

reasonable protection of beneficial uses and the prevention of nuisance.<sup>2</sup> The WQCP is not self-enforcing, but instead requires the State Water Board issue orders implementing the array of water quality objectives determined through that planning process. Thus the WQCP and the water rights decisions stemming from implementation of the WQCP and earlier water quality plans, including D-1641, are protective of beneficial uses until replaced through the update process and constitute the standard for determining injury to those beneficial uses when considering this Petition.

D-1641, adopted on December 29, 1999 and revised on March 15, 2000, describes the Petitioners' responsibilities for implementing specifically determined water quality objectives in the WQCP, as well as the responsibility of certain other Delta watershed users to implement the objectives. D-1641 was the result of a comprehensive public hearing conducted by the State Water Board that occurred over the course of over 80 days of hearings. This Petition does not seek any modification to the requirements of D-1641.

#### **Other Requirements**

The Sacramento-San Joaquin Delta Reform Act of 2009 recognizes the possibility of the California WaterFix in Water Code section 85086(c)(2):

Any order approving a change in the point of diversion of the State Water Project or the federal Central Valley Project from the southern Delta to a point on the Sacramento River shall include appropriate Delta flow criteria and shall be informed by the analysis conducted pursuant to this section. The flow criteria shall be subject to modification over time based on a science-based adaptive management program that integrates scientific and monitoring results, including the contribution of habitat and other conservation measures, into ongoing Delta water management.

Consideration of this Petition under Water Code §85086(c)(2) should occur within the existing regulatory framework for the Delta provided by the WQCP and D-1641.

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<sup>2</sup> State Water Resources Control Board Resolution No. 2006-0098.

Flows presented by Alternative 4A, beyond those required by D-1641, satisfy the appropriate Delta flow criteria to be considered by the Board under 85086(c)(2).

In addition to D-1641, the SWP and CVP currently operate in compliance with the NMFS 2009 Salmon and FWS 2008 Delta Smelt Biological Opinions (BiOps) completed under Section 7 of the ESA, and the SWP in compliance with the CDFW 2009 long-fin smelt Section 2081 Incidental Take Permit (ITP) and Consistency Determinations for Delta Smelt and Salmon. The CVP and SWP will continue to operate under these requirements until new requirements are issued by NMFS, USFWS or CDFW. Under the California WaterFix, the CVP and SWP would operate pursuant a new Section 7 consultation and ITP for in-Delta operations.

## **II. PETITION REQUEST**

DWR and Reclamation petition the State Water Board to modify DWR permits 16478, 16479, 16481, 16482 for the SWP and Reclamation permits 11315, 11316, 12721, 12722, 12723, 11967, 11968, 11969, 11971, 11973, and 12364 for the CVP, as described in this Petition and attachments. This Petition does not propose to change any aspect of the existing permits other than the points of diversion and rediversion within the Delta.