explain why the balancing of a Delta in crisis against existing water supply results in a water budget limited to an average 5% water cost. The 55w/WSA Alternative is clearly insufficient to achieve the restoration of the Delta ecosystem that is mandated in section 85054 of the Water Code. The State Water Board's decision is particularly inexplicable given that the State Water Board approved the 2018 amendments to the Bay Delta Plan, which the State Water Board estimated would reduce surface water diversions from the Stanislaus, Tuolumne, and Merced Rivers by 14 percent on average. See 2018 SED at ES-22. Nor has the State Water Board fulfilled its obligation to reconsider prior water allocation decisions in determining what instream flows to protect Public Trust resources are feasible. Under the voluntary agreements, many of the largest water diverters apparently contribute no water to help protect Public Trust resources, including DWR's Feather River Settlement Contractors (these districts generally divert more than 1 million acre-feet of water each year) and the San Joaquin River Exchange Contractors (whose contract with the Bureau of Reclamation provides a maximum of 875,000 acre-feet of water per year). The so-called Sacramento River Settlement Contractors would give up less than 5 percent of the water under their contract with the Bureau of Reclamation (they would provide up to 100,000 acre feet of water for the environment in certain water years, whereas the contract provides for up to 2.1 million acre-feet of water per year), albeit in exchange for taxpayer subsidies under the voluntary agreements. And south of Delta contractors of the State Water Project and Central Valley Project would actually increase water diversions under the voluntary agreement. See Recirculated SED at 13-107. The State Water Board has failed to consider requiring reductions in these water diversions to better protect Public Trust resources. Moreover, unlike the Delta ecosystem, California's farms and cities have ample opportunities to reduce reliance on the Delta	Please see the responses to comments 1144-69, 1144-70, 1144-71, and 1144-72. As referenced in the public trust analysis contained in Section 13.6.1, Public Trust Analysis, of the Staff Report, a description of other water management actions such as use of recycled water and conservation measures, is provided in Section 6.6, Other Water Management Actions. Further, as detailed in Section 4.4.10.5 of the revised proposed Plan amendments, the State Water Board will continue to encourage and promote water use efficiency, conservation, and recycling, including through expediting permit processes and providing funding opportunities for projects involving the use of recycled water for groundwater recharge. See also Common Response 6.3, Water Supply and Other Water Management Actions, for further discussion of water recycling, conservation, and efficiency in California. Lastly, as discussed in Section 13.3.3.2, Sacramento/Delta Tributary Inflows, of the final Staff Report, a revision has been made such that, by default, water supply adjustments will not be available for new water rights obtained after December 31, 2025, or other new water supply projects, including water right change petitions that would substantially increase diversions from the Delta watershed and decrease Delta outflows. As part of periodic review, the State Water Board could consider whether to apply WSAs to new projects based on any necessary supporting environmental and scientific documentation pursuant to Health and Safety Code section 57004. As modified, the revised proposed Plan amendments no longer contemplate State Water Board consideration of whether to include water supply adjustments for new water supply projects in individual water right proceedings.

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		by investing in sustainable local and regional water supply solutions. Indeed, the Draft SED reported that “Pacific Institute and Natural Resources Defense Council (2014) estimated that agricultural water use could be reduced by 5.6 million to 6.6 MAF/yr, or by about 17 to 22 percent, while maintaining productivity and total irrigated acreage.” Draft SED at 6-95. Yet the Recirculated SED does not analyze additional measures for water use efficiency or demand reduction in order to improve Public Trust protections. On the contrary, the Revised Draft Plan declines to adopt any of the programmatic or default approaches to new diversions and water rights the Board evaluated in the Draft SED or the 2024 Draft Plan and Draft POI. The decision to defer all decisions about new or modified water rights to individual water right proceedings substantially weights the balance of Public Trust values and water supply even further toward water supply. Nor does the Revised Draft Plan consider, let alone require, measures to reduce reliance on the Delta and invest in sustainable local and regional water supply projects, even though many of these projects are cost-competitive with water from the Delta and provide greater water supply reliability.	
1144	74	In reporting balancing considerations by the State Water Board since 2023, Section 13.6.1 reports changes in the Revised Draft Plan favoring water supply over Public Trust resources: In response to numerous public comments received expressing concern over water supply and reservoir storage impacts that would accompany the unimpaired flow requirement as presented in the 2023 Draft Staff Report, the State Water Board made revisions to the numeric flow requirements, adding in water supply adjustments for water rights obtained on or before December 31, 2025, to reduce water supply and carryover storage and associated temperature impacts and the associated economic disruption at the outset of Plan implementation. Recirculated SED at 13-216. Although this discussion frames carryover storage as a water temperature impact, the reality is that, as discussed supra, the 55 percent unimpaired flow alternative results in improved water temperatures at many reservoirs compared with the voluntary agreement or 55w/WSA	Please see the responses to comments 1144-69 through 1144-73.

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		alternative, and carryover storage is a nonconsumptive use that can be used for consumptive use later in the year. Indeed, while this section of the Recirculated SED claims that the 65 percent of unimpaired flow alternative would cause issues with respect to conserving cold water habitat, it does not make such a claim with respect to the 55 percent of unimpaired flow alternative. Recirculated SED at 13-216. The framing plays flows against water temperature, pitting two Public Trust categories against one another in deference to the “economic disruption” of reduced water supply. As discussed supra, the Revised Draft Plan also proposes carryover storage rules that are lower in volume and weaker in enforceability than the carryover storage rules the Draft SED analyzed in 2023. The weaker carryover rules further favor water supply over the Public Trust, without demonstrating protection of water temperature or other Public Trust requirements downstream of major dams. Notably, Section 13.6.1 does not affirmatively respond to the extensive analysis of the need for greater flows to better protect Public Trust resources that NGO commenters submitted in response to the Draft SED or 2024 Draft Plan and Draft POI. The “balancing” that the State Water Board has performed since 2023 has been a one-way ratchet in favor of water supply, away from protection of the Public Trust; indeed, the ratcheting down began as soon as the ink was dry on the final Public Trust flows report the State Water Board issued in 2010. The voluntary agreement alternative abandons any pretense at balancing. It simply accepts the meager purported flow additions that water users offer as a preemptive alternative to any balancing at all. It also punts on other key elements. It has no carryover storage requirements. It has no other structural changes to reduce the severity of droughts on Public Trust resources, thus retaining reliance on temporary urgency change petitions and orders and weakened water temperature requirements in sequential dry years, with disastrous effects on Public Trust resources, as discussed supra. In this respect, the State Water Board acceptance of the VAs abdicates the Board’s responsibilities under the Public Trust. In proposing to accept the VAs, the State Water Board replaces	

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		protection of the Public Trust to the extent feasible with protection of the Public Trust to the extent convenient.	
1144	75	D. The Recirculated SED Violates the State Water Board's 2020 Settlement with the California Sportfishing Protection Alliance et al. Finally, the Recirculated SED violates the July 17, 2020 Settlement Agreement of the State Water Board with CSPA et al. [Footnote 62: See Settlement and Release of Claims, California Sportfishing Protection Alliance, et al. v. California State Water Resources Control Board and Thomas Howard, (Case Number RG15780498), July 17, 2020, available at: https://calsport.org/misc-historical-documents/2020-07-17-cspa-v-swrwb-settlement-agreement-fully-executed/] The July 17, 2020 Settlement required, inter alia, at ¶ 4, a "Transparent Public Trust Evaluation for the Bay-Delta Plan Update." [Footnote 63: Id., p. 3.] Importantly, the State Water Board in this settlement agreement confirmed that the provisions of the agreement are legal obligations of the State Water Board under existing law. More specifically, the State Water Board made the following commitments: [T]he State Water Board will evaluate whether the amendments proposed as part of the pending Sacramento/Delta Update to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary are consistent with the common law public trust doctrine. Specifically, the Staff Report prepared in connection with the pending update to the Bay-Delta Plan will include, in addition to the analysis required by the Porter-Cologne Water Quality Control Act, an express evaluation of whether the proposed amendments will protect the subject fish and wildlife public trust uses to the extent feasible and consistent with the public interest, taking into consideration all relevant factors, including but not limited to the following: ... • Evaluation of whether the proposed amendments will protect the subject fish and wildlife public trust uses to the extent feasible; and	The State Water Board has appropriately considered fish and wildlife and other beneficial uses of water in accordance with legal requirements. Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion of the State Water Board's responsibilities regarding the Public Trust Doctrine. Contrary to this commenter's assertion, the Staff Report does not violate the terms of the terms of the July 17, 2020 Settlement Agreement of the State Water Board with CSPA et al. The public trust analysis contained in Section 13.6.1, Public Trust Analysis, of the Staff Report was written in part to satisfy that settlement agreement. As acknowledged in prior orders issued by the State Water Board, the Porter-Cologne Water Quality Control Act is a codification of the State Water Boards' public trust duty regarding water quality. (See e.g., State Water Board Order WQ 2023-0081, at p. 35.) Neither a precise quantification of potential water uses and impacts on those uses nor an explicit cost-benefit analysis are required to meet the State Water Board's water quality planning obligations. (United States v. State Water Resources Control Bd. (1986) 182 Cal.App.3d 82, 118-119.) Section 13.6.1 provides an express public trust analysis by referring readers to extensive analysis throughout the Staff Report evaluating potential benefits and impacts associated with different project alternatives. While these analyses satisfied other legal requirements under CEQA and the Porter-Cologne Act, they also allowed the Board to evaluate protection of public trust resources and the effects on other uses accompanying different alternatives. Section 13.6.1 also includes an explanation of why certain alternatives were not selected as the preferred alternative, and how the revised proposed project and various adaptive measures and flexibility contained within the revised proposed Plan amendments will ensure public trust resources are protected to the extent feasible.

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		• The State Water Board shall explain its findings and describe the specific factors it balanced in making its determination of whether the proposed amendments will protect the subject fish and wildlife public trust uses to the extent feasible and consistent with the public interest. [Footnote 64: Id., p. 4.] The Recirculated SED does not clearly make findings consistent with the Settlement Agreement, and it does not explain the findings it does not make. The Recirculated SED provides at a list of topics the State Water Board ostensibly considered in developing the Revised Draft Plan but does not describe how the Board made decisions about those topics. It describes the subject matter elements but does not quantify them as factors or explain either the process or the weighting with which it balanced them against other elements. In short, Section 13.6.1 describes where the Board landed but not how it got there. Finally, the Recirculated SED does not make the promised “express evaluation.” Instead, it repackages the Porter-Cologne evaluation as a Public Trust analysis and announces a conclusion.	
1144	76	IX. The Draft SED Failed to Comply with CEQA, and the State Water Board Must Prepare and Recirculate a Revised Draft SED that Accurately Assesses the Environmental Impacts of the Whole of the Action As discussed below, the State Water Board has violated CEQA in its consideration of the Bay- Delta Plan, and the Recirculated SED must be revised and recirculated to address these flaws. A. The State Water Board Has Failed to Consider the Environmental Impacts of the Whole of the Action Neither the Draft SED nor the Recirculated SED has analyzed the whole of the action, as required by CEQA. See Cal. Code Regs., tit. 14, § 15378. While the Draft SED analyzed several unimpaired flow alternatives that corresponded to different potential water quality objectives, it did not consider the environmental effects of the whole water quality control plan. A water quality control plan includes the designation of beneficial uses, water quality	As described in Common Response 1.3, Revised Proposed Plan Amendments, the 55 w/WSAs scenario is a part of regulatory pathway, which in turn is a part of the revised proposed Plan amendments. In other words, 55 w/WSAs is at the center of the project under review in the Staff Report. Chapter 13, Revised Proposed Plan Amendments, in combination with Chapter 7, Environmental Analysis, and Chapter 9, Proposed Voluntary Agreements, fully considers the impacts of that project and analyses flow scenarios ranging from 35 to 75 percent of unimpaired flow. Moreover, at the time of the 2025 partially recirculated Staff Report containing Chapter 13, the State Water Board had prepared and released the program of implementation, water quality objectives, and the designation of beneficial uses, all of which we accounted for in that recirculated analysis. The Staff Report therefore does analyze the whole of the project. The alternative scenarios mentioned in the comment are just that—alternatives. As explained in Common Response 7.24, Alternatives Analysis, the Staff Report considers a reasonable range of alternatives. CEQA does not require the consideration of

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		objectives, and a program of implementation to achieve those objectives. See Cal. Water Code § 13050(j). However, the Draft SED was released for public review and comment before the State Water Board released the initial draft program of implementation, including regulatory text. The Program of Implementation included numerous provisions that affect the analysis in the SED, including water supply adjustments on various rivers and streams and water supply adjustments for future water supply projects, and while the State Water Board has provided opportunities for public comment on the program of implementation under Porter-Cologne, the State Water Board has never analyzed the environmental effects of the whole of the action, including the program of implementation, for alternatives including 55 percent of unimpaired flow or 65 to 75 percent of unimpaired flow (the “High Flow” alternative). Nor were these errors cured in the Recirculated SED. The Recirculated SED never analyzes the 55 percent or 65 to 75 percent alternatives that were included in the Draft SED, instead focusing its analysis solely on the voluntary agreement and the 55w/WSA scenarios. In addition, in the Recirculated SED the State Water Board includes new analyses that were never applied to the 55 percent and 65 to 75 percent alternatives considered in the Draft SED, including considering how frequently certain alternatives would achieve “new flow thresholds” that were developed “[f]ollowing receipt of public comments on the 2023 Draft SED.” See Recirculated SED at 13-195 to 13-197; compare Draft SED at 7.6.2-38 (flow thresholds) with Recirculated SED at 13-204 (including new ecological flow thresholds and slightly changing the prior flow thresholds). However, despite recognizing that these flow thresholds show higher flows are necessary to achieve fishery benefits, see Recirculated SED at 13-196, the State Water Board has failed to conduct this analysis for the 55 percent and the 65 to 75 percent alternatives analyzed in the Draft SED. [Footnote 65: The Recirculated SED also states that the State Water Board could modify flows within the range of 45 to 65 percent, with or without water supply adjustments, allowing for adoption of 65 percent unimpaired flow with water supply adjustments, or 45 percent of unimpaired flow with water supply adjustments. Recirculated SED at 13-16 to 13-17. However, the Recirculated	every possible permutation of unimpaired flow levels and other plan features such as WSAs. The revised proposed Plan amendments provide the regulatory pathway, which would be implemented for any diverters that are not part of VAs. In the event that VAs do not proceed, or do not meet the requirements of the Plan, the regulatory pathway would apply. The Staff Report fully analyzes and discloses the environmental impacts of this eventuality.

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		SED never describes what water supply adjustments would apply to a 45 percent unimpaired flow requirement ("45w/WSA") or 65 percent unimpaired flow requirement ("65w/WSA"), nor does the Recirculated SED model or analyze the effects of adopting a 45w/WSA or 65w/WSA alternative.] Moreover the Recirculated SED demonstrates that changes to the Bureau of Reclamation's operations under Action 5 of the Central Valley Project significantly alter Delta inflows, Delta outflows, Cold Water Habitat, and Interior Delta flows that would result under the Revised Draft Plan, including reducing Delta outflows that would result under the voluntary agreements or 55w/WSA scenarios and resulting in more negative OMR flows under these scenarios. See, e.g., Recirculated SED at 13-405. However, the State Water Board has not analyzed or disclosed to the public the effects of these changes on all of the alternatives analyzed in the SED, including the 55 percent and 65 to 75 percent unimpaired flow alternatives. Indeed, even the environmental baseline has changed between the Draft SED and Recirculated SED. Compare Draft SED at 7.6.2-37 (showing that under baseline conditions in the Draft SED, median X2 is located at 68 km) with Recirculated SED at 13-313 to 13-316 (showing that under baseline conditions in the Recirculated Draft SED, median X2 is located at 69 km). In other places, the Recirculated SED's analysis of flows under the voluntary agreements includes flows from the San Joaquin River, Tuolumne River, or lower San Joaquin River flow objectives, see, e.g., Recirculated SED at 13-204, even though those flows were excluded from the similar analysis in the Draft SED, biasing the analysis and making it appear that flows under the voluntary agreements perform better than the other unimpaired flow alternatives. Because the State Water Board never analyzed the whole of the action – a Bay-Delta Water Quality Control Plan that includes proposed beneficial uses to be protected, water quality objectives, and the Program of Implementation to achieve those objectives– for the 55 percent and 65 to 75 percent alternatives, the State Water Board has violated CEQA. See Cal. Water Code § 13050(j); see also Cal. Code Regs., tit. 14, § 15378. [Footnote 66: In addition, we note that the Recirculated SED never analyzes a voluntary agreement alternative that excludes the Bureau of	

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		Reclamation, which controls the water rights and facilities intended to be used as part of the voluntary agreement in the American, Sacramento, and San Joaquin Rivers and in the Delta. If Reclamation declines to participate, Bureau contractors would be unable to participate, and the vast majority of the water proposed for the voluntary agreements and a significant portion of the funding would be eliminated. Coordinated operations of the CVP and SWP would be affected if only the SWP were a VA participant. The Board would have to conduct supplemental environmental review under CEQA if only portions of the voluntary agreements were to be implemented.]	
1144	77	Equally important, the Recirculated SED also fails to consider the environmental effects of the whole of the action for the proposed project, which it now defines as adoption of voluntary agreements for specific water rights holders, and a 55w/WSA flow scenario for all other water rights holders who are not part of the voluntary agreements. See Recirculated SED at 13-1 to 13-2. However, as the Recirculated SED admits, The SacWAM modeling of the VA scenario is focused on the HRL flow commitments and does not explicitly model the provision of additional flows from water right holders on the regulatory pathway that are not part of the VA pathway. Recirculated SED at 13-50 (emphasis added). While the Recirculated SED admits that the parties to the voluntary agreements constitute the majority of water diversions in the watershed, [Footnote 67: The Draft SED also fails to adequately identify which water rights would be subject to the regulatory unimpaired flow requirements, and which would be subject to the voluntary agreement pathway. The State Water Board has released a list of water rights that are allegedly subject to the voluntary agreement pathway, which “are undergoing review by State Water Board staff and may be further amended in a subsequent version of this appendix.” Revised Draft Plan, Appendix B.1, at B.1-83. It appears that many of the water rights included on that list have not contributed any water or money towards the voluntary agreement, and there appears to be no reasoned explanation why those or other water rights are included on the list. Determining which parties are properly part	The environmental conditions in the Delta, and the effect of those conditions on habitat, are not impacts of the project that CEQA requires the Staff Report to analyze. The Staff Report has considered the efficacy of the revised proposed Plan amendments, including both the VA pathway and the regulatory pathway, in protecting beneficial uses pursuant to the Porter-Cologne Water Quality Control Act. This analysis appropriately accounts for the range of effects that could occur from implementation scenarios ranging from no additional regulatory pathway flows (i.e., all water rights holders are in VAs) through full participation of all Bay-Delta water rights in the regulatory pathway (i.e., there are no VAs). The SacWAM results of the VA scenario is focused on the HRL flow commitments and does not explicitly model the provision of additional flows from water right holders on the regulatory pathway that are not part of the VA pathway. Similarly, the modeling of the regulatory pathway scenarios assumes full participation in the regulatory pathway. The modeling scenarios for the VA and regulatory pathways thus bookend the range of effects that could occur. In addition, the water rights identified in Appendix B.1 constitute the majority of the water diverted and used within the Sacramento/Delta watershed. While some additional flows would be expected under the VA pathway from water rights not included in Appendix B.1 that are on the regulatory pathway the resulting flows and effects would fall between the results of the VA pathway and the regulatory pathway and would be much closer to the VA pathway results. The State Water Board is not a signatory to the VA MOU and is

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		of the voluntary agreements has significant environmental impacts; that determination affects how much – if any – water would be included as Delta inflow and outflow above and beyond what is proposed in the voluntary agreements, whether any reservoir operators would be subject to the Cold Water Habitat objective, and whether the existing parties to the voluntary agreement are in fact contributing less water and habitat because they are forcing other water rights holders to subsidize what they have promised as part of the proposed voluntary agreement. These concerns also significantly affect the State Water Board's balancing of beneficial uses to determine what constitutes reasonable protection of fish and wildlife, and the State Water Board's obligation to protect Public Trust resources to the extent feasible.] id., it is impossible for the State Water Board, let alone the public, to understand whether and by how much Delta inflows and Delta outflows resulting from adoption of the proposed project would compare to flows under the voluntary agreement alone – even though this regulatory pathway is, at least nominally, part of the proposed project. The State Water Board simply has not analyzed the whole of the action now being proposed. [Footnote 68: In addition, the Recirculated SED fails to model or adequately consider all of the changes to CVP operations resulting from the 2024 Biological Opinions, as well as the changed CVP operations that resulted from the Trump Administration's adoption of Action 5 in 2025. See Recirculated SED at 13-48; State Water Board to U.S. Bureau of Reclamation re: Action 5 Assumptions and Environmental Compliance dated Nov. 10, 2025. While the Recirculated SED does not discuss the changes from Action 5, except for removal of early implementation of the voluntary agreement, see id., the State Water Board has acknowledged that those changes would adversely affect native fish species.]	not bound by its terms or the terms of other HRL documents. Documents produced by VA parties such as the VA MOU, the VA strategic plan, or the implementing and enforcement agreements do not represent the VA pathway in the Plan. However, the HRL documents were considered to inform the State Water Board's development of the VA pathway. Please see Appendix B.1 of the December 2025 revised draft Plan for the identification of water rights and claims of rights subject to the HRL commitments. Please see Common Response 1.3, Revised Proposed Plan Amendments, regarding the regulatory pathway, the VA pathway, and comments about the 2025 Record of Decision and 2025 Incidental Take Permit.
1144	78	The Recirculated SED also fails to fulfill CEQA's public information mandate. As noted above, the analyses and baseline are different between the Draft SED and Recirculated SED, making it difficult to compare the alternatives and undermining this public information mandate. But the State Water Board further undermines this essential goal of CEQA because the Recirculated SED never compares the results of the proposed project with the unimpaired flow alternatives, so that the public	The Staff Report analyzes the alternatives in the manner required by CEQA, as further discussed in Common Response 7.24, Alternatives Analysis. Impacts were narratively compared within the impact analyses in Chapter 13, Revised Proposed Plan Amendments, of the 2025 partially recirculated draft Staff Report. Also see the alternatives impacts discussion in Section 13.7.1, Approach, and the tabulated comparison of impacts in Appendix H4, Impact Summary Table for Alternatives, of the final

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		and decisionmakers can clearly see how the alternatives compare to each other and the proposed project. [Footnote 69: Similarly, the Draft SED fails to compare the analysis of the voluntary agreement alternative with the other alternatives, relegating the analysis of the voluntary agreement to a separate chapter; and it likewise never presents model results for all of the alternatives in a single table, such as the frequency of achieving certain ecological flow thresholds.] While the Recirculated SED includes analyses comparing the voluntary agreement or 55w/WSA scenario with baseline, the Recirculated SED never compares these scenarios with the 55 percent of unimpaired flow, 65 percent of unimpaired flow, or 75 percent of unimpaired flow alternatives from the SED. As a result, the reader cannot easily – if at all – assess how the voluntary agreements compare to the other alternatives analyzed in the Draft SED.	Staff Report. Please see Common Response 7.1, General CEQA and Approach to the Analysis, regarding the scope and level of analysis and regarding the impact analysis and comparison to the proposed VAs. There is only one project baseline, which is described in Staff Report Sections 6.2.1, Baseline Assumptions, and 13.4.2.2, Baseline Condition, and is further discussed in Common Response 6.2, Baseline and No Project Alternative.
1144	79	Finally, the State Board has never provided a complete analysis of an alternative that allows for flexibility within an adaptive range, requires reservoir storage to protect cold water and water supply, and provides specific, science-based methods and rules for meeting unimpaired flow targets within that range, and considers specific, quantitatively defined outlier conditions when flows might vary outside the adaptive range, while still protecting water storage and other beneficial uses. The State Board has not identified an “environmentally preferable” alternative, nor compared that alternative with the voluntary agreements, the 55w/WSA scenario, or existing conditions. See Friends of the River et al. Letter to State Water Board, December 24, 2024; Baykeeper et al. Letter to State Water Board, October 17, 2025. Because neither the Draft SED nor Recirculated SED has analyzed the whole of the action, the State Water Board has violated CEQA. The State Water Board must recirculate for public review a revised draft SED that adequately and accurately assesses the likely environmental impacts of the proposed project and alternatives. [Footnote 70: Adequate modeling and analysis also must account for the effects of the State Water Board’s recently proposed water supply adjustments, which would reduce required Delta inflows and outflows in two thirds	The Staff Report analyzes the alternatives in the manner required by CEQA, as further discussed in Common Response 7.24, Alternatives Analysis. Also see Common Response 1.2, Water Quality Control Planning Process, for information on the consideration of beneficial uses. Regarding comparing alternatives to one another, impacts were narratively compared within the impact analyses in Chapter 13, Revised Proposed Plan Amendments, of the 2025 partially recirculated draft Staff Report. Also see the alternatives impacts discussion in Section 13.7.1, Approach, and the tabulated comparison of impacts in Appendix H4, Impact Summary Table for Alternatives, of the final Staff Report. While no alternatives have been eliminated, Chapter 13 and the revised draft Bay-Delta Plan identify the specific actions from the alternatives previously evaluated in the draft Staff Report and described in previous drafts of the Plan that are moving forward for Board consideration. The revised proposed Plan amendments purposefully include flexibility within an adaptive range, reservoir storage requirements to protect cold water and water supply, and adaptive implementation processes that incorporate best available science. The revised proposed Plan amendments retain the required unimpaired flow range from Chapter 5, Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta, of the

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		of years compared to flows modeled in the body of the Draft SED. In addition, the Draft SED fails to analyze the entirety of the voluntary agreement alternative because it fails to model the effects on Delta inflows or water temperatures from certain potential water purchases under the voluntary agreement, while assuming those purchases contribute to Delta outflow. See Draft SED at 9-109.] In order to fulfill CEQA's public information mandate, the Recirculated SED must be revised to accurately assess the environmental impacts of the proposed project and all of the alternatives, using the same methods and same environmental baseline, and the alternatives must be compared to each other.	2023 draft Staff Report of 55 percent of unimpaired flow year-round within an adaptive range of 45 to 65 percent, in addition to the WSAs, which may be modified or removed in the future. Implementation of the cold water habitat objective will include carryover storage requirements and other measures to protect cold water. Application of the adaptive implementation measures require that they achieve at least comparable benefits and local cooperative solutions include requirements for scientific documentation. Please see Common Response 1.3, Revised Proposed Plan Amendments, for more information. The Staff Report adequately evaluates environmental impacts associated with changes in Delta inflows and water temperatures from potential water purchases under the VA pathway. The sources for the PWA Fixed Price Water Purchase Program are identified and as such are explicitly modeled in SacWAM. However, the unspecified water purchases (PWA Market Price Water Purchase Program and permanent state water purchases) would be from unspecified willing sellers, which could include inflow sources within the Sacramento/Delta watershed or reductions in exports, both of which could result in additional Delta outflows. Because the sources of the unspecified water purchases are not fully known at this time, they are not included in the SacWAM modeling of the VA scenario. Because the unspecified water purchases could be provided from reductions in exports or increases in inflows, the effects of both of these scenarios are evaluated in Section 13.4.4, Changes in Water Supply, and considered in the analysis presented in Section 13.7, Environmental Analysis. Please see Section 13.7.6.2, Aquatic Biological Resources, for an evaluation of water temperature effects on fish under the revised proposed Plan amendments.
1144	80	B. The State Water Board's Environmental Baseline Violates CEQA The State Water Board has used an unlawful environmental baseline in the Draft SED and Recirculated SED that confuses and misleads the public as to the likely environmental impacts of the proposed project and alternatives. CEQA generally defines the environmental baseline to be the environmental conditions in existence when the Notice of Preparation ("NOP") is published	Please see Section 6.2.1, Baseline Assumptions, for an explanation of the baseline assumptions in SacWAM. Please see Common Response 6.2, Baseline and No Project Alternative, for responses to comments regarding the environmental baseline.

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		(2008). See Cal. Code Regs., tit. 14, § 15125. However, instead of using the environmental conditions and regulatory requirements in place in 2009, [Footnote 71: The Draft SED identifies January 24, 2012 as the date when the NOP was published. See Draft SED at 7-11. However, as the Draft SED admits, this was the date when the State Water Board published a Supplemental Notice of Preparation. Id.; Draft SED at 6-4 (Admitting the process of updating the Bay-Delta Plan “has been ongoing since 2009, with a revised Notice of Preparation (NOP) issued for the Sacramento/Delta update to the Bay-Delta Plan in 2012.”). The initial NOP for this proceeding was published by the State Water Board on February 13, 2009. State Water Board, Notice of Preparation and of Scoping Meeting for Environmental Documentation for the Update and Implementation of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary: Southern Delta Salinity and San Joaquin River Flows, February 13, 2009, available online at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/environmental_review/docs/nop2009feb13.pdf. The conditions and regulations in effect in 2009, when this initial NOP was published, constitute the appropriate environmental baseline under CEQA. And even if 2012 were the appropriate date, the Draft SED and Recirculated SED do not use either 2009 or 2012 conditions. Again, the Draft SED and NOP documents and all other specifically identified weblinks are incorporated by reference.] when the NOP was published, in the SED the State Water Board chose to use conditions in effect more than a decade later (the year 2020). This environmental baseline is unlawful, particularly given the State Water Board’s emphasis on the need to protect then-existing flows given regulatory changes during this period (particularly the significant weakening of state and federal protections for fish and wildlife between 2009 and 2020), and the further decline in the abundance of fish and wildlife in the Bay- Delta – and further degradation of beneficial uses – that resulted from weakening these key environmental protections. The use of this degraded environmental baseline is unlawful. In addition, the Draft SED’s and Recirculated SED’s use of multiple baseline conditions is likewise unlawful under CEQA. In its supplemental 2012 NOP, the State Water Board explained	

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		that, In considering potential changes to the Bay-Delta Plan, the State Water Board will be reviewing changes that should be made to water quality objectives and the program of implementation to protect beneficial uses in the Bay-Delta in the immediate future under existing conditions and in the longer term with and without changes to the environment that may occur as the result of current planning efforts such as the BDCP. State Water Board, 2012 Supplemental Notice at 3 (emphasis added). Throughout this proceeding the State Water Board emphasized that the combination of new water diversions, changing environmental regulations, and the lack of an adequately protective Bay-Delta Plan meant that then-existing environmental flows – particularly the Delta inflows and Delta outflows that resulted from the 2008 and 2009 CVP/SWP Biological Opinions, which were far greater than the minimum flows required by the Bay-Delta Plan – were likely to decrease over time, further harming fish and wildlife beneficial uses. Equally important, throughout this proceeding the State Water Board has repeatedly concluded that the best available science demonstrated that those then-existing conditions failed to provide reasonable protection for fish and wildlife and the Public Trust. Yet instead of comparing the proposed Plan amendments to that then-existing environmental baseline, the State Water Board has unlawfully used an updated, further degraded baseline for environmental analysis in the Draft SED and Recirculated SED. Indeed, one of the primary purposes of this regulatory proceeding was for the State Water Board to adopt new water quality standards that would protect existing flows that exceed regulatory requirements, and that were otherwise at risk. For instance, in 2017, the State Water Board explained that, With respect to flows, the Science Report explains how drastically the hydrology in the Bay-Delta watershed has been modified and how much further flows could be reduced without additional flow requirements... Additionally, because existing Bay-Delta Plan flow requirements are far below current flow	

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		levels most of the time, additional regulatory requirements are needed to prevent flows from being substantially reduced in the future. State Water Board, Fact Sheet: Phase II Update of the Bay-Delta Plan: Inflows to the Sacramento River and Delta and Tributaries, Delta Outflows, Cold Water Habitat and Interior Delta Flows, Oct. 4, 2017 [Footnote 72: Document available online at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/201710_phaseII_notice.pdf]; see id. at 7 (“In some tributaries where flows are currently significantly impaired [reduced below unimpaired levels], these new inflow requirements are needed to improve conditions for fish and wildlife in those tributaries and to provide for connection with the Delta and contribution of flow to the Delta. In other tributaries where flows are less impaired, new inflow requirements are needed to ensure that those flows are not reduced in a way that is harmful to native fish.”); Draft SED at 1-9. The State Water Board’s Final 2017 Scientific Basis Report repeatedly emphasizes that flows resulting from then-existing conditions were far greater than the flows generally required by the Bay-Delta Plan, and that a major purpose of this proceeding was to adopt new water quality objectives that protect at least some of these flows into the future given that then-existing conditions failed to reasonably protect fish and wildlife. See, e.g., State Water Board, Final 2017 Scientific Basis Report at 1-5 to 1-6, 5-1 to 5-2, 5-7 to 5-8. In its Final Scientific Basis Report, the State Water Board used the 2008 and 2009 CVP/SWP Biological Opinions – the then-existing conditions in 2009 and 2012 – for its baseline conditions. See Draft SED at 7.1-14. Similarly, in 2018, the State Water Board explained that, Though various state and federal agencies have adopted requirements to protect the Bay-Delta ecosystem, the best available science indicates that the existing requirements are insufficient and that a comprehensive regulatory strategy addressing the watershed as a whole is needed. Many of the current requirements in the Bay-Delta watershed are the sole	

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		responsibility of the Projects, including water quality objectives implemented by D-1641, two BiOps addressing Delta smelt and salmonids, and an ITP addressing longfin smelt. These existing requirements address only portions of the watershed and there are a number of tributaries that do not have any requirements to protect fish and wildlife, or that have minimal requirements. Current conditions may be protective of fish and wildlife in some locations, but action is needed to ensure that conditions are not degraded in the future, and that conditions in the Bay-Delta improve based on more complete and coordinated watershed management. State Water Board, July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan, at 6 (emphasis added). [Footnote 73: Document available online at: https://www.waterboards.ca.gov/bay_delta/docs/sed/sac_delta_framework_070618.pdf] The State Water Board reached the same conclusion in its 2010 Public Trust Report, which utilized a similar baseline and concluded that, “The best available science suggests that current flows are insufficient to protect public trust resources.” SWRCB 2010 at 2. [Footnote 74: Document available online at : https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf] Yet despite this stated purpose of needing to improve protections for fish and wildlife compared to then-existing conditions when this proceeding began in 2009, particularly given that these regulatory requirements were subject to change and could reduce environmental flows given the inadequacy of the Bay-Delta Plan, and despite the 2012 Supplemental NOP emphasizing that the State Water Board would be reviewing changes compared to then-existing conditions, the Draft SED and Recirculated SED rejects this approach and instead uses an environmental baseline of conditions in 2020. See Recirculated SED at 13-43 to 13-44.	
1144	81	Although the State Water Board acknowledges that protections for endangered species that restricted operations of the State Water Project and federal Central Valley Project changed between 2012 and 2020 [Footnote 75: See Draft SED at 6-4 to 6-	Please see Common Response 6.2, Baseline and No Project Alternative regarding baseline assumptions.

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		5.], the Draft SED and Recirculated SED grossly mischaracterizes the magnitude and effect of these changes – and completely ignores other key changes to the regulatory regime during this period – suggesting that although the requirements had changed, “under most circumstances actual operations have not significantly changed.” Draft SED at 6-4. While each of the changes in isolation may not seem substantial, taken together they amount to ‘death by a thousand cuts’ to the environmental baseline, and the fish and wildlife species that depend on adequate flows. In fact, changes in the regulatory regime resulted in significant increases in water exports by the CVP and SWP, and significantly reduced resulting Delta outflow, comparing conditions in 2008 with those in 2020. See Draft SED, Appendix G3a, at G3a-11 (showing that January-June Delta outflow declined on average by more than 200,000 acre feet per year as a result of the change from the 2008-2009 CVP/SWP Biological Opinions to the 2019 Biological Opinions, as modeled by SacWAM). [Footnote 76: Because the Draft SED fails to use a single, legally accurate environmental baseline, we cannot be certain as to the accuracy of this assessment of the changes in Delta outflow caused by the weakening of biological opinions under the Trump Administration in its first term.] Indeed, state agencies filed litigation successfully challenging the Trump Administration’s 2019 Biological Opinions as unlawful, recognizing that these measures were inadequate to protect endangered fish and wildlife. [Footnote 77: See California Natural Resources Agency v. Raimondo, Case No. 1:20-cv-00426. It is important to note that as a result of this litigation, the CVP/SWP operated under an “Interim Operations Plan” for 5 years and it is unclear how the State Water Board accounted for these changed operations during this time period, 2020-2025, respectively.] Most obviously, the Draft SED admits that changes to the regulatory regime resulted in the environmental baseline assuming greater exports of water by the CVP and SWP in years classified as Wet in the San Joaquin basin, compared to the requirements of the 2009 NMFS Biological Opinion that was in place when the NOP was published. Draft SED at 6-5; see id. at 7.1-15. This change to the baseline results in significantly	

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		reduced Delta outflow in nearly one quarter of all years (years classified as Wet in the San Joaquin basin), which is even more significant in light of the State Water Board's recognition that then-current flows were inadequate to protect public trust resources and action was needed to prevent further degradation of such flows. However, Delta outflow was reduced in all but critical water year types as a result of the 2019 Biological Opinions. See Draft SED, Appendix G3a, at G3a-11. In addition, while the 2008/2009 CVP/SWP Biological Opinions required that OMR flows be no more negative than -5,000 cubic feet per second, more recent biological opinions authorize OMR to exceed that limit, up to a maximum of -6,250 cubic feet per second. Modeling in the Draft SED shows OMR exceeding -5,000 cubic feet per second under baseline conditions in certain months. See Draft SED, Appendix A1, at Table A1-114. Such conditions were prohibited and did not occur when the NOP was published, yet they are now part of the baseline in the Draft SED. The Draft SED also admits that instead of using the Fall X2 action in the 2008/2009 CVP/SWP Biological Opinions, which required greater Delta outflow in the fall months of Wet and Above Normal water year types (so that X2 is located at 74km and 81 km, respectively), the Draft SED's environmental baseline requires reduced Delta outflow (so that X2 is located at 80 km in the fall months of Wet and Above Normal years). See Draft SED at 6-5.	
1144	82	The Draft SED also ignores several other changes to the regulatory framework between 2009 and 2020 that resulted in further degraded conditions for fish and wildlife, including the elimination of the minimum Stanislaus River inflows required under the 2009 NMFS CVP/SWP Biological Opinion. And critically, whereas in 2009 the State Water Board had never granted TUCPs to waive water quality objectives in the Delta, by 2020 the State Water Board had begun a pattern and practice of routinely granting TUCPs to waive water quality objectives, not just in drought years, but even in wetter years. See Draft SED at 7.24-4; see also Baykeeper et al re Draft Staff Report on Sacramento/Delta Updates January 19, 2024, Section H.3 at 99-101; see also California Sportfishing Protection Alliance et al. v	Please see Common Response 6.2, Baseline and No Project Alternative regarding baseline assumptions.

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		SWRCB, County of Sacramento Case No. 34-2021-80003761 (Consolidated with Case No. 34-2021-80003763), Third Amended and Supplemental Verified Petition for Writ of Mandate and Complaint (April 12, 2024). Cumulatively, these changes resulted in significantly reduced Delta outflow in the winter, spring and fall months under the SED's environmental baseline compared to the conditions when the NOP was published in 2009. [Footnote 78: In addition, the Draft SED unlawfully excludes from the environmental baseline the minimum Delta inflows from the San Joaquin River at Vernalis required by the 2006 Bay-Delta Plan and Decision 1641. Instead of including either the VAMP or pulse flows required by the Bay-Delta Plan and Decision 1641, the Draft SED assumes "the base flows required under D-1641 without the April-May pulse and without VAMP pulse flows." Draft SED at 6-7. There is no valid justification for excluding required minimum flows from the baseline, and the Draft SED appears to provide no justification at all for this exclusion.] And as compared to conditions in 2009, these rollbacks of environmental protections went hand in hand with further declines of the abundance of Delta Smelt and Longfin Smelt, the complete closure of the salmon fishery for several years as a result of declining fall-run Chinook Salmon populations, further declines of ESA-listed salmon species, and greater proliferation of harmful algal blooms. The State Water Board also argues that these updated requirements represent "how they will likely continue to operate absent any updates to the Water Quality Control Plan." Draft SED at 6-5. That conclusion is not supported by substantial evidence. Indeed, as noted supra, the CVP/SWP 2024 Biological Opinions, as amended by Action 5 in the Record of Decision, increase Delta pumping in April and May, reduce Delta outflow, and worsen interior Delta flows compared to the environmental baseline. Taken together, the failure to use then-existing conditions in 2009 when the NOP was published deprives the public and decision-makers of accurate information regarding the environmental impacts and benefits of the proposed project and alternatives. It is unclear, for example, whether flows under the	

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		proposed voluntary agreements are, in fact, greater than the flows under the 2009 baseline conditions (at a minimum, much – if not the majority – of the flows promised in the voluntary agreement simply replace flows that occurred under 2009 baseline conditions). Given the State Water Board’s findings in the 2010 Public Trust Flows report and the 2017 Final Scientific Basis Report that the best available science demonstrated that then-existing baseline conditions in 2009 failed to protect Public Trust resources and failed to provide reasonable protection of fish and wildlife, the failure to use then-existing conditions in 2009 as the environmental baseline in the Draft SED and Recirculated SED fails to fulfill CEQA’s public information role.	
1144	83	In addition, the environmental baseline is also unlawful because the State Water Board uses multiple conflicting baselines in the Draft SED and Recirculated SED, confusing the public and decisionmakers. As noted supra, the State Water Board used different baselines for its Final Scientific Basis Report and its Draft SED. In addition, the Draft SED uses a different baseline (the so called “reference condition”) for evaluating the proposed voluntary agreements, [Footnote 79: In addition, the Draft SED uses a different baseline for its evaluation of the Friant Voluntary Agreement. The Board notes that, “Reference conditions for the Friant VA are defined as operational conditions, including flows, water diversions, and reservoir operations as they would occur prior to VAs being implemented, but assuming expanded SJRRP recapture abilities.” Revised Draft Plan, Appendix B1, at B.1-B-51. There appears to be no explanation or justification for the assumption that there are expanded SJRRP recapture facilities, and this baseline is different from the other baselines used in the voluntary agreement.] which is different from both the Draft SED’s environmental baseline and the baseline used in the Final 2017 Scientific Basis Report. See Draft SED at 7.1-14 to 7.1-15; id., Appendix B.1; id., Chapter 9, at 9-13 to 9-15. As a result, a significant amount of the flow proposed under the voluntary agreements is expected to be used simply to meet the SED’s environmental baseline, rather than actually increasing Delta inflows and Delta outflows to improve conditions for fish and wildlife. See Draft Revised Bay-Delta Plan, Appendix B.1 at B-1; id. at B-19. Because of the failure to use the environmental baseline of conditions in 2009, it remains unclear whether and to	There is only one project baseline, which is described in Staff Report Sections 6.2.1, Baseline Assumptions, and 13.4.2.2, Baseline Condition, and is further discussed in Common Response 6.2, Baseline and No Project Alternative. The analysis in the draft Staff Report compares the 35-75 and 55 WSA flow scenarios and the VA scenario to the same project baseline. The 2025 partially recirculated draft Staff Report included refinements to the model representation of baseline described in Section 13.4.2.1, Sacramento Water Allocation Model (SacWAM) General Updates, that showed slightly different results. However, the underlying assumptions representing regulations did not change. Section 13.4.2.2, Baseline Condition, has been updated to clarify the fact that the baseline regulatory assumptions are the same as those contained in the 2023 draft Staff Report. Please see Common Response 6.2, Baseline and No Project Alternative regarding responses to comments that raise issues with the project baseline.

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		what extent the flows under the voluntary agreements actually increase flows compared to when the NOP was published. Finally, although the Recirculated SED indicates that it uses the same environmental baseline as the Draft SED [Footnote 80: See Recirculated SED at 13-43 to 13-44.], the modeling results of the environmental baseline in the Draft SED and Recirculated SED are different. For instance, modeling of the environmental baseline shifted between the Draft SED and Recirculated SED, with the documents identifying different locations for X2 under baseline conditions. Compare Draft SED at 7.6.2-37 (showing that under baseline conditions in the Draft SED, median X2 is located at 68 km) with Recirculated SED at 13-313 to 13-316 (showing that under baseline conditions in the Recirculated Draft SED, median X2 is located at 69 km). This use of multiple baselines is confusing and inconsistent with CEQA's public information mandate, and the Draft SED fails to accurately explain the results because of these confusing, multiple baselines. For example, the Draft SED claims that flows resulting from the voluntary agreement "are on top of other flows that are in the system incidentally." Id. at B-2. However, that is not true, at least with respect to the environmental baseline, because the Delta assets of the voluntary agreements are intended to at least partially meet the Delta outflow resulting from export restrictions in the Delta that are no longer in effect, and at least some of the export restrictions required under other permits will expire as a result of approval of the voluntary agreements (and the voluntary agreements may not fully replace those Delta outflows). Elsewhere, the Draft SED explains that the modeling of the voluntary agreements compared to baseline conditions does not show the effects of the voluntary agreements, stating that, As described throughout this chapter, the VA flow assets are accounted for as additive to the 2019 BiOps condition, not baseline. Therefore, changes in flows presented below may be greater or less than the values in Table 9.3-1 because of other changes in system operations between the project baseline and the 2019 BiOps condition.	

