

# Common Response 1.1

## General Comments

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### Introduction

This introduction provides important context to this common response. A similar introduction is provided in each common response to ensure that the reader has the appropriate context when reviewing common responses. For ease of reference, a table of contents is included after this introduction to guide readers to specific subject areas.

Protecting the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta) watershed and its many beneficial uses of water is one of the State Water Resources Control Board's (State Water Board) primary responsibilities and top priorities. In response to declines of several native aquatic species since the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed (Bay-Delta Plan or Plan) was last comprehensively updated, the State Water Board commenced a process to update the Bay-Delta Plan for the Sacramento River and its tributaries, Delta eastside tributaries (including the Calaveras, Cosumnes, and Mokelumne Rivers), and Delta for the reasonable protection of fish and wildlife beneficial uses, referred to as the Sacramento/Delta update to the Bay-Delta Plan. The Bay-Delta Plan identifies beneficial uses of water to be protected in the Bay-Delta watershed, water quality objectives and program of implementation to achieve the reasonable protection of those beneficial uses, monitoring, evaluation, and special study provisions. The State Water Board's proposed action to update the Bay-Delta Plan is supported by a Staff Report/Substitute Environmental Document (Staff Report), which provides an evaluation of the environmental impacts and economic effects in support of consideration of different alternatives to update the Bay-Delta Plan to achieve reasonable protection of fish and wildlife beneficial uses in the Sacramento/Delta. The Staff Report is functionally equivalent to an environmental impact report (EIR) under the California Environmental Quality Act (CEQA) but also provides the additional analyses that support the State Water Board's consideration of the action under the Clean Water Act and Porter-Cologne Water Quality Control Act (Porter-Cologne Act or Porter Cologne).

Development of the final Staff Report and final draft Bay-Delta Plan were informed by several opportunities for public comment over multiple years. This common response may address issues that were raised during any of those public comment periods. In September 2023, the State Water Board released the 2023 draft Staff Report evaluating different alternatives for the Sacramento/Delta update to the Bay-Delta Plan for public review and comment. The 2023 draft Staff Report evaluated the following: proposed Plan amendments that were based on the 2018 Framework for a possible Sacramento/Delta update to the Bay-Delta Plan (2018 Framework); proposed voluntary agreements (VAs), referred to as the Healthy Rivers and Landscapes (HRL) proposal; as well as Low Flow and High Flow Alternatives and several modular alternatives that would modify the other alternatives. During the development of the 2023 draft Staff Report, the proposed VAs were renamed "Healthy Rivers and Landscapes" or "HRL" by the VA proponents, also referred to as the "HRL participants."

The State Water Board released draft amendments to the Bay-Delta Plan in October 2024 (2024 draft Plan) for public review and comment that incorporated alternatives identified in the 2023 draft Staff Report with revisions based on public comments. The State Water Board released revised

draft Plan updates in July 2025 (July 2025 revised draft Plan) but delayed public comment on that version of the Plan pending further updates, though some parties did submit public comments on the July 2025 draft that are part of the State Water Board's response to comments.

In December 2025, the State Water Board released Chapter 13, *Revised Proposed Plan Amendments*, as a limited recirculation of the 2023 draft Staff Report (2025 partially recirculated draft Staff Report) together with the December 2025 revised draft Plan for public review and comment. These documents reflect the updated proposed project, referred to as the revised proposed Plan amendments, which brings together in the Bay-Delta Plan program of implementation a VA pathway that incorporates commitments identified in the HRL proposal and would apply to specified HRL water rights, and a regulatory pathway based on the proposed Plan amendments that would apply to other water rights and to any HRL water rights no longer covered under the VA pathway. In August 2026, the State Water Board released a final draft Bay-Delta Plan that included refinements to the revised proposed Plan amendments based on public comments received on the December 2025 revised draft Plan. At the same time, the State Water Board released this final Staff Report, including responses to comments previously received on the draft Staff Report. The final Staff Report informs the State Water Board's consideration of adoption of the Sacramento/Delta updates to the Bay-Delta Plan.

The State Water Board reviewed and considered all comments and developed common responses to address recurring comments and common themes. The State Water Board received many comments on the Sacramento/Delta update to the Bay-Delta Plan covering a broad range of policy and environmental issues. Major topic areas that elicited frequent comments included tribal engagement and Tribal Beneficial Uses, agricultural resources, municipal water supplies, economic effects, groundwater resources, fish and wildlife and ecological health, commercial and recreational fishing, economically disadvantaged communities, the water quality control planning process, project alternatives, harmful algal blooms (HABs) and other water quality issues, and hydrology and hydrologic modeling. The State Water Board appreciates the active engagement of interested and affected parties, including local, state, and federal agencies, water users, environmental and fishing organizations, California Native American Tribes, and members of the general public.

