



State Water Resources Control Board

January 13, 2023

REQUEST FOR TRIBAL CONSULTATION REGARDING BAY-DELTA PLAN

Dear Tribal Representative,

The State Water Resources Control Board (State Water Board) is preparing a Staff Report/Substitute Environmental Document (SED) that supports the State Water Board's current effort to update the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan). This update is focused on the Sacramento River and its tributaries, Delta eastside tributaries, Delta outflows, and interior Delta flows (referred to as the Sacramento/Delta Update to the Bay-Delta Plan) and includes consideration of possible Voluntary Agreements as an alternative.

We respectfully request the opportunity to consult with your Tribe about the Sacramento/Delta Update to the Bay-Delta Plan. This consultation period is intended to facilitate feedback and engagement from California Native American tribes on the overall processes to update and implement the Bay-Delta Plan. We request that you provide written notification of intent to consult via email to Rob McCarthy at: Robert.McCarthy@waterboards.ca.gov within 45 days of receipt of this letter. Additional information on the Bay-Delta Plan is provided below.

Background

The project area for the Sacramento/Delta Update to the Bay-Delta Plan includes the Sacramento/Delta watershed, including the Sacramento River system, Delta eastside tributaries (Mokelumne, Calaveras, and Cosumnes Rivers), the Delta, Suisun Marsh, and San Francisco Bay. A map of the Sacramento/Delta watershed is attached to this letter (Attachment 1).

Protecting the Bay-Delta watershed is one of the State Water Board's primary responsibilities and top priorities. The State Water Board is responsible for adopting and updating the Bay-Delta Plan, which identifies beneficial uses of water in the Bay-Delta watershed, water quality objectives for the reasonable protection of those beneficial uses, and a program of implementation to achieve those objectives. The Bay-Delta is one of the most important ecosystems in California as well as the hub of California's water supply system. Native species in the Bay-Delta ecosystem are experiencing an ecological crisis due to habitat conversion, degraded water quality, reductions in flows, changes in the timing and distribution of flows, and the inability to access natal habitats blocked by dams and levees. This has led to severe declines,

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

and in some cases extinctions, of native fish and other aquatic species. The State Water Board is actively working to address many of these issues through the update and implementation of the Bay-Delta Plan.

The Bay-Delta Plan is being updated and implemented through two separate processes called Plan amendments. The first Plan amendment is focused on Lower San Joaquin River flows and southern Delta salinity and the second Plan amendment is focused on the Sacramento River, Bay-Delta, and Delta Eastside Tributaries.

First Plan Amendment: Lower San Joaquin River Flows and Southern Delta Salinity

In December 2018, the State Water Board adopted Bay-Delta Plan amendments focused on Lower San Joaquin River flows for the protection of fish and wildlife and southern Delta salinity for the protection of agriculture (2018 Bay-Delta Plan update). On July 15, 2022, the State Water Board issued a Notice of Preparation (NOP) and California Environmental Quality Act (CEQA) scoping meeting for a proposed regulation to implement the 2018 Bay-Delta Plan update (implementation regulation). As part of that process, in October 2022, the State Water Board sent letters to California Native American tribes in accordance with [Assembly Bill 52](#) (AB52) and [Executive Order B-10-11](#) (B-10-11) to provide an opportunity for consultation related to the proposed implementation regulation.

Second Plan Amendment: Sacramento River, Delta, and Delta Eastside Tributaries

The State Water Board is now considering a Sacramento/Delta update to the Bay-Delta Plan focused on the Sacramento River and its tributaries, Delta eastside tributaries, interior Delta flows, and Delta outflows. In July of 2018, State Water Board staff released a [Framework for potential Sacramento/Delta Update to the Bay-Delta Plan](#) (Framework)¹.

In 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. In March 2022, the State Water Board received a [Memorandum of Understanding \(MOU\) Advancing a Term Sheet for the Voluntary Agreements](#)². Subsequently, the State Water Board received updates to the MOU to include additional parties. Signatories to the MOU includes several state and federal agencies and water users (collectively referred to as Parties). The Parties submitted the Voluntary Agreements as a proposed voluntary pathway to achieve reasonable protection of fish

¹ Available at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/sed/sac_delta_framework_070618%20.pdf

² Available at: [https://resources.ca.gov/-/media/CNRA-](https://resources.ca.gov/-/media/CNRA-Website/Files/NewsRoom/Voluntary-Agreement-Package-March-29-2022.pdf)

[Website/Files/NewsRoom/Voluntary-Agreement-Package-March-29-2022.pdf](https://resources.ca.gov/-/media/CNRA-Website/Files/NewsRoom/Voluntary-Agreement-Package-March-29-2022.pdf)

and wildlife beneficial uses in the watershed. The Staff Report will evaluate the Voluntary Agreements as an alternative for the Sacramento/Delta Update to the Bay-Delta Plan.