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		Draft SED at 9-22. By using multiple, conflicting baselines, the Draft SED misleads the public and decisionmakers as to the effects of the proposed voluntary agreement, violating CEQA. The State Water Board's failure to move from the Notice of Preparation to a Final EIR and decision in a reasonable amount of time does not allow it to shift the baseline to disguise the harmful impacts of the proposed Plan. And even if there were substantial evidence in the record that supported using a baseline later than 2009 or 2012, the use of multiple different and shifting baselines makes a comparison of various alternatives analyzed between 2017 and 2025 misleading, at best, and nearly impossible at worst. This concealment of impacts of proposed alternatives and changes is inconsistent with CEQA. For all of these reasons, the State Water Board must revise and recirculate a SED that utilizes a single, valid environmental baseline for environmental review.	
1144	84	C. The State Water Board's Analysis of Cumulative Impacts is Unlawful, and the State Water Board Has Failed to Reduce Cumulative Impacts to a Less than Significant Level The State Water Board has also violated CEQA because it has failed to adequately consider and mitigate cumulative impacts, particularly with respect to the cumulative effects of future water infrastructure projects like Sites Reservoir and the Delta Conveyance Project, groundwater recharge projects, and other proposals to increase water diversions within the watershed. More, the actions proposed to "reduce possible cumulative impacts" to a less than significant level fail to do so. The Recirculated SED asserts that the cumulative impacts of these and other water supply projects are considered [Footnote 81: See Recirculated SED at 13-399 to 13-418.], as did the Draft SED. See Draft SED at 7.22-2, 7.23-18 to 7.23-19. The Draft SED admits that the combination of Plan Amendments and new water supply projects could result in potentially significant adverse cumulative impacts. Draft SED at 7.23-40, 7.23-42; 7.22-38 to 7.22-43. [Footnote 82: While the Draft SED evaluates the construction impacts of projects to increase groundwater	The Delta Conveyance Project and Sites Reservoir Project are discussed in Section 7.23.1.2, Cumulative Project List, of the 2023 draft Staff Report and Section 13.7.21.1, Cumulative Impact Analysis, of the 2025 partially recirculated draft Staff Report. Potentially significant cumulative impacts are identified in the cumulative impact analysis that follows. Please refer to Common Response 7.23, Cumulative Impact Analysis, for responses to comments related to the consideration, analysis, and mitigation of cumulative impacts associated with the Delta Conveyance Project, Sites Reservoir Project, and other past, present and reasonably foreseeable probable future projects. In addition, as discussed in Section 7.23, Cumulative Impact Analysis, Growth-Inducing Impacts, and Significant Irreversible Environmental Changes, due to the size and complexity of Sacramento/Delta water supply and use, the environmental analyses are necessarily broad to cover the wide range of foreseeable compliance measures and responses that may result from the proposed Plan amendments. A wide range of responses and associated environmental effects could occur as a result of the project due to the degree of flexibility included in the proposed Plan amendments and the scope and complexity of

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		recharge, see Draft SED at 7.22-86 to -87, the document fails to adequately consider the environmental impacts of increased surface water diversions from these projects. While the Draft SED includes a single sentence that acknowledges potential adverse environmental impacts from groundwater recharge projects that reduce instream flows that provide ecological benefits to fish and wildlife, id. at 7.23-4, there was no quantitative or qualitative analysis from the numerous groundwater recharge projects that are currently being contemplated. The Recirculated SED does not solve these failures.] For example, the Draft SED admits that water supply projects like Sites Reservoir could cause significant changes to the flow regime (magnitude and timing), water temperatures, salinity and turbidity in the Delta, and could cause cumulatively significant effects on surface hydrology and water quality and aquatic biological resources. Id. at 7.23-18. However, the analysis is almost entirely qualitative, ignoring the available quantitative modeling of these two water supply projects. For instance, the proposed Plan Amendments, Delta Conveyance Project, and the proposed Sites Reservoir Project will each affect Delta outflows, and the existing modeling shows how much each of these water supply projects would reduce Delta outflows. The Draft SED's discussion of the No Action Alternative acknowledges that several major water infrastructure projects currently being considered have cumulatively planned to reduce Delta outflow by 900,000 acre feet per year on average. See Draft SED at 7.24-7 to 7.24-8 and Table 7.24-1. Specifically, Table 7.24-1 shows that the estimated cumulative annual reduction in Delta outflow from the Delta Conveyance Project and Sites Reservoir Project is substantially greater than the total annual addition to Delta outflow proposed from the voluntary agreement pathway. Id. Yet instead of meaningfully considering the likely effects of these and other future water supply projects on Delta inflows, Delta outflows, fish and wildlife, and other beneficial uses, the modeling and analysis in the Draft SED's analysis of action alternatives (e.g., Chapter 7.12 (Hydrology and Water Quality) and Chapter 7.6.2 (Aquatic Biological Resources)), as well as the Draft SED's	Sacramento/Delta water use. Because California water resource management involves a myriad of individual and collective decisions, the study area represents a large portion of the state. The range of foreseeable compliance actions and potential responses to the project is already wide reaching and inherently cumulative in many regards. Groundwater recharge projects are evaluated under Other Watershed Actions that diverters may take in response to reduced Sacramento/Delta surface water supply. (See discussion in Section 6.6.1.1, Groundwater Storage and Recovery, and Section 7.1, Introduction, Project Description, and Approach to Environmental Analysis.) Operational impacts and mitigation measures associated with Other Water Management Actions are identified in applicable discussions in Staff Report Section 7.3, Aesthetics, through Section 7.20, Utilities and Service Systems. For example, Section 7.12.1, Surface Water, discusses how recharge using surface water diversions would likely occur during wet years when extra water is present; however, substantial reductions in flow could degrade water quality by limiting the dilution effect of existing flows and exacerbating existing water quality impairments. A mitigation measure specifies that in processing water right applications that involve groundwater storage, the State Water Board will ensure that enough flow remains instream to protect water quality. In addition, impacts of new or modified reservoirs and points of diversions and common construction impacts associated with Other Water Management Actions are discussed and evaluated as a reasonably foreseeable response action to reduced Sacramento/Delta water supply in Section 7.22, New or Modified Facilities. The identification of impacts associated with new water supply projects should not be confused with Water Board approval of any specific project. To the contrary, mitigation measures provide for State Water Board oversight and consideration of multiple factors before approval of any project. For example, consideration of whether to approve a new water right application to appropriate water by permit with the State Water Board is a discretionary action that requires a determination that unappropriated water is available, a review of potential

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		chapter on the voluntary agreements, completely ignores these potentially massive flow changes and resulting environmental impacts.	impacts on public trust resources, and a determination that the appropriation of water is in the public interest. In determining the amount of water available for appropriation, the State Water Board must take into consideration the public interest and the relative benefit to be derived from all beneficial uses of the water concerned (including irrigation, municipal, industrial, recreation, and preservation and enhancement of fish and wildlife resources) and the water quality needed to protect beneficial uses (including preservation of some portion of peak flows for ecosystem processes). The project-specific environmental document must include an evaluation of a range of operating criteria that are consistent with updates to the Bay-Delta Plan, including bypass flow criteria that achieve inflows and outflows of 55 percent of unimpaired flow, with a range of 45 to 65 percent under the proposed Plan amendments and/or local cooperative solutions. The revised proposed Plan amendments direct the State Water Board to consider imposing requirements on new water supply projects to ensure that future authorizations for the diversion and use of water are consistent with and support the salmon protection, fish viability, inflow, inflow-based Delta outflow, and interior outflow objectives of the Bay Delta Plan. Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on the protection of base flows applicable to new water supply projects.
1144	85	In the Recirculated SED, the State Water Board uses a similar cumulative project list and concludes that similar cumulative impacts could occur as those identified in Chapter 7.23 of the Draft SED [Footnote 83: See Recirculated SED at 13-401.], and it admits that changes under the voluntary agreement or 55w/WSA scenario could result in significant cumulative impacts, including significant cumulative impacts to fish species and water quality. See Recirculated SED at 402, 408. Like the Draft SED, the Recirculated SED also discusses how new water supply projects could further reduce Delta outflow, including Sites Reservoir, Delta Conveyance Project, and groundwater recharge projects, although the estimated water diversions from each project and the estimated effect on Delta	The revised proposed Plan amendments direct the State Water Board to consider imposing requirements on new water supply projects to ensure that future authorizations for the diversion and use of water are consistent with and support the salmon protection, fish viability, inflow, inflow-based Delta outflow, and interior outflow objectives of the Bay Delta Plan. Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on the protection of base flows applicable to new water supply projects. Section 7.23.1, Cumulative Impact Analysis, of the 2023 draft Staff Report and Section 13.7.21.1, Cumulative Impact Analysis, of the 2025 partially recirculated draft Staff Report address cumulative impacts of past, present, and reasonably foreseeable

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		outflow is different from that presented in the Draft SED. See Recirculated SED at 13-406 to 13-408. However, like the Draft SED, the analysis is entirely qualitative, and the State Water Board never models the effects if these pending water supply projects are approved by the State Water Board. The State Water Board's failure to meaningfully consider the existing quantitative modeling of these projects means that the Draft SED and Recirculated SED fail to disclose how much these proposed water supply projects would cumulatively reduce Delta outflows compared to current conditions. This is particularly problematic in light of the State Water Board's repeated acknowledgement that a major purpose of this update of the Bay-Delta Plan is to establish protective water quality objectives before new water supply projects further reduce environmental flows below the already degraded baseline conditions, because flows are often greater than the minimum flows required by existing, inadequate water quality objectives. See <i>supra</i>. To date, there are three separate CEQA documents for each of these three projects, and each of these CEQA documents completely ignores the quantitative modeling of the other projects. The State Water Board's failure to use the existing qualitative modeling is unexplained and wholly inadequate, and the end result of the State Water Board's approach is to piecemeal the consideration of these projects, failing to provide the public and decisionmakers with modeling that quantitatively shows the cumulative effects of these projects on Delta inflow, Delta outflow, cold water habitat, and interior Delta flows. Moreover, the Draft SED shows that approval of these and other water supply projects could cumulatively reduce Delta inflow and outflow by 900,000 acre feet per year on average – more than the purported additions to Delta inflow and outflow from the voluntary agreement pathway. See Draft SED at 7.24-7 to 7-24-8 and Table 7.24-1; see also Recirculated SED at 13-406 to 13-408 (identifying potential reductions in Delta outflow from the Delta Conveyance Project (-477,000 acre feet), Sites Reservoir (-190,000 acre feet), Shasta Dam enlargement (-59,000 acre feet), and San Luis Reservoir Expansion (-14,000 acre feet)). While the Draft SED discusses these potential impacts in the context of the No Action Alternative, it fails to	probable future projects. Section 13.7.21.1, Cumulative Impact Analysis, provides estimates of changes to Delta outflow that could occur as a result of certain major new water supply projects. Please refer to Common Response 7.23, Cumulative Impact Analysis, for responses to comments related to the consideration and analysis of cumulative impacts associated with Sites Reservoir, the Delta Conveyance Project, Sites Reservoir, and other past, present, and reasonably foreseeable probable future projects. Please also see Common Response 7.24, Alternatives Analysis, regarding the analysis of alternatives.

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		adequately consider these effects of future water projects in its analysis of the other alternatives. This is unlawful. While the Draft SED models Delta inflows and Delta outflows that are supposed to result from approval of the voluntary agreements, the modeling assumes unregulated flows continue into the future and the modeling completely ignores the effects of future water projects (including the currently pending Sites Reservoir and Delta Conveyance projects), which would necessarily reduce Delta outflows below what is modeled in the Draft SED – one of the exact problems that the State Water Board identified it needed to address in this update of the Bay-Delta Plan. The same is true in the Recirculated SED. Given that these modeled flows are not reasonably certain to occur, any decision that the proposed Bay-Delta Plan would provide reasonable protection of fish and wildlife cannot rely on the modeled flows above the minimum flows required by the Bay-Delta Plan. Indeed, the combined effect of adopting the voluntary agreements with their barely nominal flow commitments and failing to apply the updated Plan's new objectives to future water projects is to ensure that future water projects will more likely be permitted and significantly reduce Delta inflows and outflows below the modeling results in the Draft and Recirculated SED.	
1144	86	In addition to failing to adequately analyze cumulative impacts, the Recirculated SED also fails to adequately mitigate cumulatively significant impacts to a less than significant level. For instance, the Recirculated SED asserts that, As explained above, changes to existing water diversions or new water diversions could occur that would interact with the revised proposed Plan amendments and could affect interior Delta flows, Delta outflows, and water quality to varying degrees compared to baseline that could possibly result in potentially significant cumulative impacts on aquatic biological resources and hydrology and water quality depending on the specific actions that are implemented. Recirculated SED at 13-408. This includes potentially significant cumulative impacts from more negative OMR flows [Footnote 84: See Recirculated SED at 13-409.], and from reduced Delta	New surface water supply projects are subject to the Plan. Additionally, the revised proposed Plan amendments direct the State Water Board to consider imposing requirements on new water supply projects to ensure that future authorizations for the diversion and use of water are consistent with and support the salmon protection, fish viability, inflow, inflow-based Delta outflow, and interior outflow objectives of the Bay Delta Plan during the term of the VA pathway. Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on the protection of base flows applicable to new water supply projects. Section 7.23.1, Cumulative Impact Analysis, of the 2023 draft Staff Report and Section 13.7.21, Cumulative Impact Analysis, of the 2025 partially recirculated draft Staff Report address cumulative impacts of past, present, and reasonably foreseeable probable future projects. Please refer to Common Response 7.23, Cumulative Impact Analysis, for responses to comments related

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		outflows. [Footnote 85: Id. at 13-409 to 13-410.] While the Recirculated SED concludes that these impacts will be less than significant with mitigation measures, the record does not support this conclusion. First, under baseline conditions, multiple fish species “are in crisis.” Draft SED at 3-134. Reducing Delta inflows and outflows below baseline conditions as a result of approval of the Revised Draft Plan and new water supply projects would constitute a significant cumulative adverse environmental impact under CEQA. As the record demonstrates, further reducing Delta inflows and outflows is likely to further reduce the abundance and productivity of species listed under the California Endangered Species Act to less than self-sustaining levels. See Cal. Code Regs., tit. 14, §15065(a)(1). [Footnote 86: The same is true with respect to the Interior Delta Flow objectives (e.g., more negative OMR flows) and the Cold Water Habitat objective (increased water temperatures that harm salmon upstream).] And second, the proposed mitigation measures do not require that Delta outflow not be reduced below baseline conditions, nor do these require that new water supply projects not reduce Delta inflow, worsen interior Delta flows, or increase water temperatures for spawning salmon. Instead, the Plan proposes to defer assessment of conditions on future water supply projects into other proceedings, rather than ensure they comply with the proposed regulations in the Bay-Delta Plan. Moreover, the Recirculated SED asserts that these mitigation measures “would prevent Delta outflow levels from being reduced to levels close to the [Minimum Required Delta Outflow].” Recirculated SED at 13-213. However, as the Draft SED explains, the Minimum Required Delta Outflow is far less than half of the existing outflow in many years, on average would be millions of acre feet less Delta outflow than baseline conditions, and “are not protective of fish and wildlife.” Draft SED at 7.24-5 to 7.24-6 and Fig. 7.24-1; see also Recirculated SED at 13-204 (under the Minimum Required Delta Outflow nearly all of the ecological flow thresholds for fish are never achieved). While the State Water Board claims that the proposed mitigation measures “can reduce impacts,” or “may mitigate these impacts” from future water supply projects, see id. at 13-408 to 13-409, the mitigation measures do not require that	to the consideration, analysis, and mitigation of cumulative impacts associated with past, present, and reasonably foreseeable probable future projects. Please see also Common Response 1.3, Revised Proposed Plan Amendments, regarding comments about the 2025 ROD and 2025 ITP.

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		Delta outflow be maintained at the levels modeled in the Recirculated SED or even that Delta outflow be maintained at baseline levels. Those mitigations are, by definition, uncertain and speculative because they have been proposed to be determined outside of the process of updating the Bay-Delta Plan.	
1144	87	D. The State Water Board Has Failed to Adequately and Accurately Assess Potential Environmental Impacts from the Proposed Project As discussed supra, the modeling used by the State Water Board in the Recirculated SED fails to accurately and adequately assess likely environmental impacts, including: the failure to account for the effects of climate change on hydrology and temperature; the failure to account for TUCPs that weaken or eliminate Delta outflow objectives; the failure to adequately account for flow flexibility under the voluntary agreement; and the failure to adequately model and analyze the effect of flows at the bottom end of the adaptive range, including water supply adjustments (45 percent unimpaired flow plus water supply adjustments). The modeling assumptions in the Recirculated SED overestimate Delta inflows and Delta outflows that are likely to result from the Revised Draft Plan and inaccurately assess water temperatures, resulting in the document overstating potential environmental benefits, and failing to disclose the scope and magnitude of environmental impacts that are likely to result, including cumulative impacts.	Please see Common Response 4.2, Drought and Climate Change, for discussion of how climate change was accounted for in Staff Report modeling as well as a discussion on drought response measures. Please also see Common Response 1.3, Revised Proposed Plan Amendments, for a discussion on temporary urgency change petitions (TUCPs). This commenter refers to an alternative, 45 plus water supply adjustments, which is not an alternative presented in the Staff Report. 55 plus water supply adjustments is analyzed in Chapter 13, Revised Proposed Plan Amendments, of the partially recirculated draft Staff Report. As explained in Common Response 7.24, Alternatives Analysis, the Staff Report considers a reasonable range of alternatives. CEQA does not require the consideration of every possible permutation of unimpaired flow levels and other plan features such as WSAs. Please refer to the response to comment 1144-19 on how flows were represented at the bottom of the adaptive range. Please see Common Response 3.1, Fish Protection, concerning the adequacy of modeling to support the benefit analysis. To the extent that this comment summarizes other comments, please see the substantive responses to those comments.
1144	88	E. The State Water Board Has Failed to Consider a Reasonable Range of Alternatives In addition, the State Water Board failed to consider a reasonable range of alternatives in the Draft SED and Recirculated SED, violating CEQA. First, while the Draft SED considered alternative ranges of unimpaired Delta inflow and outflow to achieve those water quality objectives (high and low flow alternatives), the State Water Board failed to consider any regulatory alternatives for achieving the Cold Water Habitat and Interior Delta Flow	The lead agency has broad discretion to define the reasonable range of alternatives to a proposed project. The Staff Report considers a reasonable range of alternatives and analyzes their environmental impacts as required by CEQA and as further discussed in Common Response 7.24, Alternatives Analysis. Please see the response to comment 1144-79. The Board took no actions during the January 2026 hearings and all alternatives were still available before and after that hearing. While no alternatives have been eliminated, Chapter 13, Revised Proposed Plan Amendments, and the revised draft Bay-Delta Plan identify

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		objectives. [Footnote 87: The State Water Board considered the equivalent of a no action alternative for the Interior Delta Flow objective but did not consider any other alternatives.] The Recirculated SED also does not analyze any regulatory alternatives for achieving the Cold Water Habitat and Interior Delta Flow objectives. Because the State Water Board failed to consider any alternatives for achieving these objectives (which is particularly problematic since, as discussed infra, these objectives are not lawful, and the record fails to demonstrate that the objectives would be achieved) the State Water Board has violated CEQA. In addition, in the Revised Draft Plan the State Water Board has modified the proposed regulatory alternative to significantly reduce the required Delta inflows and Delta outflows, resulting in Delta outflows that are outside of the range of the 55 percent alternative analyzed in the SED (45 to 65 percent of unimpaired flow), and instead requiring flows that are within the range of the Low Flow alternative in two thirds of years, with only wet years requiring 55 percent of unimpaired flow. These “water supply adjustments” significantly reduce Delta inflows and outflows compared to the original alternatives, and the 55w/WSA alternative is the only alternative to the voluntary agreement considered in the Recirculated SED. It is unclear if the State Water Board is still considering higher flow alternatives, such as 55 percent or 65 to 75 percent of unimpaired flow. As a result, it appears that the Recirculated SED no longer includes a reasonable range of alternatives with significantly higher Delta inflows and outflows compared to the lawful environmental baseline of then-existing conditions in the year 2009. In addition, the State Water Board failed to analyze alternatives for managing within its original proposed adaptive range (45% to 65% of unimpaired flow) or for making “water supply adjustments” to the proposed flow requirements. As noted supra, the Board never provided a complete analysis of an alternative that allows for flexibility within an adaptive range, requires reservoir storage to protect cold water and water supply, provides specific, science-based methods and rules for meeting unimpaired flow targets within that range, and considers specific outlier conditions when flows might vary	the specific actions from the alternatives previously evaluated in the draft Staff Report and described in previous drafts of the Plan that are moving forward for Board consideration.

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		outside the adaptive range, while still protecting water storage and other beneficial uses. Evaluating such an alternative is eminently feasible; indeed, in its development of the environmental documentation for the 2024 Biological Opinions for the Long-Term Operation of the CVP, the Bureau of Reclamation evaluated a similar alternative based on a more sophisticated approach to managing flexibly within an adaptive range. See Friends of the River et al. Letter to State Water Board, December 24, 2024; SF Baykeeper et al. Letter to State Water Board, October 17, 2025. Finally, not only did the State Water Board fail to analyze alternatives, but it has also predetermined the outcome of this process before conducting or publishing an analysis of the proposed plan under CEQA. Such post-hoc review is illegal. See <i>Save Tara v. City of W. Hollywood</i>, 45 Cal.4th 116 (2008). In July, the State Water Board released a draft of the plan update including the voluntary agreements and the Water Supply Adjustments without publishing review and analysis of that plan. Shortly after legislative proposals to exempt water quality control plans from CEQA's requirements failed to be adopted, the Draft Plan was withdrawn. In December, that same plan was proposed, this time with CEQA analysis. The preordained outcome was made crystal clear by State Water Board members during the January 26-28 hearings, with Board Members explaining that they were going to adopt the voluntary agreements at the same time they were hearing testimony from interested parties and staff about whether to do so. After seventeen years, the State Water Board should and must follow the evidence, not make decisions and then attempt to engineer evidence after the fact to support the outcome.	
1144	89	F. The Proposed Inclusion of Flows from the Upper San Joaquin River as part of the Voluntary Agreement Violates CEQA In the revised Bay-Delta Plan, the State Water Board proposes to adopt a voluntary agreement that includes the management of instream flows from the upper San Joaquin River, described as the "Friant System (San Joaquin River) Voluntary Agreement." See, e.g., 2024 Draft Plan, Appendix B.1, at B-50 (hereinafter,	The Friant VA is included as a voluntary contribution to Delta outflow in the VA pathway. The water rights for the U.S. Bureau of Reclamation's Friant Division are not listed in Appendix B.1 of the revised proposed Plan amendments because water rights on the San Joaquin River are not included in the Sacramento/Delta Update to the Bay-Delta Plan. The inclusion of the Friant HRL flow contributions in the VA pathway does not constitute compliance with the Bay-Delta Plan or prevent the Board from

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		“Friant VA”). The Friant VA includes “water releases made from Friant Dam” pursuant to the settlement agreement to restore the San Joaquin River. Id., App. B.1 at B-50 and fn. 4; see also Draft SED, App. G1, at 21 (describing the Friant VA as “Continued implementation of the San Joaquin River Restoration Program.”); Revised Draft Plan at 64, 67, 71. Several of the signatories to this letter are also parties to the 2006 Settlement Agreement to restore the San Joaquin River that created the San Joaquin River Restoration Program, and these organizations continue to work in good faith to implement the Settlement and restore the health of the San Joaquin River. However, the 2006 Settlement Agreement makes clear that it was not intended to address obligations of the defendants with regard to issues beyond the scope of the litigation, such as the Bay-Delta Plan. See Stipulation of Settlement, ¶ 32 and 45(a). The inclusion of the Friant VA as part of the Bay-Delta Plan is plainly unlawful for a number of reasons. First, the State Water Board has never provided public notice, as required under the Administrative Procedures Act (“APA”) and CEQA, that it was considering adopting regulations that would affect flows in the San Joaquin River upstream from the Merced River, including water releases from Friant Dam. See, e.g., State Water Board, Notice of Opportunity for Public Comment and Hearing on Revised Draft Sacramento/Delta Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed, July 24, 2025, at 1 (describing the geographic scope as the Sacramento River watershed, Delta eastside tributaries, and Delta); see also 2012 Revised NOP (excluding San Joaquin River from the geographic scope of the project, and excluding comments on Lower San Joaquin River flows). Adoption of the Friant VA without providing adequate notice would be unlawful.	considering Bay-Delta requirements for the Upper San Joaquin River in the future. The revised proposed Plan amendments do not include flow requirements for the upper San Joaquin River since the upper San Joaquin River is outside the plan area for this update., which is why no alternatives were considered for the upper San Joaquin River. However, a number of alternatives for Delta outflow requirements were considered, including the Low Flow and High Flow Alternatives. The Friant HRL commitment does not alter any of the terms of the San Joaquin River Restoration Program, and does not constitute the State Water Board’s agreement with any alterations to the terms of that agreement. As explained in 2018 Bay-Delta Plan, the State Water Board may consider water quality objectives for the stream system above the San Joaquin River’s confluence with the Merced River in future updates to this Plan. The approval of the VA pathway in the Sacramento/Delta Plan update does not address any obligation that the Friant Division may have to the Bay-Delta now or in the future. As described in Staff Report Section 7.1.5.1, Sacramento/Delta, Plan Area, and Study Area, the plan area includes the Sacramento/Delta and continues west as water flows through the Delta and downstream through Suisun Marsh and adjoining bays, marking the brackish transition from freshwater to saltwater and the Pacific Ocean. The plan area encompasses the areas where the Bay-Delta Plan’s flow and water quality objectives and implementation measures apply, and the ecosystem that the Bay-Delta Plan is intended to protect. Surface water from the Sacramento/Delta is used within the Sacramento/Delta watershed and is delivered to and used in other areas of the state. Therefore, a larger study area is defined to provide context for total water supplies and to ensure that environmental and economic impacts are addressed comprehensively. The upper San Joaquin River is included in the study area and thus CEQA impacts to this area are evaluated. The text referenced by the commenter on page 9-2 of the 2023 draft Staff Report is only stating that the impacts of the potential VA contributions from the lower San Joaquin River are not evaluated for the lower San Joaquin River since that approval would be considered through a separate process. This text does not mean that no environmental impacts are evaluated for the lower San

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			Joaquin River. Impacts to the lower San Joaquin River are evaluated extensively throughout the Staff Report. Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on the VA pathway. Also see Common Response 1.2, Water Quality Control Planning Process, regarding the relationship to the LSJR/SD Update to the Bay-Delta Plan and the reasonable protection of fish and wildlife beneficial uses.
1144	90	Second, the State Water Board has violated CEQA because it has failed to consider any alternatives, including regulatory alternatives, to the Friant VA. Unlike the voluntary agreements proposed for the Sacramento River or Delta, none of the alternatives considered in the Draft SED include instream flows from the upper San Joaquin River. Nor did the State Water Board consider any alternatives with respect to how much of the San Joaquin River Restoration Program Flows must contribute to Delta outflow; the State Water Board has never considered alternatives, such as requiring all San Joaquin River Restoration Program flows to contribute to Delta outflow. Nor has the State Water Board considered requiring increased flows from the upper San Joaquin River, in order to contribute to Delta outflow and provide reasonable protection for fish and wildlife in the San Joaquin River. In order to comply with CEQA, the State Water Board must consider a reasonable range of alternatives to the Friant VA, including one or more alternatives that include increased Delta outflows, and one or more alternatives that include increased minimum instream flow requirements for all years, based on a percentage of unimpaired flows, and adequately protective water temperature requirements that apply to all water rights in the upper San Joaquin River. Equally important, the State Water Board has failed to analyze the effects of the proposed Friant VA or alternatives to the Friant VA on the environment of the upper San Joaquin River, notwithstanding the State Water Board's obligations under CEQA, Porter-Cologne, and the Public Trust. Indeed, the geographic scope of the State Water Board's environmental analysis completely excludes the upper San Joaquin River. See, e.g., Draft SED at 7.1-11 to 7.1-12 (defining the Plan Area to	Please see the response to comment 1144-89. The water rights for the U.S. Bureau of Reclamation's Friant Division are not listed as HRL water rights in Appendix B.1 of the revised proposed Plan amendments because water rights on the San Joaquin River are not covered under the regulatory pathway for the Sacramento/Delta Update to the Bay-Delta Plan and therefore a proposed voluntary agreement cannot be an alternative compliance mechanism. The inclusion of the Friant HRL flow contributions in the VA pathway does not constitute compliance with the Bay-Delta Plan or prevent the Board from considering Bay-Delta requirements for the Upper San Joaquin River in the future.

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		include the Sacramento River and its tributaries, Delta eastside tributaries, legal Delta, Suisun Marsh, and SF Bay); id. at Fig. 7.1-1b (excluding upper San Joaquin River from the Plan Area); id. at Fig. 7.1-1c (excluding upper San Joaquin River from the Plan Area). The State Water Board has conducted no analysis of the effects of the Friant VA on salmon in the upper San Joaquin River, other fish and wildlife species, or other environmental effects, in either the Draft SED or Recirculated SED, or considered the effects of alternative flow regimes that, for instance, might improve temperature conditions or improve the connectivity between the upper San Joaquin and downstream areas. See also Draft SED at 9-2 (admitting that the Draft SED evaluates the effects of flows from the San Joaquin River on Delta outflows, but that it does not analyze effects upstream of the Delta in the San Joaquin River). Indeed, the Recirculated SED admits that flows from the upper San Joaquin River from the San Joaquin River Restoration Program are not explicitly modeled. See, e.g., Recirculated SED at 13-26, 13-48. The failure to analyze the effects of the Friant VA on salmon and other fish and wildlife in the upper San Joaquin River is particularly egregious in light of the State Water Board's duties under Porter-Cologne and the Public Trust. The adoption of the Bay-Delta Plan, including the Friant VA, would necessarily include a finding that the Plan provides reasonable protection for fish and wildlife and other beneficial uses. See Revised Draft Plan at 4 ("This plan provides reasonable protection for the Bay-Delta watershed's beneficial uses"); see also id. at 1, 92. However, given the lack of any consideration or analysis of the effects of the Friant VA on salmon and the environment in the upper San Joaquin River, such a conclusion would plainly be arbitrary and capricious. And in fact, the State Water Board has previously disclaimed such a finding regarding the adequacy of the instream flows required under the Settlement, instead finding that, The State Water Board's authorization for releases and dedication of SJRRP flows at Friant Dam and the conditions specified thereof, including authorized releases for dedication of flows at Friant Dam and levels and timing of flows in reaches of the San Joaquin River and Bypass System, are provided solely for the purpose of implementing the Settlement and Settlement Act.	

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		The State Water Board has not imposed any water quality flow standards on the upper mainstem San Joaquin River in the stream reach covered by the SJRRP petitions; any future adoption of such standards would have to be accomplished in compliance with all applicable laws. Nothing in this order determines or predetermines whether or not the Board would find the SJRRP Flows sufficient to satisfy potential future water quality standards or any other instream beneficial use requirement. State Water Board, Division of Water Rights, Order Approving Change and Instream Flow Dedication, In the Matter of Permits 11885, 11886, and 11887, and License 1986 (Applications 234, 1465, 5638 and 23, respectively) of the U.S. Bureau of Reclamation, Petitions for Change Pursuant to Water Code Sections 1700 and 1707, October 21, 2013, term and condition 23 (emphasis added). The Settlement agreement to restore the San Joaquin River resolved the parties' claims with respect to section 5937 of the Fish and Game Code, but the Settlement did not purport to address any other obligations of state law. See Stipulation of Settlement, ¶¶ 1-2, 32; see also P.L. 111-11 § 10006(b).	
1144	91	There is simply no analysis to support a conclusion that the Friant VA provides reasonable protection of fish and wildlife. And despite the best efforts of the parties to the Settlement, there is plainly evidence that, as currently implemented, the Settlement fails to provide reasonable protection of fish and wildlife beneficial uses. Most notably, the State Water Board has not acknowledged in this regulatory proceeding, let alone considered, that less than half of the Restoration Flows annually required under the Settlement agreement have actually been released into the San Joaquin River to protect fish and wildlife. [Footnote 88: See 2024 San Joaquin River Default Restoration Allocation and Default Flow Schedule, p. 23. Available at: https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://restoresjr.net/wpcontent/uploads/2025/05/2974__20240517-SJRRP-Restoration-Allocation-Final_508.pdf] See NRDC and TBI 2021. While the	Please see the response to comment 1144-89. The water rights for the U.S. Bureau of Reclamation's Friant Division are not listed as of HRL water rights in Appendix B.1 of the revised proposed Plan amendments because water rights on the San Joaquin River are not covered under the regulatory pathway for the Sacramento/Delta Update to the Bay-Delta Plan and therefore a proposed voluntary agreement cannot be an alternative compliance mechanism. The inclusion of the Friant HRL flow contributions in the VA pathway does not constitute compliance with the Bay-Delta Plan or prevent the Board from considering Bay-Delta requirements for the Upper San Joaquin River in the future. The inclusion of the voluntary Friant HRL commitments in the VA pathway does not constitute any finding of reasonable protection of fish and wildlife beneficial uses in the upper San Joaquin River or Bay-Delta at large. The commenter has not identified specific impacts they believe would be changed due to the alleged absence of "modeling or substantive analysis." The analysis was conducted with the best available tools and, as

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		settling parties agreed in 2006 that the Restoration Flows required under the Settlement should meet the requirements of section 5937 of the Fish and Game Code, there is no basis for concluding that only providing half of those instream flows would likewise meet the requirements of state and federal law. In addition, despite the State Water Board's recognition of the need to manage water temperatures below mainstem dams to protect fish and wildlife beneficial uses and the other beneficial uses they support, there is no analysis of whether, under the Friant VA, water temperatures below Friant Dam are adequate to protect salmon and other fish and wildlife. See, e.g., Draft SED, Appendix G3e; id., Appendix A6; id., Appendix A8. [Footnote 89: And notwithstanding the legal inadequacy of the Bay-Delta Plan's proposed Cold Water Habitat objective, the Program of Implementation completely excludes Friant Dam from this element of the Plan. See, e.g., Revised Draft Plan at Table 8.] In fact, the Recirculated SED admits that implementation of the Friant Voluntary Agreement could cause changes in cold water habitat that impact biological resources. Id. at 13-302, 13-352. But no modeling or substantive analysis was provided in the Draft SED or Recirculated SED. The State Water Board has also not acknowledged or considered that in 2014 and 2022, the San Joaquin River was completely dewatered below Sack Dam – notwithstanding the requirements of section 5937 of the Fish and Game Code – when low water allocations resulted in a so-called call on Friant, where the Bureau of Reclamation delivers water to the Exchange Contractors from Friant Dam. Neither the State Water Board nor other state and federal agencies have ever analyzed or considered the effects of a call on Friant under NEPA or CEQA, including as part of the approval of the San Joaquin River Restoration Program and 1707 permit. And in this proceeding, the State Water Board has wholly failed to consider if continued implementation of the Settlement Agreement pursuant to the Friant VA, notwithstanding future dewatering of the San Joaquin River in years when there is a call on Friant, would provide reasonable protection of fish and wildlife or other beneficial uses.	referenced by the commenter, does include an analysis of impacts of the Friant VA commitments. The effects of the revised proposed Plan amendments on calls on Friant are analyzed in the Staff Report, for example see page 13-300 of the 2025 partially recirculated draft Staff Report. The analysis provided in the Staff Report is appropriately detailed for the scope of the project. As described in Staff Report Section 7.1.5.2, Baseline, Evaluation Approach, and Modeling Tools, qualitative analyses follow an approach parallel to the quantitative analyses: they compare potential impacts to narrative descriptions of resource conditions that may vary over time. For many resources, project-related changes in resource-specific parameters could not be modeled directly, but the magnitude of effect could be inferred from changes in hydrologic conditions. Please see Common Response 7.1, General CEQA and Approach to the Analysis, for additional information on the approach to the environmental analysis.

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1144	92	Finally, the State Water Board’s consideration of the Friant VA grossly mischaracterizes the requirements of, and is inconsistent with, the terms of the Settlement regarding recapture of Restoration Flows. For instance, the Revised Draft Plan claims that, “Most of the SJRRP restoration flows are intended to be rediverted (or recaptured) in the lower SJR and at Delta export facilities for recirculation to agricultural demands and not to become part of Delta outflow.” Revised Draft Plan, App. B1, at B-51. In fact, the Settlement explicitly requires that any recapture of Restoration Flows “shall have no adverse impact on the Restoration Goal, downstream water quality or fisheries.” Stipulation of Settlement, ¶ 16(a)(1). The Revised Draft Plan never evaluates whether this proposed level of recapture would have any adverse impact on the Restoration Goal, downstream water quality or fisheries. In fact, there appears to be no analysis justifying the proposed recapture limit, and it appears to simply be arbitrary. As several parties to the Settlement have repeatedly explained – to the State Water Board and federal agencies – the Settlement imposes significant limits on recapture that are not currently being implemented. See, e.g., Letters from Friends of the River to State Water Board and Bureau of Reclamation dated October 6, 2025 and November 14, 2025. Instead of complying with the Settlement’s explicit restrictions on recapture of Restoration Flows, the Friant VA would plainly override the Settlement’s plain language and replace the Settlement’s limitations on recapture with an arbitrary and capricious proposal. See also Stipulation of Settlement, ¶ 29 (requiring that all agreements with third parties to implement material terms of the Settlement must be consistent with the terms of the Settlement). While the parties to the Settlement continue to work in good faith to protect fish and wildlife in the San Joaquin River, the State Water Board’s adoption of the Friant VA as part of the Bay-Delta Plan would be unlawful.	Please see the response to comment 1144-89. The Board understands that the settling parties have a potential disagreement over the interpretation of paragraph 16(a)(1) of the Settlement and that is a matter for settling parties to resolve. As this matter relates to a potential voluntary contribution to Delta outflow, in the absence of any Restoration Flows, no Friant water would be potentially available to contribute to Delta outflow and the net effect of the release of the Restoration Flows is an increase in flows along the Lower San Joaquin River (LSJR) and into the Delta.
1144	93	X. Conclusion In addition to the many issues and concerns discussed in depth in these and previous comments and analyses submitted to the State Water Board in these proceedings, we join in the	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. To the extent that

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		recommendations and concerns raised in the comment letters submitted today by Save California Salmon et al, related to the Trinity and Klamath watersheds, and the Delta Tribal Environmental Coalition related to Tribal Beneficial Uses, traditional ecological knowledge, Tribal engagement, harmful algal blooms, and the State Water Board's conflation of water rights and water quality. Our organizations are committed to restoring the health of the Bay-Delta estuary, its Central Valley watershed, and its native fish and wildlife populations, which also protects the communities, Tribes, and jobs that depend on its health. Unfortunately, the Revised Draft Plan wholly fails to fulfill the State Water Board's statutory mandate and obligations under the Public Trust, and adoption of the voluntary agreements as proposed would be unlawful as explained herein and in our prior correspondence. For all of these reasons, we urge the State Water Board to reject the voluntary agreements and substantially amend the Revised Draft Plan to actually protect and restore salmon, other native fish and wildlife, water quality, the ecosystem that supports them, and the people who depend on them – as required by state and federal law. Thank you for consideration of our views.	this comment summarizes other comments, please see the substantive responses to those comments.
1145	1	I have attached written comments that I conveyed to the SWRCB on 1.30.2025 with the addition to give thanks for the honor that the Chair gave to all commenters. Please note that if voluntary agreements are used that these results will be dependent on groundwater extractions within surface water influences. For example San Joaquin County allows for wells to be drilled if only 50 feet from a surface water body. These near surface body wells likely influence surface flows at least sometimes and must be characterized.	Changes in hydrology, including changes in streamflows and reservoir levels, are generally analyzed qualitatively for potential water quality impacts (Impacts SW-a and SW-f). The potentially significant impacts identified for SW-a and SW-f considers increased groundwater pumping. As mentioned in Section 7.12.1, Surface Water, increased groundwater pumping to replace reductions in Sacramento/Delta supplies and reduced incidental recharge from applied irrigation water could reduce groundwater levels. Reductions in groundwater levels could reduce streamflow either by increasing surface water percolation to groundwater or by reducing groundwater accretions to surface water. In addition, increased groundwater pumping adjacent to streams could accelerate stream depletions more directly. Furthermore, groundwater impacts were analyzed in Sections 7.12.2 and 13.7.12.2, each titled Groundwater, and impacts pertaining to groundwater levels (GW-b) and

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			groundwater quality (GW-a,f) were identified to be potentially significant. Flows provided by the HRL flow commitments must demonstrate that the HRL flows are overall or seasonally new additive water over the base flow. If water is coming from groundwater substitution, it would have further defined accounting requirements. As stated in 4.4.9.4, Flow Accounting, the following specific accounting provisions apply to HRL flows made available through groundwater substitution: i. Measurement and reporting of the amount of increased groundwater pumping - conducted to provide HRL flows; ii. Identification of the location and characteristics of the groundwater wells used; iii. Historical groundwater pumping records for identified wells used for that - pumping; iv. Development of a monitoring plan to assess the effects of groundwater pumping v. Verification methods to ensure that any water made available through - groundwater substitution is producing additive flows without redirected impacts to - fish and wildlife and consistent with SGMA; and vi. Measurement or best available estimate of any reductions in streamflow resulting - from groundwater substitution, which shall be deducted from the HRL flow

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			contribution. Additionally, implementation of the Sustainable Groundwater Management Act (SGMA) would protect interconnected surface water from stream depletion caused by groundwater pumping. Please see Common Response 7.12.2, Groundwater and Sustainable Groundwater Management Act, for more information on SGMA considerations.
1145	2	My name is Mary Elizabeth, a Stocktonian. Thanks to the following organizations for elevating the need for science based solutions and advocacy for affected communities: Sierra Club California Sportfishing protection alliance Restore the Delta Center for Biological Diversity Natural Resources Defense Council Earth Justice Save California Salmon SF Baykeeper and many more but these have worked in Stockton or have taught me about problems with business as usual. Climate Change is now and we need to think about the big picture not just maximizing profits.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
1145	3	I know when conditions change that the water quality in Stockton is affected. Legacy pollution sources continue and without adequate flows poor water quality can predominate resulting in fish advisories, hyacinth and cyanobacteria blooms which create toxic conditions that are harmful. Even to consider allowing 35% flows to maintain upstream diversions is unimaginable and should not be approved.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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1145	4	The intense political/economic pressures that are being applied to consider voluntary agreements as a solution are evident. I am not sure how I was selected to work with a group on the concept of water portfolios back in 2019 and conflicts were evident then that remain today. These voluntary agreements remind me of the third party agreements in the CV salt/irrigated lands program that have allowed continued groundwater pollution without full characterization of the extent of polluted domestic wells. Targeted enforcement to reduce the source is difficult and not at all transparent. Hiding behind weak voluntary agreements that are less than full standard implementation is a mistake and the people feel the harms. We cannot depend on the regulated community to regulate their own "standards" – it is an inherent conflict of interest.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
1145	5	Please do not accept the preferred alternative - voluntary agreements with a backstop for those not participating which will end up being users without the legal and technical resources to develop voluntary agreements. Please begin the process of evaluating and adjusting water rights to allow for adequate flows to reduce cumulative impacts. Do not allow flow requirements below 45% in dry years which will harm downstream users like those in Stockton. Baseline flows must be maintained that are enforceable.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
1145	6	Thank you for the opportunity to provide verbal comments remotely and for your efforts to consider the needs of tribal, fishing, and disadvantaged communities in the Delta.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
1146	1	Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, Little Manila Rising, and Restore the Delta (collectively, the Delta Tribal Environmental Coalition, or "DTEC") submit the following comments on the December 2025 Draft Water Quality Control Plan for the San Francisco Bay/Sacramento San Joaquin Delta Watershed ("Revised Draft Plan") and partially recirculated Substitute Environmental Document ("SED"). DTEC reasserts and incorporates by reference its prior public comments submitted in this proceeding-DTEC's January 19, 2024 comments on the 2023 Draft Saff Report and SED ("DTEC Comments on SED") (Exhibit A hereto) and DTEC's January 10, 2025 comments on the October 2024 Draft Water Quality Control Plan ("DTEC Comments on 2024 Draft Plan") (Exhibit B	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		hereto). [Footnote 1: DTEC also incorporates by reference the exhibits and attachments submitted with DTEC's Comments on the SED and DTEC's Comments on the 2024 Draft Plan.] In addition, DTEC joins in the comments on the Revised Draft Plan and partially recirculated SED by Friends of the River, San Francisco Baykeeper, California Sportfishing Alliance, Golden State Salmon Association, Defenders of Wildlife, and Yosemite Rivers Alliance, et al. ("NGO Comments"). DTEC writes separately to express its continued objections to and concerns with the State Water Resource Control Board's ("State Water Board" or "Board") proposal for the Bay-Delta Plan update.	
1146	2	First, as discussed in the NGO Comments, DTEC objects to the Board's proposal to remove numerical minimum instream flow criteria proposed in the October 2024 Draft Plan in favor of vague narrative criteria. The Clean Water Act and its implementing regulations require States to adopt water quality criteria in the form of specific "numerical values." 40 C.F.R. § 131.11(b)(1); see also, e.g., 33 U.S.C. § 1313(c)(2)(B). Only when "numerical criteria cannot be established" may a State instead establish narrative criteria to protect designated uses. 40 C.F.R. § 131.11(b)(2). As DTEC discussed at length in its January 19, 2024 comments on the Staff Report and SED, the Board's then-proposed numerical inflow objective of 55 percent unimpaired flow with an adaptive range of 45 to 65 percent was incapable of meeting the Board's legally mandated duties to reasonably protect beneficial uses and public trust criteria and base its water quality criteria on "sound scientific rationale." Cal. Wat. Code § 13241; 40 C.F.R. § 131.11(a)(1). DTEC urged and continues to urge evaluation and adoption of an inflow objective of 65 percent with a reasonable adaptive range and management strategies to implement a functional flow regime capable of protecting public trust resources and non-consumptive beneficial uses of Delta flows. DTEC Comments on SED at 46. Rather than seriously considering such an alternative, the Board has backslid in its Revised Draft Plan by removing numeric instream flow standards entirely for the Sacramento River/Delta (with the exception of limited numeric objectives for SWP and CVP export facilities) and substituting in vague narrative	The commenters' arguments fail to consider the unique nature of the Bay-Delta Plan that applies the Clean Water Act (CWA) primarily through state law authorities. The regulatory framework follows a "cooperative federalism" approach whereby individual states adopt and implement major provisions of the law provided that certain minimum standards and criteria are met and approved by the U.S. Environmental Protection Agency (USEPA). A water quality objective is distinguishable from how an agency implements and enforces the objective. This is particularly true when implementing objectives outside of the federal permitting authority of the USEPA. (<i>Pronsolino v. Nastri</i>, (9th Cir. 2002) 291 F.3d 1123; <i>City of Arcadia v. State Water Res. Control Bd.</i>, (2006) 135 Cal. App. 4th 1392, 1431 [Congress has chosen not to give the USEPA the authority to regulate nonpoint source pollution].) For nonpoint sources of pollution, generally, the State Water Board has broad discretion in how it chooses to implement the objective in accordance with state law. Nonpoint source pollution includes all other pollution exempted from the National Pollutant Discharge Elimination System (NPDES) permitting program for point source discharges. This "category is defined by exclusion and includes all water quality problems not subject to § 402 [of the Clean Water Act]." (<i>National Wildlife Federation v. Gorsuch</i> (1982) 693 F.2d 156, 166.) Water diversions, dams, and reservoirs fall in this category. The USEPA does not have direct authority to regulate nonpoint sources under the Clean Water Act, and has historically relied on grants and the state to administer an effective nonpoint source program. Under the Clean Water Act, control of all other sources

