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## State Water Resources Control Board

FEB 22 2016

Ms. Karla Nemeth  
Deputy Secretary for Water Policy  
California Natural Resources Agency  
1416 Ninth Street, Suite 1211  
Sacramento, CA 95814

Dear Ms. Nemeth:

The State Water Resources Control Board (State Water Board) appreciates the Natural Resources Agency (Resources Agency) coordinating stakeholder negotiations to achieve voluntary agreements to improve water flow and quality in the Sacramento-San Joaquin Delta (Delta) and its tributaries. The State Water Board understands that Resource Agency's efforts are intended to assist in implementing the flow-dependent water quality objectives that are the subject of the State Water Board's current water quality planning processes. As State Water Board Chair Felicia Marcus has stated, voluntary agreements can help inform and expedite implementation of the water quality objectives and provide durable solutions in the Delta watershed. The State Water Board encourages all stakeholders to work together to reach voluntary agreements that could implement the proposed amendments to the Bay-Delta Water Quality Control Plan. Early voluntary agreements may also help inform and accelerate the State Water Board's Bay-Delta planning work.

The purpose of this letter is to assist the Resources Agency in the settlement negotiations by providing guidance on elements of voluntary agreements that will help inform the State Water Board's evaluation of whether an agreement will assist in implementing proposed amendments to Bay-Delta Water Quality Control Plan. As you are aware, the State Water Board anticipates amending the San Joaquin River flow objectives, the southern Delta salinity objective, and the programs of implementation for these objectives this year. Other water quality objectives in the Bay-Delta Water Quality Control Plan are also undergoing review for the Board's consideration, with adoption in 2018.

The State Water Board will consider a voluntary agreement as part of its regulatory proceedings to implement the Bay-Delta Water Quality Control Plan, such as through a water right proceeding to determine the responsibility of water right holders to meet the water quality objectives. When considering whether to incorporate terms of a settlement agreement as part of its regulatory approval, the State Water Board must satisfy its independent duty to make any required findings and establish appropriate conditions. Accordingly, in evaluating a voluntary agreement, the State Water Board will consider whether the agreement will help achieve the water quality objective, help protect the beneficial use, and be enforceable through Board action. The State Water Board will also make any independent findings relevant to the

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

particular regulatory action (e.g., a finding regarding legal injury in a water right proceeding involving a change petition).

Although a voluntary agreement could address any of the potential proposed amendments to the Bay-Delta Water Quality Control Plan, this letter focuses on the amendments relating to the protection of fish and wildlife beneficial uses. In the lower San Joaquin River watershed, the State Water Board is considering a water quality objective that includes flow conditions on the tributaries to the San Joaquin River sufficient to maintain viable native migratory fish populations. It is also considering recommended actions to other agencies, including non-flow actions, which will assist in further improving protections for fish and wildlife beneficial uses. The State Water Board's draft environmental document supporting the amendment to the San Joaquin River flow objectives will evaluate a range of flows for the Board's consideration that will reasonably protect the beneficial uses. While the final decision on flow requirements has yet to be made by the State Water Board, the range of flows analyzed in the draft environmental document should inform the settlement discussions.

The settlement discussions should recognize that the State Water Board's final decision concerning amendments to the Bay-Delta Water Quality Control Plan, including implementation of the objectives through any voluntary agreement, must be guided by the Board's statutory and constitutional obligations. With that principle in mind, a voluntary agreement should include, but may not be limited to, the following:

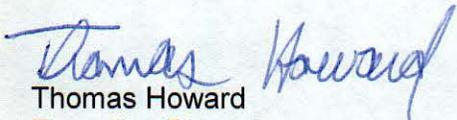
- Identification of the actions to be taken to meet the requirements adopted by the State Water Board, and the settlement participants responsible for each action.
- A schedule for implementation of each action.
- Provisions that ensure adequate funding to carry out the proposed actions.
- A description of measurable indicators (e.g., biological goals and habitat conditions) that will be used to evaluate success of the actions in achieving the objective.
- The monitoring methods, including type and frequency, which will be used to evaluate compliance with the objective and effectiveness of actions taken, and to inform potential changes in implementation to achieve the objective.
- Procedures for adaptive implementation to better achieve the objective based on measurable indicators, monitoring and review results and other scientific information.
- A description of, and commitment to conduct, annual reporting to the State Water Board that includes the actions taken during the previous water year, the results of implemented actions, and an implementation plan for meeting the objective in the following year.
- A description of, and commitment to conduct, a comprehensive review and report to the State Water Board, on at least a triennial basis, of the actions taken, the results of actions taken, monitoring and review results, progress in achieving the objective, and any proposed changes in implementation to better achieve the objective. This element is not intended to supplant the State Water Board's responsibilities under state or federal law.
- Identification of the participants to whom the State Water Board will assign responsibility for achieving the objective through a water right proceeding or other Board proceeding.
- Procedures for coordinating actions, evaluations, adaptive implementation, monitoring, and reporting with, at a minimum, the State Water Board, the California Department of Fish and Wildlife, the National Marine Fisheries Service, the United States Fish and Wildlife Service, and water users on the Merced, Tuolumne, and Stanislaus Rivers.

- A description of how separate agreements reached on each of the San Joaquin River tributaries work together if such separate tributary-specific agreements are reached.

Governor Brown's updated California Water Action Plan underscores the importance of integrated strategies to tackle the myriad water issues facing California, and the State Water Board shares the Governor's sense of urgency in achieving a sustainable water management program for the State. Toward this end, the State Water Board's water quality control planning processes serve to address water quality and ecosystem needs in the Delta. To ensure timely consideration of voluntary agreements in the State Water Board's water quality control planning processes, the Board encourages settlement participants to develop and submit agreements to the Board by December 31, 2016.

Finally, although I do not anticipate that State Water Board staff will be involved in the settlement negotiations, staff are available to provide information as to how the settlements may fit into the Board's ongoing work. Thank you for your efforts.

Sincerely,

  
Thomas Howard  
Executive Director

cc: Matthew Rodriguez, Secretary  
California Environmental Protection Agency

Felicia Marcus, Chair  
State Water Resources Control Board

Charlton H. Bonham, Director  
California Department of Fish and Wildlife

Mark Cowin, Director  
California Department of Water Resources