Additional information regarding the State Water Board's Bay-Delta planning and implementation processes can be found at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/

Consultation Process

This invitation to consult is focused on the second Plan amendment, referred to as the Sacramento/Delta Update to the Bay-Delta Plan.

The State Water Board is developing a Staff Report/Substitute Environmental Document as part of this Plan amendment. CEQA allows that when a state agency's regulatory program meets certain qualifications, as certified by the California Natural Resources Agency, it can rely on a Substitute Environmental Document in lieu of an Environmental Impact Report (EIR). The State Water Board's water quality control planning process is a CEQA certified regulatory program, and as such the document that the State Water Board is developing for the Sacramento/Delta Update to the Bay-Delta Plan is a Staff Report/Substitute Environmental Document. (Pub. Resources Code, § 21080.5; Cal. Code Regs., tit. 14, § 15251.) The State Water Board's Staff Report/Substitute Environmental Document provides background on the purpose and need for the proposed action, project alternatives (including a potential Voluntary Agreement alternative), as well as technical, environmental, and economic analyses of the proposed alternatives, among other information. The Staff Report/Substitute Environmental Document is still being drafted with an anticipated public release date of spring 2023 and is not yet ready for public review.

The State Water Board is actively seeking consultation with California Native American tribes consistent with B-10-11 and its [Tribal Consultation Policy](#)³. The State Water Board is proceeding consistent with B-10-11 because the provisions of AB 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.

³ Available at:

https://www.waterboards.ca.gov/tribal_affairs/docs/california_water_board_tribal_consultation_policy.pdf

Project Timeline⁴

Below is a general timeline that identifies current and anticipated major milestones for the Sacramento/Delta Update to the Bay-Delta Plan.

January/February 2023:

- Release of [Draft Scientific Basis Report Supplement in Support of Possible Voluntary Agreements for the Sacramento/Delta Update to the Bay-Delta Plan \(Scientific Basis Report Supplement\)](#)⁵ (January 5, 2023)
- Public [Board workshop on draft report](#)⁶ (January 19, 2023)
- Comments due on draft report (February 8, 2023)

Spring 2023:

- Release of the Draft Staff Report/Supplemental Environmental Document for public review and comment
- Revised Draft Scientific Basis Report Supplement submitted for independent peer review

Spring/Summer 2023:

- Public workshop on Draft Staff Report/Supplemental Environmental Document to receive public comments

Spring/Summer 2024:

- State Water Board staff response to comments on the Draft Staff Report/Supplemental Environmental Document and development of proposed final changes to the Bay-Delta Plan

Summer/Fall 2024:

- Release of Final Staff Report/Supplemental Environmental Document and State Water Board consideration of adoption of Sacramento/Delta Bay-Delta Plan amendments

⁴ This is a projected timeline that may be subject to change. The anticipated timeline for implementation of the Lower San Joaquin River Flow and Southern Delta Salinity updates to the Bay-Delta Plan adopted in 2018 will also be presented at the January 19, 2023 State Water Board meeting.

⁵ Available at:

https://waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/2023/202301-bd-draft-sbrsupp.pdf

⁶ Notice of Opportunity for Public Comment and Board Workshop on Draft Scientific Basis Report Supplement available at:

https://waterboards.ca.gov/public_notices/comments/docs/2023/notice_va_sbr_rev.pdf

Consultation Request

The State Water Board is actively seeking consultation with California Native American tribes consistent with B-10-11 and its Tribal Consultation Policy. This consultation request is focused on the second Plan amendment, referred to as the Sacramento/Delta Update to the Bay-Delta Plan; however, the State Water Board also welcomes ongoing feedback and discussion on the Bay-Delta Plan as a whole.

We request that you provide written notification within 45 days of receipt of this letter if you are requesting consultation with the State Water Board for this project. Written notification of the intent to consult should be provided to Rob McCarthy by email at: Robert.McCarthy@waterboards.ca.gov.

In addition to tribal consultations, State Water Board staff intend to hold a tribal listening session in early 2023 to provide an overview of all of the State Water Board's Bay-Delta Plan update and implementation efforts and gather feedback.