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		objectives, such as fish and wildlife biological objectives oriented around the maintenance of "viable native fish populations." Revised Draft Plan at Table 3. Making the matter worse, the Board has made no attempt to meaningfully define "viability," making it impossible to reliably evaluate whether this objective is being attained. The Board's October 2024 Draft Bay-Delta Plan and prior Staff Report/SED clearly show that numerical criteria could be established. The Board's failure to do so for the Bay-Delta is a clear violation of the Clean Water Act and Porter-Cologne Act.	is reserved for the states and local government through the areawide waste management plans under section 208 of the Clean Water Act. (See National Wildlife Federation v. Gorsuch (1982) 693 F.2d 156, 176 [describing legislative history of 1977 amendments, section 208 was a devise for separating out pollution sources amenable to NPDES technological controls and partly an "experiment" in the effectiveness of state regulation (citations omitted)].) The fact that dams and reservoirs are exempted from NPDES requirements does not mean that these facilities are immune from Clean Water Act requirements. The State Water Board can and does implement water quality objectives pursuant to its planning authorities and water right proceedings under state law. However, absent restraints imposed by the State Water Board itself, the State Water Board has discretion on how it chooses to implement objectives in the context of statutory and common water rights law. This is consistent with the U.S. Supreme Court's narrow interpretation of Clean Water Act section 101(g), which allows regulation of water users by a state to protect water quality while avoiding a fundamental interference to a state's water allocation authority. (PUD No. 1 of Jefferson County v. Washington Dep't of Ecology (1994) 511 US 700, 720.) Here, the numeric flow requirements are equally enforceable whether included as water quality objectives or program of implementation. The numeric flow requirements required in the program of implementation can be considered legally binding provisions that address designated uses, water quality objectives (narrative or numeric) to protect those uses that express or establish the desired conditions or instream level of protection. (USEPA 2012) Water Code section 13247 requires state agencies, including the State Water Board, to comply with water quality control plans unless otherwise directed or authorized by statute. The Bay-Delta Plan includes both objectives and program of implementation. Please see Common Response 1.2, Water Quality Control Planning Process, for information on the consideration of other beneficial uses, the Clean Water Act, numeric versus narrative water quality objectives, public trust and the reasonable protection of fish species. As described in

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			Section 7.1.3, Purpose and Goals of the Sacramento/Delta Update to the Bay-Delta Plan, of the 2023 draft Staff Report, the underlying fundamental purpose of the project is for the reasonable protection of fish and wildlife beneficial uses in the Sacramento/Delta. Please also see Common Response 1.3, Revised Proposed Plan Amendments, for information on the proposed new inflow objective and the definition of “viability” in relation to the narrative objectives. Additionally, see Common Response 3.1, Fish Protection, and Chapter 3 of the Staff Report for information on the benefits of 45-65% of unimpaired flow.
1146	3	Second, DTEC reasserts its fervent objections to the Board's proposal to rely on negotiated agreements with water rights holders-the Voluntary Agreements ("VAs")-to implement these vaguely defined water quality objectives. As again discussed at length in DTEC's prior comments and reiterated below, the VAs are the result of exclusionary, backroom deals with water rights holders who acquired their rights through the dispossession, disenfranchisement, and exclusion of Native American Tribes and communities of color. The Board's proposal to make these secretly negotiated agreements the centerpiece of Bay-Delta water quality control brings the State violence braided into its water rights system directly into its governance of water quality, ecological flows, and public uses of water. In addition to being incurably inequitable, the VAs are plainly unlawful: they lack the requisite sound scientific basis or statutory authorization, they result in a shifting and uncertain Plan, and their adoption unlawfully conflates the Board's water quality and water rights obligations. They are also by design a flawed vehicle for watershed governance as they depend on the increasingly unreliable participation of the U.S. Bureau of Reclamation, whose withdrawal could collapse the entire implementation scheme.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. To the extent that this comment summarizes other comments, please see the substantive responses to those comments.
1146	4	Third, DTEC strongly supports the State Water Board's proposal to integrate Tribal Beneficial Use protections into the Plan, including by formally designating the Tribal Tradition and Culture (CUL) use for the watershed. DTEC also appreciates the Board's modification of the CUL definition to clarify that it	The Bay-Delta Plan establishes water quality control measures and flow requirements needed to provide reasonable protection of beneficial uses in the Bay-Delta watershed, particularly for fish and wildlife beneficial uses. Tribal Subsistence Fishing (T-SUB) and Subsistence Fishing (SUB) are not designated by this

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		encompasses fishing, gathering, and consumption of natural and aquatic resources, which are inseparable from the identity, culture, and lifeways of Delta Tribes. Nonetheless, for the reasons elaborated in DTEC's prior comments, DTEC remains discouraged by the Board's decision not to designate T-SUB and SUB beneficial use designations for any portion of the watershed despite its own recognition of widespread evidence showing historical and continuing reliance on subsistence fishing practices by Delta Tribes and by many non-Tribal communities of color. See DTEC Comments on 2024 Draft Plan at 29-31. The failure to designate T-SUB or SUB leaves these uses unprotected and should be corrected with haste. In a similar vein, DTEC urges the Board to consider whether additional flow actions or other modifications to water quality objectives are necessary to protect CUL. For instance, a "viability" objective adopted for biological goals may be inadequate to protect the fish abundance necessary for maintenance of Tribal ceremony and subsistence fishing practices. DTEC also reiterates that the Board's proposal to rely on the VAs for implementation of water quality objectives undercuts its commitments to dignify and protect TBUs and integrate Traditional Ecological Knowledge into water management; the two cannot be squared.	plan for any waterbodies in the Bay-Delta watershed due to the human health risks associated with those uses. Individual stream segments could be designated for T-SUB and SUB beneficial uses as appropriate by the Regional Water Quality Control Boards in the future. However, while T-SUB and SUB relate to the risks to human health from consumption of noncommercial fish or shellfish at higher rates and were not developed to in and of themselves protect aquatic life, a thriving fish population could support fishing at higher consumptive rates; therefore, flow actions for the reasonable protection of fish and wildlife are related to the T-SUB and SUB beneficial uses on the same waters. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for more information on Tribal Beneficial Use incorporation and designation. In addition, Chapter 11 of the Staff Report, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses, contains a discussion on incorporation and designation of Tribal Beneficial Uses in the Bay-Delta Plan.
1146	5	Fourth, DTEC reiterates its objections to the Board's continued failure to meaningfully address the proliferation of Harmful Algal Blooms (HABs) in the Delta-a present and growing problem that poses a particular threat to the health, safety, and welfare of the Delta's environmental justice communities, including to their ability to recreate in and enjoy the waterways in their own backyard. Plainly violating the Clean Water Act, the Board provides no justification for failing to adopt HABs standards recommend by the U.S. Environmental Protection Agency (EPA), which would create a reliable and science-based metric to evaluate and control the HABs problem. Additionally, the Board's proposals for monitoring and mitigation of HABs continue to fall short.	Please see Common Response 4.1, Harmful Algal Blooms, regarding water quality standards for cyanotoxins, HABs and environmental justice communities and economically disadvantaged communities, instream flows and HABs, and State Water Board efforts to address HABs in the Delta.
1146	6	Fifth, the Board's piecemeal construction and evaluation of the Bay-Delta Plan continue to violate the California Environmental Quality Act ("CEQA") and threaten the legal viability of this long-overdue update. Among other things, the Board's reliance on uncertain and tenuous VAs, its fractured evaluation of an	Please see Common Response 1.2, Water Quality Control Planning Process and Common Response 7.1, General CEQA and Approach to the Analysis, regarding the adequacy of the project description.

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		integrated Plan across multiple separate environmental documents, and its shifting baselines for evaluation mean that the Board has again failed to create an environmental review of the whole of the proposed action capable of informing decision-makers and the public of the environmental effects of the proposed Bay-Delta Plan update and assuring adequate mitigation. The Board's failure to recirculate a complete SED evaluating the Bay-Delta Plan update in its entirety is both a painfully missed opportunity and a clear violation of the law.	
1146	7	These and other problems detailed below follow inexorably from the Board's decision to move forward with this long-overdue update while investigation into its compliance with federal civil rights laws is still pending. As the Board is well aware, DTEC filed a civil rights complaint with the EPA related to the Board's administration of Bay-Delta water quality standard setting on December 16, 2022, and the EPA accepted the complaint and opened an investigation on August 8, 2023. Shortly thereafter, the Board, EPA, and DTEC agreed to enter into a facilitated informal resolution process to pursue a negotiated resolution of the concerns documented in the complaint. This process resulted in a proposed resolution agreement developed by EPA and informed by the facilitations, which has been pending with the Board for well over a year. The Board's decision to go forward with this update without acting on the agreement or otherwise attempting to resolve the investigation-including its decision to adopt the VAs, which are the direct subject of open charges of unlawful discrimination-is a breach of public trust and undermines faith in the Board's assurances that racial equity and open public processes would be at the center of its decision-making. The Board's duty to ensure that its water quality control planning avoids disparately injuring disadvantaged communities and Tribes is not elective. As a recipient of federal funds, the Board has an enforceable obligation under Title VI of the federal Civil Rights Act of 1964 and its implementing regulations to ensure that its water quality control planning-including the timing of its actions, provisions for public participation, and substantive updates-comport with its duties to meaningfully involve impacted communities in its decision-making and avoid	As expressed in the State Water Board's September 7, 2023 letter to the U.S. Environmental Protection Agency in response to the Title VI civil rights complaint about the Bay-Delta Plan update process, the State Water Board disagrees with the allegations made in the Title VI complaint. Please see Common Response 10.1, Economically Disadvantaged Communities, for a discussion on the State Water Board's Racial Equity Resolution and Racial Equity Action Plan, and Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for a discussion on tribal outreach and engagement. Please see Common Response 1.2, Water Quality Control Planning Process, for more information on the State Water Board authorities related to Water Quality Control Planning Process, for a discussion on reasonable protection of fish and wildlife and consideration of other beneficial uses.

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		disparate injury to protected groups. 42 U.S.C. § 2000(d); 40 C.F.R. § 7.35(a)-(b); see also U.S. Const. amend. XIV 14, § 1. So too, as a State agency, the Board is bound by privately enforceable State laws that prevent it from unlawfully denying full and equal access to the benefits of its water quality planning programs and activities and to ensure that they do not unlawfully discriminate on the basis of race, color, ethnic group identification, or other protected grounds. Cal. Gov. Code §§ 11135, 11139. Both the State Legislature and the Board itself in its 2021 Racial Equity Resolution have recognized that the Water Boards' "programs were established over a structural framework that perpetuated inequalities on the basis of race" and directed the Board to correct the role racism plays "in the allocation and protection of water resources." [Footnote 2: 2. Pursuant to Assembly Bill 2108, the Board must provide a "concise, programmatic findings on potential environmental justice, tribal impact, and racial equity considerations related to the adoption" of the Bay-Delta Plan update, as well as identify measures within its authority to address impacts on disadvantaged communities and Tribes. Wat. Code § 13149.2. The Board has made no such findings here.] Assem. Bill 2108, § 1(d); see Cal. State Water Res. Control Bd., Resolution No. 2021-0050 (Nov. 16, 2021). The Board has had every opportunity to pursue measures to unbraid racism from Bay-Delta water quality planning since it initiated this update nearly 20 years ago. In 2010, the Board completed a Legislatively mandated analysis of minimum instream flow criteria that would be needed to protect public trust rights and interests-including the fish populations integral to Tribal culture and identity and relied on by Tribes and many Delta ethnic minority communities for subsistence. [Footnote 3: 3. State Water Res. Control Bd., Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem (Aug. 3, 2010), https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf; see, e.g., Fraser Shilling et al., Contaminated Fish Consumption in California's Central Valley Delta, 110 Env't Research 334 (May 2010), https://www.sciencedirect.com/science/article/abs/pii/S001393511000023X?via%3Dihub (reporting on heightened fish consumption and attendant mercury exposure by ethnic minority	

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		subsistence anglers in the Delta); Cal. Dept. of Water Resources, Your Delta, Your Voice: Environmental Justice Community Survey (May 2021), https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/Public-Information/DCP_EJ-Survey-Report-5-28-2021_Final_508.pdf (finding that 90% of Disadvantaged Community respondents reported consuming fish from the Delta four or more times per week-a finding that the Department of Water Resources characterized as "remarkable")] In 2017, it completed a scientific basis report evaluating numeric flow criteria up to 75% unimpaired flows to inform adoption of numeric objectives that would adequately protect the Delta's degraded public trust resources and sustain beneficial uses. [Footnote 4: 4 State Water Res. Control Bd., Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries (Oct. 4, 2017), https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/2022/201710-bdphaseII-sciencereport.pdf (hereinafter, "2017 Scientific Basis Report").] It has elicited and received numerous rounds of oral and written comments by DTEC, other Delta Tribes, Delta community representatives, and a range of stakeholders on flow controls needed to protect disadvantaged and vulnerable communities dependent on a healthy Delta. It participated in months of facilitated informal resolution sessions with DTEC to identify measures to meaningfully implement environmental justice in its Delta water quality control planning. And yet, despite all these efforts and despite decades of delay as conditions in the Delta have continued to deteriorate, the Board has chosen to once more sacrifice equitable, science-based regulation informed by Tribes, environmental justice communities, and the public for inequitable and politically expedient compromises with the few who claim to control the water resources of this state. The Board's abdication of its stated commitments to racial equity, science, and civil rights law is heartbreaking and cannot withstand judicial scrutiny. DTEC expands on these and other concerns with the Board's proposed Revised Draft Plan and Partially Recirculated SED in the comments below.	

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1146	8	The Board's Failure to Adopt Numeric Flow Standards Violates the Clean Water Act, Porter-Cologne Act, and the Board's Public Trust Duties and Betrays the State's Racial Equity Commitments DTEC joins in the discussion in the NGO Comments showing that the Board's proposal to adopt narrative criteria for Delta Inflow, Delta Outflow, Cold Water Habitat, and Interior Flows in lieu of numeric criteria plainly violates the Clean Water Act and Porter Cologne Act. DTEC adds the following comments to explain its opposition to the Board's proposal. As discussed in the NGO Comments and above, both the Clean Water Act and Porter Cologne Act direct the Board to adopt numeric objectives where possible to provide clear and measurable levels or limits for water quality parameters to ensure protection of designated beneficial uses. Under the Clean Water Act, States must adopt numeric criteria based on EPA's section 304(a) guidance or other scientifically defensive methods. 40 C.F.R. § 131.11(b)(1); see also, e.g., 33 U.S.C. § 1313(c)(2)(B). States may adopt "narrative criteria" only "when numerical criteria cannot be established or to supplement numerical criteria." 40 C.F.R. § 131.11(b)(2). Likewise, under the Porter Cologne Act, the Board must include criteria in its water quality control plan for the Bay-Delta comprising "limits or levels of water quality constituents or characteristics" for "the reasonable protection of beneficial uses of water." Wat. Code § 13050(h), (j). Here, the record is clear that such numeric criteria could be established. In 2017, the Board released a scientific basis report evaluating a range of numeric unimpaired flow objectives, supplemented by narrative objectives, to "address the complexities of inflow needs and constraints in the watershed in a reasonable and protective manner." 2017 Scientific Basis Report at 1-18. In 2018, the Board set forth a framework for the Bay-Delta Plan update with a proposed numeric inflow objective of 55% unimpaired flows with an adaptive range between 45 and 65% and an analogous numerical inflow-based outflow objective. [Footnote 5: 5 State Water Res. Control Bd., July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan at 14-18 (July 2018),	Please see the response to comment 1146-2. The State Water Board agrees that it could promulgate numeric flow objectives as originally contemplated in the proposed Plan amendments. That approach is valid and is the case for the numeric flow objectives that were adopted in the 2018 LSJR/SD Plan Update . The State Water Board does not agree that adopting numeric flow requirements as objectives is the only approach. The State Water Board does not agree with commenters that moving numeric flow requirements relegates those requirements or somehow lessens the scientific rigor and consideration that has gone into their development. The flow requirements will be implemented pursuant to the same authorities whether they are defined as water quality objectives or program of implementation. The revised proposed Plan amendments were designed with considerable flexibilities to move within ranges and even pathways to adapt to changing circumstances and improve flow conditions over time. Given the large scope and complexity of the Sacramento/Delta watershed, the decision has been made to house all of the implementation detail in the implementation portion of the Plan. See Common Response 1.3, Revised Proposed Plan Amendments, for more information on the provision to protect the flow base and the regulatory pathway implementation of the inflow objective, including the applicability of WSAs for new water supply projects. Also see Common Response 1.1, General Comments, for information on the Delta Flow Criteria Report.

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		https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/sed/sac_delta_framework_070618%20.pdf.] The Board's 2023 SED and October 2024 Draft Plan analyzed and proposed to codify these numeric objectives. Although DTEC and other commenters took issue with the specific numeric criteria the Board had proposed-urging, for instance, a 65% unimpaired flow objective with a narrower adaptive range (DTEC Comments on SED at 46)-they endorsed the Board's longstanding premise that numerical flow-based criteria are necessary to assure the continuity of beneficial uses in this imperiled ecosystem. Rather than seriously grapple with comments on the appropriate numerical ranges, the Board now proposes to erase numerical flow criteria from the Plan's water quality standards altogether. This latest turn appears to be driven not by an evaluation of the science or the public interest but rather by political pressure to make the voluntary agreements a cornerstone of the Plan's implementation. In its comments on the October 2024 Draft Plan update, DTEC warned the Board that its then-proposed "multiverse approach" to water quality control-which would set numerical objectives from which VA parties would be exempted, accompanied by a new narrative fish viability objective for the VA parties-could not pass legal muster. See DTEC Comments on October 2024 Draft Plan at 22-23. Seeming to recognize this problem, the Board has created another, equally serious one by shifting numerical objectives to the program of implementation, cabining their applicability to pre-2026 non-VA water rights, and supplanting the previous adaptive range with water supply adjustments that would allow even more diversion and export of water-allowing water levels to be drawn down to 35% of unimpaired flow in the driest of months, when the Board's own science shows that 75% of unimpaired Sacramento River inflow and Delta outflow would be needed to preserve attributes of the system to which native fish are adapted. Delta Flow Criteria Report at 5. In doing so, the Board unlawfully dispenses with nearly two decades of its own research and public process aimed at deriving robust numerical criteria. It also leaves significant and unnecessary uncertainty around controls that would apply to potential new and modified water rights-such as the Delta Conveyance Project and Site Reservoir Project, both subject to	

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		pending water rights applications. In combination, the Board's removal of measurable numerical criteria from the water quality standards with its uncertain and piecemeal approach to implementing those numerical criteria across different water rights destroys any assurances that the proposed Plan will improve the status quo, not to mention protect beneficial uses and public trust resources and interests as the law requires.	
1146	9	Making the matter worse, the Board has done nothing to define its vague "viability objective" for fish and wildlife beneficial uses, nor to assure consistency of this objective with the newly designated Tribal Beneficial Uses for Tribal Tradition and Culture (CUL) (which may depend on levels of abundance that significantly exceed what might be considered "viability"). At best, the Board has set forth a range of "indicators" of viability- "population abundance, spatial extent, distribution, structure, genetic and life history diversity, and productivity"-without providing any means to evaluate when viability is achieved or even whether progress toward it is being made. Without clear and measurable "limits or levels" (Wat. Code § 10350(h)), the Board makes "viability" a matter of unconstrained interpretation. In doing so, the Board makes it impossible to conduct the robust triennial reviews the Clean Water Act requires. 33 U.S.C. § 1313(c)(1); see Wat. Code § 13240.	Water Code section 13050, subd. (h) defines "water quality objectives" as the limits or levels of water quality constituents or characteristics established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area. The revised proposed Plan amendments include narrative objectives with additional detail and specificity on how to implement and achieve the objectives in the program of implementation. As described in Section 7.1.3, Purpose and Goals of the Sacramento/Delta Update to the Bay-Delta Plan, of the 2023 draft Staff Report, the underlying fundamental purpose of the project is to establish water quality objectives, a program of implementation, and monitoring and special study measures for the reasonable protection of fish and wildlife beneficial uses in the Sacramento/Delta. See also Common Response 1.2, Water Quality Control Planning Process, for a discussion of numeric and narrative objectives and program of implementation. The revised proposed Plan amendments designate CUL specifically due to the cultural and spiritual importance of native fish and wildlife to tribes. The water quality objectives needed to protect fish and wildlife beneficial uses are addressed by the objectives and program of implementation in the Bay-Delta Plan. The revised Plan includes adaptive implementation and is designed to be adjusted as needed moving forward. Provisions for tribal input are included so that tribal voices are actively involved in this process. Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on water quality objectives for fish and wildlife and Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for more discussion on the protection of Tribal Beneficial Uses.

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1146	10	The Board's failure to adopt clear numerical criteria is particularly egregious as mounting stressors on both water supply and demand exacerbate existential threats to the Delta ecosystem and its imperiled fish and wildlife populations. On the one hand, climate change promises reduced and less reliable water supplies accompanied by changes to temperature and other parameters that increase stressors to native fish populations and exacerbate harmful algal blooms. On the other, the acceleration of artificial intelligence (AI) over the last five years and resulting explosion in demand for data storage and compute are posing new threats to water supplies in water-strained locations like the Delta. In the Delta, three data center facilities are already supplying artificial intelligence services. [Footnote 6: Restore the Delta, The Environmental Justice Implications of Artificial Intelligence Infrastructure in the Sacramento-San Joaquin Delta (Jan. 15, 2026), https://restorethedelta.org/wp-content/uploads/Restore-the-Delta-AI-White-Paper.pdf.] The risks to water supplies and local communities posed by AI-driven data centers make robust water quality controls applicable to all existing and future water rights all the more necessary, particularly for the Delta's most vulnerable communities. [Footnote 7: As explained in oral comments at public hearing, the Board's failure to adopt straightforward regulatory controls also threatens Delta agriculture, a beneficial use that contributes \$4.6 billion annually and relies on adequate freshwater flows. Salinity intrusion, toxic algal blooms, and inadequate flows jeopardize the productivity and survival of Delta agriculture.]	Please see the response to comment 1146-2.
1146	11	It is no secret why the Board erased numerical flow criteria from the Plan. This undisguised effort to salvage the VAs only opens the Board to a host of new legal problems. In addition to putting the Board in plain violation of the Clean Water Act and Porter-Cologne Act, it reveals to the extent to which the Board is willing to go to accommodate exclusionary and incurably inequitable negotiations with water rights holders in lieu of robust and measurable protections organized around the needs of the Delta ecosystem and communities dependent on it. At the same time, the Board's erasure of numerical criteria betrays its "affirmative duty to take the public trust tin account in the planning and allocation of water resources" by jettisoning its own findings	Please see the response to comment 1146-2.

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		that more robust flow criteria that increase environmental flows are necessary for public trust resource protection. Nat. Audubon Soc'y v. Superior Court, 33 Cal.3d 419, 445 (1983); see Delta Flow Criteria Report at 4-5; id. at 5 (concluding that "[f]low and physical habitat interact in many ways, but they are not interchangeable").	
1146	12	II. The Revised Draft Plan is the Result of an Exclusionary State-led Process, Which Flouts the State's Commitments to Racial Equity and its Duties to Meaningfully Consult with Native American Tribes As discussed at length in DTEC's prior comments to the State Water Board, the voluntary agreements are the product of an inequitable and discriminatory process that excluded Native American Tribes, communities of color, and the general public. See, e.g., DTEC Comments on SED at 86-88 (Ex. A); DTEC Comments on 2024 Draft Plan at 8-17 (Ex. B). The Revised Draft Plan now enshrines the voluntary agreement pathway as the primary, if not exclusive, way that water quality objectives will be defined and implemented. In doing so, the Board discriminates against communities of color and Tribes in the Delta, and it violates its statutory obligation to engage in government-to-government consultation with Tribes whose ancestral lands are affected by the project. A. The Board's Adoption of a Voluntary Agreement Pathway Constitutes Unlawful Discrimination on the Basis of Race The Board's continued reliance on private contract negotiation with water rights holders in lieu of a regulatory update developed through an open public process promises to deepen the racial discrimination that has defined the California water rights system since its inception. The State of California's history of state-sponsored genocide and racial discrimination in ownership of land and associated water rights is well documented. See, e.g., Shingle Springs Band of Miwok Indians et al., Complaint under Title VI of the Civil Rights Act of 1964 at 13-18 (Dec. 16, 2022) ("Title VI Complaint"). In its 2021 Racial Equity Resolution, the State Water Board itself rightly recognized that "the Water Boards' programs were established over a	See Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to tribal comments on the VAs. Informed by the analyses contained with the Staff Report, the State Water Board has formulated revised proposed Plan amendments articulated in the December 2025 revised draft Bay-Delta Plan and August 2026 final draft Bay-Delta Plan that are intended to balance public trust uses and other competing uses and achieve objectives for the reasonable protection of fish and wildlife beneficial uses. The revised proposed Plan amendments include new narrative water quality objectives, which are described in detail in Staff Report Section 13.3.2, Water Quality Objectives for Fish and Wildlife Uses, and a program of implementation that includes a VA pathway that would allow for implementation of HRL commitments in lieu of implementing other provisions for tributary inflow, cold water habitat, and inflow-based Delta outflows; and a regulatory pathway that would apply to water rights not included in the VA pathway and would also apply to HRL water rights in the event the VA pathway is discontinued. Both pathways would have regulatory effect upon adoption of Plan amendments. The VA pathway includes provisions for supplemental science and monitoring that must include consideration of traditional ecological knowledge to evaluate effectiveness of the VA pathway and ensure compliance, as described in more detail in Section 13.3.4.7, Supplemental Science and Monitoring. Details on the process for continuing, modifying, or terminating the VA pathway are presented in Section 13.3.4.10, Continuation, Modification, or Termination of the VA Pathway. The VA pathway is described in more detail in Section 13.3.4, Voluntary Agreement Pathway. See Common Response 1.3, Revised Proposed Plan Amendments, for further description of the VA pathway. See also Common Response 11.1, Tribal Engagement

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		structural framework that perpetuated inequities based on race." Resolution No. 2021-0050 1 7. Such injustices include the "colonization, displacement, and genocide of Native American people" in California, as well as the duplicitous disregard of treaty promises with California Tribes, which "have contributed to the loss of water resources and watershed management practices that supported Native American peoples traditional food sources and ways of life" and resulted in the failure to recognize and protect Tribal water rights. Id. 1 7(b). These injustices include the "historical seizures of land from people of color" and the systematic exclusion of communities of color throughout California from property ownership, which have resulted in the dispossession of exclusion of "associated water rights." Id. 1 7(d). The imprint of the State's long history of racial discrimination is plainly evident in today's water rights system. For instance, a recent analysis by Department of Water Rights employees titled "Who makes decisions about California's water?" determined that of nearly 14,000 water rights holders, an estimated 91% are white, as are approximately 86% of local water agency directors and 92% of agricultural water district directors. [Footnote 8: See Ian James, "A foundation of Racism": California's antiquated water rights system faces new scrutiny, L.A. Times (Mar. 6, 2023), https://www.latimes.com/environment/story/2023-03-06/is-californias-antiquated-water-rights-system-racist; Megan Fidell & Paul Shipman, Who makes decisions about California's Water? (Jan. 9, 2023), https://www.restorethedelta.org/wp-content/uploads/2023-Fidell-Who-Makes-Decisions-about-Californias-Water.pdf.] These same water rights holders who obtained their rights through the exclusion of Tribes and communities of color are the parties with whom the State negotiated, behind closed doors, for voluntary self-regulation of water flows and habitat measures. In this way, the State carries the discrimination that marred the development of the State's water rights system directly into water governance in the present. As the Board is aware, its reliance on the voluntary agreements in lieu of a regulatory update is the subject of a pending federal civil rights investigation pursuant to the U.S. Environmental	and Tribal Beneficial Uses, for a description of the provisions for tribal engagement and consideration of TEK under the VA pathway. As expressed in the State Water Board's September 7, 2023, letter to the U.S. Environmental Protection Agency in response to the Title VI civil rights complaint about the Bay-Delta Plan update process, the State Water Board disagrees with the allegations made in the Title VI complaint. Also see Common Response 10.1, Economically Disadvantaged Communities, for responses to comments on existing environmental conditions and the CEQA analysis and Common Response 4.1, Harmful Algal Blooms, for a discussion of harmful algal blooms and instream flows.

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		Protection Agency's August 8, 2023 decision to accept DTEC's Title VI Complaint and open an investigation into "[w]hether the California State Water Resources Control Board's administration of the water quality setting program with the respect to the Water Quality Control Plan for the [Bay-Delta Region], including timeliness of rulemaking and opportunities for public participation, subjects members of Native Tribes and Black, Asian and Latino residents of the Bay-Delta Region, particularly the South Stockton community, to discrimination based on race, color, and national origin." U.S. EPA, Letter RE Acceptance of Administrative Complaint, EPA File No. 01RN0-23-R-9 (Aug. 8, 2023). Despite months of facilitated complaint resolution sessions and negotiations, the State Water Board has refused to enter into or even respond to an informal resolution agreement pending since November 2024. Its decision to ignore the civil rights process and the continued grievances of communities of color shut out of the voluntary agreement negotiations is further evidence of the State's disregard for environmental equity. As amply documented in the Title VI Complaint and by the State itself, communities of color in the Delta already suffer from disproportionate environmental burdens. See DTEC Comments on SED, Att. 1 (DTEC Title VI Complaint and Petition for Rulemaking). In particular, communities in South Stockton, such as those that border the Port of Stockton and the San Joaquin River, rank in the 99th and 100th percentiles for cumulative impacts statewide. [Footnote 9: Cal. OEHHA, CalEnviroScreen 4.0, https://experience.arcgis.com/experience/11d2f52282a54ceebcac7428e6184203/page/CalEnviroScreen-4B0.] These communities are also within the area selected for a Community Air Monitoring Plan and Community Emissions Reduction Program under Assembly Bill 617 due to their high cumulative exposure burden, significant number of sensitive receptors, and area-wide disadvantaged community designations. [Footnote 10: Cal. Air Resources Bd., Stockton Overview, https://ww2.arb.ca.gov/capp/com/cip/stockton.] Immense environmental burdens facing these communities, including air pollution and water pollution, already threaten human health, worsen quality of life, and prevent Delta communities from safely enjoying the sloughs and waterways that surround them.	

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		See, e.g., DTEC Comments on 2024 Draft Plan at 84-86. Increasing proliferation of harmful algal blooms in Stockton waterways, driven by low flows and warming temperatures, threatens to make these existing problems even more severe, further alienating residents from waterways, exacerbating threats to the unhoused and others at high risk of coming into contact with contaminated water, and contributing to the area's heavy burden of particulate matter pollution. [Footnote 11: See Haley Plaas, et al., Secondary Organic Aerosol Formation from Cyanobacterial-Derived Volatile Organic Compounds, 7 ACS Earth & Space Chemistry 1798 (Sept. 6, 2023), https://pubs.acs.org/doi/abs/10.1021/acsearthspacechem.3c00177.] Rather than reducing the environmental impacts to these already overburdened communities, the State Water Board has failed to adequately consider these disproportionate impacts to communities that already suffer from environmental injustice. Approval of the voluntary agreement pathway would perpetuate and exacerbate these disparate impacts to environmental justice communities in the Delta. In deciding to move forward with the voluntary agreement pathway, the Board has chosen to forego an opportunity to create meaningful repair for communities subject to a long history of discrimination in water governance and to ensure that water quality going forward will be managed through sound science and exercise of Traditional Ecological Knowledge by the watershed's original stewards rather than politics and power. DTEC urges the State Water Board to let go of this misguided and discriminatory pathway.	
1146	13	The Board Violates Its Duty to Engage in Government-to-Government Consultation with Delta Tribes While DTEC appreciates that the Revised Draft Plan now requires the State Water Board to develop a Tribal Engagement Plan to better consult with Tribes and better incorporate Tribal concerns and Traditional Ecological Knowledge ("TEK") in the future, see Revised Draft Plan at 118; see, e.g., id. at 93 (requiring participants in the voluntary agreements to "engage with California Native American Tribes"), a commitment to future meetings and "engagement" with Tribes does not cure the fact	The State Water Board actively sought, and continues to seek, consultation with interested California Native American Tribes consistent with Executive Order (EO) B-10-11 and its Tribal Consultation Policy. The State Water Board proceeded with EO B-10-11 because the provisions of Assembly Bill (AB) 52 do not apply to a certified regulatory program or a project with a Notice of Preparation (NOP) filed before July 1, 2015. (The Revised NOP for the Sacramento/Delta Update to the Bay-Delta Plan was issued in 2012.) Agencies and tribal governments consulting on projects with NOPs filed before July 1, 2015, can utilize the EO B-10-11 process and those with NOPs filed on or after July 1, 2015,

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		that the voluntary agreement pathway was developed through this exclusionary, discriminatory process, resulting in a Revised Draft Plan that fails to protect fish and wildlife and Tribal Beneficial Uses. Nor does it satisfy the State Water Board's obligation to meaningfully consult with Tribes under Assembly Bill ("AB") 52. AB 52 was adopted to "establish a meaningful consultation process between California Native American Tribal Governments and lead agencies." Stats. 2014, Ch. 532, § 1(b)(2). As the Court of Appeal recently explained, For purposes of Assem. Bill No. 52, "consultation" is defined by reference to section 65352.4 of the Government Code, which states that "'consultation' means the meaningful and timely process of seeking, discussing and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement" and that "[c]onsultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty." (See § 21080.3.1, subd. (b) [referring to Gov. Code, § 65352.4].) CEQA does not prescribe topics for consultation, but provides that "[i]f the . . . tribe requests consultation regarding alternatives to the project, recommended mitigation measures, or significant effects, the consultation shall include those topics." (§ 21080.3.2, subd. (a).) The statute further provides that "[t]he consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation or mitigation that the . . . tribe may recommend to the lead agency." (Ibid.) Thus consultation is not limited to an agency's consideration of proposals by a tribe: as part of the consultation either party "may propose mitigation measures . . . capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource." (Ibid.) Koi Nation of Northern California v. City of Clearlake, 109 Cal.	can employ either AB 52 or EO B-10-11. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for more information related to tribal outreach and engagement.

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		App.5th 815, 825-26 (2025). Consultation under AB 52 is not concluded-and the agency generally cannot approve the proposed project under CEQA-until either the Tribe and agency reach an agreement, or one of the parties "acting in good faith and after reasonable effort, concludes that reasonable agreement cannot be reached. Pub. Res. Code § 21080.3.2(b). Native American Tribes have suffered for generations because of the mismanagement of water resources in the Bay-Delta, which has decimated salmon and other native fish and wildlife species that many Tribes hold sacred. The Draft Revised Plan proposes to incorporate Tribal Beneficial Uses and designate Tribal Traditional and Cultural beneficial uses in the Bay-Delta Plan, "specifically due to the cultural and spiritual importance of water and native fish and wildlife, particularly salmon, to Tribes." See Recirculated SED at 13-34; id. at 13-2. As the State Water Board explained, The designation of CUL within the Bay-Delta watershed is based on substantial evidence provided to the State Water Board through tribal outreach and engagement efforts. Tribal representatives shared through written and verbal testimony the significance of salmon within tribal culture, including in creation stories, as a centerpiece of traditional ceremonies and feasts (such as traditional salmon bakes), and the general correlation of Native American life ways with the timing and locations of northern California salmon runs. The State Water Board recognizes the centrality that vital fish populations have for cultural, spiritual, ceremonial, and traditional rights and lifeways of tribes in the Bay-Delta watershed. Salmonids utilize the watershed both temporally and spatially at various life stages, and the tribes' cultural and spiritual use is centered on the connectivity between themselves and their ancestors with these species and the ecosystem that supports them. Recirculated SED at 13-35; see Revised Draft Plan at 10-11. As the State Water Board admits, native fish populations in the Bay-Delta, including native salmon runs, have declined precipitously since the Bay-Delta Plan was substantially amended in 1995; according to the State Water Board, salmon	

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		runs have declined by 43 to 89 percent compared to the average annual natural (non-hatchery) salmon populations from 1967-1991. Draft SED at 3-22, 3-134. Most of these species, including all four salmon runs, are not currently viable. Reversing these declines and restoring healthy and abundant salmon runs-and other native fish and wildlife species-in the Bay-Delta watershed is critical to sustaining Tribal cultural, economic, and spiritual practices. Despite this critical importance, there is no question that the State Water Board has not initiated, let alone completed, consultation with Native American Tribes under AB 52, even with respect to the designation of Tribal Beneficial Uses in the Revised Draft Plan. According to the State Water Board, In early 2023, the Board sent letters requesting consultation on the Sacramento/Delta update with tribes located in the Bay-Delta and Trinity River watersheds. The Board is committed to ongoing engagement with tribes throughout the planning and implementation processes for the Bay-Delta Plan. State Water Board, Notice of Availability and Opportunity for Public Comment, Hearing, and Staff Workshops on Draft Staff Report in Support of Potential Sacramento/Delta Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary at 2 (Sept. 28, 2023). The State Water Board's January 13, 2023 letter requesting Tribal Consultation explained that, "[i]n 2022, the State Water Board also received Voluntary Agreement proposals for updating and implementing the Bay-Delta Plan from various water users in the watershed," and it invited Tribes to consult on the "Sacramento/Delta update to the Bay-Delta Plan." State Water Board, Request for Tribal Consultation Regarding Bay-Delta Plan at 2-3 (Jan. 13, 2023), available at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/2023/2023-01-13-swb-tribal-consultation-ltr.pdf. Critically, however, the letter asserted that consultation would occur only under Executive Order B-10-11 and the State Water Board's Tribal Consultation policy, because the provisions of AB	

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		52 do not apply to a certified regulatory program or a project with a Notice of Preparation filed before July 1, 2015. (The Revised Notice of Preparation for Sacramento/Delta Update to the Bay-Delta Plan was issued in 2012.) However, given the significant tribal interest in the Bay-Delta Plan, the State Water Board is moving forward with tribal consultations under the B-10-11 process to hear and learn from tribal perspectives on this project. Though this consultation period will focus on the Plan amendment for the Sacramento River, Delta, and Delta Eastside Tributaries, the State Water Board welcomes feedback and discussion on the Bay-Delta Plan as a whole as well. Id. at 3. [Footnote 12: Because the State Water Board's letter requesting consultation explicitly stated that it was not requesting consultation under AB 52, no Tribe could have failed to timely respond to a request for consultation under AB 52.] Contrary to the State Water Board's conclusion, the obligation to consult with Tribes under AB 52 applies to this regulatory proceeding. First, the State Water Board asserts that this project is exempt from formal consultation under AB 52 because AB 52 does not apply to certified regulatory programs, like the State Water Board's. However, the text of AB 52 does not include any such exemption. Furthermore, while CEQA provides that certified regulatory programs are exempt from the requirements of Chapter 3 and Chapter 4 of Division 13 of the Public Resources Code, see Cal. Pub. Res. Code § 21080.5(c), the provisions of AB 52 are codified in Chapter 2.5 and Chapter 2.6 of Division 13 (and elsewhere in the Public Resources Code). Moreover, Courts have held that these provisions regarding certified regulatory programs are narrowly construed and do not exempt agencies from CEQA's core policies and standards. See, e.g., Pesticide Action Network of N. Am. v. Cal. Dept. of Pesticide Regul., 16 Cal. App. 5th 224 (2017). Second, the State Water Board asserts that this project is exempt from formal consultation under AB 52 because the Notice of Preparation was issued in 2012. The State Water Board is correct that AB 52 provides that "This act shall apply only to a project that has a notice of preparation or a notice of negative	

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		declaration or mitigated negative declaration filed on or after July 1, 2015." Stats. 2014, Ch. 532, Section 11(c). However, as discussed above, the State Water Board has violated CEQA because it has failed to issue a notice of preparation that accurately describes the proposed project, geographic scope of the project, and likely environmental effects. The State Water Board's failure to issue a supplemental Notice of Preparation has deprived Native American Tribes their right to meaningful consultation under AB 52, as issuing an accurate, supplemental Notice of Preparation anytime after 2016 would have triggered the obligation to meaningfully consult with Native American Tribes under AB 52. Indeed, as discussed at length in DTEC's prior comments and reiterated here, the Board did not begin Phase II environmental review until at least 2017, when it issued a Fact Sheet and Scientific Basis Report outlining recommendations for the Phase II update. State Water Board., Fact Sheet: Phase II Update of the Bay-Delta Plan: Inflows to the Sacramento River and Delta and Tributaries, Delta Outflows, Cold Water Habitat and Interior Delta Flows 1 (2017), https://www.waterboards.ca.gov/publications_forms/publications/factsheets/docs/201710_phaseI_factsheet.pdf. This while the Board points to 2012 as the starting point for Phase II amendments, the actual starting point was 2017-two years after AB 52 went into effect. Nor is consultation under AB 52 satisfied by a "process to hear and learn from tribal perspectives," as described in the State Water Board's January 2023 Tribal Consultation letter. As the Court of Appeal explains in Koi Nation, AB 52 requires meaningful and timely consultation that seeks agreement of the parties, not a "perfunctory" consultation. Koi Nation, 109 Cal.App.5th at 840. Here, despite the fact that the Plan clearly would affect Tribal resources, and despite the fact that Tribes have clearly identified significant adverse impacts to Tribal resources and informed the Board of such throughout the environmental review process, the State Water Board has not issued a letter requesting consultation with Tribes under AB 52, has not included a general summary of the information obtained during Tribal consultation in the CEQA document, and has not demonstrated that the State Water Board sought agreement with Tribes, as required by AB 52. Id. at 840-41.	

