



November 2, 2018

Felicia Marcus, Chair  
State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812-2000

**Re: Ensuring Phase 2 of the Bay-Delta Plan Update Protects Water Supplies for Central Valley Wildlife Refuges**

Dear Chair Marcus and Members of the Board,

We are writing to urge the State Water Resources Control Board (“Board”) to ensure that Phase 2 of the Bay-Delta Plan update includes meaningful protections for the water supplies of Central Valley wildlife refuges. We understand that the Board’s efforts are focused on enhancing protections for Chinook salmon and other native fish that rely on the Bay-Delta estuary and its watershed. However, we are concerned that, without adequate safeguards, increased instream flow requirements could negatively affect water supplies for wildlife refuges that are critical for Pacific Flyway birds, threatened giant garter snakes, and myriad other wetland species. Below we suggest approaches the Board could use to ensure critical wetland water supplies are protected in Phase 2 of the Bay-Delta Plan update.

The Central Valley is one of the most significant places in North America for migratory birds. It once contained 4 million acres of wetlands and hosted 20 to 40 million migratory birds. There are now fewer than 300,000 acres of wetlands remaining, which together with flooded agricultural lands support 6 to 8 million migratory waterfowl, 350,000 migratory shorebirds, and hundreds of thousands of other migratory and resident birds and other wildlife, including threatened and endangered species. These remaining wetlands are intensively managed to maximize food production and habitat value, which has stabilized populations of migratory birds. The Central Valley currently provides habitat for 20% of the migratory waterfowl in North America, and 60% of the Pacific Flyway population.

The North American Waterfowl Management Plan adopted by the United States, Canada, and Mexico and approved by Congress has an objective to secure a water supply of suitable quality and delivered in a timely manner for optimum management of wetlands in the Central Valley. Congress incorporated these objectives in the Central Valley Project Improvement Act (“CVPIA”), which requires the Bureau of Reclamation to deliver a firm water supply of suitable quality to 19 wetland habitat areas in the Central Valley, meeting both the quantity and delivery

schedules for those refuges. The continued delivery of the water supplies mandated by the CVPIA is essential for the health of the Central Valley's last-remaining wetlands.

Though the CVPIA refuges' water supplies are supposed to be guaranteed under federal law, the recent drought made clear that limited availability of surface water can negatively impact the refuges. For example, in 2014, south of Delta wildlife refuges received less than 50% of their total water supply and were denied water in the spring and summer months, contributing to a rapid decline in food supply and available wetland habitat for wildlife. We are concerned that, without explicit safeguards, the increased instream flow requirements in Phase 2 of the Bay-Delta Plan update could have unintended negative impacts on water supplies for CVPIA refuges. In its July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan, the Board acknowledged this possibility and indicated that the updated plan would "include provisions to avoid or minimize redirected impacts to refuges." We thank the Board for this acknowledgement and urge you to include meaningful language in Phase 2 of the Bay-Delta Plan update to ensure the protection of refuge water supplies.

We believe the best way to do this would be to clearly acknowledge that CVPIA refuge water supply is a wildlife beneficial use of water, and establish water quality objectives that are at least as protective as the CVPIA's Level 2 water supply requirements (or two thirds of the total refuge supply). This approach of establishing water quality objectives would provide the strongest legal protection for refuge water supplies and would help to safeguard the full suite of species that rely on water from the Bay-Delta system. Establishing a refuge water supply objective that is consistent with Reclamation's current refuge water delivery obligations for Level 2 supplies should have no water supply impact on other water users. Further, establishing water supply objectives for the refuges is consistent with the Board's focus on protection of instream flows for aquatic species, as the refuges' wetlands were hydrologically connected to the Central Valley's rivers prior to construction of dams, diversions, and levees.

Alternatively, the Board could include language in the Phase 2 Program of Implementation to require that water supply impacts to wildlife refuges be avoided. If the Board takes this approach, we suggest inclusion of the following language:

When implementing objectives for Sacramento/Delta flows and cold water, Delta outflows, and interior Delta flows, the State Water Board will consider any potential impacts to refuge water supplies and will include water delivery targets or other requirements to ensure that meeting the objectives will not negatively affect USBR's ability to provide the Level 2 water supplies identified in the Central Valley Project Improvement Act or ongoing initiatives by USBR, USFWS, and DFW to secure and convey Incremental Level 4 water supplies.

Including this or similar language in the Program of Implementation would help to ensure that well-intended efforts to recover native fish don't inadvertently harm other species.

Finally, we note that concerns about impacts to CVPIA refuges exist whether the Bay-Delta Plan update is implemented by the Board or through voluntary agreements. No matter how the Plan update proceeds, it must include meaningful safeguards for refuge water supplies.

Thank you for considering these comments, and please feel free to contact us with any questions.

Sincerely,

A handwritten signature in blue ink that reads "RZwillinger".

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Rachel Zwillinger  
Defenders of Wildlife

A handwritten signature in blue ink that reads "Ric Ortega".

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Ric Ortega  
Grassland Water District

A handwritten signature in black ink that reads "Jay Ziegler".

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Jay Ziegler  
The Nature Conservancy

A handwritten signature in blue ink that reads "Michael Lynes".

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Mike Lynes  
Audubon California