State Water Board Point of Contact

Rob McCarthy, Tribal Coordinator: Bay-Delta Plan Update & Implementation processes
State Water Resources Control Board
Division of Water Rights Mail Room, Attn: Bay Delta Section
P.O. Box 100, Sacramento, CA 95812-2000
916-341-5408 | Robert.McCarthy@waterboards.ca.gov

Very Respectfully,



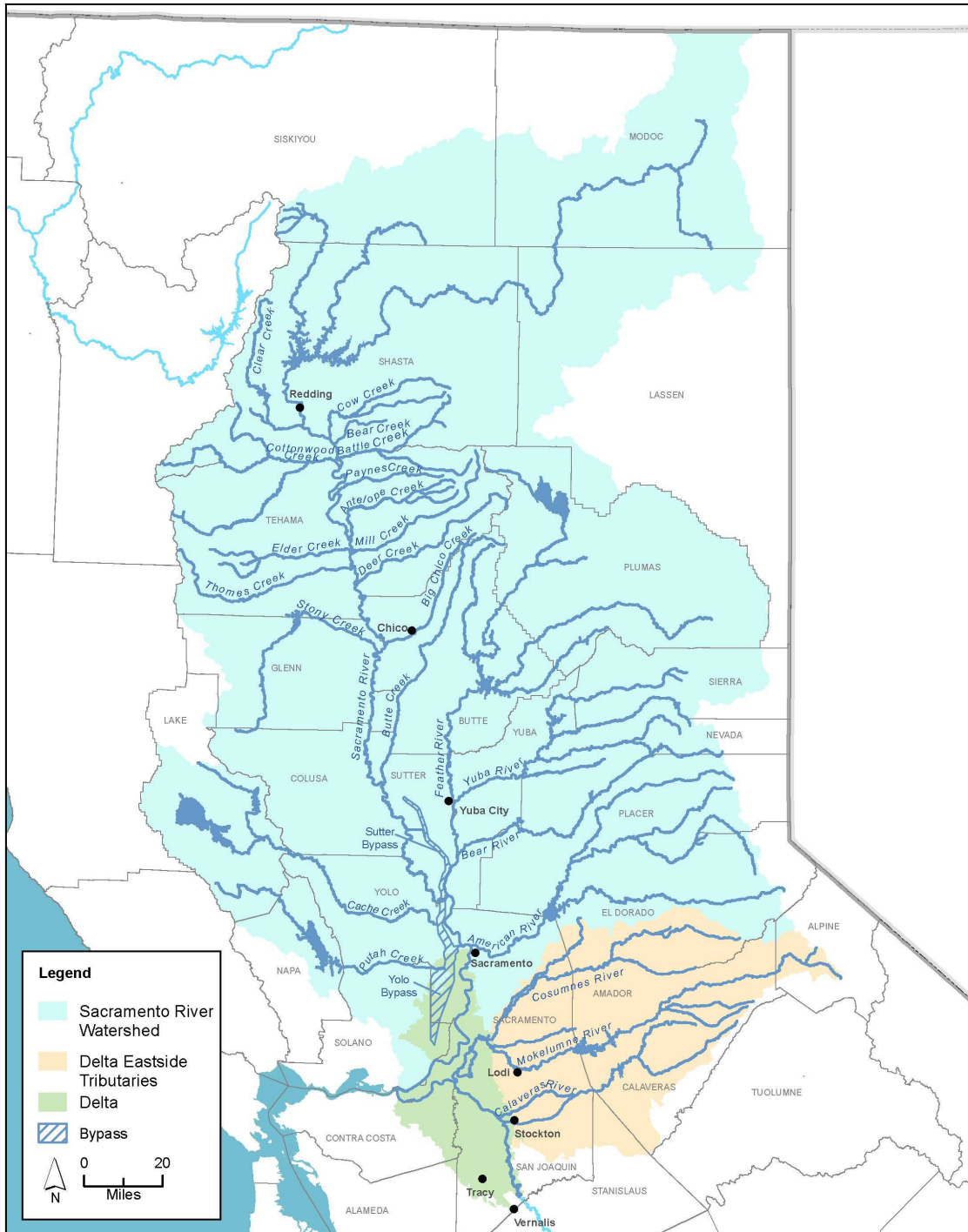
Erik Ekdahl
Deputy Director, Division of Water Rights
State Water Resources Control Board

ec: Please see next page

ec: **State Water Resources Control Board**
Adriana Renteria, Tribal Liaison
Adriana.Renteria@waterboards.ca.gov

State Water Resources Control Board, Division of Water Rights
Erica Gonzales, Tribal Coordinator
Erica.Gonzales@waterboards.ca.gov

Attachment 1: Sacramento/Delta Watershed Map



Sacramento/Delta Watershed