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		In this proceeding, the State systematically excluded Tribes from the room where they cut the deal, and only after the deal was cut did the State Water Board invite Tribes for a listening session to inform how the Plan might be implemented or amended in the future, but not to meaningfully engage in an attempt to reach agreement on what constitutes adequate protection of Tribal Beneficial Uses or other beneficial uses in the Bay-Delta watershed. The State Water Board has failed to meaningfully consult with Native American Tribes under AB 52 in a timely manner regarding the Bay-Delta Plan. It must do so before adopting an updated Bay-Delta Plan.	
1146	14	III. The Board Continues to Fail to Ensure Meaningful Integration of TEK into the Bay Delta Plan's Update and Evaluation In the Revised Draft Bay-Delta Plan, the Board outlines steps it proposes to take to engage with Tribes and incorporate Traditional Ecological Knowledge in its Program of Implementation ("POI") to implement the Plan's water quality objectives. See Revised Plan at § 4.5.3. As discussed above, the Plan should not be adopted unless and until it is subject to adequate environmental review informed by meaningful government-to-government consultation with Tribes under AB 52. Notwithstanding that the Plan, as currently drafted, is not legally viable, this section examines the Board's proposals for the integration of TEK and Tribal engagement in the Plan's POI. While DTEC is supportive of the Board's general proposal to strengthen incorporation of TEK in the monitoring and evaluation of the Bay-Delta Plan update and to improve Tribal consultation going forward, DTEC reiterates its concerns from its January 2025 comments on the prior Draft Bay-Delta Plan that the Board's proposals to do so remain overly vague and continue to lack a clear and actionable commitment to adequately engage Tribal Nations in the Bay-Delta Plan process. DTEC provides the following comments to assist the Board in realizing its commitments to incorporate adequate Tribal consultation and engagement as well as ensure adequate integration of TEK into the Plan's implementation.	The revised proposed Plan amendments describes the tribal engagement actions that the State Water Board has committed to and includes information on how the State Water Board will consider and incorporate Traditional Ecological Knowledge (TEK) into their efforts to update and implement the Bay-Delta Plan. This includes the possible development of policies and guidelines regarding the incorporation of TEK. To ensure adherence to the CARE principles, the State Water Board would request tribal review by the Bay-Delta Tribal Advisory Group of any Bay-Delta Plan related documents incorporating TEK and would revise documentation of TEK based on that feedback. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for more information on tribal outreach and engagement, Traditional Ecological Knowledge/tribal knowledge, and a discussion of the tribal outreach and engagement provisions within the revised proposed Plan amendments including the State Water Board tribal engagement plan, the HRL tribal engagement plan, and the Bay-Delta Tribal Advisory Group.

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		A. The Board Misunderstands TEK Traditional Ecological Knowledge refers to the cumulative knowledge that Indigenous peoples have conserved and passed down for millennia, informed by their unique, evolving, and intimate relationships with their environments. TEK is an adaptive production of Indigenous Knowledge over time, which continues to adapt based on shifting contemporary contexts. Rather than a static and unchanging body of knowledge that can be "extracted from its society and fit into policy-relevant science," TEK should be understood as "the living environmental governance of indigenous peoples" expressive of a "system of responsibilities." [Footnote 13: Kyle Powys Whyte, On the Role of Traditional Ecological Knowledge as a Collaborative Concept: A Philosophical Study, 2 ECOLOGICAL PROCESSES 7, at 5 (2013).] While Indigenous Knowledge systems have been historically undermined in favor of Western Science, the two knowledge systems are far from mutually exclusive, with TEK oftentimes enriching Western Science. This knowledge-sharing is captured in the concept of two-eyed seeing developed by Mi'kmaw Elder Albert Marshall. Practitioners of two-eyed seeing strive to engage with Indigenous Knowledge systems and Western scientific knowledge systems so that Indigenous Knowledge systems are respected on their own terms and not subsumed by or assimilated into the dominant Western system. [Footnote 14: See, e.g., Deborah McGregor et al., Toward Meaningful Research and Engagement: Indigenous knowledge systems and Great Lakes governance, 49 J. Great Lakes Research S22 (2023); Deborah McGregor et al., Indigenous Knowledge Systems in Environmental Governance in Canada, 5 KULA: Knowledge Creation, Dissemination, and Preservation Studies 1, https://kula.uvic.ca/index.php/kula/article/view/148.] Indigenous peoples have already overcome drastic environmental and social challenges through Indigenous Knowledge systems. Consequently, if the Board adopts a two-eyed seeing approach to respecting the contributions of TEK and Indigenous Knowledge holders, Indigenous peoples will be uniquely well positioned to guide the Board in tackling the complex problems threatening the San Francisco Bay/Sacramento-San Joaquin Delta Watershed.	

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		Likewise, inclusion of TEK in water governance requires political integration of Indigenous and non-Indigenous institutions such that Indigenous Knowledge holders are included on their own terms as active participants in watershed governance. Id. , - 63. That is, respect for and recognition of TEK is inseparable from the political integration of TEK practitioners in policy decision-making and evaluation.	
1146	15	B. Tribal Beneficial Uses (TBUs) are Inseparable from TEK Tribal Beneficial Uses are directly informed by TEK and are, consequently, inseparable from TEK. Therefore, for the Board to incorporate and protect the Tribal Tradition and Culture(CUL) designations it proposes to make in the Bay-Delta Plan, it must integrate TEK into its analysis. Incorporating TEK is necessary to realize the Board's commitments to Tribal engagement and to ensure that water quality objectives are culturally appropriate and substantively protective of Tribal water uses. The Board's current ill-defined commitment to consider future "additional flow-based water quality objectives or site-specific water rights requirements" on a subjective "if needed" basis to protect Tribal activities encompassed within CUL fails to outline how TEK would be used. Revised Bay-Delta Plan at 11. Without incorporating TEK, the Board will be unable to genuinely evaluate whether CUL is being protected and updated as needed. Additionally, the Revised Plan's failure to explicitly commit to designating the remaining TBUs-Tribal Subsistence Fishing (T-SUB) and Subsistence Fishing (SUB)-for the Bay-Delta watershed further exemplifies the absence of TEK in the Revised Bay-Delta Plan update. In failing to designate T-SUB and SUB, the Board chooses to ignore centuries of TEK that demonstrate the integral role subsistence fishing plays in the Delta. Using Winnemem Wintu TEK as his foundation, Tribal Knowledge holder and Government Liaison to the Winnemem Wintu Tribe Gary Mulcahy has testified that the survival of Indigenous peoples throughout the Delta would be comprised if they are unable to access Nur (Chinook salmon). See DTEC Comments on SED, Att. 1 (Title VI Complaint) at Ex. E, Att. B (Declaration of Gary Mulcahy). If TBUs, including T-SUB and SUB, are protected, with TEK guiding their designation, the benefits of a healthier Bay-	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for more information on tribal outreach and engagement, Traditional Ecological Knowledge/tribal knowledge, and a discussion of the tribal outreach and engagement provisions within the revised proposed Plan amendments including the development of the Bay-Delta Tribal Advisory Group. Please also see Staff Report Section 13.3.7, Designation of Tribal Tradition and Culture (CUL) and Incorporation of Tribal and Subsistence Fishing Beneficial Uses, which describes the proposed designation of the CUL beneficial use and incorporation of Tribal Subsistence Fishing and Subsistence Fishing beneficial uses into the Bay-Delta Plan.

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		Delta ecosystem will not only serve Tribes but will also extend to all Californians who rely on the water, species, and landscapes of this irreplaceable ecosystem.	
1146	16	C. Despite DTEC's January 10, 2025 Comments, the Board Continues to Demonstrate Disregard for TEK As a State agency, the State Water Board has an obligation to respect TEK in the same manner as Western Science and to take measurable and proactive steps to ensure that TEK informs the Bay Delta Plan. Notwithstanding this obligation, the Board's discussion in section 4.5.3 continues to evidence a persistent failure to seriously commit to meaningfully integrating Tribes and the exercise of TEK into water governance in the Delta. First, the Board fails to make a minimum commitment towards incorporating TEK, stating that "if the State Water Board develops specific policies and guidelines regarding incorporation of TEK, those policies and guidelines will be adhered to." Revised Draft Plan at 118. By conditioning its adherence to TEK on the possible development of specific policies and guidelines in the future, the Board reveals the lack of respect it holds for TEK, and its lack of commitment towards implementing TEK in the Bay Delta planning process. Second, while the Board proposes to conduct Tribal listening sessions and to create a Bay-Delta Tribal Advisory Group, both proposals are marred by a lack of clear timelines, a lack of clear selection processes, and a lack of clear financial commitments. For example, stating that the "composition, structure, and meeting frequency" of the Bay-Delta Tribal Advisory Group will be determined by undetermined members through an undetermined process on an undetermined timeline does not demonstrate a commitment by the Board to adequately engage Tribal Nations in the Bay-Delta planning process. The Board should outline clear steps as to how Tribal participants in both the Tribal listening sessions and the Tribal Advisory Group will be selected, who will choose said participants, when the Tribal Advisory Group will be formed, and when Tribal listening sessions and Tribal Advisory Group meeting will be held, taking care to schedule meetings in a manner that respects Tribal	The State Water Board considered all comments requesting changes to the revised proposed Plan amendments and incorporated some of the suggested changes. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for a summary of comments received and responses on the tribal related provisions within the revised proposed Plan amendments. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for more information on tribal outreach and engagement including State Water Board efforts to identify funding opportunities to facilitate tribal participation, and a discussion of the tribal outreach and engagement provisions within the revised proposed Plan amendments. That discussion includes the role the tribal engagement plan has in outlining the specifics of the Bay-Delta Tribal Advisory Group.

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		ceremonial schedules. Third, the Board's proposals fail to specify how the Tribal listening sessions and the Bay-Delta Tribal Advisory Group will be funded. Clear financial commitments from the Board to fund Tribal advisory groups are instrumental to their success. As a result, the Board should affirmatively commit to fully funding the Tribal listening sessions and Tribal Advisory Group, remedying previous instances in which Tribal participants were not compensated for their time or expertise and have had to shoulder the cost of their participation. The Bay Delta Plan Update planning process itself evidences this lack of compensation and financial support. For example, the State Water Board has failed to compensate Tribal Nations whose expertise it has relied on throughout this multi-year Bay Delta Plan Update process. Additionally, in the parallel Delta Conveyance Project proceeding, whose outcome will undoubtedly impact Bay Delta water quality, Tribes, such as the Shingle Springs Band of Miwok Indians, received no compensation from the Department of Water Resources for their consultation services. In the Revised Plan, the Board's commitments towards supporting the Tribal listening sessions and Tribal Advisory Group are vague and limited, with the Board stating that it will devote additional resources towards its Tribal engagement processes only as "additional resources . . . become available." Revised Draft Bay-Delta Plan at 118. These ill-defined financial commitments persist despite the Revised Plan stating that "to ensure adherence to the CARE principles, the State Water Board will request tribal review by the Bay-Delta Tribal Advisory Group of any Bay-Delta Plan related documents incorporating TEK." Revised Draft Bay-Delta Plan at 118. Although it predicates its adherence to the CARE principles on the Tribal Advisory Group's services, the Board fails to outline any funding sources for the Tribal Advisory Group or provide any details regarding how members of the Tribal Advisory Group would be compensated for these services. Adequate funding and compensation are necessary for the Board to follow through with its commitment to protecting TEK and	

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		other forms of Indigenous Knowledge through the CARE process and to integrating TEK and Tribal stakeholders into the Bay Delta Plan's update process. A commitment to adequately fund the Tribal listening sessions and the Tribal Advisory Group and to adequately compensate Tribal participants would thus help remedy some of the deficiencies in the Revised Plan's 4.5.3 Section. Consequently, the Board should set clear targets for securing resources, including the dates by which it plans to make resources available to Tribes, and should set out a clear and transparent compensation scheme for Tribal participants prior to creating the Tribal listening sessions and the Tribal Advisory Group. Fourth, and similar to its failure to outline clear selection processes and funding sources for the Tribal listening sessions and Tribal Advisory Group, the Board fails to provide key details on the types of contracting mechanisms it plans to utilize to support Tribal engagement and outreach. The Board states that it will "utilize available contracting mechanisms to support outreach and engagement with tribes on Bay-Delta planning efforts." Revised Draft Plan at 118. This vague commitment fails to detail who the parties participating in these contract mechanisms would be-making it unclear whether and how the Board intends to contract with Tribes-, how these parties would be determined, and what funding sources would support these contracting mechanisms. Additional clarity regarding these contracting mechanisms is necessary if they are to genuinely support tribal outreach and engagement.	
1146	17	D. The Board's Proposal to Adopt the Exclusionary Voluntary Agreement Pathway Cannot be Reconciled with its Purported Commitment to Respect and Consider TEK. The Board's continued reliance on exclusionary voluntary agreements ("VAs") runs directly counter to its purported commitments to integrate TEK into the Bay Delta Plan. As discussed above, the Board created these exclusionary VA agreements without informing implicated Tribal members and without conducting Tribal consultation. Through these exclusionary VAs, the Board made a decisive choice to reject TEK. If the Board continues advancing its proposal to implement	The State Water Board recognizes the significance of Traditional Ecological Knowledge in water resource management and is committed to integrating that knowledge into the Bay-Delta Plan update and its implementation processes. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for a discussion of the Traditional Ecological Knowledge/tribal knowledge and tribal outreach and engagement provisions of the revised proposed Plan amendments. Please also see Common Response 11.1 for responses to tribal comments on the VAs.

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		exclusionary VAs, the Board's actions will constitute an informed and intentional effort on the Board's part to continue to subordinate adequate Tribal engagement, consultation, and the inclusion of TEK into the Bay-Delta Plan, regardless of what the Board may try to indicate.	
1146	18	IV. The Revised Draft Plan Violates Porter-Cologne and the Public Trust A. The State Water Board Has Unlawfully Conflated its Water Rights and Water Quality Obligations In its consideration of the proposed voluntary agreement pathway, the State Water Board has failed to proceed in the manner prescribed by law because it has conflated its water rights and water quality obligations in this proceeding. Fifty years ago, the Court of Appeal warned the State Water Board that "the procedure followed-combining the water quality and water rights functions in a single proceeding-was unwise," and the Court ruled that the State Water Board's adopted water quality standards were unlawful because of those procedural errors. <i>United States v. State Water Resources Control Board</i>, 182 Cal. App. 3d 82, 119 (1986). The State Water Board has made a similar error in this proceeding, again "compromising its water quality role by defining its scope too narrowly." <i>Id.</i> at 120. The Court of Appeal struck down the 1978 Bay-Delta Water Quality Control Plan because the State Water Board's consideration of water quality objectives to reasonably protect beneficial uses was unlawfully limited to considering the impacts caused by the Central Valley Project and State Water Project, without considering all the water rights and water diversions in the watershed. <i>Id.</i> at 119-120. As the Court explained, "in order to fulfill adequately its water quality planning obligations, we believe the Board cannot ignore other actions which could be taken to achieve Delta water quality, such as remedial actions to curtail excess diversions and pollution by other water users." <i>Id.</i> In this proceeding, the State Water Board has turned the water quality planning process on its head and, as it did fifty years ago, ignored other actions that could be taken to improve Delta water	This commenter understates both the analysis conducted by the State Water Board and the alternatives considered throughout this process to update the Bay-Delta Plan. Please see Common Response 1.2, Water Quality Control Planning Process, regarding the Porter-Cologne Water Quality Control Act, consideration of beneficial uses, and reasonable protection of fish and wildlife beneficial uses. Please also see Common Response 7.24, Alternatives Analysis, regarding the evaluation of alternatives, project purposes and goals, and the scope of alternatives evaluated. As described in Staff Report Section 13.3, Revised Proposed Plan Amendments, the revised proposed Plan amendments include a regulatory pathway that builds on and modifies the proposed Plan amendments presented in Chapter 5, Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta, including the narrative inflow, cold water habitat, Delta outflow, and interior Delta flow objectives and the inflow-based Delta outflow objective, and other alternatives presented and analyzed in Chapter 7, Environmental Analysis, with modifications in response to public comments received throughout the planning process. The revised proposed Plan amendments also include a VA pathway, which is an alternative implementation pathway for new narrative objectives applicable to the HRL water rights identified in Appendix B.1 allowing for implementation of the HRL commitments in lieu of certain actions described in the regulatory pathway. As discussed in Section 13.3.4.10, Continuation, Modification, or Termination of the VA Pathway, of the Staff Report, the VA pathway contains a regulatory backstop such that HRL water rights may be subject to the regulatory pathway if HRL participants do not meet the flow and non-flow commitments of the VA pathway. A separate process for terminating or modifying the VA pathway based on significant evidence that continuing

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		quality and actually protect fish and wildlife, fishing, recreation, Tribal, and other beneficial uses that depend on a healthy Bay-Delta watershed. Instead of determining what flows and water quality objectives are necessary to reasonably protect beneficial uses, and after adopting a Bay-Delta Plan then conducting a water rights proceeding to assign responsibility to achieve the water quality objectives, this proceeding has focused on the small amounts of water that rights holders and water contractors are willing to voluntarily give up,[Footnote 15: In addition, much of the water provided under the voluntary agreement would be paid for with hundreds of millions of dollars in taxpayer subsidies, despite the fact that this water belongs to the public, see Cal. Water Code § 102, and despite the fact that the State Water Board has a continuing duty under the Public Trust to reconsider prior water allocation decisions, see National Audubon Society v. Superior Court, 33 Cal. 3d 419 (1983). It appears that much of the habitat restoration under the voluntary agreement likewise would be subsidized by taxpayers.] equating that voluntary agreement with reasonable protection of beneficial uses. That is true even as the water proposed under the voluntary agreement has continued to shrink, and even as some of the largest water users in the State contribute no water under the voluntary agreement or regulatory pathway.	implementation will not provide reasonable protection of beneficial uses or will jeopardize the continued survival of native fishes. Please see Common Response 1.3, Revised Proposed Plan Amendments, for further information regarding continuation, modification, or termination of the VA pathway. As noted in Staff Report Section 13.6.1, Public Trust Analysis, this ability to pivot from the VA pathway to the regulatory pathway, along with other adaptive provisions contained in the Plan, gives the State Water Board flexibility to make adjustments to better protect public trust resources and ensure reasonable protection of fish and wildlife beneficial uses without having to start the water quality control planning process over. Further, while the HRL does provide for some compensation of parties providing water, the State Water Board itself is not providing any compensation for HRL flow commitments. Any such compensation is beyond the jurisdiction of the State Water Board.
1146	19	For instance, the State Water Board has recognized that "multiple aquatic species in the Bay-Delta estuary are in crisis," with populations of salmon and other native fish species having declined by 43 to 99 percent over the past several decades. Draft SED at 3-134. Under baseline conditions, multiple fish species, including winter-run Chinook salmon, spring-run Chinook salmon, fall-run Chinook salmon, Longfin Smelt, and Delta Smelt, are declining in abundance, and as the State Water Board has repeatedly concluded, under baseline conditions fish and wildlife beneficial uses are not reasonably protected and the State has not met its obligations under the Public Trust. See, e.g., Draft SED at 3-112 ("existing Bay-Delta Plan and BiOp flow requirements are not adequate to ensure Delta outflow conditions necessary for the reasonable protection of fish and wildlife beneficial uses.") However, the State Water Board has simply assumed in the Recirculated SED that any improvement under the voluntary agreement compared to the degraded baseline conditions would	The results presented in page 13-288 of the 2025 partially recirculated draft Staff Report incorporate an assessment of temperature suitability for salmon. Please see the description of the methods on page 13-287. Also see Common Response 1.2, Water Quality Control Planning Process, regarding the consideration of beneficial uses and achievement of water quality objectives.

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		constitute reasonable protection of fish and wildlife and would lead to viability. See, e.g., Recirculated SED at 13-288 (analysis of water temperatures below Shasta Dam compares the voluntary agreement to baseline conditions, but it never evaluates whether the resulting water temperatures under the voluntary agreement are "suitable" for salmon and other native fish species). Similarly, the Recirculated SED explains that, Under the VA pathway, flow-related ecological benefits and associated beneficial economic effects would also be expected to the extent that the VA pathway results in a more natural flow regime. However, the changes in streamflow under the VA pathway would be smaller than those under the starting point for the regulatory pathway (55 w/WSAs). Subsequently, fish population improvements and fisheries-related ecological benefits resulting from a more natural flow regime could be smaller under the VA pathway compared to the starting point for the regulatory pathway, for the term of the VA pathway, even with the additional flows provided by non-HRL water rights under the regulatory pathway added to the VA pathway, as described in Section 13.4.2. However, the VA pathway would also provide for non-flow habitat restoration measures on a portion of the Sacramento/Delta tributaries that could result in fisheries-related ecological benefits and associated beneficial economic effects. Recirculated SED at 13-539. This is clear error; given that populations are declining under baseline conditions, in order to demonstrate that a species is viable the State Water Board must show that the improvements in population growth actually lead to positive population growth, not merely that the species is declining less quickly. For example, if natural production of fall-run Chinook salmon has been declining by 5 percent per year under baseline conditions, and the voluntary agreement improved natural production by 1 percent compared to baseline conditions, fall-run Chinook salmon are still declining by 4 percent per year, which is not a viable population. Elsewhere, the State Water Board has simply claimed that the voluntary agreement is "expected to contribute toward the narrative objectives for salmon protection and fish viability." See,	

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		e.g., Recirculated SED at 13-205. However, the State Water Board never provides any analysis showing that the program of implementation as a whole will achieve the Plan's fish viability, salmon protection, and other objectives, as required by law. Cal. Water Code §§ 13050(j), 13242, 13247; see <i>In Re State Water Resources Control Board Cases</i>, 136 Cal.App.4th 674 (2006). Indeed, with respect to certain proposed water quality objectives, even though the voluntary agreement would result in ecological conditions that are worse than baseline conditions, the State Water Board seems to find the voluntary agreement would still constitute reasonable protection. See, e.g., Recirculated SED at 13-109 (voluntary agreement results in more negative OMR flows than under baseline conditions). Similarly, the State Water Board has identified ecological flow thresholds that are important for salmon and other native fish species, but the State Water Board has never identified how frequently those flow thresholds must be exceeded in order to achieve viable fish populations, let alone achieve the higher abundances required to achieve the salmon doubling objective, or to sustain commercial and recreational fishing or Tribal beneficial uses. See Recirculated SED at 13-211. Yet even though the frequency of exceeding these flow thresholds under the voluntary agreement "would generally remain unchanged" as under the degraded baseline-and would actually reduce the frequency of meeting the flow threshold for longfin smelt-the State Water Board appears to find that the voluntary agreements would provide reasonable protection for fish and wildlife and other beneficial uses. <i>Id.</i>	
1146	20	Instead of determining what flows are needed to reasonably protect fish and wildlife and other beneficial uses, the State Water Board and other agencies have instead focused on how little water that water rights holders must give up under a voluntary agreement. And the amount of water proposed to increase Delta outflow under the voluntary agreement has repeatedly shrunk. In 2017, the California Department of Fish and Wildlife proposed that 1.3 million acre feet of additional Delta outflow (beyond that	As described in Section 13.4.2.4, Voluntary Agreement Pathway, of the 2025 partially recirculated draft Staff Report, while some additional flows would be expected under the VA pathway from water rights not included in Appendix B.1 of the revised proposed Plan amendments, the resulting flows and effects would fall between the results of the VA pathway and the regulatory pathway and would be much closer to the VA pathway results. Please see Common Response 1.2, Water Quality Control Planning Process, on the consideration of beneficial uses.

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		which would result from the 2008/2009 biological opinions and Bay-Delta Plan) was necessary to protect fish and wildlife as part of a voluntary agreement. [Footnote 16: 16 See Doug Obegi, Honey, the VAs Shrunk the Delta Flows (Apr. 11, 2022), https://www.nrdc.org/bio/doug-obegi/honey-vas-shrunk-delta-flows.] In 2018, the State's Framework proposal stated that it would increase Delta outflow by 740,000 to 1.040 million acre feet per year on average. Cal. Nat. Res. Agency, Framework Proposal for Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan (Dec. 12, 2018), available at https://waterboards.ca.gov/bay_delta/docs/bay_delta/cnra_va_proposal_12122018.pdf. By 2019, the voluntary agreements proposed only 75,000 to 704,000 acre feet of new water per year, depending on water year type. Cal. Dept. of Fish and Wildlife and Cal. Dept. of Wat. Res., Complete Voluntary Agreement Package (Mar. 1, 2019), available at: https://waterboards.ca.gov/bay_delta/docs/bay_delta/complete_va_package03012019.pdf. Further, the amount of water proposed for Delta outflow under the voluntary agreements shrank further in the past few years, as a result of new, weakened federal biological opinions that increase CVP pumping in April and May, reducing Delta outflow. See, e.g., Recirculated SED at 13-47. As a result of these changes, in the Recirculated SED, the State Water Board estimates that the voluntary agreement pathway would increase January to June Delta outflow on average by only 130,000 acre feet per year and would decrease July to December Delta outflow by 8,000 acre feet per year on average. Id. at 13-114. Yet even as the volume of water proposed for Delta outflow under the voluntary agreements has shrunk, the State Water Board has continued to assert that the voluntary agreements would reasonably protect fish and wildlife and other beneficial uses. [Footnote 17: Indeed, in the Revised Draft Plan the State Water Board has dramatically weakened its regulatory proposal from the initial proposal in the 2023 staff report (55 percent of unimpaired flow); now, with the proposed water supply adjustments the State Water Board proposes to only require 35 percent of unimpaired flow in the driest third of years, 45	

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		percent of unimpaired flow in the middle years, and 55 percent of flow in the wettest third of years. Like the voluntary agreement, this regulatory proposal fails to reasonably protect fish and wildlife and other beneficial uses, but because the State Water Board only analyzes the voluntary agreement and the 55w/WSA alternatives in the Recirculated SED, and because the State Water Board never directly compares the flows under the voluntary agreement with flows under the 55 percent or 65 to 75 percent of unimpaired flow, weakening the regulatory proposal in the Recirculated SED makes the voluntary agreement look less bad by comparison.] That is apparently true even though, as discussed above, adoption of the Revised Draft Plan does not ensure that Delta inflows and outflows actually are greater than the environmental baseline; new water diversions and the effects of climate change easily could result in less Delta outflow than under baseline conditions. Similarly, the State Water Board continues to assert that the Revised Draft Plan would reasonably protect fish and wildlife and other beneficial uses even though the Revised Draft Plan does not require the parties to the voluntary agreement to achieve "suitable" water temperatures and adequate carryover storage required by the Cold Water Habitat objective; instead, the State Water Board has exempted parties to the voluntary agreement from having to take any actions, like temperature management plans or carryover storage requirements, to implement the Cold Water Habitat objective, Revised Draft Plan at 51-52, 64. The Recirculated SED also demonstrates that Interior Delta Flows under the voluntary agreement are worse than under the degraded baseline conditions, see Recirculated SED at 13-109, yet the State Water Board still concludes the voluntary agreement pathway reasonably protects beneficial uses. The Revised Draft Plan likewise exempts several rivers from having to contribute any flow in many years and exempts other rivers from the Revised Draft Plan's inflow-based outflow objective. See id. at 47 (requiring 0 percent of unimpaired flow on 3 rivers under certain reservoir storage levels, and requiring at most 35 percent of unimpaired flow); id. at Table 9 fn. 1 ("Some or all of these flow commitments may not be accounted for as contributing to additive Delta outflows above base conditions as specified below and in Appendix B.1.").	

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		While the State Water Board admits that the parties to the voluntary agreements constitute the majority of water rights and water diversions in the watershed, the State Water Board has never modeled or analyzed how much water would be contributed under the proposed regulatory pathway (55w/WSA) if the voluntary agreement pathway is approved. Recirculated SED at 13-50. And some of the largest water rights holders in the watershed are required to contribute no water or funding towards achieving the Revised Draft Plan's objectives, including the San Joaquin River Exchange Contractors (maximum contract amount of more than 875,000 acre feet per year) and the California Department of Water Resources' Feather River Settlement Contractors (water districts that divert 1 million acre feet of water per year or more, including Western Canal Water District, Garden Highway Mutual Water Company, Joint Water Districts Board, Oswald Water District, Plumas Mutual Water Company, and Tudor Mutual Water Company). Meanwhile, rather than giving up water, South of Delta contractors of the Central Valley Project and State Water Project will increase water diversions under the Revised Draft Plan, with an average increase of 86,000 acre feet per year. Id. at 13-105 to 13-106. In this proceeding, instead of determining how much water is needed to protect and restore the health of the Bay-Delta estuary and protect beneficial uses, the State Water Board has gutted the water quality objectives and program of implementation proposed in the Draft Plan in order to make the voluntary agreements fit-even as the voluntary agreement pathway shrinks, even as some of the biggest water users do not contribute any flow and other water districts increase water supply, and even as the modeling and analysis demonstrates that the Revised Draft Plan will likely result in less Delta outflow than today, worse Interior Delta Flow conditions, and worsened water temperatures below Shasta Dam and other reservoirs. The Revised Draft Plan woefully fails to protect and restore the health of the Bay-Delta estuary, its fish and wildlife, and the Tribes, communities, and jobs that depend on its health. The State Water Board has unlawfully constricted its determination of what flows and other measures are needed to achieve viable fish populations and achieve salmon doubling, limiting it to what the parties to the voluntary agreement are willing to offer.	

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		While the State Water Board has the authority and obligation to balance reasonable protection of beneficial uses, it cannot adopt a water quality control plan that does not achieve the plan's objectives. Cal. Water Code §§ 13050(j), 13242, 13247; see In Re State Water Resources Control Board Cases, 136 Cal.App.4th 674 (2006). It plainly has done so here, subverting its obligations with respect to water quality planning to considerations of water rights.	
1146	21	B. The Revised Draft Plan Fails to Reasonably Protect Beneficial Uses from Harmful Algal Blooms Harmful algal blooms have proliferated in the Delta over the past several decades, due to the failure to adequately manage water quality, including flows, temperature, salinity, turbidity, and pollutants (particularly nutrients). Under baseline conditions, harmful algal blooms are increasing in frequency and extent. See, e.g., Draft SED at 4-16 to 4-17. Yet the Revised Draft Plan fails to include water quality objectives that reduce or prevent harmful algal blooms in the Delta, even as the State Water Board and the U.S. Environmental Protection Agency recognize that such standards or objectives are necessary to protect beneficial uses. While the State Water Board proposes additional monitoring requirements and studies as mitigation measures, the Revised Draft Plan fails to adequately protect beneficial uses from harmful algal blooms, and instead adoption of the voluntary agreement is likely to contribute to the nuisances caused by harmful algal blooms. In the Recirculated SED, the State Water Board admits that increased Delta outflow in the January to June period could lead to reduced HAB formation, and that decreased Delta outflow during the summer and fall could lead to increased frequency and size of harmful algal blooms. Recirculated SED at 13-356. Similarly, the document recognizes that changes in net flow in Delta channels can affect HABs, with lower net flows in the summer and fall months resulting in increased residence time that could increase the formation of harmful algal blooms. Id. at 13-354 to 13-355.	The Staff Report evaluates and discloses the potential environmental impacts of the revised proposed Plan amendments on increasing HABs in reservoirs and Delta channels in Chapter 13, Revised Proposed Plan Amendments, Section 13.7.12.1, Surface Water, and on recreation in Section 13.7.18, Recreation. The relationship between turbidity and HABs is addressed in Section 7.12.1, Surface Water. The potential effects of the revised proposed Plan amendments on Delta flows and the subsequent potential effects on Delta HABs are discussed in Section 7.12.1 and Section 13.7.12.1, Surface Water. As discussed in Chapter 13, changes in hydrology under the revised proposed Plan amendments would result in a less-than-significant impact on salinity (i.e., electrical conductivity, bromide, and chloride) in the Delta for the VA pathway and the regulatory pathway because changes would not result in substantial increases in salinity and exceedances of associated water quality objectives. The relationship between salinity and growth of HABs is addressed in Section 7.12.1. The final Staff Report includes an analysis in Section 13.7.12.1 of the effects of the 2025 Record of Decision and Incidental Take Permit (2025 ROD/ITP) for operations of the Central Valley Project and State Water Project on changes to inflows and outflows and exports during the summer and fall and discloses that decreases in inflows and outflows during that period as a result of the 2025 ROD/ITP could worsen HABs under the revised proposed Plan amendments. An updated analysis in Section 13.7.18 similarly acknowledges that there could be effects on recreation. However, the provision for the protection of the flow base described in Section 13.3, Revised Proposed Plan Amendments, could reduce these impacts. See Common Response 1.3, Revised Proposed Plan Amendments for further discussion of the protection of the

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		However, as discussed above, the Recirculated SED fails to adequately consider the effects of the likely changes in Delta outflows, interior Delta flows, and Delta water quality from the Revised Draft Plan on the formation and extent of harmful algal blooms, including the failure to accurately account for the effects of climate change on water temperatures and hydrology, failure to account for changes in turbidity and salinity on harmful algal blooms, and failure to accurately assess likely changes in Delta inflows and outflows under the proposed project. Even ignoring the failure to adequately analyze effects on harmful algal blooms, the Recirculated SED demonstrates that the voluntary agreement and 55w/WSA scenarios are likely to increase the formation and extent of harmful algal blooms compared to the already degraded baseline conditions, and would not improve water quality conditions in a manner that is likely to reduce the frequency and extent of harmful algal blooms. For instance, the Recirculated SED asserts that the voluntary agreements would have small effects on harmful algal blooms because the voluntary agreements "would have only small effects of Delta outflow and exports during the warmer time of year when HABs and invasive aquatic plants are growing." Recirculated SED at 13-356. However, the record shows that under the voluntary agreements, Delta outflow in the summer and fall months would be reduced compared to the baseline, as would summer/fall South of Delta exports in most years and on average. Id. at 13-106, 13-114 to 13-115. In addition, the Recirculated SED indicates that the voluntary agreements would increase Delta outflow in the January to June period by only 130,000 acre-feet per year on average, an approximately 1.1 percent increase. Id. at 13-115. However, the Revised Draft Plan does not ensure or require that the voluntary agreements actually increase Delta outflow in the January to June period compared to baseline conditions, and winter-spring outflow under the voluntary agreements is likely be lower than baseline conditions if new water rights, such as Sites Reservoir or Delta Conveyance Project, are approved, which would increase the risk of harmful algal blooms. Equally important, under baseline conditions harmful algal blooms are impairing beneficial uses, including recreation and	flow base. VA parties would be required to provide support for implementation of the Delta Cyanobacterial Harmful Algal Blooms (CHABs) Monitoring Strategy as part of Mitigation Measure MM-SW-a,f: 4 identified in Chapter 13, Revised Proposed Plan Amendments. In addition, Staff Report Chapter 13, Section 13.3.9.2, Harmful Algal Blooms, describes provisions included in the revised proposed Plan amendments for addressing HABs in the Delta, including identifying management and mitigation measures that could be used to control HABs and HAB monitoring that would be required of VA Parties on VA tributaries. See Common Response 1.3, Revised Proposed Plan Amendments, for further discussion of the HAB provisions. HABs are a statewide water quality issue that exists independently of potential incremental effects from changes in hydrology under the revised proposed Plan amendments. CEQA does not compel the State Water Board to provide a solution to this existing environmental problem in its Sacramento/Delta Update to the Bay-Delta Plan. More importantly, the specific causes and potential solutions to HABs are under development and more investigation is needed. The Sacramento/Delta updates to the Bay-Delta Plan are intended to provide for the reasonable protection of fish and wildlife beneficial uses and not expressly intended to manage the occurrence of HABs in the Delta or in reservoirs. However, the State Water Board recognizes that HABs are a growing concern and addressing HABs is a high priority for the Board. Please refer to Common Response 4.1, Harmful Algal Blooms, regarding instream flow and Delta HABs, numeric objectives or criteria for cyanotoxins, and for a discussion of the importance of coordinated HAB monitoring to help determine the most effective mitigation and management strategies for addressing Delta HABs. Monitoring is a critical step toward identifying the specific conditions and management levers that can effectively mitigate blooms without causing unintended consequences to other beneficial uses. Immediate prescriptive changes to flow or water quality objectives, absent sufficient scientific support, could prove ineffective or counterproductive.

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		Tribal Beneficial Uses, and the Recirculated SED fails to demonstrate that these uses will not be impaired under the Revised Draft Plan. For instance, the State Water Board admits that adoption of the Revised Draft Plan may cause significant adverse environmental impacts to recreation as a result of "increased frequency" of closures of Delta channels to recreation because of increased harmful algal blooms. Recirculated SED at 13 226. Similarly, the Recirculated SED admits that increased harmful algal blooms could impair Tribal and Cultural beneficial uses. Id. at 13-234. And the State Water Board also admits that, While there are guidelines available that identify thresholds of cyanotoxins associated with adverse health impacts, there are no specific water quality objectives yet for these compounds to protect human health when contacting water or consuming fish or shellfish. Any water quality objectives or implementation measures that would be developed in the future for cyanotoxins are not necessarily the result of CUL designations It is likely that water quality control measures for HABs are needed to protect other existing beneficial uses such as REC-1. Recirculated SED at 13-234 (emphasis added). Thus, under baseline conditions, harmful algal blooms are impairing other beneficial uses, and measures are required to improve baseline conditions to reduce the frequency and extent of harmful algal blooms. Already, harmful algal blooms are causing substantial adverse effects to Delta communities. Beyond impairing contact and non-contact recreational beneficial uses, harmful algal blooms alienate communities from local waterways environment in their backyard. As discussed above, they pose particular risks to unhoused communities and other vulnerable members of the public at high risk of coming into contact with toxic blooms. They suppress Tribal ceremony, fish consumption, and other water-based practices essential to Tribal culture and identity. And they aggravate risks to the public health by degrading water quality and contributing to degradation of air quality in overburdened areas. [Footnote 18: See Plaas, supra.] However, instead of proposing changes to water quality	Refer to Common Response 4.2, Drought and Climate Change, regarding assessments of climate change and analysis of potential impacts throughout the Staff Report; Common Response 7.1, General CEQA and Approach to the Analysis, for a response to comments related to the adequacy of mitigation presented in the Staff Report; and Common Response 1.3, Revised Proposed Plan Amendments, regarding details about the enforceability of the Voluntary Agreements, and for information on protection of the flow base.

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		objectives in the Revised Draft Plan that would be adequate to protect other beneficial uses from the harmful effects of harmful algal blooms, as noted above, the State Water Board's proposed mitigation measures largely focus on expanded water quality monitoring for harmful algal blooms and requires certain scientific studies, which could be used in the future "during the periodic review process to determine whether changes are needed to the Bay-Delta Plan or its implementation to address HABs." Recirculated SED at 13-37 to 13-39. These mitigation measures would not address the flow and water quality conditions that cause the formation of harmful algal blooms, nor would these mitigation measures reduce or ameliorate the proliferation of harmful algal blooms in the Bay-Delta that impair beneficial uses. Nor does the Revised Draft Plan include specific water quality criteria that are adequate to protect human health from harmful algal blooms. In 2019, the U.S. Environmental Protection Agency issued recommended criteria under section 304(a) of the Clean Water Act to protect human health for microcystins and cylindrospermopsin, identifying recommended concentrations that would protect swimming and other water-borne recreation. Evn't Protection Agency, Recommended Human Health Recreation Ambient Water Quality Criteria or Swimming Advisories for Microcystins and Cylindrospermopsin, 84 Fed. Regs. 26413 (2019). Under the Clean Water Act, the State Water Board must either adopt these EPA recommended criteria for HABs, or provide a reasonable explanation for not doing so that is consistent with the Clean Water Act. See id. at 26414; 40 CFR § 130.20(a). The Board has done neither. The State Water Board can and must do better. It is simply unconscionable to adopt a voluntary agreement pathway that is likely to worsen the conditions that lead to harmful algal blooms compared to the already degraded baseline that fails to protect beneficial uses from the effects of harmful algal blooms. The State Water Board should establish a water quality objective, based on the best available science, that protects human health from harmful algal blooms, and it must revise the flow and other measures in the Revised Draft Plan that meaningfully reduces	

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		the frequency and extent of harmful algal blooms that impair other beneficial uses and threaten human health.	
1146	22	C. The Revised Draft Plan Fails to Reasonably Protect Tribal Beneficial Uses Finally, while DTEC appreciates that the State Water Board proposes to designate Tribal Beneficial Uses in the Bay-Delta watershed, the Revised Draft Plan fails to reasonably protect Tribal Beneficial Uses. The Revised Draft Plan recognizes the significance that salmon and other fish and wildlife have for "cultural, spiritual, ceremonial, and traditional rights and lifeways of Tribes in the Bay-Delta watershed." Revised Draft Plan at 10. However, the State Water Board has defined the reasonable protection of Tribal Beneficial Uses to be the same as the reasonable protection of fish and wildlife uses, id., and the Revised Draft Plan does not consider the designation of Tribal Beneficial Uses to justify additional measures to protect and restore native fish and wildlife in the Bay-Delta watershed. See Recirculated SED at 13-231 ("the CUL beneficial use does not itself authorize implementation actions aimed at protecting fish populations . . . "). Instead, the Revised Draft Plan simply states that, "Incorporating [Tribal Beneficial Uses] into the Bay-Delta Plan recognizes the tribes' voices and participation in this process." Revised Draft Plan at 10. Of course, as discussed supra, the State Water Board has failed to fulfill its obligations for meaningful consultation with Tribes under AB 52. Preventing extinction of fish species and ensuring minimally viable populations of salmon and other fish and wildlife species are important goals, but doing so does not reasonably protect Tribal Beneficial Uses. Tribal cultural, spiritual, and subsistence practices depend on healthy and abundant populations of salmon and other fish species, supporting traditional harvests. Fish populations must be more abundant than merely viable to support Tribal harvests, and as the Recirculated SED admits, recreational and commercial fishing for salmon has been completely closed or severely restricted in recent years because of the failure to reasonably protect fish and wildlife. Recirculated	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments on Tribal Beneficial Uses and tribal comments on the VAs. Please also see Staff Report Section 13.3.7, Designation of Tribal Tradition and Culture (CUL) and Incorporation of Tribal and Subsistence Fishing Beneficial Uses, for more discussion on the CUL designation. The State Water Board is considering amendments to the Sacramento/Delta portions of the Bay-Delta Plan for the reasonable protection of fish and wildlife beneficial uses. Chapter 3, Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, provides a review and summary of the best available science on flow needs for the protection of fish and wildlife beneficial uses. Chapter 3 includes an analysis of the benefits of the 35 through 75 flow scenarios and other components of the proposed Plan amendments described in Chapter 5, Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta. Chapter 9, Proposed Voluntary Agreements, includes an analysis of the benefits of the HRL commitments. Section 13.5, Beneficial Environmental Effects, contains benefit analyses for the revised proposed Plan amendments. In particular, Section 13.5 provides analysis that includes scenarios representative of the regulatory pathway and the VA pathway. See Common Response 3.1, Fish Protection, for a description of revisions made to Chapter 3, Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, to update flow thresholds and a discussion of the flow-benefit analyses. Please also see Common Response 1.2, Water Quality Control Planning Process, for a discussion on reasonable protection of fish and wildlife and consideration of other beneficial uses.

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		SED at 13-535. Yet the Revised Draft Plan determines that the voluntary agreement pathway would provide reasonable protection of fish and wildlife if it merely "contributes" to achieving the narrative fish viability objective. See id. at 64, 92, 95. [Footnote 19: To the extent that the State Water Board asserts that the Revised Draft Plan includes a time schedule for achieving the narrative fish viability objective, and that achieving this objective is not required until the year 2050, see Revised Draft Plan at 95-96, such an approach plainly violates the federal Endangered Species Act as well as the State Water Board's obligations under the California Endangered Species Act and Public Trust. The State Water Board has recognized that it is required to take action to conserve (help recover) species listed as threatened or endangered. State Water Board, Water Rights Decision 1644, at 27; Cal. Fish & Game Code § 2052. Allowing for fish populations to remain unviable until the year 2050 plainly would fail to provide reasonable protection for Tribal Beneficial Uses, which depend on abundant and sustainable fish populations.] Indeed, the newly proposed narrative objectives for Delta outflow, Interior Delta Flows, and Delta inflows are limited to what is necessary to achieve viable fish populations, and do not require actions necessary to achieve healthy and abundant fish populations that support sustainable fisheries. Protecting Tribal Beneficial Uses requires more than merely viable fish populations, but the Revised Draft Plan does not require that the Plan achieve abundant fish populations, nor does it even ensure that viable fish populations are achieved; instead, the Revised Draft Plan requires merely that the voluntary agreements "contribute" to achieving viability. Because the Revised Draft Plan functionally equates reasonable protection of Tribal Beneficial Uses to "contributing" to achieving the fish viability objective, and wholly fails to consider the need for more abundant fish populations to sustain Tribal harvest, the State Water Board has failed to reasonably protect Tribal Beneficial Uses. Equally important, the Recirculated SED fails to demonstrate that approval of the Revised Draft Plan will achieve the fish viability and salmon protection objectives. Under baseline	

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		conditions, fish and wildlife are not reasonably protected and are in "crisis." Draft SED at 3-112, 3-134. Because the Revised Draft Plan equates fish and wildlife and Tribal Beneficial Uses, Tribal Beneficial Uses are also not reasonably protected under baseline conditions. Yet as discussed herein and in other comment letters, the voluntary agreement pathway would at best maintain the degraded baseline, and it is likely to worsen conditions for fish and wildlife in the future, particularly in light of the effects of climate change and new water diversions. The Recirculated SED admits that Delta outflows under the voluntary agreements would largely achieve the same frequency of meeting ecological flow thresholds, and would actually reduce the frequency of achieving the Longfin Smelt flow threshold, see Recirculated SED at 13-211; would worsen Interior Delta flow conditions compared to the degraded baseline, id. at 13-109; would not require any measures to ensure suitable water temperatures below upstream dams, even though baseline water temperatures are not "suitable" for salmon in many years and on many rivers; and would actually worsen water temperatures for spawning salmon below Shasta Dam and other dams in the driest 10 percent of years when temperature control is already inadequate, see id. at Appendix H1b at H1b-28 (showing the voluntary agreement would increase water temperatures in the Sacramento River at Clear Creek in the months of October and November). Nor does the State Water Board's analysis show that habitat restoration would fully offset the reduced Delta outflows, increased Delta pumping and entrainment and loss of fish, and inadequate water temperature control below upstream reservoirs provided under the voluntary agreement. Instead, spawning habitat is generally not limiting fish populations, so habitat restoration is unlikely to result in significant population level benefits; the voluntary agreement would not provide rearing habitat that would meet 25 percent of what is necessary to achieve the salmon doubling objective for the Sacramento and American Rivers, Recirculated SED at 13-208, nor would total instream and floodplain habitat meet 25 percent of what is needed to achieve the salmon doubling objective on the	

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		American, Feather, or Sacramento River (for fall-run Chinook salmon), id. at H1c-38; and the voluntary agreement generally would not meaningfully increase the frequency of meaningful floodplain inundation events on nearly all rivers in the watershed, see id. at Appendix H1c. As the Recirculated SED admits, there is scientific uncertainty about the effects of the proposed habitat restoration, which "could result in fisheries-related ecological benefits." See id. at 13-218, 13-539 (emphasis added). The administrative record demonstrates that the voluntary agreement fails to protect and restore native fish and wildlife and ensure these native fish populations are viable, abundant, and support sustainable fisheries. Instead of reasonably protecting fish and wildlife beneficial uses, the voluntary agreement pathway-which was the product of an incurably exclusionary and discriminatory backroom process-will primarily protect the parties to the voluntary agreements. The State Water Board must reject the voluntary agreement pathway and adopt a water quality control plan for the Bay-Delta that actually protects and restores healthy and abundant populations of fish and wildlife, and the Tribes and communities that depend on them.	
1146	23	V. The State Water Board Has Failed to Comply With CEQA a. The Recirculated SED Fails to Consider the Whole of the Action The State Water Board has violated CEQA because neither the Draft SED nor the Partially Recirculated SED analyzes the whole of the action as required by law. See Pub. Res. Code § 21065; Cal. Cod. Regs., tit. 14 ("CEQA Guidelines") § 15378. Instead, the Board has created a fractured and inscrutable set of environmental review documents that: fail to evaluate a complete range of regulatory alternatives alongside the new proposed project using common metrics; fail to evaluate the newly proposed project as a whole; and fail to analyze the entirety of the integrate Bay-Delta Plan, including objectives and a program of implementation for the lower San Joaquin River and Sacramento/Delta.	The State Water Board has taken public input seriously and adapted the project to arrive at the revised proposed Plan amendments, which are thoroughly and clearly described and analyzed in Chapter 13, Revised Proposed Plan Amendments. At the time the 2025 partially recirculated draft Staff Report containing Chapter 13 was released, the State Water Board had also prepared and released the program of implementation, water quality objectives, and the designation of beneficial uses, all of which the State Water Board accounted for in that recirculated analysis. Please see Common Responses 1.1, General Comments and 7.1, General CEQA and Approach to the Analysis, regarding the adequacy of public process and the adequacy of the project description, respectively. This comment includes several topics that are not related to whether the Staff Report addresses "the whole of the action" under consideration. The Staff Report's approach to the analysis

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		First, in the Draft SED, the State Water Board analyzed the potential environmental effects of several alternative unimpaired flow scenarios. Crucially, however, the Draft SED was released before the State Water Board had released its draft Program of Implementation in October 2024, which is an essential component of a water quality control plan. Cal. Water Code § 13050(j). Indeed, the State Water Board explained in November 2023 that after considering public comments on the substitute environmental document, the State Water Board, will develop and circulate draft proposed Sacramento/Delta changes to the Bay-Delta Plan, including the program of implementation, and will hold a public workshop to receive input. These draft Bay-Delta Plan amendments will include the specific draft regulatory text for the Sacramento/Delta updates to the Bay-Delta Plan itself and will be subject to a full public process. State Water Board, Revised Notice of Availability and Opportunity for Public Comment, Hearing and Staff Workshops on Draft Staff Report at 5 (Nov. 14, 2023). The Board has failed to provide the promised "full public process." Since release of the Draft SED in 2023, the State Water Board issued and then iteratively modified a proposed program of implementation, including through the addition of provisions on water supply adjustments for existing and new water rights. None of this was analyzed in the SED. As a consequence, the public has never had the opportunity to comment on the potential environmental impacts of a complete draft Bay-Delta water quality control plan, including the program of implementation. The State Water Board's provision of opportunity to comment on the program of implementation under the Porter-Cologne Act does not cure its failure to analyze and provide for public comment on the environmental effects of the Plan as a whole under CEQA. A complete analysis of the entire action is necessary to ensure that "environmental considerations do not become submerged by chopping a large project into many little ones-each with a minimal potential impact on the environment-which cumulatively may have disastrous consequences." Laurel Heights Improvement Assn. v. Regents of Univ. of Cal., 47 Cal.3d at 396 (quoting Bozung v. Local Agency Formation Comm'n, 13 Cal.3d 263, 283-84 (1975)).	of alternatives is explained in Common Response 7.24, Alternatives Analysis. CEQA does not require alternatives to be analyzed at the same level of detail as the project under review, nor does it require that every aspect of the project be reproduced in the range of alternatives. Moreover, neither CEQA nor Porter-Cologne Water Quality Control Act require the adoption of one particular set of Plan amendments that is the most protective of a specific resource or beneficial use. Recent changes to CVP and SWP operations are not a part of the revised proposed Plan amendments and thus are not relevant to the question of whether the Staff Report considers the complete project. Please see Common Response 1.3, Revised Proposed Plan Amendments, regarding comments about the 2025 Record of Decision and 2025 Incidental Take Permit.

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		The Partially Recirculated SED does not satisfy the State Water Board's CEQA obligations. Notably, the Recirculated SED only analyzes the effects of the currently proposed project; it fails to analyze the potential environmental effects of a reasonable range of alternatives, including alternatives that would provide for 55, 65, and 75 percent of unimpaired flow, respectively. [Footnote 20: While some of the modeling in the appendices includes analyses of other alternatives, including 55 percent of unimpaired flow, the body of the Recirculated SED only analyses the voluntary agreement and 55w/WSA scenarios, and the appendices never analyze the 65 percent alternative from the Draft SED.] In addition, the Recirculated SED includes analyses that were never applied to the alternatives in the Draft SED, including considering how frequently certain alternatives would achieve "new flow thresholds" that were developed "[f]ollowing receipt of public comments on the 2023 Draft Staff Report. See Recirculated SED at 13-195 to 13-197; compare Draft SED at 7.6.2-38 (flow thresholds) with Recirculated SED at 13-204 (including new ecological flow thresholds). As the Recirculated SED admits, "Overall, these additional thresholds demonstrate that higher flows than those originally described in the 2023 Draft Staff Report confer benefits for outmigration survival or population growth rates." Recirculated SED at 13-196. Yet despite recognizing that these flow thresholds demonstrate that higher flows are necessary to achieve fishery benefits, the State Water Board has failed to conduct this analysis for the 55 percent, 65 percent, and 75 percent alternatives analyzed in the Draft SED. Equally important, the Recirculated SED demonstrates that changes to the Bureau of Reclamation's operation of the Central Valley Project significantly alter Delta inflows, Delta outflows, Cold Water Habitat, and Interior Delta flows that would result under the Revised Draft Plan. In particular, these changes reduce Delta outflows that would result under the voluntary agreement or the newly proposed regulatory pathway (55% unimpaired flow with water supply adjustments ("55w/WSA")) scenarios and result in more negative Old and Middle River ("OMR") flows under these scenarios. See, e.g., Recirculated SED at 13-405. Again, the State Water Board has failed to analyze the effects of	

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		these changes on each of the alternatives analyzed in the SED, including the 55 percent and 65 percent unimpaired flow alternatives. Changes to essential metrics between the Draft and Partially Recirculated SED further undercut the Board's attempt to provide a complete analysis by slotting in Chapter 13 rather than revising and recirculating the full SED. For instance, the Board has changed the environmental baseline between the Draft SED and Recirculated SED. Compare Draft SED at 7.6.2-37 (showing that under baseline conditions in the Draft SED, median X2 is located at 68 km) with Recirculated SED at 13-313 to 13-316 (showing that under baseline conditions in the Recirculated Draft SED, median X2 is located at 69 km). In other places, the Recirculated SED's analysis of flows under the voluntary agreements includes flows from the San Joaquin River, Tuolumne River, or lower San Joaquin River flow objectives (e.g., Recirculated SED at 13-204) even though those flows were excluded from similar analysis in the Draft SED, biasing the analysis and making it appear that flows under the voluntary agreements perform better than the other unimpaired flow alternatives. Because the State Water Board never analyzed the whole of the action—that is, a Bay-Delta Water Quality Control Plan that includes proposed beneficial uses to be protected, water quality objectives, a program of implementation (Cal. Water Code § 13050(j))—for a complete range of alternatives (including 55, 65, and 75 percent unimpaired flow alternatives), the State Water Board has violated CEQA.	
1146	24	Second, the new Chapter 13 fails to consider the environmental effects of the entire project: adoption of a voluntary agreement for specific water rights holders alongside a 55w/WSA flow scenario for all other water rights holders who are not part of the voluntary agreement. As the Recirculated SED admits, The SacWAM modeling of the VA scenario is focused on the HRL flow commitments and does not explicitly model the provision of additional flows from water right holders on the regulatory pathway that are not part of the VA pathway.	Regarding the analysis of alternatives and changes to CVP and SWP operations, please see the response to comment 1146-23. The Staff Report provides analysis of the primary aspects of the regulatory pathway in Chapter 7, Environmental Analysis, and of the VA pathway in Chapter 9, Proposed Voluntary Agreements. The revised proposed Plan amendments combine these two pathways, along with certain changes, such as the water supply adjustments. Chapter 13, Revised Proposed Plan Amendments, provides analysis of this aggregated project. The comment

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		Recirculated SED at 13-50 (emphasis added). It is impossible for the State Water Board, let alone the public, to understand how Delta inflows and outflows resulting from adoption of the proposed project would compare to flows under the voluntary agreement pathway alone, even though this regulatory pathway is part of the proposed project. [Footnote 21: In addition, the Recirculated SED does not model or analyze all the recent changes to the Bureau of Reclamation's operations of the CVP resulting from the 2024 biological opinions, as well as from the changes imposed in 2025 as a result of the adoption of Action 5. See Recirculated SED at 13-48.] To comply with its duties under CEQA, the Board should have recirculated the entire SED with an updated evaluation of the project as a whole alongside a complete range of alternatives to provide decisionmakers and the public an informed view of the tradeoffs. Instead, differences in the analyses and baseline between the Draft SED and Partially Recirculated SED make it impossible to meaningfully compare alternatives. The Recirculated SED does not even attempt to compare the results of the proposed project with the unimpaired flow alternatives so that the public and decisionmakers can clearly see how the alternatives compare to each other and the proposed project. [Footnote 22: Similarly, the Draft SED fails to compare the analysis of the voluntary agreement alternative with the other alternatives, relegating the analysis of the voluntary agreement to a separate chapter, and it likewise never presents model results for all the alternatives in a single table, such as the frequency of achieving certain ecological flow thresholds.] While the Partially Recirculated SED includes analyses comparing the voluntary agreements or 55w/WSA scenario with baseline, the Recirculated SED never compares these scenarios with the 55 percent of unimpaired flow, 65 percent of unimpaired flow, or 75 percent of unimpaired flow alternatives considered in the SED. As a result, the reader cannot easily—if at all—assess how the voluntary agreement pathway compares to the other alternatives.	quotes a sentence from Chapter 13's explanation of its approach to analysis. It does not quote the rest of the paragraph: "The water rights identified in Appendix B.1," that is, the rights included in the flows modeled for the VA pathway, "constitute the majority of the water diverted and used within the Sacramento/Delta watershed. While some additional flows would be expected under the VA pathway from water rights not included in Appendix B.1 that are on the regulatory pathway the resulting flows and effects would fall between the results of the VA pathway and the regulatory pathway results." The "missing" water rights for the VA pathway would increase outflow, improving the VA pathway's ability to meet biological goals beyond what is directly reported. The analysis, providing model results for two scenarios and explaining that actual results are likely to fall in between, is sufficient to support the Staff Report's conclusions regarding the project's environmental impacts and its effectiveness. Please See Common Response 6.1, Sacramento Water Allocation Model and Changes in Hydrology and Water Supply, for further information regarding modeling inputs and outputs. Please see Common Response 7.24, Alternatives Analysis, regarding the Staff Report's approach to comparing the alternatives, including the revised proposed Plan amendments. Chapter 13, Revised Proposed Plan Amendments, compares the revised proposed Plan amendments to the alternatives originally described in the 2023 draft Staff Report. Appendix H4, Impact Summary Table for Alternatives, of the final Staff Report provides a tabulated comparison of alternatives, including the proposed Plan amendments and the revised proposed Plan amendments.

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1146	25	Third, the Board has unlawfully piecemealed the environmental review of the entire Bay-Delta Plan update by segmenting environmental review of the lower San Joaquin/Southern Delta update from the Sacramento/Delta update. As the revised Plan itself admits, the two components form interrelated parts of an overall plan for an integrated watershed. See, e.g., Revised Plan at 7 ("The most recent updates to the Bay-Delta Plan and the 2018 updates to the Bay-Delta plan are intended to work together to provide for the comprehensive update of the Bay-Delta Plan.") And the two sets of objectives are inseparably intertwined in their function and environmental effects. See, e.g. Recirculated SED at 13-19 ("The required Delta outflow would be calculated by adding up the applicable required inflows from the Sacramento/Delta tributaries, including an equivalent amount of Sacramento River Valley Floor and Delta accretions, and required lower San Joaquin River flows making appropriate adjustments for natural losses."). And although the 2009 and 2012 Notices of Preparation purported to phase environmental reviews, they identified updates to the "water quality objectives and the program of implementation in the Bay-Delta Plan" as the complete project under consideration. 2009 NOP at 3; see also 2012 NOP at 4 (notifying the public "that the State Water Board intends to prepare a SED for the comprehensive review of the 2009 Bay-Delta Plan, which will evaluate potential modifications to current, and establishment of new, objectives and the program of implementation for those objectives"). Yet the Board has never comprehensively analyzed the environmental effects of this entire interrelated action. Its failure to do so compromises informed decision-making and constitutes a classic violation of CEQA's proscription on piecemeal environmental review. See, e.g., Tuolumne County Citizens for Responsible Growth v. City of Sonoma, 155 Cal.App.4th 1214, 1229 (2007) ("[W]hen one activity is an integral part of another activity, the combined activities are within the scope of the same CEQA project.") The Board's failure to provide a complete environmental review document that evaluates the entirety of the action and a reasonable range of alternatives using common metrics undercuts CEQA's public information mandate and vitiates "informed self-government." Laurel Heights, 47 Cal.3d at 392.	Please see Common Response 1.2, Water Quality Control Planning Process, regarding the relationship to the 2018 LSJR/SD Update to the Bay-Delta Plan.

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1146	26	b. The State Water Board Has Violated CEQA Because the Notice of Preparation Fails to Accurately Describe the Proposed Project The State Water Board further violates CEQA because neither its initial 2009 Notice of Preparation ("2009 NOP") nor its Supplemental Notice of Preparation issued in 2012 ("2012 NOP") accurately describes the proposed project, its geographic scope, and probable environmental effects. See CEQA Guidelines § 15082(a)(1). As discussed in Section III below, this CEQA violation is particularly damaging because the Board relies on it to avoid its obligations to conduct meaningful government-to-government consultation with Native American Tribes as required by Assembly Bill (AB) 52. First, the proposed project in the Recirculated SED has changed dramatically from what was described in the 2009 NOP and 2012 NOP. In the 2009 NOP, the State Water Board described the project as a review and update of water quality objectives, including flow objectives, and the program of implementation, although the notice only sought comments concerning water quality objectives for South Delta Salinity and San Joaquin River flow objectives. 2009 NOP at 2. The 2012 NOP likewise explained that the proposed project is a review of potential changes to current objectives in the 2006 Bay-Delta Plan, potential adoption of new objectives, and modifications to the program of implementation for those objectives, focused on the comprehensive review of the Bay-Delta Plan, excluding South Delta salinity and San Joaquin River flow objectives. 2012 NOP at 2, 6. The 2012 NOP further explained that the 2009 staff report, which evaluated potential changes to the Bay-Delta Plan, recommended further review of the following issues: (1) Delta outflow objectives, (2) export/inflow objectives, (3) Delta Cross Channel Gate closure objectives, (4) Suisun Marsh objectives; (5) potential new reverse flow objectives for Old and Middle Rivers; (6) potential new floodplain habitat flow objectives; (7) potential changes to the monitoring and special studies program; and (8) other potential changes to the program of implementation. 2012 NOP at 3. Similarly, the 2012 NOP explained that	A notice of preparation does not bind or constrain the lead agency's discretion to propose changes to the project. CEQA Guidelines section 15082 does not require, or even provide for, a supplemental or revised notice of preparation. Please see Staff Report Section 13.2, Planning Process, regarding the evolution of the revised proposed Plan amendments. As the commenter notes, the VAs were in part developed through negotiations that did not include the State Water Board. See Common Response 1.1, General Comments, for more information on the VA development process. Upon inclusion in the 2023 draft Staff Report, VAs were subject to all of the procedural requirements applicable to a substitute environmental document prepared pursuant to a certified regulatory program under Public Resources Code section 21080.5 and CEQA Guidelines section 15250 et seq, including public review and comment pursuant to Government Code 2101080.5(d)(3)(B) and 23 CCR § 3779. Section 13.3.9.4, Tribal Engagement and Traditional Ecological Knowledge, of the 2025 partially recirculated draft Staff Report discusses the tribal engagement process and avenues through which the State Water Board would incorporate tribal input into the Bay-Delta Plan. As described there, the revised proposed Plan amendments include provisions for considering and incorporating Traditional Ecological Knowledge, tribal feedback, and perspectives shared by California Native American Tribes. Additionally, the revised proposed Plan amendments would require HRL participants to submit annual reports that include tribal engagement and outreach. See Staff Report Chapter 11, Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses. Please also see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, concerning traditional ecological knowledge and , for more information on tribal outreach. Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion of the State Water Board's authority. Regarding the potential for additional flows from non-VA parties,

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		Specifically, the State Water Board seeks input and information to support whether the water quality objectives and associated program of implementation discussed above should be modified or whether they should remain the same. In particular, the State Water Board seeks input and information to support whether Delta outflows, Delta inflows, and water project operational constraints should be increased, decreased, or remain the same. Id. at 4. Even as the State Water Board was holding public workshops on the Bay-Delta Water Quality Control Plan, the State of California was simultaneously engaging since at least 2016 in extensive confidential, nonpublic negotiations with water contractors and water rights holders over voluntary agreements for the Bay Delta Water Quality Control Plan. Those negotiations excluded all Native American Tribes, all environmental justice organizations, most conservation groups, and all members of the public. And the State required participants to sign nondisclosure agreements, furthering shrouding deliberations in secrecy. Those exclusionary negotiations led to a framework proposal for a voluntary agreement submitted by the California Natural Resources Agency to the State Water Resources Control Board in 2018, a voluntary agreement submitted by the California Department of Water Resources and California Department of Fish and Wildlife in March 2019, and a memorandum of understanding for the voluntary agreements submitted in 2022. While the 2023 Draft SED included the voluntary agreements as an alternative in a standalone chapter, the Partially Recirculated SED makes the voluntary agreements the proposed project to be adopted as an adjudicatory settlement under section 11415.60 of the Government Code. [Footnote 23: As explained at length in DTEC's January 2025 comments on the prior Draft Bay-Delta Plan, the Legislature adopted Government Code section 11415.60 to codify implied agency dispute resolution. The State Water Board exceeds Legislative authorization by relying on this provision to allow water rights holders to contract around the regulatory update to water quality control standards required by the Porter-Cologne Act and Clean Water Act. See DTEC Comments on Draft Bay-Delta Plan at 15-16 (Jan. 10, 2025).] See,	please see the response to comment 1146-24. Regarding the scientific support for habitat and temperature measures, please see Staff Report Chapter 3, Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, and Common Response 3.1, Fish Protection.

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		e.g., Recirculated SED at 13-1 to 13-2, 13-20; Revised Draft Plan at 61. The proposed project would thus provide for vague commitments to restore physical habitat in lieu of the measurable improvements in instream flow required by other alternatives in the Draft Revised Plan. Moreover, in the Recirculated SED, the State Water Board admits that the majority of water rights holders in the Bay-Delta watershed are parties to the voluntary agreements, such that little or no additional flow would occur if the voluntary agreement pathway were adopted. The Recirculated SED does not even model whether additional flows by non-parties would occur if the voluntary agreement pathway is adopted: The SacWAM modeling of the VA scenario is focused on the HRL flow commitments and does not explicitly model the provision of additional flows from water right holders on the regulatory pathway that are not part of the VA pathway. The water rights identified in Appendix B.1 constitute the majority of the water diverted and used within the Sacramento/Delta watershed. While some additional flows would be expected under the VA pathway from water rights not included in Appendix B.1 that are on the regulatory pathway the resulting flows and effects would fall between the results of the VA pathway and the regulatory pathway and would be much closer to the VA pathway results. Recirculated SED at 13-50 (emphasis added). Thus, the Revised Draft Plan proposes that the voluntary agreement pathway effectively is the only action to define and implement the water quality objectives in the Plan. However, neither the 2009 NOP nor the 2012 NOP notified the public and other agencies of these exclusionary negotiations over a proposed voluntary agreement, nor did either notice identify the voluntary agreement pathway that resulted from these exclusionary negotiations as the proposed project. To the contrary, the 2012 NOP explicitly states that, "The proposed Project does not include amendments to water rights and other measures to implement a revised Bay-Delta Plan. A separate Environmental Impact Report will be prepared for these actions." 2012 NOP at 6. Despite this assurance, the proposed	

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		project now includes this voluntary agreement pathway to implement a revised Bay-Delta Plan and purports to analyze it through the SED, such that a separate Environmental Impact Report would not be prepared to analyze implementation of these measures. The State Water Board has issued numerous notices under the Porter-Cologne Act notifying the public of the significant changes in the proposed project resulting from the consideration of voluntary agreements, including notices dated January 5, 2023, January 19, 2023, September 28, 2023, and March 8, 2024. Still, the State Water Board has failed to issue a supplemental Notice of Preparation to notify the public and agencies, despite the significant changes to the project that have occurred. Because the 2009 NOP and 2012 NOP fail to accurately inform the public and decision-makers regarding the description of the proposed project, including the contemplated adoption of a voluntary agreement pathway to implement the revised Bay-Delta Plan without a separate Environmental Impact Report, the State Water Board violates CEQA's noticing requirements. CEQA Guidelines § 15082. Adding to the unlawful omission of voluntary agreements from the NOPs, the Board has made other significant changes to the defined scope of the project without issuing a revised NOP for the changed project. For instance, the Revised Draft Plan now includes a proposed Cold Water Habitat objective, which is intended to affect the operation of upstream reservoirs by ensuring that they retain sufficient cold water in storage and provide suitable water temperatures to protect salmon and other native fish species. Revised Draft Plan at 17. While DTEC strongly supports improved temperature management to protect and restore salmon and other native fish species, neither the 2009 NOP nor the 2012 NOP notified the public and responsible agencies that changes to reservoir operations and temperature management in the upper watershed were part of the proposed project. See 2012 NOP at 3, 4. Similarly, neither the 2009 NOP nor 2012 NOP notified the public that the proposed project would include physical habitat restoration-particularly habitat restoration in lieu of instream flow. Again, while DTEC supports habitat restoration and emphasizes the importance of including	

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		Tribes in habitat restoration measures to provide for respectful exercise of Tribal Ecological Knowledge to inform effective habitat restoration, DTEC strongly opposes substitution of habitat for flow-which lacks basis in both TEK and Western science. Neither Notice of Preparation notified the public that physical habitat restoration was being considered for inclusion as part of the proposed project.	
1146	27	Second, the geographic scope of the proposed project is also inconsistent with the Notices of Preparation issued by the State Water Board. The 2012 NOP described the project location as the Sacramento-San Joaquin Delta, and it explained that "[t]he area of potential environmental effects" encompassed the watershed of the Bay-Delta. 2012 NOP at 6. It further explained that "a separate SED is being prepared to address updates to the water quality objectives for . . . San Joaquin River flow objectives for the protection of fish and wildlife," id., and that the State Water Board was not soliciting public comments regarding San Joaquin River flow objectives in response to the notice of preparation, id. at 2. In contrast, the proposed project now includes "flow and habitat restoration commitments to be provided within the following watersheds: the Sacramento River, Feather River, Bear River, Auburn Ravine, Yuba River, American River, Putah Creek, Mokelumne River, Friant area, and the Delta." Revised Draft Plan at 64; see Recirculated SED at 13-20. In addition, the proposed project also includes the management of flow from the San Joaquin River; the voluntary agreement includes "San Joaquin River Restoration Program (SJRRP) flows of up to 50 TAF," based on a proposed voluntary agreement with the Friant Water Authority. Revised Draft Plan at 71. Rather than simply causing effects throughout the watershed, the proposed project now specifically includes actions throughout the watershed, including flow and habitat restoration, that were not mentioned in the notices of preparation. And even though the 2012 NOP specifically did not include flows from the San Joaquin River and did not seek comments on management of San Joaquin River flow objectives, the proposed project now includes the management of flows from the San Joaquin River. As explained above, the State Water Board has plainly designed the two	Regarding the project's notices of preparation, please see the response to comment 1146-26. Regarding the extent of tribal consultation, please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses.

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		phases of the Bay-Delta Plan updated to comprise an interrelated whole, but it failed to plainly say so in its notices of preparation or to consider integral components in a single environmental review evaluated their combined effects. Similarly, the Cold Water Habitat objective in the proposed Bay-Delta Plan now specifically requires implementation of actions to manage carryover storage at, and water temperature below, upstream reservoirs in the Sacramento, Feather, and other rivers, which is outside the geographic scope of the project location in the Notices of Preparation (the Sacramento-San Joaquin Delta). While the 2012 NOP included the Sacramento River and other parts of the watershed as part of the "area of potential environmental effects," these areas were not included in the geographic scope of the project in the Notices of Preparation, whereas now the proposed project specifically includes actions in these upstream areas. Because the project has changed substantially from that described in the Supplemental Notice of Preparation issued in 2012, the State Water Board must issue a revised Notice of Preparation to comply with CEQA. As discussed below, remedying this violation is critical to ensure meaningful consultation with Native American Tribes, as required by law.	
1146	28	c. The Partially Recirculated SED Fails to Accurately Assess the Effects of the Proposed Project and Alternatives on Harmful Algal Blooms, and the Proposed Mitigation Measures Fail to Reduce these Impacts to a Less Than Significant Level In the Partially Recirculated SED, the State Water Board admits that adoption of the Revised Draft Plan may cause potentially significant environmental impacts because of the proliferation of harmful algal blooms in the Delta, which can threaten human health and safety. Recirculated SED at 13-356, 13-411. However, as discussed above, the State Water Board has failed to accurately and adequately assess the likely effects of the Revised Draft Plan on harmful algal blooms, and the impacts are likely to be much more significant than identified in the Partially Recirculated SED. Equally important, the mitigation measures proposed in the Bay-Delta Plan, which largely comprise	Please see the response to Comment 1146-21. Section 13.7.21.1, Cumulative Impacts, Growth-Inducing Impacts, and Significant Irreversible Environmental Changes, of the 2025 partially recirculated draft Staff Report includes an analysis of the effects of the Sites Reservoir Project and the Delta Conveyance Project on Delta outflow. and concludes that changes to existing water diversions or new water diversions could occur that could affect Delta outflows, and water quality to varying degrees compared to baseline that could result in potentially significant cumulative impacts on water quality depending on the specific actions that are implemented. These impacts could be reduced by the provision for the protection of the flow base. See Common Response 1.3, Revised Proposed Plan Amendments, for further discussion of the provision for the protection of the flow base. Section 13.7.21.1 of the final Staff Report also includes

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		increased HAB monitoring and special studies, fail to reduce the impacts from harmful algal blooms to a less than significant level. For instance, the modeling and analyses used in the Draft SED and Recirculated SED fail to account for the effects of climate change, which is likely to exacerbate the frequency and extent of harmful algal blooms in the Delta because climate change is increasing air and water temperatures, and increasing the frequency and severity of drought conditions. Yet the State Water Board's modeling uses historic hydrology and climatology, see Draft SED, Appendix A1, at A1-1 to A1-2, even though climate change has already significantly affected hydrology and temperatures compared to what occurred decades ago during the modeling period. The Recirculated SED appears to lack any modeling of water temperatures in the Delta, and thus ignores the effects of climate change in increasing water temperatures and increasing the formation of harmful algal blooms in the Delta; similarly, the Recirculated SED appears to ignore potential changes in turbidity (water clarity) from changes in flow, even though it is well understood that decreased turbidity (increased water clarity) would likely increase the frequency and extent of harmful algal blooms. And the modeling fails to account for changes in instream flows that are resulting and will result from climate change compared to historic conditions. By contrast, other state and federal agencies do not use historic hydrological and meteorological data but instead use climate-transformed historic data to account for the effects of climate change that have already been observed, as well as those expected over the coming years. Similarly, the modeling used in the Draft SED and Partially Recirculated SED fails to account for reasonably foreseeable reductions in Delta inflows and outflows compared to what was modeled in the documents. The Recirculated SED recognizes that reductions in Delta inflow and outflows, either during the January-June period or in the summer/fall months, would likely increase the frequency and extent of harmful algal blooms. Recirculated SED at 13-355 to 13-366. And yet, the Recirculated SED fails to accurately assess changes in flows that are likely to result if the Revised Draft Plan is adopted.	an analysis of the cumulative impacts of Temporary Urgency Change Petitions that may interact with the revised proposed Plan amendments. That the proposed mitigation measures for harmful algal blooms (HABs) may not reduce impacts from HABs to a less-than-significant level does not indicate a deficiency under the California Environmental Quality Act, which requires the adoption of all feasible mitigation measures and disclosure of significant effects, but does not mandate that all impacts be reduced to less than significant. Please refer to Common Response 1.3, Revised Proposed Plan Amendments, regarding comments on other water supply projects and for information on Temporary Urgency Change Petitions. See Common Response 3.1, Fish Protection, for a discussion of flow effects on water temperature in the Delta.

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		For instance, the modeling appears to completely ignore the use of Temporary Urgency Change Petitions, which have been used in numerous years over the past decade to weaken or waive water quality objectives in the Delta, particularly Delta inflow and outflow objectives. Thus, approving Temporary Urgency Changes under the voluntary agreement pathway likely would result in less Delta outflow than under baseline conditions, particularly during drier years, which would increase the frequency and extent of harmful algal blooms. The Revised Draft Plan and Recirculated SED fail to address this important aspect of the problem. Under the Revised Draft Plan, neither the voluntary agreement nor the regulatory pathway prohibits the use of Temporary Urgency Change Petitions to weaken or waive water quality objectives during future droughts. And as the State Water Board has recognized, the U.S. Bureau of Reclamation has already adopted plans to not merely continue to rely on the use of Temporary Urgency Change Petitions to weaken Delta outflow requirements in the coming years, but to do so "on a consistent and prolonged basis." See letter from State Water Board to the U.S. Bureau of Reclamation RE Action 5 Assumptions and Environmental Compliance at 2, 5, 7 (Nov. 10, 2025), available at https://www.politico.com/f/?id=0000019a-eb2b-d516-affef990000. Yet despite recognizing that the use of temporary urgency change petitions is a problem-particularly for the voluntary agreement pathway, given that it largely maintains the status quo-and despite recognizing that the Bureau of Reclamation plans to use Temporary Urgency Changes on a "consistent and prolonged basis," the Recirculated SED wholly fails to consider this important aspect of the problem. In addition, the modeling of Delta inflows and outflows fails to adequately account for future water diversions, like proposed Delta Conveyance Project and Sites Reservoir. The Recirculated SED admits that approval of these projects could "further reduce" Delta outflows. Recirculated SED at 15-406. Approval of these and other future water supply projects could reduce Delta outflows by hundreds of thousands of acre feet. Id. at 15-406 to 15-408. However, the Recirculated SED never actually models the likely Delta outflows that would occur if these and/or other projects are approved. It never models how much of the Delta	

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		outflow would be required under the proposed plan amendments and how much of the Delta outflow would be uncontrolled flows that could be diverted in the future with new infrastructure. [Footnote 24: As discussed above, potential new waters include both water storage and conveyance projects like Sites Reservoir and the Delta Conveyance Project as well as major new sources of water demand, such as burgeoning AI-driven data centers. See Restore the Delta, The Environmental Justice Implications of Artificial Intelligence Infrastructure in the Sacramento-San Joaquin Delta, supra.] And it never demonstrates that Delta outflows would be greater than baseline conditions-which the document repeatedly concludes is what will result from adoption of the Revised Draft Plan-if these or other water supply projects are approved. In fact, if either or both of the Delta Conveyance and Sites Reservoir projects are approved, Delta outflows in the January to June period will almost certainly be reduced compared to the degraded baseline conditions. As a result, the record fails to demonstrate that Delta outflows are likely to increase compared to the degraded baseline, despite the conclusions in the Recirculated SED, nor does the Revised Draft Plan require that Delta outflows increase compared to baseline conditions. Taken together, these flaws demonstrate that the State Water Board has failed to adequately consider and analyze the effect of the proposed project on the frequency and extent of harmful algal blooms. Finally, while the Recirculated Draft admits that approval of the proposed project is likely to result in harmful algal blooms that cause a significant environmental impact to Recreation under CEQA, the proposed mitigation measures fail to reduce these impacts to a less than significant level. The proposed mitigation measures largely focus on expanded water quality monitoring for harmful algal blooms and requires certain scientific studies, which could be used in the future "during the periodic review process to determine whether changes are needed to the Bay-Delta Plan or its implementation to address HABs." Recirculated SED at 13-37 to 13-39. While DTEC supports expanded monitoring and special studies regarding harmful algal blooms, these mitigation measures would not address the flow and water	

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		quality conditions that cause the formation of harmful algal blooms, nor would these mitigation measures reduce or ameliorate the proliferation of harmful algal blooms in the Bay-Delta that impair beneficial uses. Because the mitigation measures are not designed to and would not reduce the frequency or extent of harmful algal blooms, the State Water Board has failed adopt all feasible mitigation to reduce these impacts to a less than significant level as CEQA requires.	
1146	29	d. The State Water Board Has Failed to Adequately Consider and Mitigate Cumulative Impacts While the State Water Board recognizes that future water supply projects like the Delta Conveyance Project and Sites Reservoir could "further reduce" Delta outflows, the Partially Recirculated SED fails to disclose that adoption of the Revised Draft Plan is likely to result in significant cumulative impacts, and the measures proposed to "reduce possible cumulative impacts" fail to reduce those impacts to a less than significant level. New water supply projects like the Delta Conveyance Project and Sites Reservoir could reduce Delta inflows and outflows compared to baseline conditions, and adversely affect Interior Delta Flows and Cold Water Habitat objectives, worsening conditions for fish and wildlife and other beneficial uses that depend on healthy fish populations, including Tribal Beneficial Uses. The Recirculated SED asserts that other provisions of the Revised Draft Plan, particularly provisions that would defer what water supply adjustments apply to these and other water rights granted on or after December 31, 2025, would reduce this to a less than significant level. See Recirculated SED at 13-408 to 13-409; Revised Draft Plan at 46. However, neither these nor other measures in the Revised Draft Plan require that the Delta inflows, Delta outflows, or Interior Delta Flows identified in the Recirculated SED actually occur if new water supply projects are approved, nor does the Revised Draft Plan require that Delta inflows and Delta outflows be greater than baseline conditions if these future water supply projects are approved. For instance, the Recirculated SED asserts that these measures "would prevent Delta outflow levels from being reduced to levels close to the [Minimum Required Delta Outflow]." Recirculated SED at 13-	Section 13.7.21, Cumulative Impact Analysis, of the 2025 partially recirculated draft Staff Report addresses cumulative impacts of past, present, and reasonably foreseeable probable future projects. Please refer to Common Response 7.23, Cumulative Impact Analysis, for responses to comments related to the consideration, analysis, and mitigation of cumulative impacts associated with Sites Reservoir, the Delta Conveyance Project, and other past, present, and reasonably foreseeable probable future projects. The revised proposed Plan amendments direct the State Water Board to consider imposing requirements on new water supply projects to ensure that future authorizations for the diversion and use of water are consistent with and support the salmon protection, fish viability, inflow, inflow-based Delta outflow, and interior outflow objectives of the Bay Delta Plan. Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on the protection of base flows applicable to new water supply projects.

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		213. However, the Minimum Required Delta Outflow would be millions of acre feet less Delta outflow than baseline conditions, and under the Minimum Required Delta Outflow nearly all of the ecological flow thresholds for fish are never achieved. See id. at 13-204. Under baseline conditions, multiple fish species "are in crisis." Draft SED at 3-134. Reducing Delta inflows and outflows below baseline conditions as a result of approval of the Revised Draft Plan and new water supply projects would constitute a significant cumulative adverse environmental impact under CEQA, as the record demonstrates that further reducing Delta inflows and outflows is likely to further reduce the abundance and productivity of species listed under the California Endangered Species Act to less than self-sustaining levels. CEQA Guidelines § 15065(a)(1). The measures proposed in the Revised Draft Plan, including provisions regarding future permit conditions for new water supply projects, fail to ensure that the cumulative effect of the Revised Draft Plan is an increase in Delta inflows and Delta outflows compared to baseline conditions. Because the proposed measures fail to reduce this impact to a less than significant level, the State Water Board has violated CEQA.	
1146	30	e. The State Water Board Has Failed to Adequately Consider the Effects of the Trump Administration's Lack of Support for the Voluntary Agreement The Recirculated SED assumes that the U.S. Bureau of Reclamation will fully fund and implement the voluntary agreements. The Bureau of Reclamation is a necessary party to the voluntary agreements because it operates diversion facilities in the Delta and numerous upstream reservoirs covered under the Revised Draft Plan, it holds water rights that are essential to implement the voluntary agreement pathway, and it would need to contribute substantial funding to implement the voluntary agreements. Yet the U.S. Bureau of Reclamation has not committed to implement the voluntary agreements, it has proposed operations of the Central Valley Project that are inconsistent with the Revised Draft Plan, and Appendix A1 of the Revised Draft Plan does not include key Bureau of Reclamation	Please refer to Common Response 1.3, Revised Proposed Plan Amendments, on the enforceability of the VA pathway, and continuation, modification, or termination of the VA pathway. See also Common Response 1.5, Trinity River, for a discussion of the Board's ability to enforce state law requirements against the Bureau of Reclamation. See Section 13.4.6, Sensitivity Analysis for 2025 Record of Decision and 2025 Incidental Take Permit, for information on the Board's sensitivity analysis to consider the range of effects under the implementation of Action 5 (authorized in the Reclamation's 2025 Record of Decision) and DWR's amendments to the Incidental Take Permit (ITP) issued for State Water Project operations. See Common Response 1.3, Revised Proposed Plan Amendments, for responses to comments received regarding the 2025 Record of Decision and ITP changes.

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		water rights that would be necessary to implement the voluntary agreement pathway. As such, the State Water Board has failed to adequately consider whether the voluntary agreement pathway is financially, contractually, or operationally viable. It has also failed to evaluate the environmental impacts if the Department of Water Resources or other parties to the voluntary agreements were to seek to implement a revised proposal without the participation of the Bureau of Reclamation. While the Recirculated SED assumes that the Bureau of Reclamation will participate in the voluntary agreements, the water rights included in Appendix B1 make participation ambiguous. For instance, numerous contractors to the Central Valley Project are proposed to participate in the voluntary agreements, including Sacramento River Settlement Contractors, Sacramento River water service contractors, American River water service contractors, and Central Valley Project contractors that receive water from the Delta. However, Appendix B1 excludes the water rights held by the U.S. Bureau of Reclamation on the Sacramento River. Revised Draft Plan, Appendix B1 at B1-84 to B1-94. In addition, Appendix B1 appears to erroneously include numerous claimed water rights on the Sacramento River that have been settled in exchange for contracts with the U.S. Bureau of Reclamation. Id. The contractors to the Central Valley Project generally lack sufficient control over the facilities and water diversions of the Central Valley Project to be able to compel the implementation of the voluntary agreements if the Bureau of Reclamation refuses to participate. The State Water Board has failed to consider this important aspect of the problem. Nor has the Bureau of Reclamation committed to participate in the voluntary agreements. Indeed, as part of adopting Action 5 in 2025, the Bureau of Reclamation eliminated requirements in the 2024 biological opinions to implement provisions of the voluntary agreement. [Footnote 25: These problems also occur under Porter-Cologne, where the lack of participation of the Bureau of Reclamation would mean that the voluntary agreement would fail to achieve the Revised Draft Plan's objectives and would be inconsistent with the Program of Implementation.] Recirculated SED at 13-48. Action 5 would also	Common Response 1.3 also includes a discussion of temporary urgency change petitions (TUCPs). The draft Staff Report's analysis of the revised proposed Plan amendments addresses the full range of predicted hydrological conditions and does not assume the use of TUCPs. Please see Common Response 7.1, General CEQA and Approach to the Analysis, concerning the adequacy of the project description. This commenter has not specified which water rights it believes have been improperly included in Appendix B.1 as rights on the Sacramento River that have been settled in exchange for contracts with Reclamation. However, in general, settlement contractors retain their underlying claims of right even after reaching a settlement agreement with Reclamation. Depending on the circumstances and contract in question, water may still be diverted under these water rights. These water rights could be used to provide HRL flow commitments either via reductions in project deliveries or under the water right itself consistent with the accounting procedures established in Appendix B.1. Further, as discussed in Staff Report Section 13.3.4.3, HRL Flow Commitments, the list of water rights under which HRL participants propose to provide HRL flow commitments is subject to review by State Water Board staff and the public, and may be modified after Plan adoption.

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		harm fish and wildlife in the Delta and conflict with the proposed voluntary agreements. As the State Water Board commented to the Bureau of Reclamation, Action 5 assumes regular relaxations of D-1641 and significant changes to CVP 2024 LTO operations (described further below) that were not contemplated in the analyses performed by the State Water Board for the [voluntary agreement]. In addition, these changes would impact the accounting for the HRL in ways that have not been contemplated that would create significant complications. State Water Res. Control Bd., Letter to Adam Nickels, Action Regional Director, U.S. Bureau of Reclamation, RE Action 5 Assumptions and Environmental Compliance (Nov. 10, 2025). [Footnote 26: Available at https://www.politico.com/f/?id=0000019a-eb2b-d516-affef990000.] Indeed, under Action 5 the Bureau of Reclamation assumes expanded use of Temporary Urgency Change Petitions to waive water quality objectives, id. at 2, but the Recirculated SED fails to consider the effects of such waivers of water quality objectives as part of the voluntary agreement pathway. Finally, the Recirculated SED never considers the environmental impacts of a voluntary agreement pathway that excludes the Bureau of Reclamation. Without the participation of the Bureau of Reclamation, it does not appear that flow commitments on the Sacramento River or American River, or the foregone exports in the Delta, would be reasonably certain to occur. However, the Recirculated SED never analyzes the effect of a voluntary agreement pathway that excludes the Bureau of Reclamation, including how the coordinated operations of the State Water Project and Central Valley Project would be accomplished. If, as expected, the Bureau of Reclamation refuses to commit to participating in the voluntary agreements, the State Water Board would need to go back to the drawing board, redoing its plan of implementation and recirculating a revised SED evaluating the environmental impacts of such a proposal to proceed without the Bureau of Reclamation. The significant uncertainty at the core of the proposed program	

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		of implementation-regarding how the VA pathway will work, to whom it will apply, how it will function in combination with the regulatory pathway, and to which present and future water rights the regulatory pathway applies-means that the Board has still failed to produce the "accurate, finite, and stable description" of its project that CEQA requires. <i>Washoe Meadows Cmnty. v. Dept. of Parks & Rec.</i>, 1 Cal.App.5th 277, 287 (2017). Instead, its unstable and shifting descriptions of the Project meant that "meaningful public participation is stultified," and the public and the decisionmakers remain in the dark about what version of the proposed project will actually be implemented. <i>San Joaquin Raptor Rescue Ctr. v. County of Merced</i>, 149 Cal.App.4th 645, 656 (2007). For these and the other reasons set forth in the DTEC's Comments on the SED, the Board's continued reliance on the VAs with all their uncertainties means that the Board has failed to describe and evaluate the stable project that CEQA requires. See DTEC Comments on SED at 99-101.	
1146	31	CONCLUSION Thirty years after the current Bay-Delta water quality standards were developed, the Board is finally on the verge of updating standards that have proven incapable of meeting the needs of ecosystem and its communities, particularly in the face of an increasingly erratic climate and the long-overdue recognition of the racism and colonialism baked into water quality and water rights administration. DTEC welcomes the Board's investment in achieving this long-delayed update. Yet it mourns the many missed opportunities reflected in the Board's proposal to ensure that it would do consistent with science and the Board's legal duties, respectful of the role of Traditional Ecological Knowledge in informing sound water governance, consistent with the Board's commitments to racial equity, and capable of restoring an imperiled ecosystem resilient to the changing climate. DTEC urges the Board to reconsider its investment in adopting the unlawful and inequitable VAs and to instead proceed with the straightforward adoption of numeric minimum instream flow standards that the science, TEK, and the public support. DTEC urges the Board to finally adopt HABs standard and address this scourge on the health and welfare of the region's	Please see Common Response 4.1, Harmful Algal Blooms, for a discussion of HABs and water quality standards for cyanotoxins. See Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for a discussion of Traditional Ecological Knowledge/tribal knowledge and responses to tribal comments on the VAs.

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		environmental justice communities with the urgency the situation demands. And it urges the Board to make real on its commitment to allow the Delta's original stewards to reclaim their role in governing the Delta's water resources in robust cooperation with the State and informed through millennial knowledge of effective watershed governance over changing conditions.	
1147	1	The SRSC join in the comments submitted by the Northern California Water Association and Sacramento Valley Water Users ("NCWA Letter"). Likewise, the SRSC appreciate that the State Water Board has incorporated aspects of the Healthy Rivers & Landscapes ("Healthy Rivers") Proposal within the VA Pathway for implementing the proposed update to the Bay-Delta Plan. We write separately and briefly to emphasize the importance of the Healthy Rivers Proposal and ensure that our members can rely on the Board's Substitute Environmental Document ("SED") to deliver on the Proposal's commitments.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
1147	2	I. The SRSC Remain Committed to the Sacramento Mainstem Healthy Rivers Proposal. The Sacramento River watershed is an ecological and economic workhorse providing most of California's water, most of the fish, and a working landscape for habitat for birds migrating along the Great Pacific Highway and terrestrial and aquatic species who historically called the Sacramento Valley's floodplains home. The Sacramento River watershed is a highly managed system that reflects careful balancing of competing needs to make water resources go further with every drop of water used and reused, providing multiple benefits for the environment and water supply. Indeed, programs like the WRAP or the Floodplains Forward Coalition demonstrate that the SRS Contractors are committed to landscape-scale improvements to benefit all beneficial uses of water. It is with these integrated, multi-benefit and holistic approaches to managing water resources in the Sacramento Valley in mind that the Sacramento Mainstem Healthy Rivers and Landscapes ("Healthy Rivers") Proposal was developed.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
1147	3	These integrated, multi-benefit and holistic approaches form the core of the Healthy Rivers Proposal and are necessary to protect all beneficial uses of water in the Sacramento/Bay-Delta	Please see the peer reviewed 2017 Scientific Basis Report (Appendix B to the Staff Report), Staff Report Chapter 3, Scientific Knowledge to Inform Fish and Wildlife Flow

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		watershed. For the past fifty years, the State Water Board implemented the Porter-Cologne Water Quality Control Act in the Bay-Delta watershed by turning only one knob: restricting diversions. This approach has not yielded the intended results. In fact, conditions for species have worsened as instream flow requirements increased from Water Right Decision D-1485 through Water Right Decision D-1641. Indeed, the biological tools and modeling relied on to justify these flow measures often overestimate survival and fail to reflect actual conditions. It is time for a new approach to solve this existential problem. Forward progress towards reasonably protecting all beneficial uses requires a more holistic approach to add the missing ingredient: habitat for salmonid pawning, rearing, and out-migration. Science supports this approach. Indeed, the panel of seven neutral, independent scientific experts enlisted to review the Scientific Basis Report Supplement in Support of the Voluntary Agreements agreed that adding habitat to flow measures will benefit salmonid species [Footnote 2: Final response to Request for Review of the Final Draft Scientific Basis Report Supplement in Support of Proposed Voluntary Agreements For the Sacramento River, Delta, and Tributaries Update to the San Francisco Bay/Sacramento-San Joaquin Delta Water Quality Control Plan (Feb. 21, 2024) available at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/2024/2024.02.21-peer-reviewpackage.pdf].	Recommendations, and Common Response 3.1, Fish Protection, for information on the benefits of increased flow.
1147	4	The SRSC and its members are firmly committed to meeting the Sacramento Mainstem Healthy Rivers Proposal's goals of flow, habitat, and science. Our proposal is still to provide 100,000 acre-feet of new additional flow to the system through land fallowing and groundwater substitution. We urge the Board to adopt the flow contribution schedules as proposed by the Sacramento Mainstem Healthy Rivers Participants, which allow the SRS Contractors and Reclamation the operational flexibility to maintain a coldwater pool for winter-run later in the irrigation season. We further propose to contribute to the	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		addition of 137.5 acres of instream and 113.5 acres of spawning habitat, as well as 20,000 acres of floodplain habitat in the Colusa and Sutter Basins, respectively [Footnote 3: Proposed Implementation Agreement for the Healthy Rivers And Landscapes Program on the Sacramento River Mainstem Between the California Department of Water Resources, Sacramento River Settlement Contractors and Tehama-Colusa Canal Authority Parties (Mar. 29, 2024) Appendix 1 at Table 2.]. Lastly, we remain committed to the Healthy Rivers’ monitoring and science program so that we can improve the science and adaptively implement Healthy Rivers to achieve the Bay-Delta Plan’s water quality objectives.	
1147	5	II. Specific Comments to Chapter 13 of the Draft Staff Report. Delivering on the Healthy Rivers Proposal’s commitments will require separate compliance with the California Environmental Quality Act—and potentially the National Environmental Policy Act—for implementing specific projects. This separate environmental review in turn must rely on the State Water Board’s Bay-Delta Plan Update. Given the relative timing, implementing the Healthy Rivers Proposal on January 1, 2027 will be challenging if the State Water Board adopts the Bay-Delta Plan Update in late 2026. Thus, it is imperative that the SED properly describe and analyze the Healthy Rivers Proposal. Unfortunately, the SED’s analysis of the VA Pathway appears to misrepresent the true nature of the Healthy Rivers Proposal and underreport its ability to reasonably protect the beneficial uses identified in the Bay-Delta Plan. Chapter 13 presents results of SacWAM modeling that purports to analyze the benefits and environmental impacts resulting from implementing the VA Pathway. In describing the baseline against which the VA Pathway is analyzed, Chapter 13 describes changes to the SacWAM modeling to include United States Bureau of Reclamation’s 2024 Record of Decision on the Long-Term Operations of the Central Valley and State Water Projects (“2024 LTO”). However, SacWAM modeling’s assumptions of Central Valley Project operations do not accurately capture Reclamation’s operations of Shasta Lake.	The 2024 National Marine Fisheries Service (NMFS) Biological Opinion (BiOp) was not included in the modeling, because of the uncertainty associated with how the operational components of the Long Term Operation (LTO) would change. Chapter 13, Revised Proposed Plan Amendments, contains a discussion on how the 2024 LTO and associated BiOp could affect the project. In addition, the Shasta Reservoir Bin system for temperature management is not directly modeled in SacWAM due to the uncertainties in governance and implementation. While SacWAM does not implement the bin system for temperature management, the reservoir operations logic achieves similar outcomes as anticipated in the Drought Protection Program (DPP) through the use of reservoir buffers. Please see Common Response 6.1, Sacramento Water Allocation Model and Changes in Hydrology and Water Supply, regarding carryover storage targets and SacWAM reservoir buffer pools. The DPP was not directly modeled because of the uncertainties regarding its implementation and the way in which its effects would complicate other changes resulting from the 2024 NMFS BiOp. Staff has interpreted the commitments outlined in the DPP to depend on several factors that are outside of governance of the HRL Alternative and therefore would be difficult to directly model. While it seems likely that the DPP would result in more Shasta carryover storage and benefits to temperature management during some dry years, the implementation of the Shasta Reservoir Bin system introduces further complications to the interpretation of the DPP. Section 13.4, Changes in Hydrology

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		The modeling assumes that Shasta Dam end-of-September storage will decrease below 2 million acre-feet, and presents temperature impacts that result from these modeled operations. This modeling assumption ignores the DPP and is inconsistent with the Shasta operations analyzed and adopted in the 2024 LTO and with the reference conditions described in the December 2025 Draft Update. Under the DPP, individual SRS Contractors agreed to forego up to 500,000 acrefeet of water in certain critically dry years to assist Reclamation's cold water pool and carryover storage operations for the benefit of winter-run Chinook. Had the SacWAM modeling included proper assumptions about Reclamation's Shasta management, the fishery benefits modeled for both winter run and fall run salmonids presented in Chapter 13 would have been greater than what was presented for the unimpaired flow and unimpaired flow with water supply adjustment scenarios. Chapter 13 needs to be revised to reflect this action just as the modeling was updated to reflect the in-delta actions with the 2024 LTO.	and Water Supply, of the final Staff Report qualitatively addresses the 2024 NMFS Biological Opinion Environmental Impact Statement analysis and, among other things, the potential effects of the DPP.
1147	6	We appreciate that Chapter 13 explicitly notes that no additional water will be imported from the Trinity River system to the Sacramento River. During the January hearings, several commenters stated that additional imports from the Trinity River Division would occur. This is inconsistent with our Healthy Rivers Proposal. Further, it is inconsistent with the likely outcome of Reclamation's separate ongoing consultation. The SRSC [Sacramento River Settlement Contractors] expect that Reclamation's record of decision on the Trinity River Division will result in fewer imports from the Trinity River system into the Sacramento River system.	This comment is consistent with the analysis provided in the Staff Report.
1147	7	III. Conclusion The SRSC remain committed to working with the State Water Board and its staff to resolve modeling issues described above. We also acknowledge that the State Water Board is concerned about the baseline and additive flows. The SRSC appreciates these concerns and will be discussing with other Healthy Rivers participants to ensure that they are properly addressed. To that end, we ask that the State Water Board coordinate its processes, including Water Right Order 90-5, so as to not undercut the	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. To the extent that this comment summarizes other comments, please see the substantive responses to those comments.

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		carefully considered flow contributions and related fishery benefits. The SRSC seek to partner with the State Water Board through the Healthy Rivers governance structure to resolve these issues. Additionally, the SRSC understand that the State Water Board's Office of Chief Counsel is reviewing the enforcement agreements for the Healthy Rivers Proposal. We look forward to continued collaboration with the State Water Board to refine these agreements further.	
1147	8	In sum, the SRSC's Healthy Rivers Proposal represents a unique, collaborative effort based on the best available science to ensure the reasonable protection of all beneficial uses in the Sacramento/Bay-Delta watershed. To ensure this effort can continue, the State Water Board should adopt the Bay-Delta Plan Update that includes the Healthy Rivers and Landscapes program as proposed by the Healthy Rivers and Landscapes parties.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
1148	1	I have followed State efforts to update the Bay Delta Plan for years. I've sat through presentations on the Voluntary Agreements and the Scientific Basis Report analysis of those agreements. I remain skeptical of the VA's and the Scientific Basis Report confirms my skepticism. The Board should reject the VA's and implement flow requirements in the Bay Delta Plan so as not to perpetuate the same failed system we have in place today. I am concerned about several aspects of the VA's. I am skeptical of the VA modeling results as presented at the last hearing. One slide in particular claimed 'better results' from a flow slightly lower than a minimum flow under the Bay Delta Plan. That just doesn't make sense. All things being equal in terms of non-limiting	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. Also see Common Response 1.3, Revised Proposed Plan Amendments, for information on the VA pathway, including enforceability.

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		physical factors like instream habitat restoration, gravel replacement, and cosmetics, higher flow wins. Flow is the real limiting factor. We need the higher probability provided by greater flow. The ‘off-ramps’ in drier years result in little or no additional relative flow and are inadequate over all years and operating conditions. The VAs lack viable enforcement mechanisms and there are too many opportunities for double-counting of flow. We need a REGULATORY decision with timelines that can be enforced. Lastly, much of the cost of the proposed VA projects would be assumed by state and federal taxpayers which violates the principle of “beneficiary pays.”	
1149	1	We are running out of time to save California’s salmon and the salmon families this fishery supports. Winter- and Spring-run salmon are facing a growing extinction risk. The commercially and recreationally critical Central Valley Fall-run is also in decline. The 2023 California salmon fishing season is closed for just the third time in state history and it appears likely that the 2024 fishing season will be closed as well. Simply slowing this rate of decline is unacceptable and would fail to meet the salmon protection objective. In fact, allowing the State’s salmon runs to continue their catastrophic downward trajectories amounts to the sanctioned theft of the people’s natural resource – a resource that coastal towns, families, river ecosystems, the fishing industry, cultures, and many tens of thousands of jobs in California and Oregon depend on. Additionally, we have witnessed hazardous algal blooms making	Please see Common Response 1.1, General Comments, for information on the Delta Flow Criteria Report and for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		people sick and killing pets and wildlife, and the listing of six species of fish as threatened or endangered in our Delta. Commercial fishing is now closed in the Bay-Delta for the following species: Green sturgeon, White Sturgeon, Delta Smelt, Longfin Smelt, Starry Flounder, American Shad, Striped Bass, Oysters and Clams. Further, there is now extraordinarily limited commercial fishing for other Bay-Delta species, which were formerly abundant, including Bay shrimp and anchovies. Since the Board is the only agency with legal authority to set flow and temperature protections for Fall-run Chinook, it is imperative that science, not politics, drives a plan to restore salmon...a plan that saves people. The Board must update the current failed standards that were adopted in 1995 to reverse declines of salmon so I strongly urge you to adopt an “unimpaired flow” approach. As we all know, fish need water and flows that are allowed to come down Central Valley rivers and through the Delta directly impact critical salmon issues such as water temperature, water quality and accessible and functional floodplain habitats that baby salmon need to survive and thrive. The unimpaired flow approach would mimic the natural hydrographic, of which salmon are adapted. The Board must set a standard requiring a minimum of 65% of unimpaired flow from January to June, combined with temperature protections at major Central Valley reservoirs, if Central Valley salmon are to be restored. Moreover, the Board's 2010 Flow Criteria Report found that 75% of unimpaired flow on the Sacramento River and its tributaries and 75% of unimpaired Delta outflow are needed to protect the Bay-Delta ecosystem. It is also imperative to safeguard beneficial uses pertaining to commercial, recreational, tribal and subsistence fishing. The only way to restore and sustain Central Valley salmon runs is to require flow and temperature protections that enable them to survive.	
1150	1	But no more, the entire ecosystem is so damaged that it is on the verge of	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not

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		collapse. The impending loss of the entire bay delta ecosystem is the result of this boards failure to follow state and federal law, and the regulations meant to protect flows and water quality standards. 30 years of noncompliance with the law is why wild salmon are now functionally extinct. Salmon return numbers have gone from as many as 30,000 wild fish to as few as 200, less than 1%. This year's return numbered 3000 fish but is made up of hatchery strays, the unique genetics of the Tuolumne wild salmon have been lost. The number of returning steelhead that have passed thru the counting weir in the last 8 years is 1 fish. Salmon and steelhead are iconic species, but the other native California fish are also on the same path to extinction.	raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
1150	2	The Tuolumne is the only river in the entire southern San Joaquin watershed that is still actually connected to the bay delta estuary. The Merced, San Joaquin, Kings, Tule and Kaiwea rivers are already 100% diverted in all but the very wettest years. This violates California law, one of a number of laws that this board doesn't enforce, that requires dam operators to maintain adequate flows for fish populations below dams.	Please see Common Response 1.2, Water Quality Control Planning Process, for information on Fish and Game Code section 5937.
1150	3	The VAs will simply enable the status quo. The violations of both state and federal laws will continue. Corporate agriculturals free hand to act with impunity will be codified by laws and regulations that their ownlawyers wrote.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		What's next? VAs for other extractive industries? The oil and gas, mining and timber industries would certainly welcome similar self regulation. Especially, as big ag is attempting, to avoid any mitigation cost or consequences by dumping them on the state and federal governments. The VAs are unexceptable and corrupt, rejecting them is the only way forward. Every member of this board knows that. Do your job, uphold and enforce existing law and regulations. And we just may be able save a future with a functioning bay delta estuary system. Or just rubber stamp big AGs end around and be remembered as the state regulators who failed to prevent the collapse of the west coast's largest estuary and the extinction of salmon in California.	
1151	1	Back in August 2018, Palo Alto's Mayor Liz Kniss wrote to the Water Board — to Felicia Marcus and your predecessors — to say that our City Council had voted unanimously to support the Bay Delta Plan and to call for increased unimpaired flows in the Tuolumne and other rivers that feed the Delta. That has not changed. And today, I urge this Board to do the same: adopt and implement the Bay Delta Plan—and reject the voluntary agreements.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. Also see the evaluation of the benefits of the VA pathway in the Scientific Basis Report Supplement (Staff Report Appendix G2) and Staff Report Section 13.5, Beneficial Environmental Effects.

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		Would we really entrust our essential rivers and ecosystems to voluntary compliance? These agreements are uncertain, unenforceable, and rely on federal support from a Trump administration that has repeatedly shown itself to be unreliable, unpredictable, and hostile to California's water needs. The Draft Report offers no scientific analysis to show that these voluntary agreements would protect water resources, fish, or wildlife. There's no accountability. No real enforcement. No guarantee that flow, habitat, pollution, or temperature targets will be met. The Bay-Delta watershed covers 40% of California's land mass and captures 50% of our precipitation. Yet upstream diversions leave the Delta in "super-critically dry" conditions in 19 of the last 40 years. In plain English: the Delta is in a state of perpetual drought. Meanwhile, 80% of California's water goes to agriculture, mostly corporate farms. There are tremendous opportunities to use water more efficiently. The Bay Delta Plan would spur innovation. The voluntary agreements? They would just lock in the status quo, wasting precious water. One observation I've made on Palo Alto's utilities commission is that the tendency of some of California's largest legacy water users — in our case, it's SFPUC — to overstate the risk of drought, to overstate water demand growth in the face of improved conservation and falling urban consumption, and to understate their water storage and their access to river flows. SFPUC's multi-year "design drought" is a case in point, modeled on a once-in-several thousand- years drought scenario — essentially a scare tactic on water supply. There is enough water for farms and urban user on the one hand and fish and ecosystems on the other. I call on the Water Board to implement the Bay Delta Plan and protect our rivers, wildlife, and communities.	
1152	1	This letter is submitted as supplemental comments to previously submitted comments on January 9th, 2025 regarding the draft	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for more discussion on Tribal Beneficial

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		Sacramento/Delta updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed (Bay-Delta Plan) by the State Water Resources Control Board (Board). While I appreciate the progress reflected in the revised Bay-Delta Plan, including that the Plan now designates Tribal Tradition & Culture (CUL) as a beneficial use basin-wide, I remain deeply concerned that the proposed updates still do not provide the level of protection needed to restore salmon runs, safeguard Tribal beneficial uses, or ensure healthy flows and water quality for the ecosystem and communities that depend on the Delta and specifically the Trinity River water.	Uses and tribal comments on the VAs. Please see also Common Response 1.5, Trinity River, for a discussion of how the Bay-Delta Plan update relates to the Trinity River.
1152	2	I am also extremely concerned that the Voluntary Agreement (VA) approach continues to assume that there will be cooperation from federal water users, despite the adoption of Action 5, changes to VA early implementation actions, and the approval of Sites Reservoir. Action 5, and federal changes to the Endangered Species and Clean Water Acts, changes the baseline, protections, assumptions, and agreements this plan is based on, and greatly impacts cumulative effects and mitigations, and demands new analysis and a harder look at the plan.	Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on the 2025 ROD and 2025 ITP and regarding comments on other water supply projects.
1152	3	Voluntary Agreements (VA) The current Bay-Delta Water Quality Control Plan relies heavily on Voluntary Agreements, which are non-binding and lack regulatory teeth. Rather than model these VA against unimpaired flows or the regulatory approach, the board has chosen to do its analysis against the baseline, despite the fact the Bay Delta Plan has not been updated in decades, and the baseline is often wrong or based on outdated information. Despite this, modeling shows that the VA can actually lead to less water being in the system in many watersheds, and that in many year types they provide very little water.	Please see Section 13.4.2.2, Baseline Condition, of the 2025 partially recirculated draft Staff Report for a description of the baseline condition and Section 13.4, Changes in Hydrology and Water Supply, for the expected changes in hydrology and water supply from the VA pathway. Also see Common Response 1.3, Revised Proposed Plan Amendments, for information on the VA pathway, including enforceability.
1152	4	The VA has no clear enforcement mechanisms. They rely on funding that is uncertain. They unlawfully substitute narrative objectives for numeric, quantifiable objectives. In addition, there is no clear, readily implementable regulatory alternative available when the VA fails.	Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion of narrative vs. numeric water quality objectives and Common Response 1.3, Revised Proposed Plan Amendments, for information on the VA pathway, including enforceability.

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1152	5	The Delta, and our rivers are in crisis due to decades of the board not protecting water flows or water quality. I need real benchmarks and standards and do not have the time to wait 8 years or more to figure out if agreements are working. Additional habitat projects and funding must be additive to scientifically defensible numeric flow standards and not be used as a substitute for flows or used to show a very slight increase from an illegal baseline during some year types. It should also be clear that “paper water” can not be used or included in modeling.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
1152	6	The Draft Phase II Bay-Delta WQCP fails to assure achievement of the salmon doubling narrative objective required by the 1995 WQCP and the CVPIA because: ● Temperature requirements are too high and cause death and population reductions. ● Flows are insufficient causing increased predation and disease. ● Salinity objectives are too high causing significant impacts to salmon physiological development including growth rates and physiological development; Salinity levels are a critical environmental factor for anadromous fish, particularly during their migration from freshwater rivers to the ocean, as it affects their physiological development (smoltification), growth rates, and ability to acclimate to saltwater.	The temperature criteria when evaluating salmonid spawning and rearing habitat used upper thermal limits of 13 and 18 degrees Celsius, respectively. The rearing upper thermal limit is based on recommendations from the US Environmental Protection Agency as well as a review of scientific literature. The chosen temperature limit is below a value that is prohibitive for growth or causes direct temperature-induced mortality based on laboratory studies (Appendix G2, Final Scientific Basis Report Supplement in Support of Proposed Voluntary Agreements for the Sacramento River, Delta, and Tributaries Update to the San Francisco Bay/Sacramento-San Joaquin Delta Water Quality Control Plan, Section 5.1.4.1, Temperature Criteria) The average Total Annual Delta Inflow increases, with respect to the current baseline, in all flow scenarios for all water type years, except the wet year 35% unimpaired flow scenario. (See Table 6.3-1 in the draft Staff Report.) Similarly, modeling results show the benefits of increased flow in tributaries by a resulting increase in salmonid habitat. The modeled median percent changes between reference condition and VA scenarios for suitable spawning habitat and instream rearing habitat are positive for most watersheds (American River, Feather River, and Sacramento River) in most water year types (Appendix G2, Section 6.1.4, Synergy between Flow and Non-Flow Habitat). These increases in flow and non-flow commitments would help to decrease salmonid exposure to disease and predation, and support the salmon doubling objective. Under the recommended 55% unimpaired flow scenario, the average February through June 2 psu salinity isohaline (X2) position shifts westward by several kilometers with respect to baseline, under every water year type. The largest shifts in X2 occur in the critical and dry

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			water year type, when expanding freshwater habitat is crucial (Section 6.3.1.3, Sacramento-San Joaquin Delta; Figure 6.3-21 and Table 6.3-3). Please see Common Response 3.1, Fish Protection, for a discussion on updated flow thresholds and frequency, temperature effects on salmonoid fish, and life cycle models.
1152	7	Under the Public Trust Doctrine, the Water Board has no discretion to promote non-public trust farming uses at the expense of public trust uses like fisheries. There is no balancing here.	Please refer to final Staff Report Section 13.6.1, Public Trust Analysis, for the State Water Board's public trust analysis of the revised proposed Plan amendments. See also Common Response 1.2, Water Quality Control Planning Process, for a discussion of the State Water Board's consideration of beneficial uses and public trust resources during the water quality control planning process.
1152	8	Within the 2022 Memorandum of Understanding (MOU) Advancing a Term Sheet for the VA it is stated that the regulatory and private parties recognize that execution of Voluntary Agreements will not occur until required environmental review has been completed and that the ultimate terms in those agreements will reflect the results of that review. Currently, adequate environmental review has not been adequately completed and the science that the VA are relying on is not the best available science. For example, the "blocks of water" method that the VA propose will result in lower flows for fish than other alternatives propose. The VA also depend on the USFWS and NMFS 2019 Biological Opinion which has "not been fully implemented due to litigation, and...are currently under consultation due in part to the litigation." Furthermore federal Action 5 further reduces flows and impacts drinking water quality without addressing climate change or supply issues and endangers critical fish passage and restoration efforts. This makes the impacts and benefits of the VA even more uncertain.	Please see the evaluation of the benefits of the VA pathway in the Scientific Basis Report Supplement (Staff Report Appendix G2) and Staff Report Section 13.5, Beneficial Environmental Effects. Also see Common Response 3.1, Fish Protection, for a discussion of the use of best available science and Common Response 7.1, General CEQA and Approach to the Analysis, for information on the CEQA analysis.
1152	9	Therefore, I recommend 1) the federal government be held to the regulatory pathway, which can include VA if they meet the 65% unimpaired flow limits, 2) An analysis of VA versus the regulatory pathway flows moves forward, and if individual VA can not obtain the unimpaired flow standards, they can be negotiated so they meet the standards within the framework of the regulatory process, 3) The board puts a prohibition into the plan that limits new large new water right holders and large	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		water right holders that are looking to greatly modify their right to the regulatory pathway.	
1152	10	Lack of Protection for Trinity and Lower Klamath Rivers These supplemental comments specifically address concerns regarding the December 2025 draft of the Bay-Delta Plan. In both cases the plan and supplement continue to fail to ensure necessary protections for the Trinity River and in effect treats the Trinity and Lower Klamath Rivers as a salmon sacrifice area. Even though the Trinity River was included in the project area, there is nothing reassuring in the latest version of the plan to provide guarantees that the VA will protect the Trinity River from adverse flow and temperature conditions. The December 2025 Update still does not define the likely impacts to the Trinity River, gives no definition of what impacts would be, nor does it contain mitigation or remedies when and if they occur. The Plan also fails to include the Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB) or Subsistence Fishing (SUB) beneficial uses of the Trinity and Lower Klamath Rivers (North Coast Basin), which are a source of water for implementing the VA. The Board only requires the Bureau of Reclamation to report annually on indirect impacts to the Trinity River. The December 2025 Update still does not define the likely impacts to the Trinity River, gives no definition of what impacts would be, nor recommends mitigatory remedies when and if they occur. The July 2025 plan also states, "This plan supersedes the regional water quality control plans to the extent of any conflict between this plan and the regional water quality control plans." In short, the fox would continue to guard the henhouse and the Trinity River remains unprotected There is no analysis or balancing by the SWRCB given their state duty to protect the values of the State of California Wild & Scenic Trinity River nor is there any balancing of uses as required under Section 5937 of the California Fish and Game Code. As a result of this Plan and the VA, the Trinity River will be	Please see Common Response 1.5, Trinity River, on consideration of the Trinity River watershed and for discussion on how additional evaluation and consideration of existing water quality problems on the Trinity River does not fit within the purposes and goals of the update to the Bay-Delta Plan.

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		further deprived of necessary water to ensure compliance with federal and state laws. This failure to comply includes North Coast Basin Plan temperature objectives that are omitted in the Plan and SED, federal fishery restoration goals for the Trinity River, take requirements for Trinity River coho pursuant to the Endangered Species Act, the Clean Water Act, compliance with the CVPIA, and the 1955 Trinity River Division Act (Public Law 386 - 84th Congress) that require preservation and protection of its fishery resources essential to tribal, commercial and recreational fishing and the local and regional economies sustained by the Trinity River watershed.	
1152	11	Analysis of the SacWAM modeling results in Appendix H1a2 is problematic as the reported total annual volumes of water released to the Trinity River and Clear Creek Tunnel don't agree with historic and current operations. Figure 1 plots the exceedance curves for the total annual flow released to the Trinity River under the Baseline and VA alternatives using values in the far-right column of Table H1a2-75. Figure 1 also includes exceedance curves for observed Trinity River flow below Lewiston Lake for the historic WY1964 through 2021 period and post-Trinity ROD period of WY2002 through 2024. The modeled Baseline condition flows are about twice the magnitude of observed historic and Trinity ROD flows. This Baseline is unrealistic and inappropriate as it does not accurately reflect actual Trinity River flows.	As described in Staff Report Chapter 6, Changes in Hydrology and Water Supply, and Appendix A1, Sacramento Water Allocation Model Methods and Results, SacWAM represents a fixed level of development and a fixed set of regulations. Thus, it would not be possible to represent both historic and current operations at the same time because current operations are governed by current rules and regulations, whereas historic operations were governed by a different set of rules and regulations. The figures provided in the comment (Figures 1 and 2) do not provide a valid comparison of modeled results and observed flows because they compare the full period of simulation (1922-2021) to two recent observed periods, both of which were drier than the full period of simulation. When the years 2004-2021 are compared (which are the years that the fully implemented ROD and SacWAM simulation overlap), the difference is much smaller. Please refer to Common Response 6.2, Baseline and No Project Alternative, regarding the baseline assumptions. Please also see Common Response 1.5, Trinity River, on consideration of the Trinity River watershed.
1152	12	Even when considering the SacWAM model results for the Baseline and VA alternatives would result in lower diversions to the Clear Creek Tunnel (see Figure 3), achieving the Trinity River Baseline flows used in the model may not be operationally feasible by the CVP Trinity Division and they will certainly deplete reservoir storage to a larger degree than that indicated by comparison of the Baseline and VA conditions. Certainly, the Plan does not intend to increase releases to the Trinity River well above the stipulated ROD flow schedule at the expense of	Please see the response to comment 1152-11.

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		reducing diversions to the Sacramento River. The modeling analysis precludes meaningful analysis of impacts.	
1152	13	In summary, the Bay-Delta Plan and VA have improperly analyzed/modeled impacts to the Trinity River. The VA are another raid on Trinity River water largely for the benefit of subsidized corporate agriculture. The proposal should be withdrawn and redone with specific, enforceable flow, water temperature and Trinity Lake cold water carryover storage protections for the Trinity River to ensure that there is always adequate water to ensure a thriving Trinity River that meets the fishery restoration goals of federal law as embodied in Public Law 104-154 (see https://www.congress.gov/104/statute/STATUTE-110/STATUTE-110-Pg1338.pdf) : “Trinity Basin fisheries restoration is to be measured not only by returning adult anadromous fish spawners, but by the ability of dependent tribal, commercial, and sport fisheries to participate fully, through enhanced in-river and ocean harvest opportunities, in the benefits of restoration;”	Please see the response to comment 1152-11.
1152	14	The exports and flows envisioned under these proposed VA will not protect the Trinity River fishery resources and water rights as required by law and will not provide sufficient flows to ensure the Bay-Delta estuary ecosystem survives. The Board should reject the proposed VA as an element of the Bay-Delta Plan and instead: ● Adopt enforceable Trinity Reservoir cold water carryover storage requirements. ● Update and enforce temperature objectives below Lewiston Dam. ● Explicitly prohibit redirected impacts to the Trinity River from Voluntary Agreements. ● Revise reservoir priority rankings to include Trinity Reservoir as high priority. ● Include Trinity River and Lower Klamath River CUL, TSUB and	Please also see Common Response 1.5, Trinity River, on consideration of the Trinity River watershed.

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		SUB in Plan objectives (more than a simple acknowledgement in the current plan). Please protect the Trinity River and recognize the impacts to the county of origin.	
1153	1	EMERGENCY — THIS IS THE LAST LINE NORTHERN CALIFORNIA IS BEING SACRIFICED For 30–40 years, massive Delta export pumping through the SWP and CVP has caused catastrophic environmental and economic damage to Northern California — and it is STILL CONTINUING. This is not just about salmon. Aquifers are collapsing Wildfires are intensifying because soils and vegetation have been dried out Water rates are extortion-level Food prices are rising because water costs are rising Fisheries and marine life are collapsing Entire coastal and inland economies are being destroyed More than ONE TRILLION DOLLARS in economic and environmental damage has already been done to Northern California — and the damage is ongoing. All so public water can be exported out of the Sacramento–San Joaquin Delta through the State Water Project and Central Valley Project pumps for private profit. ENOUGH IS ENOUGH — HERE IS THE DEMAND	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. Also see Common Response 1.3, Revised Proposed Plan Amendments, for information on the VA pathway, including enforceability.

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		The State Water Board MUST: Reduce Delta export pumping by at least 80% year-round STOP Delta export pumping 100% during any drought or low-flow conditions REJECT and REMOVE all so-called “Voluntary Agreements” Adopt enforceable flow and water quality standards — not private deals Voluntary Agreements are not enforceable, do not protect fish or communities, and violate the public trust.	
1201	1	The Bay Delta Plan with VAs Is Unenforceable And Ignores All Scientific Data, History and Public Input ● Delta Reform Act required the State Water Board to estimate amount of water necessary to fully protect ecosystems and water quality ● 2010 Delta Flow Report: 75% of unimpaired runoff needed for San Francisco Bay. ● 2017 Scientific Basis Report Confirmed the Sacramento River needed up to 75% ● Phase 1 of the Bay Delta Plan called for 35%-45% of unimpaired flows to stay in watershed (The San Joaquin and South Delta). ● 2024: The original plan and science report proposed that 55% of unimpaired flow remain in the Sacramento River’s tributaries, within an adjustable range of 45% to 65%. Tribes, scientists, NGOs, fishermen and the public commented to support this. ● During this period from 2017-2023 salmon populations and water quality plummeted spring run salmon by over 90%	As described in Chapter 3, Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, and Chapter 4, Other Aquatic Ecosystem Stressors, since the Bay-Delta Plan was last updated and implemented, populations of native aquatic species in the Bay-Delta watershed have shown significant signs of decline due to a combination of factors, including hydrologic modifications, non-flow physical habitat degradation, water quality impairments, and climate change. Scientific information indicates that restorations of flows, and the functions that flow provides, in an integrated fashion with physical habitat improvements are needed to address the declines. The revised proposed Plan amendments include new objectives for Sacramento/Delta inflow, cold water habitat, Delta outflow, interior Delta flows, and fish viability as well as provisions for habitat restoration specific to the VA pathway. In addition, the revised proposed Plan amendments are intended to contribute to implementing the existing salmon protection objective. Please see Staff Report Chapter 1, Executive Summary, Section 1.3, Background, on the background for the proposed Plan amendments to the Bay-Delta Plan. Please see Chapter 13, Revised Proposed Plan Amendments, for the current project description of the revised proposed Plan amendments which include a regulatory pathway and VA pathway. Please also see Common Response 1.3, Revised Proposed Plan Amendments, for responses to comments about the enforceability of the VA

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			pathway and the enforcement agreements associated with the VA pathway.
1201	2	What is Needed in a Water Quality Control Plan ● Updated and protective flow and water temperature objectives ● Full accounting cumulative impacts and required water obligations including Tribal ● Integration with legal federal law and biological opinions. ● Tribal beneficial use protection and consultation ● Mitigation measures tied to enforceable outcomes ● Rejection or revision of Voluntary Agreements that undermine water quality objectives. VA's should obtain numerical goals, have benchmarkers, meet standards ● Explicit protection of the Trinity River and other Water Quality Control plans and beneficial uses within the Plan scope	Please see Common Response 1.2, Water Quality Control Planning Process, for more information on the State Water Board authorities related to the Water Quality Control Planning Process, and numeric vs narrative water quality objectives. Please see also Common Response 1.5, Trinity River, for a discussion of how the Bay-Delta Plan update relates to the Trinity River.
1201	3	We have been commenting for 8 years. Most input on Phase 2 has been ignored ● We began commenting on the Bay Delta Plan in 2017 when we were founded. Since then we have commented in 2017, 2018, 2023, 2025 and now 2026. ● Soon after the Board started considering the VA's rather than the Scientific Basis Report. ● The only place we can comment on the VAs is to this board, DWR and the federal government have no mechanism	The State Water Board has conducted extensive outreach and has received significant input from DACs, environmental justice organizations, environmental non-governmental organizations, California Native American Tribes, and others related to the Sacramento/Delta Update to the Bay-Delta Plan, and has considered the feedback provided by tribes and stakeholders throughout the planning process for the Sacramento/Delta update to the Bay-Delta Plan. Please see Chapter 12, Public Participation, for a summary of the public participation activities that have occurred related to the Sacramento/Delta update to the Bay-Delta Plan. The State Water Board provided several opportunities for the public to provide comments related to the VA proposal, which has informed the development of the revised proposed Plan amendments and final draft Bay-Delta Plan. Please see Common Response 10.1, Economically Disadvantaged Communities, for

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			responses to comments on the VAs including comments related to the HRL development process.
1201	4	Voluntary Agreements Should be Guided By Instream Flow and Biological Needs ● Current modeling and analysis is a illegal baseline vs. the VAs and does not include the regulatory plan analysis. Analysis should model needed flows and obtainment of beneficial uses against the VAs ● Modeling shows reductions in flows during critical times of years even when compared to a depleted baseline, but does not show impacts to salmon runs and water quality from this. ● Modeling does not include a hard look at new proposed diversions & water rights, or even the changes to operations from the Trump administration (Action 5)	Please see Common Response 1.3, Revised Proposed Plan Amendments, for discussion of the 2025 Record of Decision and 2025 Incidental Take Permit and other regulatory changes. See also Common Response 6.2, Baseline and No Project Alternative, for responses to comments about the project baseline.
1201	5	The Current Bay Delta Plan Ignores State Laws and Beneficial Uses ● Water Quality Standards ● TMDLs and 303(d) listings ● Tribal consultation standards and AB 52 ● The Racial Equity Resolution and Action Plan ● California Endangered Species Act The plan does however allow those that engage in the VAs to not be subject to curtailments during droughts, which will lead to less water in rivers and the Delta.	Please see Common Response 1.2, Water Quality Control Planning Process, for information on the State Water Board authorities related to Water Quality Control planning and information on the Porter-Cologne Water Quality Act and Clean Water Act. Please also see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for information on CEQA and Assembly Bill 52 (AB 52). Please also see Common Response 10.1, Economically Disadvantaged Communities, for a discussion on the State Water Board's Racial Equity Resolution and Racial Equity Action Plan. As discussed in Staff Report Section 13.3.4, Voluntary Agreement Pathway, the VA pathway would apply to the water rights that are part of approved HRLs (i.e., the specific water rights identified in Appendix B.1 of the revised proposed Plan amendments), during the term of the VA pathway. Under the VA pathway, water rights that are not part of approved HRLs would be subject to the regulatory pathway. While HRL water rights would not be subject to the regulatory pathway, HRL water rights could be subject to water right curtailments due to lack of water availability during times of scarcity such as a drought.

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1201	6	The Bay Delta Plan Ignores Cumulative Impacts and the Duty of this Board The duty of the Water Board includes setting flow requirements, establishing water quality objects for fish and wildlife and protection the public trust. The Bay Delta Plan reliance on VAs is a dereliction of duty Cumulative Impacts that should be considered include: ● Sites Reservoir ● New Water rights ● The Bay Delta Plan ● Action 5 ● The Trinity BO ● Climate Change Assessments	The revised proposed Plan amendments direct the State Water Board to consider imposing requirements on new water supply projects to ensure that future authorizations for the diversion and use of water are consistent with and support the salmon protection, fish viability, inflow, inflow-based Delta outflow, and interior outflow objectives of the Bay Delta Plan. Please see final Staff Report Section 13.3.4.2, Protection of Base Flows and LTO Balancing Provision and Common Response 1.3, Revised Proposed Plan Amendments, for information on the provision to protect the VA flow base from new water supply projects. Section 7.23, Cumulative Impact Analysis, Growth-Inducing Impacts, and Significant Irreversible Environmental Changes, and Section 13.7.21, Cumulative Impacts, Growth-Inducing Impacts, and Significant Irreversible Environmental Changes, address cumulative impacts of the proposed Plan amendments and revised proposed Plan amendments and past, present, and probable future projects. Please refer to Common Response 7.23, Cumulative Impact Analysis, for responses to comments related to the Staff Report's consideration, analysis, and mitigation of cumulative impacts associated with Sites Reservoir, the Delta Conveyance Project, and other past, present, and probable future projects.
1201	7	The Bay Delta Plan Ignores Federal Deregulation & Defunding of Restoration ● Trump's EO on Fish vs. farms ● Action 5 replacing the 2019 and 2024 Biological Opinions ● The Gutting of the Endangered Species Action ● The Gutting of the Clean Water Act ● The Gutting of Restoration Funding for Habitat ● Pulling out of Early Implementation Funding for the VAs ● The board should be using its authority to protect us, water and species as a remaining defense	The State Water Board derives its Water Quality Control Planning authorities from both the federal Clean Water Act and California's Porter Cologne Water Quality Act and is charged with protecting beneficial uses of water whether designated or not. Please see Common Response 1.2, Water Quality Control Planning Process, for information on the State Water Board authorities related to water quality control planning and information on the Porter-Cologne Water Quality Act and Clean Water Act.

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1201	8	Deregulation and New Diversions Taken Together Will Harm North State and Fishing Industry. The Feds should take Regulatory Path Key Impacts of Action 5 and Proposed New Diversions and Reservoirs ● Increased Water Exports: The Bureau of Reclamation plan aims to move more water south, targeting increased supplies for agriculture. ● Environmental & Ecosystem Risks: The plan reduces habitat protections for endangered salmon and other species, with modeling suggesting a potential decline in fish populations even during wet years. ● Legal & Political Conflict: Action 5 will put the needs of ag above cities, North State economics, Tribes and clean water. The feds have pulled early implementation and shown they are lawless. They can not be included in VAs ● Action 5 will harm the North State's Tribal subsistence fishing and ceremonial needs, recreation, the fishing industry, our towns and economies, along with drinking water supplies. The VAs taken with Action 5 will make this worst. ● Action 5 will add to issues such as Harmful Algal Blooms, Salinity, Mercury Concentrations, warm temps, and pesticides impacts, especially with new diversions. Not having numeric standards leaves us at risk.	Please see the response to comment 1201-6. Please see Common Response 1.3, Revised Proposed Plan Amendments, for discussion of the 2025 Record of Decision and 2025 Incidental Take Permit and other regulatory changes. See also Common Response 6.2, Baseline and No Project Alternative, for responses to comments about the project baseline.
1201	9	This board's responsibility is to protect water quality, beneficial uses and California's people and species. Instream flows of 55-75% are critical and needed. VA's should only be accepted if they can demonstrate they will meet this goal. Please do the right thing like you did in 2018 and chose the regulatory path. VAs can be used to meet this goal	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
1202	1	Matriarchal Societies Matriarchal societies are social systems where women exercise authority guiding communal social lifestyles. Tribal Communities	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		are based around the practice of matriarchal societies where Indigenous women are looked upon to support the work of our men. Ceremonies in each Tribe may be led in either a matriarchal or patriarchal way, but always defer to the guidance of the women. Rematriation Land Rematriation is the use of Indigenous Cultural practices to restore our natural landscapes through the practice of Indigenous led land management and restoration projects. In our Indigenous Culture we believe we all have a place caring for our lands and our families. All are part of the ceremony in this way as we honor and respect mother nature with the utmost respect	
1202	2	Water Quality Indigenous people believe that our elements or Cultural Resources hold a greater power and significance than that of the people. In the Western world legal frame work the natural resources such as water are looked upon as a commodity, exploited for excessive use in ag and hospitality industries. Rights of Water to Indigenous People commence greater value they are not to be controlled as property. A. Tribal Beneficial Uses B. Native Plant Health C. Endangered Cultural Resource	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
1202	3	Unit 4: Native American Cultural Resources The State of California Native American Heritage Commission (NAHC) defines Native American Cultural Resources as elements or areas of the natural landscape holding traditional cultural significance. Prehistoric and ethnocentric Native American archaeological sites may be identified as areas of traditional cultural significance holding notable value and religious connection to the origins of the first people's ancestral territories.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		A. Native American Cultural Resources B. Religious or Spiritual Sites C. Riparian Cultural Resources Resource California Native American Heritage Commission Understanding Cultural Resources Understanding Cultural Resources – California Native American Heritage Commission	
1202	4	Restoration Projects To restore a healthy landscape in our riparian areas we must commit to projects supporting Native plant species and wildlife habitats. Projects supporting water quality and restoration should include the restoration of Native plants. We base our daily paths on the change of the season and ways in which the waters travel recognizing the significant life cycles each diverse ecological community holds in providing our families harvests for the coming years. In this sense, we as Indigenous people, are upholding long term land management practices	The State Water Board has consistently acknowledged and incorporated flow and non-flow measures to comprehensively address Delta aquatic ecosystem and tributary ecosystem needs in all watersheds. The program of implementation identifies actions that other entities should take to address other ecosystem stressors and provides a framework to incorporate both flow and complementary ecosystem projects such as physical habitat restoration into local cooperative solutions. In addition, some complementary ecosystem projects may also serve as an implementation mechanism for the proposed cold water habitat objective. In addition, the VA pathway includes implementation of non-flow habitat restoration actions targeted at improving spawning and rearing capacity for juvenile salmonids, estuarine species, and other native fish and wildlife on a portion of the Sacramento/Delta tributaries for an initial 8 years (with the possibility to extend the term). Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to the tribal outreach and engagement provisions of the revised proposed Plan amendments, including the Bay-Delta Tribal Advisory Group's role in providing input related to habitat restoration occurring through the regulatory pathway and a discussion of the provision for incorporating input from California Native American Tribes on VA habitat restoration projects.

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1202	5	Indigenous Food Sovereignty Indigenous Food Sovereignty is an effort to restore traditional food systems aligned with the natural environment. Indigenous people face health disparities, food insecurities and historical cultural disconnection to natural food systems. Native Food Staples Native food staples provide a diet for Indigenous people in preparation for living resilient healthy lives off of the land. Many staple food items such as acorns can be found in Indigenous communities throughout California and Oregon.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
1202	6	CA Fish & Game Code Chapter 1. Legislative Findings § 16000. Legislative findings and declarations The Legislature finds: (a) Jurisdiction over the protection and development of natural resources, especially the fish resource, is of great importance to both the State of California and California Indian tribes. (b) To California Indian tribes, control over their minerals, lands, water, wildlife, and other resources is crucial to their economic self-sufficiency and the preservation of their heritage. On the other hand, the State of California is concerned about protecting and developing its resources; protecting, restoring, and developing its commercial and recreational salmon fisheries; ensuring public access to its waterways; and protecting the environment within its borders.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
1202	7	The State of California Executive Order N-15-19 Acknowledges and apologizing on behalf of the State for the historical violence, exploitation, dispossession and attempted destruction of tribal communities.	The State Water Board actively sought and continues to seek consultation with interested California Native American Tribes consistent with Executive Order B-10-11 and its Tribal Consultation Policy. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to tribal outreach and engagement.

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		Executive Order B-10-11 It is the policy of the state administration that every state agency and department subject to executive control is to encourage communication and consultation with California Native American tribes. Executive Order N-82-20 Addressing biodiversity crisis accelerating nature-based solutions requires inclusive partnerships and collaboration among federal, state and local governments and California Native American tribes.	
1202	8	Yahwee, Khe Kanema (N. Pomo, Thank you my relatives) With Sincere Gratitude I Would Like To Extend Thanks To Our Woman Advocates Fighting for Environmental Justice. In This Work We Are Supporting and Paving The Path Forward for Our Future Generations. Our Young Tribal Community Members Express Humbleness and Wellness In Preparing To Take On The Roles of Land Stewards Who Will Lead in Rematriation and Returning Our Lands To Its Natural Health. Together We Are One People, One Fire! Powe' Nom, Powe' Yim (Yuki, One People, One Fire) Yahwee, Kedi Wadim, (N. Pomo; Thank you, Walk well in a spiritual way) Nikcole Whipple, Round Valley Indian Tribes	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.
1203	1	Tribal Beneficial Uses and Water Rights ● Salmon, water flow and water quality are essential to Tribes	The State Water Board recognizes the centrality that vital fish populations have for cultural, spiritual, ceremonial, and traditional rights and lifeways of tribes in the Bay-Delta

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		for sustaining Tribal sovereignty, culture, food and livelihood ● Tribes, Tribal orgs and members have been advocating against VAs and for TBUs since at least 2018. ● Despite this, Tribes were excluded from the planning of the VA's and are largely excluded from management.	watershed. As such, the revised proposed Plan amendments designate Tribal Tradition and Culture (CUL) specifically due to the cultural importance of native fish and wildlife, particularly salmon, to tribes. Additionally, provisions for tribal input are included so that tribal voices are actively involved in the Bay Delta Plan update and implementation processes. The State Water Board recognizes the significance of Traditional Ecological Knowledge in water resource management and is committed to integrating that knowledge into its Bay-Delta Plan update and implementation processes. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments on Traditional Ecological Knowledge/tribal knowledge and responses to tribal comments on the VAs.
1203	2	Tribal Beneficial Uses ● Plan added TBUs but does not include meaningful or enforceable protections for TBUs despite water quality listings that directly impact them. ● The Plan does not designate T-SUB for waterbodies in the Bay-Delta watershed or discuss Trinity River TBUs ● Plan includes only vague information regarding infrequent listening sessions ● "Where appropriate..." ● Tribal Advisory Group does not have same authority as Stanislaus, Merced and Tuolumne Working Group and this is just one example of how Tribal input can be ignored.	The State Water Board considered all comments requesting changes to the revised proposed Plan amendments and incorporated some of the suggested changes. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for a summary of comments received and responses on the tribal related provisions within the revised proposed Plan amendments. Please also see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments related to Tribal Beneficial Uses and the tribal outreach and engagement provisions of the revised proposed Plan amendments.
1203	3	Tribal Consultation ● The Winter's Doctrine and all case law from circuit courts to the Supreme Courts confirm that Tribes have senior water and fishing rights, even in cases they do not have treaties. ● Tribes also have riparian and appropriative water rights.	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments regarding tribal reserved water rights, and CEQA and Assembly Bill 52. Please also see Common Response 10.1, Economically Disadvantaged Communities, for responses to comments about the State Water Board's Racial Equity Resolution and Racial Equity Action Plan.

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		● AB-52 requires Tribal input as do any agreements that include federal agencies due to Tribal Trust obligations. ● Despite this The Bay Delta Plan and VA's only include non-Tribal Water Rights Holders ● Therefore the Plan violates Racial Equity resolution and Action Plan and Tribal consultation laws	
1203	4	Tribal Engagement Tribal Engagement Plan ● Role of this is unclear ● How will this work with VAs ● How will Tribal concerns and impacts be addressed ● Timeline for establishment ● Early and regular involvement of Tribes and cultural practitioners is crucial	As described in the revised proposed Plan amendments, the State Water Board will develop and regularly update a tribal engagement plan in coordination with California Native American Tribes for consultation, outreach, and engagement to incorporate tribal knowledge and perspectives into its Bay-Delta Plan update and implementation processes. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for a summary of comments received and responses on the tribal related provisions within the revised proposed Plan amendments including a discussion of the tribal engagement plan.
1203	5	Stanislaus, Tuolumne, Merced Working Group The plan establishes the Stanislaus, Tuolumne, and Merced (STM) Working Group. This group: ● Includes state and federal agencies and water diverters but NOT Tribal representatives ● Can decide how much water is sufficient for fish and how to monitor • Water diverters can regulate themselves with no public or Tribal input ● NEEDS to include Tribal membership in Working Group with decision-making ability	Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for a summary of comments received and responses on the tribal related provisions within the revised proposed Plan amendments including a discussion of the STM Working Group and Bay-Delta Tribal Advisory Group.

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1203	6	Summary ● Water Board should incorporate specific TEK policies and guidelines, and protection of Tribal fishing and water rights under guidance from Tribes ● Water Board needs to include meaningful engagement and decision-making capabilities to Tribes ● VA's are exclusionary and directly harmful to Tribes and should only be used to meet regulatory goals, and Tribes should be consulted and their input should be incorporated into VAs ● Science based numerical flows are best to protect TBUs.	The State Water Board has conducted extensive public and tribal related outreach and appreciates the significant input from tribes and environmental justice communities related to the Sacramento/Delta Update to the Bay-Delta Plan. Please see Staff Report Chapter 13, Revised Proposed Plan Amendments, for additional information on the State Water Board's efforts to engage more robustly with California Native American Tribes and integrate tribal and Traditional Ecological Knowledge into the State Water Board's Bay-Delta Plan update and implementation processes. Please see Common Response 11.1, Tribal Engagement and Tribal Beneficial Uses, for responses to comments about Tribal Beneficial Uses, Traditional Ecological Knowledge, and tribal comments on the VAs. Please see Common Response 1.1, General Comments, for responses to comments expressing general support or opposition to the VAs.
1301	1	SECRETARY CROWFOOT: Well, thanks so much and thanks for letting me kick off your three-day hearing today. First of all, just huge thanks for all the work that you do that has nothing to do with the topic we discussed today. My favorite news to read over the last several years is all of the progress that SAFER is making, your program to ensure clean and safe drinking water across the state. I pinged you, Chair, last week, too, when I was delighted to read about the success with the Allensworth community in Tulare County. Just huge kudos to your staff and to all the partnerships that are delivering clean and safe drinking water, perhaps one of the most important accomplishments across the state over the last decade that really doesn't get the attention that it deserves. Also, thank you for your steadfastness updating the Bay-Delta Plan, decades in the making. This is poised to happen under your watch. I know Governor Newsom and we are all really proud of your piloting this complicated, careful process to its conclusion because our nature and our people desperately need it.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		It's been a journey over the last several years, seven-plus years that we've been working towards this effort and parallel pathway. I got involved with the development of the so-called Voluntary Agreements probably the first week that I was in this role, and even before in my capacity working for an NGO, and it's been a journey. You know, the effort was called the Voluntary Agreements initially because it was a group, a set of groups coming together in a voluntary way to identify a pathway to meet the state's legal obligations in a way that could work for everybody. It has since been renamed, as you know, Healthy Rivers and Landscapes for a couple of reasons. One, so we can explain what our vision is of building truly healthy river systems and landscapes. And two, because there's really nothing voluntary about this program of implementation. It's detailed. It's science-based. And it's outcomes-focused. And I appreciate the comments that Member Firestone made and, Chair, you made about the importance of the regulatory framework along with Healthy Rivers and Landscapes. I and we support that. It's important. As you point out, it shouldn't be an either/or. It's a both/and. Those parties that are not participating in Healthy Rivers and Landscapes, you know, should be under the regulatory construct that the Board has set forward. And there needs to be accountability on agencies like mine implementing the actions within Healthy Rivers and Landscapes. And if we're not meeting those actions or those outcomes, there needs to be clearly another pathway. And it's not back to the starting point. So appreciate the important point you make there. Look, what gets me up in the morning and why I've done a really challenging job for the last seven years is my passion for helping people and nature thrive together. At the end of the day, we face an uncertain future in California. It was only three years ago when we really hit the depths of some of our salmon populations, scraping towards extinction. And at the same time, we had 5 million Californians under water rationing. We were planning within a series of weeks in the winter of 22 going into 23 to half the state to being underwater rationing. And it was	

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		those nine atmospheric rivers that created their own challenges that saved us from that. But at the end of the day, this is a really important update. And this update has to protect all beneficial uses. I am passionate that this is the pathway to recover fish and all of the people, tribes, the fishermen, all of us who rely on those fisheries. I also think it's the most effective way to protect the beneficial uses, which is the majority of Californians that rely on water supply that comes through these river systems. Why? Really, four reasons that I just want to set forth. It's holistic. Yes, we need to restore flows. We know that fish and aquatic species need more flows than have historically run through our rivers and the Delta. But nobody would argue that we also need to restore habitat. We've lost upwards of 95 percent of spawning and rearing habitat for these fish. We need to expand habitat. We need to do that in a way that's thought through and with the flows. And right now, as I've understood over the last decade, the Water Board doesn't have the regulatory gear or regulatory mechanism to really drive that habitat. And so this habitat, we are accountable for delivering this habitat at massive scale in Healthy Rivers and Landscapes. So holistic, but also adaptive. Our systems are changing year to year, even within seasons. We have to be more adaptive to help fish and wildlife recover and manage our water supply. And at the end of the day, I think none of us expected to have as dynamic a water system as we have and are now facing. And simply put, you know, regulations or court orders can't be the way that we manage our system. We have to do it more adaptively with scientific monitoring and in a transparent manner. And I'm really proud that HRL sets up both. The idea that we have these assets, so-called assets, restored flow, habitat, and we scientifically monitor how they're working with the hydrology that's coming in a given season or between seasons, and we can	

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		adapt. And we want to do that in a transparent and inclusive way. And I'll talk at the end a little bit about process and what we've learned. But our commitment as state agencies implementing this is to bring everybody who wants to, to the table, to understand the decisions that we're making, the science that we're using. Because at the end of the day, this is the paradigm we need, collaborative, adaptive management versus, you know, conflict and litigation. Third, it's science-based. You know, your staff has been tremendously diligent, as it should be, to really run this proposal and planned implementation, a program of implementation, through its paces, based on a scientific basis report, a blind scientific peer review, months, I think, years of analysis on this proposal. And as you point out, this does include some actions that could be considered experimental. But we are in that mode. We can't work on the margins. We can't do what we've done before, because it's brought us to where we are now. We need to remain science-focused. We need to ensure that the monitoring is better than ever. We need to be transparent about that. And frankly, you then ultimately need to decide, or not even decide, but determine whether the actions that we've taken, habitat restored flows, achieve the outcomes that is required. And if we don't, then there's obviously another pathway. It's not back to zero. Lastly, this is fast-moving. I'm super passionate about getting things done quickly. And this has been a long process. And it's needed to be a long process. But we haven't waited for this process to take action. We know there are no regrets, improvements that we need to make. So I want to just draw your attention to and huge thanks to the Water Board for your leadership in the cutting green tape effort. How do we get more environmental restoration on the ground more quickly? I couldn't be prouder and more thankful of your work at the Water Board to do that, in partnership with our Department of Fish and Wildlife.	

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		But we've got the Prospect Island project in Solano County, 1,600 acres of restoration that is all about fish recovery, salmon smelt recovery. A portion of that wouldn't happen without this Plan that's been developed through HRL. The Lower Elkhorn Basin Slough Setback process -- or Project, I should say, 1,000 acres of levee setback on the Sacramento and the Yolo Basin, again, driven by this process. Just last week, we were in the Sacramento Valley, focused on the implementation of an MOU that we created last year called Floodplains Forward, to accelerate the expansion of seasonal floodplains, driven by Healthy Rivers and Landscapes, where our federal agencies and state agencies and partners are working together to say, okay, how do we roll up sleeves and get projects on the ground at the scale we need, driven by the accountability that HRL has and the very ambitious habitat restoration goals? So I can just tell you with everything that I bring to this job, that I'm passionate about this approach. I'm passionate about us attempting this approach. And, you know, as long as I'm in the job and after I'm in this job, I'm committed to actually getting this done. Last point on process, because I know there's been a lot of concern on process. I'm really proud that in this building with Secretary Blumenfeld, that many years ago, we invited an inclusive table to help us develop what became HRL. And it was a long, complicated, and at times rocky process. I was proud that conservation groups were invited to the table. And I also understood and respected their choice when they stepped away because they didn't feel like it was headed in a place that they could support. But I want to be clear, this has always been meant to be an inclusive process. We've also been on a journey with tribal governments and sovereign tribes. I'm very proud of our government-to-government consultation and all that we're doing at our agency to partner and to support the leadership of tribes. But candidly, our government-to-government consultation process and policy,	

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		you know, seven years ago, was not what it is today. So I am glad that in the last two to three years, there have been much more proactive outreach with tribal governments and communities. And my commitment to you publicly is that if this moves forward, everything we implement within the Healthy Rivers and Landscapes part of the Bay-Delta Plan will have a very high standard of government-to-government consultation with California tribes. So huge thanks for all the work that you, and importantly your staff has done in coming years and appreciate your consideration of this draft proposal. SECRETARY CROWFOOT: Thank you. SECRETARY CROWFOOT: Thank you.	
1302	1	DIRECTOR NEMETH: Good to see you all. Thank you, Chair Esquivel and members of the Board, Vice Chair D'Adamo. It's good to be here. We've been at it a long time together, marking our progress. And I share in your satisfaction of narrowing of issues. It's been a big job. And I want to just offer my sincere thanks to you all and the Board staff who have been working so intensely on this for so long. Picking up a little bit on what the Secretary said, I don't want to be redundant, maybe I'll just say, you know, I agree. I associate myself with those comments. But, you know, for me, who's a little bit closer to the water user side, I think one of the things that is most important from my perspective is a sense of shared responsibility among water users. And that is really what the Healthy Rivers and Landscapes is about. I think to a person, this DWR Director included, I know a lot more about other water users and what they're concerned about, what they believe about their systems and how their systems operate than I definitely did at the beginning. And it's a complicated system. And so instead of throwing up our hands at the complications, it really is a testament to everybody's dedication to improving our system is to get in there and understand it.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		You know, we have a few arguments on the water user side, just a few. And really this is an opportunity to understand how these systems operate help us, I think, dispel some of the mythology. Everybody thinks the next person over has it better. And that's just, that's the dynamic that we live in. So all of the effort to date, and I think also, excitingly, the effort that it's going to take to implement this is something that the Department is very eager to pursue.	
1302	2	I want to start on something that may feel like a degree of tangent, although I did hear Board Member Firestone's comments and I think this is responsive to that. And I think those are important comments that you are raising, Board Member Firestone. And it's important to me to do maybe a little bit more than I traditionally do with a PowerPoint to really talk about what we just experienced with this first flush and our, under California ESA permit, our permit amendment to enable the Department to make these certain real time assessments. We care very much about how we understand pumping operations and the rules and regulations that guide those pumping operations and how they relate. They are not the same as but they do relate to separate regulations that you all are responsible for. So even heading into this in December, that was very much on our mind. How do all these pieces work together? And so I think this is an important presentation because we have to understand each other better. We keep talking about moving water when it's wet so that we can leave more in the system when it's dry. We talk about affordability. We talk about safe and clean drinking water. All these pieces come together around these issues. And this really does give us an opportunity to describe the process that the Department went through with our colleagues at the Department of Fish and Wildlife, the things that we were considering, what was happening in real time in the system and then our process to keep you all up to date, which will be part and parcel to how we work through the implementation of HRL.	Please see Common Response 1.3, Revised Proposed Plan Amendments, regarding comments about the 2025 ROD and 2025 ITP. See also Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		So I do have a set of slides. And so this first slide is a beauty. And it's a beauty because it's the Yolo Big Notch, which was a long time in the making. So that's some drone footage of operations this year. And what's important about that is it provides a real significant scale of floodplain habitat. This project is something that has been a requirement of the projects for a while. It's not part of HRL. But I consider it a sort of a proof point, if you will. And what has been so great about starting to activate this floodplain in this particular year is we've had a couple of really wet years and we're starting to see better salmon numbers, which is great. And that's exactly the time to lean in, not step back and say, okay, you know, the problem's resolved. We know California is going to be back in drought. And what was great about this year and what's so great about this project is -- and is envisioned by HRL is when we have those wet water years, we also have places where salmon can go that's safer and more beneficial for them than just staying in the rivers as they would today. And so that is one of the things I think about this particular year is it really does demonstrate these opportunities and how valuable these opportunities are for us to do more than be talking about it, but actually activating our systems. So I wanted to start with that, because if you haven't been out there, it's a beautiful spot and call the Department and we can take you out there and you can take a look at how that's what it looks like. And I don't know if we're going to get much more of this this year, unfortunately. But, you know, hope springs eternal in California Water Management. Which I think takes me to the next slide. So, yeah, hope springs eternal in California Water Management. I'm not going to go over this in too much detail. I think we've all seen it a lot. This is all what we're working for. But this is just the point that starts a lot of our water presentations in California is we have a very flashy system. It's getting flashier. And project operations are, in point of fact, quite dynamic. And even though we do things in monthly time steps with our modeling, how water moves through the system is really important in terms of the opportunities it presents and does not present to move water.	

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1302	3	So next slide, please. So the first flush regulatory process for the Department of Water Resources was essentially through California Endangered Species Act. Our existing permit includes adaptive management. To effectuate adaptive management, we need to seek an amendment. So all of that has been contemplated by the California ESA permit that was approved in 2024. What this amendment did for first flush was it allowed the Department to do an assessment, an assessment of existing conditions and understand whether incoming hydrology, which is modeled coming in, so we have an assessment of fish that are in the system, we have an assessment of turbidity and other things, and we are looking at the storm coming in and we are trying to anticipate whether there's an opportunity to, flexibly, to move more water, to adjust our Old and Middle River regulations in a way that's safe for fish, in a way that doesn't draw more fish into the pumps. And so what we do is we prepare that assessment and we send that assessment to the Department of Fish and Wildlife. And they deny or modify our operations plan as they see fit in accordance with California ESA. And then what happens is we get into actual real-time conditions. The storm comes in. This one was pretty interesting because we saw higher flows on the San Joaquin, I think, than we had been anticipating a few weeks out for a whole bunch of reasons. And of course, the San Joaquin hydraulically changes some of the conditions in the South Delta. And that became part of what we were managing to end with in this particular first flush event. So this is our general process, and then we kick into implementation. I do want to say, maybe before I move on from this slide, is that when we do our assessment as a department, we do look at increased pumping and potential changes in overall outflow. We make it. That's part of our assessment to the Department of Fish and Wildlife. It's a separate assessment from the things that you all are considering. It's based on the specific species, et cetera.	Please see Common Response 1.3, Revised Proposed Plan Amendments, regarding comments about the 2025 ROD and 2025 ITP. See also Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		But we do go into it with an understanding of the relationship between pumping flexibility and outflow conditions. So next slide, please. So just in a run-up to what's happening in the State Water Project before we see this hydrology on the horizon, we were operating to D-1641. Our exports were fluctuating with Delta outflows. And then we saw this storm arrive December 22nd. And those flows and turbidity trigger Old and Middle River flow management and Delta inflow rises. That's generally how this works heading into a storm event. So what we ended up doing, on the next slide, so what we looked at was anticipation of heavy precipitation December 24th through the 29th. In that moment, what we were doing was we were preparing an assessment for the Department of Fish and Wildlife to take a look at. So we were looking at turbidity bridge, the potential for larval smelt entrainment, and we proposed these adjustments. These adjustments were already within the bounds of the incidental take permit, which enabled us to -- you know, we do modeling that, you know, deals with very specific conditions. But as a general proposition, the overall modeling that supports the incidental take permit, that was already completed as part of the incidental take permit, which is important because the take permit anticipated activating adaptive management through the duration of the permit. So next slide, please. So we took a look at the distribution of species, smelt, longfin, winter-run, and spring-run Chinook. We analyzed those impacts. We used particle tracking models, entrainment models, something called routing probability data, so where we think the fish are going to go, and survival models. And the result of that assessment was there were few species actually present in the Delta at that time. We had no loss at the State Water Project or the Central Valley Project at that time. And high flows, particularly the ones we started to see off the San Joaquin River, presented minimal risk for fish entrainment.	

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		And so that was our assessment. And that was the scientific underpinning of the Department seeking the flexibility. So what was that flexibility? Next slide, please. So what we did, so we have in our permit what we call the default operations. So if the assessment turned out differently, we in all likelihood would not have pursued additional flexibility. Our default operations are negative 2000 OMR. So our proposal was DWR would operate no more negative than negative 3500 starting on 12/25, unless we saw the San Joaquin River, their flows exceed 10,000 CFS. So that's what I was talking about. This had a dimension of high San Joaquin flows that hydraulically, I'd say, mitigate or mute, if you will, the interaction between Old and Middle River negativity and risk of entrainment. So what we said was if those flows exceeded 10,000 CFS off the San Joaquin, then we could go up to negative 5 OMR, unless we started to see salvage of winter-run or spring-run occurring at the pumps. So for week two, our proposal was, you know, because we were riding the hydrology, we're riding this curve that's coming into the system, when those Q West flows dropped below 10,000 CFS, then we would turn pumping back down. So that was the general flex that we were pursuing in that time period. Next slide, please. So what happened? And so as I mentioned, you know, overall, we are paying attention to State Water Project pumping operations and its effect on overall outflow. And so what you're seeing really here is what We -- this is operationalizing this idea of seeking opportunities to move more water when it's wet, when it's safe for fish. And in this instance, the safety for fish is about the interaction between the pumps and fish species under California ESA. So ultimately, what happened was in the period between the 23rd of December and through that first week in January, the actual overall outflow with the pumping flexibility that I	

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		mentioned was about just north of 90,000 CFS. Without the amendment, it would have been 91,671. So the overall outflow reduction in this period was about one percent. So next slide, please. So this slide is a little bit busy, but I think it's really important because it gives, I think, shines a greater light on our operators of the project and, when we see the potential for flexibility, how we operate the project to accommodate that. So as I mentioned, we had been operating to D-1641. We had -- which enabled us to be operating at a much higher negative OMR until we actually triggered first flush. And so what you're seeing there, so what would have happened, the green line is what would have happened if we had not pursued the amendment assessment and more flexible operations. So what you see there is the Department doing what we are allowed to do under the law, which is to operate at 8,000 right up until, and that's that sort of cliff, right up until we hit that trigger. And then we essentially move from negative eight to about negative two. And then we're kind of working across the bottom there on that green line. Because we were focused on species presence and we understood that when you allow flows to be a little bit more negative, you run a risk of entrainment, we wanted to mitigate the risk of entrainment as early as we could. So we took an early action and started, essentially, ramping down. And we ultimately ended up at negative 3,500 on day one of our action. We started moving down from negative 8 to negative 5 to negative 35. And in that moment, you know, you can see the projects are, you know, based on the baseline, we are leaving water in the system. And then you see, as these high outflows start, we see that bump on the San Joaquin River, then we are increasing our pumping to a negative 5,000 OMR regulation. And we're really running that, we're really running that system. What started to happen -- and this is where it gets dynamic, and I	

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		said, you know, we do the assessment, we do an operation that we think works with that assessment, DFW approves that, and then we're operating; right? And we are operating in known triggers if we start to catch fish. So what you're seeing in the middle there is we did have a spring-run salvage. And that meant we reduced exports to negative 3,500. That spring-run salvage was something that was unusual. And so we have more, you know, work to do on the environmental DNA side of the house, if you will, to understand those movement of fish at that time. That was not anticipated. But that's also my point. Our system is dynamic. Things happen that we don't anticipate. And we need to have, you know, rules and ways of responding to those things in real time. So essentially, this chart shows the adjustment in our operating curve, both how adjustments in OMR regulations relate to volumes of water that the Department was able to move during this first flush. So what you essentially see from here is that the Department, you know, our modeling is showing we probably got about 15,000 acre-feet of additional exports in this timeframe. So next slide, please. So in that period, our exports totaled 107,000 acre-feet. About 15,000 was the result of the ITP amendment. And the estimated change in Delta outflow was about one percent. So again, the process of operating in real time is to see the hydrology coming in, do an assessment of species, talk with DFW. In the context of that assessment, we have a sense of outflow. I just want to emphasize it's separate from, you know, considerations that you all are making. But we very much want to be transparent about, you know, how we take a look at it and how we track it during real time operations. And so this was our outcome of our first flush adjustment this year. So I thank you for allowing me to go into that kind of nitty gritty detail because I think it's important. I think it's important when there's a lot of angst and a lot of people talking past each other, I think it's a natural human instinct to want to manage to a	

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		worst case scenario. But this is why the Department was comfortable in December when we started seeing things set up, taking this action, working with DFW, exercising adaptive management in our CESA permit. And, you know, I know you all have lots of things to discuss about where you all are headed with the Water Quality Control Plan and HRL. And I really understood this to be something that was definitely in the background, if not in the foreground, around credibility of the Department, our genuineness in meeting our commitments under HRL. And that's why I wanted to come and personally, you know, deliver something that was a little more detailed than I traditionally do. So I do thank you for your time and attention. I'm happy to answer questions as I can. Certainly from a policy perspective, my technical expertise is pretty modest. But I know if you have other specific questions, we can get the right DWR operators and biologists talking to you or your staff. So thank you very much. DIRECTOR NEMETH: Thank you. DIRECTOR NEMETH: Thank you. DIRECTOR NEMETH: Thank you.	
1303	1	MANLEY: Great. Thanks, Mr. Chair and members of the Board. We appreciate the -- and good morning still. It's still morning. You guys are ahead of schedule, so kudos on that. So we really appreciate the opportunity to be with you today. And for this panel, we're really going to be focusing on three issues. First of all, we're going to be providing an update of the early implementation work. We've had some questions and comments on that, and so I think that that's going to be really good. We also are going to be describing some of the lessons that we've learned from those projects that have been implemented. And then, also, we're going to be describing how we will continue to make progress towards the HRL goals as we move forward. Do I have a clicker or do I need to just ask somebody?	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		MANLEY: Oh, okay. Neat. Yeah, thank you. Yeah, if you could advance the slide? So I am Todd Manley. I'm with the Northern California Water Association. Next slide, please. And joining me on the panel today, we have Josh Martinez with the Department of Water Resources, Michelle Workman with the East Bay Municipal Utilities District, and Max Stevenson with the Lower Putah Creek Coordinating Committee and Solano County Water Agency. Next slide, please. And we're representing a broad statewide coalition that is supporting the Healthy Rivers and Landscapes Program, many of whom are in the room today, but also watching online as we go through this hearing, so thank you. Next slide, please. So we thought it would be good to start off with sharing some overarching themes here. And just first and foremost, we are committed to salmon recovery. That's why we're here. That's why we're doing this work. We have a long history of implementing projects that promote salmon recovery throughout the region. We're providing a unique perspective to this hearing. As practitioners of those habitat projects, we've done the work, we've seen the results, and we can share that with you. And we are invested in the success of the Healthy Rivers and Landscapes Program because we believe and the science supports that the programs are joining of comprehensive and substantial habitat improvements with targeted functional flows is the way to make meaningful progress in Chinook salmon recovery. We are also listening. When the MOU was developed, you asked	

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		for us to maintain momentum on project implementation. And we've responded with the early implementation projects that you're going to be hearing more about here today. You've also asked for help in developing habitat accounting that reflects what is happening on the ground. And we will be submitting comments based upon our experience constructing these projects. And you have asked for a better way of showing the progress being made on project implementation. And Josh is going to be sharing an interactive map that has been developed to do just that. And lastly, we are learning. As we move forward on this process, we are constantly learning and we're excited by what we're learning as part of this process. Next slide, please. So what are we learning? So first of all, you know, what we've been doing here more recently builds upon decades of salmon recovery efforts that have been implemented in the region. We've got a lot of experience in doing this. We've been doing projects for a very long time here. And I think more importantly, the exciting work that we have now is with this early implementation. These projects have been underway and have been implemented. And now we're at the time where we really can look at the success that we're being able to generate from these projects. And we've got two examples of that today with the Mokelumne River and on Putah Creek. Next slide, please. And so, you know, how are we learning? We're learning by implementing these projects, the early implementation projects that build upon this past work. We then have a robust and, to be frank, a fairly expensive monitoring program that has been part of these projects. And the importance of that is it's really allowing us to see how the projects are being utilized by fish, how they respond to different flows and what habitat values they provide at those different flows. And so that's allowing us to develop the science that is allowing	

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		us then to learn from those projects that are implemented, adapt how we design projects in future projects in response to what we're learning and then improve that habitat as we move forward. And the whole goal and the idea of this is that this is going to allow us to maximize habitat values and get this bang for our buck that we all collectively are looking for. I think importantly, as well, is that this work cannot stop when we're at the end of early implementation. It is something that needs to continue as we transition into the term of the agreement. And we're excited to talk to you about that as well. So with that, I am going to -- next slide, please -- turn it over to Josh and my fellow panelists to add a little more detail to these comments, so thank you.	
1303	2	MARTINEZ: Thank you, Todd. Good morning, Board. Thank you for the opportunity to give what we hope you'll find to be an exciting update. We're a bunch of fish nerds on this panel. We find it very exciting, but that may be just us. I'm Josh Martinez. I've been with the California Department of Water Resources for the last 18 years. And in that time, I've been lucky enough to study our native fish species in the Delta and in our aquatic floodplains. We've also been implementing a lot of large-scale habitat restoration projects in those floodplains and some big adult fish passage projects. Next slide, please. So we kind of get right into it in the title of this slide. Why are we making such a big deal about these early implementation projects? Or you might hear us call them EI projects for short. We love our acronyms here in the state. I think we should start with what's the definition of an early implementation project? I mean, after all, under HRL, isn't a project is a project is a project; right? Well, not really. We think that we should give a special designation to these early	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		implementation projects. Because these are projects that were designed, they were constructed. Maybe they're at the permitting phase. Maybe they're already done in providing benefit. But that all predated any formal design criteria that we now have in the updated Water Quality Control Plan. And I think that that kind of begs the question: Well, why would HRL parties go out and start building stuff before you have formal design criteria? And it's a good question. So for the next two slides, I'm going to answer that. The first one here, this was a direct response to a challenge that was put forth from state leadership back in the 2018 Voluntary Agreements then, right, Voluntary Agreements workshop. While we're doing this ongoing negotiation of not just an HRL Program, but a broader Water Quality Control Plan, there is a challenge put forth to the water users and, right, to the state, show us some progress. Roll up your sleeves, give us a good faith effort and show that not only are you willing to do these big projects, are you able to do them? And we have a pretty ambitious habitat goal, as you see in the HRL Program. And so that's what was done. And this was done under this mutual understanding between both parties that the projects that we provide under this early implementation label, is going to be valued consistently with the rest of the habitat valuations in the MOU, and now in the updated Plan. Next slide, please. So that was reason number one for starting early, this is, as a project implementer, this is my selfish reason for needing to start early. It's out of necessity. Board Member Firestone, you had a great discussion earlier about how long it takes to get these things in the ground. I put, purposefully, kind of a scary table in here. This is a project implementation life cycle for your typical -- think at landscape scale or modifying huge tracts of land in the hundreds, maybe even thousands of acres, this is how long it takes to get stuff done. I'm not saying this is all done sequentially. Certainly this	

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		can be done with some parallel effort. But each of these phases, right, concept development, you need to decide what it is we're willing to do, develop tools to evaluate those concepts and ultimately select a preferred alternative, that's one to three years. Design, we've got some projects that are well beyond that one to three years of design. The real estate component is a really tricky one. We have a lot of these public private partnerships that we're finding. We need to add a minimum of two years to a schedule that is not really done in sequence. Getting us to permitting. As a practitioner, I think a lot of the folks in this room, when we build out our project work schedules, that's the critical path item. Oftentimes it's two, three, four years, I'll sheepishly say maybe it's gone even longer in one project I've worked on, to get full permits to go out and actually start construction. Most of our projects in the river have really narrow work windows, so it may seem like a smaller project, but it's one to three, sometimes more years to even build the project. And then we're getting to monitoring. And I don't know that we give monitoring enough, right, respect. It takes a lot of monitoring to make sure you're doing things properly and you monitor what you plan to manage. And adaptive management is going to be a big part of the HRL Program. All this to say we do this out of necessity; right? We need to get a little bit of a jump on those bigger projects to make sure we're going to meet that eight-year timeline. But having that headstart allows us to build projects that maximize benefits to species. We're building resilient projects; right? Something that's going to withstand climate change. We're going to be able to handle a dynamic flow environment in the Delta that we've all talked about earlier today. If we only had eight years to build these big-scale projects, the lens that we would look at project lists would be radically different. It would be what's quickest, what's cheapest, and what checks a compliance mark, and that would be it.	

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		Next slide, please. Okay, I kind of like this. We're pivoting into adaptive management. Secretary Crowfoot actually illustrated the need to be willing and able to adapt earlier. But we are relying on this data collection, so this is that monitoring we're talking about. This is going to inform our decision-making moving forward. In short, and you're going to hear a lot more about this from the other speakers, this allows us to do more of what works and pivot away from things that may be falling short of our design objectives. Next slide, please. So I promise that was all the scary stuff. We do have a plan in place other than start early to make sure that we do meet the eight-year deadline. And I've kind of broken these down into four bins of efficiency, if you will, that are going to maximize our odds of success. The first one, we did talk a bit today about permitting efficiencies. The Cutting Green Tape Initiative is a great one. We're also working with parties to see, are there ways that we can do more programmatic permitting? If we have a handful of similar projects and a similar geographic scope, can we do a blanket-type permit rather than doing each one individually? The next one is securing funding. I really -- Secretary Crowfoot kind of stole my thunder twice now. We had that floodplain-forward MOU that just a week ago we had a one-year celebration for. And this was a big deal. This is the first time in the HRL Program where we had a number of federal partners come together and pooled money into a RFP that wasn't a nationally competitive solicitation. This was regional; right? This is for floodplain benefit in the Sacramento Valley. And that's a great example of what needs to come next to streamline these efficiencies. Just this November, the Wildlife Conservation Board did award roughly \$75 million worth of funding into HRL objectives. That	

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		was another big streamlining there. The next one here, incorporating science into design, that's the kind of, well, of course we're doing that; right? Well, we should be, and hopefully everybody is, but it's important to be intentional about how we design these projects. We are, like I said, learning from those previous projects and incorporating those lessons learned. But we're going through a standardized science plan. We have tributary-specific science plans, and that's going to address key stressors in each of those tribes and locations. And we're making sure that whatever we're proposing, whatever adaptive management decisions we're doing, it's through a scientific lens. And the last one, this collaboration to enhance capacity, that's another way of saying we've got a small army of people under the HRL umbrella that are willing to take, right, their smaller bites out of the same apple and help us get to the finish line. Next slide, please. So talk about burying the lead. I think this is what everybody was looking for here. This is our update on the status of our early implementation projects. We currently have 58 projects that would fall under that EI banner. We do have a map here. I know there was a request that we put together a map of projects. We are working through the ADA remediation process to get this uploaded onto our CNRA website. We actually have bigger plans for this map. We want to make an interactive site where folks can hover over each individual dot and get the project-specific details, so that is coming. But I like this map. It shows the broad geographic extent of where we're doing projects. And if you look down at the bottom there, you can actually see a wide variety of projects in this early implementation portfolio. So some highlights of those 58 projects, 35 are done, complete. They're in the river. They're providing benefit as we speak. Another 7 are currently under construction and 11 more are going to construction this year.	

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		Next slide, please. All right, so I'm going to -- we're going to kind of shift towards these success stories. I snuck one in here at the 11th hour. Todd had mentioned we're going to have two. Here's number three. This is the Lower Elkhorn Basin Levee Setback Project. I'm stealing somebody else's thunder for a change. I did not work on this project, but this is a really big project along the Yolo Bypass and the Sacramento Bypasses. We're talking in excess of 1,000 acres. It's a floodplain project. It's been inundated twice over the last two years and we've been able to get out there and monitor it. And what we found is this is one of the most productive landscapes we've ever measured. So this image on the left, this is taken from the property. You see the inlet water sample. This is as the water's flowing into the parcel. I'm not saying you should drink it, but it's definitely clearer than the one on the left, in the image on the left there. This is as that water's had a chance to incubate and become productive. The big image on the right here, when we talk about fish food, this is what we're talking about, right, zooplankton. We call them bugs, but they're not bugs, it is zooplankton. In our monitoring, we found over 250,000 of these bugs per, I put square meter in the slide, forgive me, per cubic meter. So extrapolate that over a thousand-acre parcel. I mean, this is the engine that's driving the aquatic food web. And that's why we feel it's so important to get these fish onto these landscapes. Next slide, please. So I'm going to hand it off now to my other colleagues. We're going to show how we are kind of shifting away from this lens of, but can we actually do this? We're now firmly in the, how are we going to optimize these projects to maximize benefits? And I gave an example of a large scale restoration project, but we're going to look at the Mokelumne River and Putah Creek, and we're going to show how you don't necessarily need a massive	

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		project to deliver outsized benefits. Thank you. Oh, next slide, please.	
1303	3	WORKMAN: Great. Thanks, Josh. So I'm Michelle Workman. I am the Manager of the Department of Natural Resources for East Bay MUD, working on primarily the Mokelumne River in this context. And so thank you for the opportunity to speak. Next slide, please. I want to just start off by showing some of our current successes on the Mokelumne River, because I think they're very related to HRL and the program that we have ahead of us. We have experienced in recent years some really good successes on the Mokelumne River. And those successes have come after signing what we call the Joint Settlement Agreement, which was an agreement under our FERC process. And that agreement was really providing provisions for flow, habitat, and temperature management on the Mokelumne River that we've been implementing since 1998. And the graph shows a pretty clear change in what we're seeing in salmon populations on the river from before Comanche went in, after Comanche went in, before the JSA, and then post-JSA. And so, you know, what the JSA has given us to date is the opportunity to expand spawning habitat quality and availability to the point where we don't have a requirement for spawning habitat under HRL because we have the capacity to meet the doubling goal population in the river. It's also helped us increase our escapement numbers to the river and increase our contributions to the ocean. And those are all really great -- but if I can see the next slide -- what the HRL can add on top of that really is give a boost to that. So we've spent a lot of time managing for the adult side of the equation, with the goal being the doubling goal population. But over time, it's clear, and the modeling from the HRL Program	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		shows, that we are deficient in that critical habitat for juvenile species. And so now we can switch our activities to really focus on, now that we've improved spawning habitat and capacity and escapement numbers are really good, how do we improve survival of that juvenile portion of the program? And I think the HRL helps us elevate that through a number of different pathways. One, really opening up funding streams has been hugely important in trying to implement projects. It's hard to implement projects on a small river that's all locked into private landowners. There's very little public land on the Mokelumne River. And the HRL Program also, it's providing those dedicated flows that we can shift to a time where they're most important for juvenile fish. And then also provided this collaborative environment for us to work with other scientists in the valley on how we design these programs and really bringing together that science to make sure we're putting on the ground really beneficial projects. Next slide. So when we're talking about the habitat on the Mokelumne River and the restoration projects, I think it's really important to clarify that this wasn't a decision about habitat overflow and it wasn't a decision of flow for flow's sake. So this was a very mindful integration of what flows are needed to inundate the kinds of habitat we need to build capacity for juvenile fish in the river. And so that's how the Mokelumne River proposal came to be, was this is how much habitat we need to support juvenile fish. This is how much water we would need in a volume to put the right CFS level of water onto those habitats for it to be beneficial. So we're using that science and modeling throughout our collaborations with the science team to build meaningful and	

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		beneficial habitats. And I think it's also important to understand, on the Mokelumne, we have a group of scientists that many of them, including myself, have been there more than 20 years. We have a lot of institutional knowledge and we're local expertise. We have, also, some newer members of our team that are really smart and have really cutting edge ideas. And so melding those two is really helping us build really good projects. And I think the flexibility of site-specific flexibility for our actions is really important to make sure that we're building the types of projects that will be beneficial to the Mokelumne River. Next slide. So when we look at our habitat restoration, and Josh gave me a good lead in, so, you know, in the Delta, they're doing these really grand scale, fabulous projects and producing enough bugs to feed all the fish in the system. We have very little real estate to work with and we're doing the best we can with that real estate. This is a great example of a before and after from one of our early implementation projects. This is about a three-acre floodplain project, which doesn't sound like much, but you can see from the before picture, we've taken this perched area of the riparian habitat and we've dropped that elevation down. And what you see on the right is this beautiful, nutrient-dense, slow moving, vegetated area that is going to provide exactly what those juvenile fish need for growth, for refuge from predators, and hopefully increase survival as we move down the river. Next slide. And then if we look at that project from a little bit different standpoint, and you guys may have seen this in a previous hearing where we were talking about accounting, this is the same project looking from above. And the beauty of this project is that we've used our dedicated HRL flow pattern to fill this project. And we know that we can implement these flow levels for enough time and duration and provide the magnitude and the depth and the frequency to really fill this habitat. And as flows	

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		come up from the initial inundation of 800 CFS on this slide and as it moves through the habitat, what you really get is not just more habitat, but a much more complex habitat mosaic in that habitat design. So there's, you know, lots of different features in that habitat that come online as the flows go up, but there's still good habitat at those lower flows. And so we're really excited about this design and being able to sort of optimize benefits to fish on very small footprints. Next slide. WORKMAN: Yes? WORKMAN: So that project, yeah, that project, we actually got Prop 68 funds. So I think we got those funds in late 2021 and we were able to implement that project by -- it was in the ground and functioning by 2023. It's a pretty quick timeline. I will say we own that property, so that reduces a little bit of the permitting. It's also above the legal floodway input on the channel, so we didn't need Flood Board permits. So there was a little bit of internal streamlining because it was our own property and because we have the Prop 68 funds. And we can do -- on these small scale projects, because we have a big team and we have some annual contracts with construction folks for the spawning habitat maintenance, we have the ability to get in and out and target these projects, get them built, and then watch how they perform and come back and kind of modify them if they're not performing the way we think. So that's kind of the beauty of these small projects on our own property. WORKMAN: Okay. WORKMAN: And so the other thing that this timeline has given us, I know this is a long timeline for everyone and we all have a little bit of fatigue, but having this early implementation period has really provided us an opportunity to do some of the effectiveness monitoring up front. And so this has been in place since 2023. We're monitoring it every spring. We have had	

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		inundation flows, as you can see. And so we're able to get out there, start collecting data, see if it's working, see what is working and what's not working, and then use the Science Committee for input to use adaptive management to change things that they're not working. The really beautiful story about this piece that excites me as a fish nerd is, you'll see in the pictures, there's a Chinook salmon smolt. So that's the target; right? So they're using that habitat and that's really great. But that bottom picture is a three-spined stickleback. And for the non-fish nerds in the room, it's not a super common native species, but it's a native species. And I've worked on the Mokelumne since 1993 and the only place we've ever seen three-spined stickleback has been in the one small tributary, not in the main stem. So building this habitat and watching these native fish come in and use the habitat and function in a place where they weren't functioning before, super exciting for us to see. And then I also wanted to mention, too, as part of this effectiveness monitoring, you know, we are also in the process, like when we talk about timeline and how we're going to meet all these targets, in the process of modifying our monitoring regime. We have a really great, solid long-term monitoring program, but there are some tweaks that we need to make to that program to meet the gold standard under the science plan. And we're working on that right now and we're actually implementing uptick in monitoring this year to see how we can staff that up and how we can collect some of this extra data that we haven't been collecting that's going to be useful in the evaluation of these projects. Next slide.	
1303	4	And then just to finish up, you know, where we're going, you know, we're really looking forward to and hopeful for adoption of this Plan, this piece into the Water Quality Control Plan. To date, we, under the early implementation program, we have not only put in the overbank juvenile rearing habitat that was required of us, we've also screened six high-priority diversions in	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		the downstream reaches because we know those are impactful to successful migration out of the system. And we think that that is something that has to happen along with building this habitat, growing fish. We also need to protect them on our migration route out. And again, while we don't have any requirement for spawning habitat, where we are implementing spawning habitat maintenance projects, which really means continuing to input small amounts of gravel to keep the gravel, the river bed at the elevation it needs to move gravel on its own. And so we're implementing those projects and we've completed, you know, these small floodplain projects. But the really exciting thing is, and I'm so happy to say, yesterday we entered escrow into a conservation easement agreement with a private landowner. And that's the green box you see kind of mid screen, and then also the small highlighted box downstream of that. This is a local landowner on the river. We've been negotiating with him, to Josh's point, negotiating with him since 2022. And we just are getting signatures on a conservation easement and entering escrow. So we're super excited about that. We didn't let that languish. We have been working on designs for that floodplain project all along the way while we were negotiating in good faith. And so we're at 60 percent design for a project on that 55 acres. So, you know, that that will move the needle significantly for the Mokelumne, depending on how the suitability range works out. It might get us to our goal. It might not. We're also in discussions with another private landowner government collaboration downstream, closer to the city of Lodi, where we have another opportunity for another significant piece. And so the beauty of all this is it's building this system all the way downstream to out migration where these fish have these refuges and these growth opportunities. So depending on where they're at in the system and at what stage of their growth, they'll have a spot to get big, to stay away from predators and hopefully get down the river successfully.	

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		And I just want to end my section by saying, you know, we -- our collaborations have really increased on the Mokelumne River. Being able to say that this is a program and highlight that to landowners has spurred some enthusiasm among some landowners that we haven't been able to spur in the past. That's been super beneficial for us. And we look forward to continuing those collaborations. And we also have a few conservation agencies, NGOs and tribes that we generally work really well with on the Mokelumne River. We aren't on the same page for this program, but we're really hopeful that as -- if this goes forward and gets adopted, that we can really come back to the table with those groups and get their input and really make these as meaningful as possible for our river and for all of those groups to meet all the benefits. So thank you for your time and I'll pass it off to Max.	
1303	5	STEVENSON: There we go. Max Stevenson. I work for Solano County Water Agency. I'm the Putah Creek Streamkeeper. I've been the Streamkeeper for about four years. Michelle's been helping me figure things out over the past couple of years. And we have never met in-person. We've only met over Zoom. So this is fun for me. Next slide, please. So just some orientation to Putah Creek. See the cities of Davis and Winters? It's about 25 miles of creek. It's a heavily modified and managed system. Of course, we have Lake Berryessa where the large dam has modified the flows downstream of Davis. It looks like a wiggly line but it's really pretty straight as an arrow. That's all a hand-dug channel in the late 1800s. We have about 150 landowners on Putah Creek. And we communicate with all of them on a regular basis with postcards and invite them to many, many meetings. But some of them do come. About a third of the creek is in public ownership. Mostly UC Davis owns about seven miles. And then the state of California, CDFW owns the Yolo Bypass Wildlife Area. And you can stand on the banks of Putah Creek and see the downtown	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		skyscrapers of Sacramento. I just was there yesterday. Next slide, please. So the team here said I could have unlimited slides showing pictures of salmon, but only one slide with a graph. So this is my one slide, and I'm going to make it count, and it's counting the salmon. It starts in 2004 to present. And the Y-axis shows the number of salmon showing up. You can see for the first 10 years there, or longer, there were no salmon showing up in Putah Creek. And with the Putah Creek Accord, the settlement from a lawsuit in the 1990s, the court told the water agency we needed to release more water and hire a Streamkeeper, more water for fish, and so we did that every year, starting in 2000, pulse flows for attracting salmon, extra water for temperature control. And the salmon weren't showing up until 2014. And why did it take so long? So next slide, please. So, yeah, what changed over that time period? Next slide, please. So a lot of money. \$25 million in spawning habitat, about \$50 million in grants, about \$10 million from the water agency. Lots of -- dozens of different projects, some larger than others. This is just an example of one of the types of projects here. You see this excavator with the claw. That's for gravel scarification. And that claw was designed in-house by our staff and custom manufactured to fluff up the gravel. The gravel supply has been mined out. It's also been blocked by the dam. The lower flows don't transport the gravel. And the gravel that remains is cemented together. So we've been digging it up. And then on the right hand is a Putah Creek salmon creating a redd, so about to lay eggs in the gravel that we've fluffed up for it. And this has been very successful. UC Davis counts the fry that are out-migrating downstream. Some years, over 30,000 fry born in Putah Creek are measured, caught in the rotary screw trap, a	

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		special trap for monitoring migrating juvenile salmon. Next slide, please. So what else does UC Davis discover or show us scientifically? They did otolith microgeochemistry, the ear bones in salmon, and found that the salmon that are returning as adults to Putah Creek, some of them were born there. They are not just lost hatchery strays, although a lot of them are. And this was a big deal in the fishery science world. And this is peer-reviewed scientific publications, the highest standard. And basically, we as a community, the Putah Creek community, the regulators, the water agencies, the landowners helped make this run happen. We created a natal spawning run. And then the next slide, so even better, this past year in November, we had record numbers of returning adult salmon. You may have seen it in the news. I got texts from France and postcards from Maine and Missouri. It was -- I was thrilled; right? But I was a little surprised too. People love a record. And boy, Putah Creek, you know, is only 10, 15 feet wide in some sections and thousands of salmon swimming around. You walk down there and you're like, are there dogs playing in the water? And you hear all the splashing and it's not. They're 30-pound King salmon jumping. Next slide, please. This is a quote from one of the professors at UC Davis. "There's a lot of potential to have more Putah Creeks out there." And that's what I believe. And part of it is, you know, having a streamkeeper, you know, someone to not just manage the water or the gravel or the, but manage the people. The community building is really what made this happen, because there was a lot of animosity during the lawsuits, which we'll talk about in a second. Next slide, please. Yeah, so no single action was responsible for the salmon returns. You know, I mentioned the community and, you know, the gravel augmentation.	

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		but next slide. So we've got a little cartoon here of six key practices. On the left, the timely cold water releases, you know, you can't do anything without the water. We definitely need that. And we were releasing that for many years. But we needed to do the other steps, address the other parts of the salmon life cycle gravel, fish barriers. But over on the right, the collaborative effort, this idea that, you know, it takes a community, that's what I'd like to talk about next. Next slide. Yeah, so this, this is my last slide. And I want to tell a little story. This is at the Winter Salmon Festival. I'm there in the hat, in the center. In November last year, we were celebrating the 25th anniversary of the accord. And we had a little committee to decide how to do it, half hour of politicians giving proclamations, which was very nice. But then my boss said, hey, we need to invite the people back that started this whole thing, you know, 25, 30 years ago, and they need to talk about what happened. And I was afraid. I had pictures of my uncle Bob at Thanksgiving, like oh no. And it turned out to be great. So one of the retired general managers from the water agency, he got up and he said, you know, we fought for years in court over this in the 1990s. And when the court told us, you know, decreed that we needed more water and a streamkeeper and to go back to the meeting room and work with your -- the people that were suing you to figure out the details, he stated at the event in November that he had a change of mind. He was like, okay, I, I'm a water manager. I do flood control and water supply and recharge and water quality. I can add this salmon thing to my plate. I can add fish to the mission of this agency, and the Board went along with it. And in fact, I don't know how this happened, but the court -- there was a very small salmon run. There wasn't a big salmon run before the big dams in the 1950s. And so the decree from the court was to provide more water for fish and the streamkeeper.	

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		But during the Accord negotiation process, the extra flows for the salmon were added. Those were not demanded by the court. The parties agreed to do that. They were like, if we're going to do that, let's go all in. And, you know, it's relatively small amount of water for these pulse flows. And that's -- you know, you can see the results today. They're so proud. I've taken some of the original founding members of the Putah Creek Council down to the counting weir to look at the salmon and they're in tears. I mean, they can't, they can't believe that what they worked on so long ago actually is helping and is working. And what it was, was people deciding to come together and work on this without fighting and stay at the table. Even if you feel like you're not being heard to just keep, keep at it and you can get the good results. And in conclusion, you know, sometimes I'm accused of being a Pollyanna a little bit. And, you know, that might be true. But the previous stream keeper, Rich Marovich, he always looked at it as the power of human intention. You know, if we decide to make a salmon run, you know, we can do it. If we put that on our list of goals, we can do that. And I'm happy to say that I'm part of that process. So thank you. MANLEY: Just have another slide or two. So next slide, please. Just to wrap up, thank you for your time. We really appreciate it. So once again, as you can tell, right, we are committed to salmon recovery. We're passionate about it and it's very important. Also, you know, we will need the ability to continue to adapt as we learn more, and you've heard that from the speakers today, and that adaptive management and ensuring that that's part of the program is going to be key. And we're going to submit some comments on edits that we think will help to do that and ensure that that can occur. And then lastly, we look forward to working with you to implement a program that is successful. That's our goal with this and we appreciate that. And we would like to invite you at any time, if you'd love -- you, staff, everyone, if you'd like to come out	

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		and see some of these projects, it truly is a lot different when you're out there on the ground. So thanks again for your time. Really appreciate it. And we -- next slide -- we welcome any questions. STEVENSON: Yeah, we probably owe everybody thank you cards for that one. We are definitely using it. I can't speak to how many of those projects on that map, but a number of them are, either have used it or in the process of using it as they go through the permitting phase right now. So it is, it's a big tool. Thank you.	
1303	6	WORKMAN: Yeah, I think if I can answer that, the science team, the Science Committee under HRL is really working hard on those very questions and how -- what that monitoring needs to look like and how we coordinate and collaborate so that all of the monitoring elements needed to roll up the information and develop system-wide metrics is being addressed. And so I think, hopefully, you'll hear a little bit more from some of the science team, you know, later either in just public comment or in their comment letters, but I do think that that's a big part of the science plan that's been put together. And that's why there are not only site-specific hypotheses and metrics, but there's also system-wide hypotheses and metrics. And the concept is, how do we roll up these smaller metrics into these larger metrics and then coalesce all of that data to benefit? And it's really a benefit for everyone. So, you know, we can monitor the heck out of the Mokelumne River, but being able to look at it in the context of what's happening in the Delta and around us is really beneficial to all of us. STEVENSON: I love monitoring and data collection. I see two different levels. A lot of the monitoring that happens from a commitment perspective, like, did you do the habitat that you promised to do, is the flow that you promised, is it there, that's just confirming that you're saying what you did. STEVENSON: The accounting component. STEVENSON: Then the response, you know, the salmon	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		population numbers, that's our goal. You know, it might work or it might not, but that's the final end metric. And the way -- you know, we have great flow measurement from the USGS programs over the years in the state. That's ongoing flow measurement for in perpetuity. We use it for dozens of different -- or hundreds of different uses, you know, real estate, flood management, water quality, loading, everything. What I see us doing with the biology is starting that long-term monitoring, you know, focusing on salmon here as we're going to be monitoring those populations into the future, beyond HRL, beyond. We're establishing something to manage that resource into the future no matter what we do. And if it's HRL continues in eight years or if we have other development projects or other restoration projects, we need to collect that data no matter what. And it's not just for HRL. It's for the long-term management and, you know, for many generations in perpetuity. MARTINEZ: If I could add one thing, I love that last thought. It's certainly concerned us as well. One thing that gives me hope is if you were to go into one of our Science Committee meetings, I think you'd see a lot of familiar faces from those past EIP working groups, right, these other programs that may be slowly eroding away. We're poaching where we can.	
1303	7	WORKMAN: I can say on the Mokelumne, we have habitat maintenance built into our ongoing budgets. So it's not a huge budget for us. Again, we're a small river. And with that gravel maintenance, like he talks about fluffing up the gravel, but also there's a depletion of materials, appropriate size material as water moves it down. I happen to have the luxury of having a great staff of about 15 people. We do our own topographic surveys every year. And so we can see if our design for our spawning habitat is starting to erode away and we can sort of target small areas to kind of bring that elevation back up, reduce fine sediments. And so with staff time, the actual money dollars for construction, we just keep about \$50,000 in our budget every year for maintenance only. So that's not building a project. That's not having to pull any extra permits because we have some programmatic permits that allow	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		us to go back in to maintain that gravel. So the cost, it's more of a commitment, a time commitment, and a commitment for the monitoring to know when it's time to do that. So you have to have that baseline data to know what you need. But certainly, you have to be maintaining that habitat. Building spawning habitat, and then walking away and saying, I built spawning habitat is not going to work as long as there are dams in the system because they're eventually going to erode away. STEVENSON: So for Putah Creek, we have a funding source from the water agency. The total program for Putah Creek is about \$2 million per year, mandated by the Accord. From the year 2000 index to inflation, about \$280,000 of that is from the Accord. So the Solano County Water Agency is spending this extra amount beyond what is mandated. And about half of that \$2 million is for monitoring. About a quarter of that is UC Davis counting the adult salmon and the baby salmon. And then other consultants for counting fish and bats and plants and the whole system. You know, in terms of our nimbleness or how we decide to change things, you know, we recognize around our office, and I think this is true in any water agency office, that we're in an emergency here with the salmon. It's all hands on deck. And we're doing everything that we can and we need help. We need help with ideas. We need help from TEK. We need help from, you know, native principals. We need help, you know, and we want to do those things. And, you know, this idea that this is one of our missions, besides water supply and flood control, that watershed management and the environment are part of that mission, you know, all the managers that I know up and down the Sacramento Valley, they feel the same way. You know, this idea of -- it's kind of an old idea that the water agencies are just using the water for the humans and cities and farms. It's a comprehensive management philosophy that allows us to pay attention, dedicate resources, have teams of biologists and engineers working every day, dedicating their lives to public service, as everyone in this room is, and working on these issues.	

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		MARTINEZ: And I think the last thing I'd add to that is, the short answer is it's very expensive. We do have in the HRL Program all of the parties who are participating in HRL. They're providing flows. They're providing habitat. But they're also contributing to our science and monitoring fund for that very reason. Recently, there's been a bit of a shift, not just on the federal level, but also on the state level, through their grant program for restoration actions. A lot of folks are now requiring monitoring and actually including funding to support that monitoring. We're really kind of getting this global perspective on how important it really is. And I think you had a question on how do we know when to course correct? And that's a trickier one. And I wish there was more of a black and white answer. There's kind of a running joke with one of my colleagues up north. They do gravel projects and I'm doing floodplain restoration. My joke is you just add rock, and their joke to me is you just add water, which is easier. And what we find on the gravel stuff, and I'm way out of my depth here, but there's new ways of doing gravel that allows it to be more resilient to changes in flow. So it used to be you dump rock in and you hope for the best, and you have these high flow events that may wash it all away tomorrow, or it might be five years from now. And now there's ways that we know that we can better embed that. So we still want mobilization of gravel. That's an important thing, but we don't want to lose it all. And so little things like that we've learned, and those are course corrections that are actively being applied in HRL.	
1303	8	MARTINEZ: No, happy to. We may reconvene with some of our Science Committee members and build a more robust answer for you, we can include in our written comments. But I think there's two things that would hopefully address the concern and we share it; right? We can't just have this, well, we'll see what happens year eight. That's not good enough. So on the bigger scale, we plan to use the CNRA website as a hub for tracking progress. And so what we'll do over time as projects	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project.

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		are implemented and we conduct our habitat accounting, we'll update the website and you'll be able to track how are we doing towards that specific commitment; 20,000 acres of floodplain habitat, we have X thousand in year two, Y thousand in year three. And I think what you'll see, just kind of forecasting out, we'll have the early implementation projects and I expect a bit of a plateau while we go through that permitting and right the Planning phase for those next projects. But then incrementally, it'll start to grow exponentially as we get closer to that year eight. I think where a good kind of natural checkpoint would be, this is top of my head, so I may change my mind later, for year five or six, we should have on this website identified all of the potential projects to meet that. If we don't have all the projects identified by year six, we're not going to build them by year eight. And so I think that's probably a really good check-in point. The second layer that we want to look at this through is the level of assessments we do for the actual projects. Max, you talked about the habitat accounting. That's just one of three different steps that we have. And I think this will be really important in those annual reports, giving them something that's worthwhile, not just saying we did it. So the first assessment is that habitat accounting, the implementation. Did we build what we said we're going to build? Okay, great. After a while, we'll do this, what we call suitability monitoring, and that's making sure this habitat is providing the conditions that we think are necessary to provide adequate benefits to our target species. And then we have a third layer, which folks who monitor love this stuff, the biological utilization and effectiveness monitoring. So we're actually going to get out and we're going to see, are we observing species on these landscapes? And is it providing that desired benefit? So are they just there to occupy space? Are they deriving a growth benefit? Are we seeing enhanced survival?	

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		We'll be able to use the information that we learned from those three levels of monitoring and apply them to the hypotheses that are in our science plan. And I think the Vice Chair's question on when to course correct, these are the kind of monitoring that is going to inform when it's time to make a course correction. MANLEY: I don't know if you noticed, but Josh and I got really excited when you asked that question. I've lost count of the number of conversations that the two of us have had on this. And so, yes, I do appreciate that. And we've been thinking about this for quite a bit. And in fact, I'm going to beat this dead horse in front of you like I do in front of everybody else, is we need to think of this as a six-year program because by year six, if we're not well underway, it's not going to happen. And so that's been really, I think, a real driving force for us is that we've got to really be -- have a sense of urgency for this because we all know just how long this takes. And that's really important. I think also, you know, this is a program that the scope and the diversity and just the quantity of habitat in this program, I don't know of another one in California that's this big. And while that is a challenge, it's also an opportunity. I think we're going to have a lot of attention on this. And the science program is going to be, you know, equally as large. And so I think there's going to be opportunities within that we aren't talking about one specific project and tying science just to that. We're doing multiple projects that are the same, that are in different areas. And there's going to be a better opportunity with that science program to learn from all of those. And so I think that, yes, we need to be very clear on this. We do have, thankfully, within the MOU, the environmental targets. So we do have that immediate gut check on just where are we? You know, how close are we? And then, you know, based upon what we know about how long it takes to get work done, we're going to have a pretty good understanding on, you know, are we falling behind? Are we ahead? You know, and if we're ahead, we're not going to believe it. We're going to keep pushing, you know, because we need to keep driving on this.	

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		But, yes, that is a very, very, very important question, and so thank you for that.	
1304	1	SHUTES: Good afternoon, Chair Esquivel and members of the Board. Chris Shutes for the California Sportfishing Protection Alliance. Next slide, please. My presentation begins and ends with the overarching maxim, count the water. In that regard, I start by pulling data from the 2023 SED and the recirculated SED and putting the data side by side to compare the water costs of different alternatives. And I refer to them as the SED, you could equally say the Draft Staff Report or Chapter 13, but for consistency, I'll use the SED terminology. I'm going to note a key theme. In discussing the public trust, the recirculated SED generally equates the public interest with water supply. What we'll see when we make comparisons is that the VA has virtually no water cost. Others presenting after me will describe why the VA has almost no benefits for fisheries and other public trust values and resources. Above all, the recirculated SED provides no explanation for why the VA is the limit of feasible protection for public trust resources. Also, the recirculated SED offers no analysis for additional targeted options for reducing water supply effects while better protecting the public trust. Next slide, please. I assembled this table from data provided in the 2023 SED and the recirculated SED. The sources are in the two columns farthest to the right. In this table, I compare the water cost overall and by region of three alternative flow requirement scenarios compared to baseline. These alternatives are 55 percent of unimpaired without water supply adjustments, or WSA, 55 percent of unimpaired with WSA, and finally, the VA. I report modeled reduction in water supply in acre-feet and by percent. In this	The revised proposed Plan amendments include substantial flexibility to reduce water supply costs while protecting fish and wildlife. These include the water supply adjustments, flow shaping, moving within the unimpaired flow range, and other flexibilities provided through the adaptive implementation measures. The State Water Board will have the ability to leverage these flexibilities through implementation in order to provide the "targeted options for reducing water supply effects while better protecting the public trust" as referred to by the commenter. Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on the regulatory and VA pathways.

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		table, I report on all years without regard to the water year type. Before we move on, I call attention to the note at the bottom of this slide. Between 2023 and 2025, the baseline change so the comparisons, at least numerically, are not exactly correct. In the next slide, I'll offer some high-level observations. I imagine you'll want to revisit the table when you have more time. Next slide, please. So here are the big takeaways from the table on slide three. The average water costs across all years are these: VA, one percent; 55 percent with WSA, 5 percent; 55 percent without WSA, 14 percent. The VA yields average increases in several regions, including Southern California. The largest costs of regulatory flows are to areas of export. Eastside and Bay Area water costs are substantially reduced by the tributary-specific WSAs. Next slide, please. In this table, I added some new elements. I added the water costs by region for 65 percent of unimpaired without WSA, which is next to 55 percent of unimpaired also without WSA. Then I added the values for critical years only for 55 percent of unimpaired without WSA and 55 percent of unimpaired with WSA. Water users generally go straight to what happens in critical years, so I show that. Next slide, please. So what we see in slide five is that the water cost under the 55 percent requirement across all years is only about 56 percent of the water cost under the 65 percent requirement in all years. We also see that the water cost in critical years is generally greater than the water cost average over all years. In critical years, the WSA saves an additional 45 percent compared to 55 percent without the WSA. Finally, it's important to remember that for the VA, not shown in this table on slide five, there is almost no water cost in critical	

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		years, and under the VA, there's no proposed change in drought management generally, and also no benefit to fish in the worst years for fish. Next slide, please.	
1304	2	I'd like to turn to how the recirculated SED addresses the public trust. That's found in section 13.6.1. The section starts with what one might call the standard of review. First, there's a quote from the Audubon decision about the Board's affirmative duty to protect the public trust to the extent feasible. But then there's a quote from Robie in 2006, "limiting feasibility to what is in the public interest," quote, unquote. There's a quote from Racanelli that's really about the lack of need to evaluate each individual water right. And finally, there's a mention of Fish and Game Code section 5937. Next slide, please. Then this section turns to a list of how the Board says it's implementing a public trust analysis. It lists the topics and data the Board considered. It has a statement of intent. And it has a statement that across -- that the Board duly considered the public trust and the Plan and that the Plan is what the Board finds feasible. Next slide, please. In my view, there's a couple of important standards of review that section 13.6.1 leaves out. First is another quote from Racanelli stating a requirement that conditions in a Water Quality Control Plan must be supported by precise and specific reasons founded on tangible record evidence. Second is the fact that the Delta is in crisis, as stated in the Delta Reform Act and many Board documents. And finally, there's the Light decision affirming that in a clash of public trust and the rule of priority, the rule of priority must yield. Next slide, please. Let's start with the Light decision. The Board likes to quote the	The State Water Board considered both fish and wildlife and other beneficial uses of water in accordance with legal requirements. Please see Common Response 1.2, Water Quality Control Planning Process, for a discussion of the State Water Board's consideration of beneficial uses and its responsibilities under the Public Trust Doctrine. As stated in Section 13.6.1, Public Trust Analysis, of the 2025 partially recirculated draft Staff Report, neither a precise quantification of potential water uses and impacts nor an explicit cost-benefit analysis is required to meet the State Water Board's water quality control planning obligations. (United States v. State Water Resources Control Bd. 91986) 182 Cal.App.3d 82, 118-119.) Further, the Porter-Cologne Water Quality Control Act (Porter-Cologne) is a codification of the State Water Board's public trust duty regarding water quality. (See e.g., State Water Board Order WQ 2023-0081, at p. 35.) Thus, the Board's analysis under Porter-Cologne and its balancing under the Public Trust Doctrine are necessarily intertwined. As required under the July 17, 2020 Settlement Agreement between the State Water Board and California Sportfishing Protection Alliance et al, the State Water Board has included a public trust analysis in Section 13.6.1 of the Staff Report. Nothing in California law or in the July 17, 2020 Settlement Agreement requires the level of analysis requested by this commenter. As discussed in Section 13.3.4.10, Continuation, Modification, or Termination of the VA Pathway, of the final Staff Report, the VA pathway contains a regulatory backstop such that HRL water rights may be subject to the regulatory pathway if HRL participants do not meet the flow and non-flow commitments of the VA pathway. A separate process for terminating or modifying the VA pathway based on significant evidence that continuing implementation will not provide reasonable protection of beneficial uses or will jeopardize the continued survival of native fishes. Please see Common Response 1.3, Revised Proposed Plan

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		Light decision, but it is extremely reluctant to apply it. The regulatory side of the revised Plan does place public trust over the rule of priority in two ways. First, it requires compliance by tributary. This is consistent with Phase 1. This is necessary and appropriate. Second, the tributary WSAs create exceptions based on hydrology and use, notably for the Mokelumne and the Calaveras. I won't say I support the details, but structurally, this is also necessary. But after that, the re-circulated SED splits the baby and applies WSAs across all watersheds equally. You haven't shown that to be necessary, and you haven't shown why the 55/45/35 percent breakdown based on a third of water years is the right answer. You declined to look at the structure of the NGO Alternative 3 that Reclamation analyzed to 2024 BiOps, which looked at the interplay between storage and flow. You declined, as I understand it, because it would have been unfair to some users according to the law of priority. You didn't give the public trust it's due in this case, as stated in Light. Thus, you end up protecting all diverters based on the water cost to those users that stand to lose the most water. It's similar to managing only for critical years. The result of that is you don't protect the public trust to the extent feasible. Next slide, please. Slide 11 -- is that where we are? -- goes to the heart of the problem, the precise and specific reasons for the decisions that the re-circulated SED does not explain. Why is it in the public interest to limit the protection of the public trust to what you can do with a one percent water cost? Is there not also a public interest in restoring the Bay-Delta Watershed's public trust resources, especially when the legislature and this Board has found those public trust resources to be in crisis? The re-circulated SED claims to have balanced uses. Where do we find the balancing? Nowhere does it say how the Board assigned weight to public trust and other resources. The re-circulated SED really can't say how the proffered VA flows	Amendments, for further information regarding continuation, modification, or termination of the VA pathway. As noted in Section 13.6.1, Public Trust Analysis, this ability to pivot from the VA pathway to the regulatory pathway, along with other adaptive provisions contained in the Plan, gives the State Water Board flexibility to make adjustments to better protect public trust resources and ensure reasonable protection of fish and wildlife beneficial uses without having to start the water quality control planning process over. Please also see final Staff Report Section 13.4.2, Modeling Approach, for a discussion of the State Water Board's modeling and analyses of the 55 w/WSAs scenario. Common Response 1.3, Revised Proposed Plan Amendments, also contains a discussion of both watershed-wide and tributary-specific water supply adjustments.

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		balance public and consumptive uses. They're not the result of a public trust balancing. They're a result of the acceptance of what the VA parties offered. You allowed them to do their work for you, and here we are. Next slide, please.	
1304	3	So 15 years after the Delta Flow Criteria Report, where indeed are we? I made a scorecard and put it on six slides. To read the scorecard, first look at where this Board and/or the legislature addressed an issue. That's at the bottom of the slide. Then look at the results under the VA and the results under the 55 percent with WSA alternative. Behind the metaphor, the message is serious. Category 1, the Delta is in crisis. The VA is just in denial. One doesn't respond to a crisis with the incrementalism of the past, and the regulatory path doesn't respond to the extent of the crisis. Next slide, please. Category 2, percent of unimpaired flow. One purpose of the VA is to preempt and bury the percent of unimpaired flow concept. The regulatory path is not fully fleshed out, and it is not really ready as a backstop. We heard, this morning, talk about how the implementation of curtailments and such was going to take another, I don't know, a year to fully prepare. The backstop is not ready as a backstop. Next slide, please. Category 3, rules for droughts. For the VA, it's business as usual. TUCPs, no change. For the regulatory path, it's WSAs first, but it can revert to TUCPs and business as usual at any time. Next slide, please. Category 4, rules for new diversions and water rights. Both the VA and the chosen regulatory path punted entirely. Even without the VA, the bar for new diversions is case by case. Next slide, please.	Please see Common Response 1.1, General Comments, for responses to comments that make general comments, do not raise specific environmental impacts of the project, or do not raise specific economic effects of the project. Also see Common Response 1.3, Revised Proposed Plan Amendments, for information on the implementation methodology.

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		Carryover storage. The VA doesn't even have a hint. The regulatory path backpedaled substantially. There's weak compliance and lower requirements, and carryover is treated separately from flows. Next slide, please. Category 6, incorporate the 2008-2009 BiOps into the Plan. Remember that? That was in the framework to preserve existing protections and guard against rollbacks by the first Trump administration. This idea was forgotten a long time ago. Next slide, please. So to summarize, the water user community enabled by the state has delayed the update of the Bay-Delta Plan for 15 years. Delay, deferral, and denial of crisis were the primary goals of the Voluntary Agreement. Stated differently, it's business as usual for as long as possible. At the same time, the goal was to enable more large water development projects, now including the new gold rush to divert more surface water to backfill irresponsible groundwater extraction. Water users never tried to work with the percent of unimpaired flow approach or any substantial increases in Delta inflow and outflow. Instead, they preemptively brought small amounts of water and seemed to have persuaded the Board to accept them. Remember, Voluntary Agreements, 15 years to date, and likely 15 more years to come, one percent water Supply -- water cost. Next slide, please. Thank you very much. I'll be glad to take questions, probably after Mr. Nelson has made his presentation.	
1304	4	NELSON: Oh, thank you. Barry Nelson with Golden State Salmon Association. Thank you, Chair Esquivel and Board members. I appreciate the chance to be here today.	If the VA flow, habitat, science, and other commitments are not provided, the VA pathway could be modified or terminated. Section 13.4, Changes in Hydrology and Water Supply, presents the flows expected to result from the VA pathway. The Friant VA

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		Actually, I'd like to start by just clarifying the record somewhat. This morning, Secretary Crowfoot said that he was proud of NGO conservation community involvement in crafting the Voluntary Agreements. It is true that some NGOs were involved early on in those discussions. They were frustrating. Feel free to ask them questions. But in the last many years, before the VA framework was released, all of those groups were excluded from negotiations. And there are no NGO signatories on that document. I just want to make sure the record is clear on that point. What I'd like to talk about today are implementation challenges. If the Board approves the Voluntary Agreements, which seems unfortunately likely, I'd like to talk about the challenges the Board is going to face if we go down that road. Next slide, please. I'll talk about five areas, funding, habitat, flows, the Bureau's position on the VAs, the backstop, close with some recommendations. Next slide, please. These are our challenges I think we can predict with a high degree of confidence. First is that the VA budget calls for \$740 million in new, I'm going to highlight new, federal funds to implement the VA program. I'll point out that the Big Beautiful Bill that passed recently had a billion dollars for the Bureau of Reclamation. Most of that likely would be to the priorities of California water users. There is not a penny in that bill for the Voluntary Agreements implementation. The current federal administration has been more focused on cutting funding and environmental programs than increasing funding. I think it's extraordinarily, vanishingly unlikely that there will be \$740 million in the next few years, which would be necessary in order to fund things like habitat restoration that would depend on those funds. The water users are not going to agree to backstop all of those	is included as a voluntary contribution to Delta Outflow in the VA pathway. The water rights for the U.S. Bureau of Reclamation's Friant Division are not listed as HRL water rights in Appendix B.1 of the revised proposed Plan amendments because water rights on the San Joaquin River are not included under the Sacramento/Delta Update to the Bay-Delta Plan. The inclusion of the Friant HRL flow contributions in the VA pathway does not constitute compliance with the Bay-Delta Plan or prevent the Board from considering Bay-Delta requirements for the Upper San Joaquin River in the future. The VA flow commitments are required to be provided in addition to base flows, including flows required by D-1641, other regulatory requirements, and other non-regulatory flows that would be present absent HRL flow commitments. The revised proposed Plan amendments do not include any relaxations of D-1641 flow requirements. Please see Common Response 1.1, General Comments, for information on the VA development process. Also see Common Response 1.3, Revised Proposed Plan Amendments, for comments about the 2025 ROD and 2025 ITP, and for information on the protection of base flows, HRL habitat commitments, HRL flow commitments, and VA pathway enforceability.

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		missing federal funds. It's already been proposed quietly that we should double count existing funds, things like the CVPIA Restoration Fund, the 34-year-old federal salmon restoration program, that those should be VA contributions. That's frankly absurd. And as a result of that, because of these funding issues, it's likely that you're going to hear calls for delay. Next slide, please. Because of the reduction in federal funding, it is very likely that habitat restoration efforts are going to be reduced and delayed. I mentioned the CVPIA double counting. I've already heard quiet reports that CVPIA restoration projects should be counted as VA habitat restoration projects. It's absurd. That's not a new contribution to habitat restoration. That's part of, frankly, the baseline that the VA should be building on. And then finally, evaluation of the slow pace of habitat restoration compared to the promises is going to be hampered by the lack of clear milestones for performance. I'm pleased to hear Board members raising that issue. And I'll get back to that in the recommendations. Next slide, please. On the flow side, it's important to remember that the rollbacks of the VA baseline, as Chris Shutes already mentioned, are underway. The rollback from the 2008-2009 biological opinion, the new Action 5 rollback, the incidental take changes that you heard Director Nemeth describe to you, those rollbacks have already reduced the water the VA program would produce. It is possible that those rollbacks have already more than swamped the modest contributions that the VAs would contribute on average, meaning compared to the framework you saw in 2018, there may be less water today in the VA proposal than you had on the table then. These are worse environmental conditions. Next, water purchases. This is something I've testified about in the past. There is a very poor record of large scale water purchases for the environment happening. They depend on funding. They frankly depend on the priorities of a lot of water	

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		agencies to make them happen. It's extremely likely that they will not be in place by January of 2027, which you heard your Staff Reporting is the deadline for having those VA assets in place. And then there's what we have described at length, flawed accounting. The Board is going to have to review hundreds of plans in order to make sure that the environmental water the VAs promise are real, is real. I think it is likely that establishing reference operations for some criteria in project operations will be difficult to impossible, things like TUCPs, Old and Middle River flows, planned water deliveries, end of year storage, flood operations. It's going to be very difficult for your staff to create numeric enforceable reference operations in order to determine that the environmental water the VAs claimed promise is real. And the paper water can already be seen today. The Friant contribution to the VAs is not real water. They've promised water to be delivered by not recapturing water pursuant to the San Joaquin River settlement. They're not allowed to capture that water under a settlement that has been approved by the courts and by Congress and the state has supported. That's not real water. That's water that's already committed to the environment. It's therefore extraordinarily likely that full VA flows will not be provided in a timely fashion. Next slide, please. The lack of protection for existing flows is going to undermine VA flows and encourage even more projects. You have a large project before you already to divert existing flows. You're likely to see even more proposals to divert existing flows. And then finally, in a media story in July of last year, the acting regional director for the Bureau said that the Bureau is, quote, "targeting D-1641," in what appeared to be a clear statement that the Bureau is planning not to fully comply with D-1641. I don't know what form that will take, whether it's TUCPs or something else. But it's important to note that the Bureau is promising to underline -- undermine another of the foundational baseline components of the VA proposal.	

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		Next slide, please. Where does that leave us in terms of flows? Some of you may recall this slide of my photograph of my aunt's JELL-O mold salad. It has layers in it. At the bottom, and just like the VAs, at the bottom are flows protected by existing regulatory requirements. Next up, the green layer, unprotected existing flows. The new VA flows are that layer sitting on top. So where do all those layers stand? Next slide, please. Again, from bottom to top, the ESA, CESA, the existing regulatory requirements already hit by rollbacks, possible Bureau violations, and extraordinarily likely TUCPs. Existing flows that are above those regulatory requirements are threatened by proposed projects. And then finally, those new VA flows are likely to be delayed or incomplete because of water purchases, challenges with regard to water purchases, and then flawed accounting approaches are likely to lead to paper water. It suggests that the VA approach to flows is like my aunt's JELL-O mold salad, also, in that it is pretty squishy. The draft document does not prevent any of these flaws. As a result, it is possible, it is likely that this approach will produce worse conditions than we see today at a cost of up to \$2 billion in taxpayer funds. Next slide, please. Next deep concern is the elephant in the room. The Bureau does not support the Voluntary Agreements. The previous federal administration signed the MOU. The current federal administration has never been before you saying that they support the Voluntary Agreements. You did not see them testify today. I don't believe they have testified before you over the course of the past year and told you that they will implement all of the commitments in the Voluntary Agreements. And in fact, the current Bureau of Reclamation does not support the VAs. They are actively pursuing multiple rollbacks. There is no	

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		commitment to providing the federal funds that are in the VA budget. And the Bureau has stated that we are likely to see noncompliance with existing Bay-Delta standards. Next slide, please. Then the final flaw is with regard to the backstop. We are concerned that comprehensive evaluation of the VAs may be -- may delay the backstop. I mentioned the lack of milestones related to funding and habitat. It is going to make it very difficult for the Board to conclude that the VA program is not performing adequately. And then the findings that are required in order to trigger the backstop are extraordinarily likely to simply trigger more litigation and delay. Next slide, please. The Voluntary Agreements are filled with flaws and loopholes. Not a surprise given that there was no public interest in that room as the VAs were finalized. And I simply want to highlight, this is not a conspiracy. The job of the project operators is to maximize the benefits to their water projects under the regulatory rules that you impose. Their job will be to exploit the loopholes and flaws in the Voluntary Agreements if they are approved. The VAs as currently proposed are going to fail. They are not designed to succeed. They are designed, as Chris mentioned, to delay science-based protections and facilitate new diversions. Next slide, please.	
1304	4.1	Here are recommendations. The first one and the core one will not surprise you, and that is we simply see the current VAs as a fatally flawed approach. We urge you to reject them and adopt a science-based unimpaired flow approach. If the Board does not do that, here are four things we recommend that you do. Next slide, please.	Please see the response to comment 1304-4.

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		First, require makeup water for the rollbacks now. These rollbacks have been underway now for quite a few years. The most recent two, Action 5 and changes to the ITP, have just happened. The document says here this language here in four different places, and that is if there are rollbacks, this accounting document would require updates. I hope that's polite language for the Board would require makeup water for those rollbacks to keep the VAs flow benefits intact. If that is the Board's intention, do it now. Don't wait. The rollbacks have already happened. They have been happening on an ongoing basis. Don't wait until the Plan is adopted and then wrestle with this issue. Wrestle with it now and include the makeup water in the Plan as you adopt it. Next slide, please. Next, eliminate the paper water now. You can do that by rejecting Friant's proposed contribution, which is not real water. It is water already legally committed to the environment. Then next, convene an independent panel to determine if establishing objective enforceable reference operations is even possible. And with regard to flexible issues like TUCPs, OMR flows, planned water deliveries, flood releases, end-of-year storage, I think it is going to be extraordinarily difficult to develop objective reference operations to measure VA flow contributions against. Next slide, please.	
1304	5	Develop an effective backstop. You are going to need it. That starts with clear milestones for funding and habitat. As I mentioned, the findings look like they are designed -- well, that they could produce delay in adopting a backstop. We urge you to delete or simplify some of those findings. And with regard to CVPIA habitat double counting, the VA program is promising to increase habitat restoration. It's important to note that there have been active habitat restoration programs for over 30 years in the watershed. The Board should have a database of restoration trends over the last 30 years in	Please see the response to comment 1304-4.

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		order to determine whether and how much the VA program is actually proposing to increase habitat restoration or whether it is just repackaging restoration programs we have seen for decades. And then finally, carefully evaluate the early implementation actions. I'll point out that I believe early restoration -- early implementation restoration projects have been underway for eight years. That's the life of the VA program. So at this point, before you commit to eight more years of this approach, take a look at the existing early implementation restoration actions and see what they have produced, not just in terms of whether fish are occupying a floodplain, but what they are actually producing systemwide and what they are producing in terms of population level benefits, because it's sure not obvious when you look at what is happening in the ecosystem. Finally, acknowledge the elephant in the room. Stop pretending that the Bureau of Reclamation supports the Voluntary Agreements. The Bureau is not here to testify. Perhaps they will testify later. But if the Bureau does not testify before you in this hearing, ask them. Write to them. Ask them if they will commit to all of the actions in the Voluntary Agreements, if they will not pursue rollbacks, if they will implement -- provide the federal funding required. I'd like to ask a simple question, and that is, how can the Board hold the Bureau of Reclamation responsible and accountable for a voluntary program that they have not told you they support? Next slide, please. This is a sobering moment for the fishing community. We are going to get a fishing season in 2026. That's great news. We don't know what that season looks like yet. The last three years have been staggeringly painful. We are getting a season this year because it was wet several years ago. But as Karla Nemeth pointed out, our climate is changing. And if project operations do not reform, salmon are going to see bad years more and more frequently. The occasional wet year is not going to be enough to save our industry or save the ecosystem.	

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		Thank you.	
1304	6	SHUTES: I'd say the first answer would be that is a question you should ask Dr. Pearse and Dr. Rosenfield. They are the fish experts here. My recollection of the review from Dr. Poff was something along the lines of it's better and anything is better. And it was kind of -- it seemed very perfunctory to me. But again, I would in that, in making that statement and using that criterion to judge the overall Voluntary Agreement approach. But again, I'd recommend that you ask that question to the following panel. NELSON: If I could offer a couple of additional thoughts about that? First, I completely agree. My sense of that document was that its conclusion was, well, it is better than where we are today. That does not mean it is up to meeting the challenge of an ecosystem that is in crisis, the HABs crisis in the Delta, the fishing crisis, the extinction crisis in the Bay-Delta. It doesn't mean it is up to that challenge. Second, and I think this is very important, I think that peer review, understandably, this is what they were charged with, assumed that the water the VAs would provide is real and did not take into fact -- into account the fact that by not protecting existing flows, by not having rules to govern future water projects, there is a likelihood that future water projects will result in conditions worse than we are today. I don't think those conditions were in the charge that the peer review evaluated. Again, I agree. Ask the PhDs on the next panel, not us.	Please see the response to comment 1304-4. Also see the Scientific Basis Report Supplement (Appendix G2 to the Staff Report) for an analysis of the benefits of the VA pathway and see Common Response 3.1, Fish Protection, for information on the Scientific Basis Reports and the use of best available science.
1304	7	NELSON: Could I add an additional thought there? That's helpful and we'd appreciate an opportunity to participate in a public process in that regard. As I said, I assume that that means this accounting document would be adjusted to maintain VA benefits by requiring makeup ordering in some fashion. And that would be -- that would be enormously helpful. NELSON: And I focus, I'm sorry, I forgot one point, I focus on makeup order in my comments. But there's another reason why this needs to be addressed now in the document before you	Please see Common Response 1.3, Revised Proposed Plan Amendments, for information on the protection of base flows and regarding comments about the 2025 ROD and 2025 ITP.

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		adopt it. And that is that, frankly put, the project description in your document is no longer accurate. It no longer describes the Voluntary Agreements as they're before you today. So, you know, from our perspective, makeup water is substantively what we recommend. But we think legally the project, the project description is incorrect and needs to be changed. And the modeling probably also has to be redone to reflect the fact that between Action 5 and the ITP changes, as Karla Nemeth outlined to you, we're seeing greater exports and more impacts to fish and wildlife. She outlined that, yes, we increased exports and, yes, it produced a fish -- a salmon take of the pumps. You know, those changes are not in the document before you today.	
1304	8	SHUTES: Could I take 30 seconds to respond to something -- SHUTES: -- Board Member Firestone said? SHUTES: She said, you know, give folks a shot to make this work. My question in response is not just whether all the water would show up under the VAs that are the VA that is promised, but is that really the best you can do? Is one percent water cost the best you can do? You looked at the, you know, overall average water cost of your 55 percent with the water supply adjustments as being 5 percent. I think you all need to explain to us why that's not affordable. SHUTES: Yes. SHUTES: Yeah. NELSON: If I could, but I'd just add to that, is that it would be fair for the Board to give the VA approach a chance to succeed if the assets were real and if your analysis showed that that program would succeed if well implemented. But I think none of those -- neither of those things are true. The assets aren't real. The funding's not real. The flows aren't real. And as the next panel, I suspect, will discuss, your own analysis shows that even if I'm wrong about that, your analysis shows that the effort wouldn't succeed. That's why we object to giving the VAs a chance.	If the VA flow, habitat, science, and other commitments are not provided, the VA pathway could be modified or terminated. Please see the Scientific Basis Report Supplement (Appendix G2 to the Staff Report) for an analysis of the benefits of the VA pathway; Common Response 1.2, Water Quality Control Planning Process, for information on the reasonable protection of fish and wildlife; and Common Response 1.3, Revised Proposed Plan Amendments, for information on the VA pathway, including enforceability.

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		Obviously, our community, the ecosystem, the Delta communities have an enormous amount at stake and giving effort that seems doomed to fail years to test it out doesn't seem like the right approach to us. NELSON: Thank you.	