The State Water Board made a concerted effort to understand and respond to the general issues and concerns raised by the commenters that are addressed in this common response. While this common response addresses general comments, these comments were often related to additional subjects that are addressed in other common responses. Accordingly, this common response references related common responses, as appropriate, where recurring comments and common themes overlap with other subject matter areas. This common response addresses, but is not limited to, the following topics:

- Approach to responses to comments
- Adequacy of the public process
- Scope of the Staff Report and the flexibility of the Bay-Delta Plan
- General support and opposition for the Plan amendments, VAs, and other flow alternatives
- Consistency with other laws, policies, and agreements

For information on the State Water Board's authorities and legal requirements related to water quality control planning, see Common Response 1.2, *Water Quality Control Planning Process*. For more information and responses to comments on the revised proposed Plan amendments, see

Common Response 1.3, *Revised Proposed Plan Amendments*. For responses to comments on the Staff Report's use of best available science and the benefit analyses, see Common Response 3.1, *Fish Protection*. For responses to comments on water supply for municipal and agricultural use, and other water management actions, see Common Response 6.3, *Water Supply and Other Water Management Actions*. For responses to comments related to economically disadvantaged communities, see Common Response 10.1, *Economically Disadvantaged Communities*. For information on Tribal Beneficial Uses and responses to comments regarding Tribal Beneficial Uses and other issues specific to California Native American Tribes, see Common Response 11.1, *Tribal Engagement and Tribal Beneficial Uses*.

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## Overview and Approach to Responses to Comments

This section describes the approach the State Water Board took when identifying, considering, and responding to the large volume of comments received on the 2023 draft Staff Report and 2025 partially recirculated draft Staff Report and drafts of the Bay-Delta Plan. The Sacramento/Delta update to the Bay-Delta Plan has required significant effort and has been informed by substantial public participation from interested parties over many years. The State Water Board released several documents for public review and comment; held numerous workshops, hearings, and other meetings to receive public input; and received thousands of written comments. The State Water Board appreciates the active engagement of the public and stakeholders in the water quality control planning and environmental and related analysis and review processes. The State Water Board acknowledges that amending the Bay-Delta Plan presents many complex, challenging, and controversial issues and appreciates the efforts of interested parties to review and provide input.

Volume 3, *Responses to Comments*, contains responses to comments received on the Staff Report, including the 2023 draft Staff Report and the 2025 partially recirculated draft Staff Report. It also contains responses to comments on the July 2025 and December 2025 revised drafts of the Bay-Delta Plan. Responses to comments are provided in Chapter 2, *Common Responses*, and Chapter 4, *Responses to Comments Tables*, of Volume 3. All comments have been reviewed, evaluated, and appropriately addressed and have informed the final version of the Staff Report and the revised proposed Plan amendments. The responses to comments document the State Water Board's best efforts to carefully and objectively review and consider all comments and supporting evidence provided by commenters informing the planning process and eventual State Water Board consideration of adoption of the Sacramento/Delta updates to the Bay-Delta Plan.

The State Water Board received approximately 950 written comment letters on the 2023 draft Staff Report and approximately 150 additional written comment letters on the 2025 partially recirculated draft Staff Report and December 2025 revised draft Plan. These written comment letters included unique letters and form letters (i.e., the same letter provided by multiple commenters). In addition, the State Water Board heard oral comments from a total of approximately 28 panels and 321 individual speakers during the November through December 2023 and January 2026 public hearings. Those oral comments were transcribed and included in the written responses to comments.

Although the State Water Board delayed the comment period on the July 2025 revised draft Plan to make additional refinements to the Plan and coordinate the public process with the December 2025 limited recirculation of the draft Staff Report, the State Water Board received 19 written comment letters on the July 2025 revised draft Plan. Those comments were considered and included in the written responses to comments.

The State Water Board received approximately 430 additional written comment letters on the October 2024 draft Plan that were reviewed and considered in development of the Plan amendments. While comments on the October 2024 draft Plan were reviewed and considered in development of subsequent drafts of the Plan, Volume 3 does not include formal written responses to those comments.

In addition, the State Water Board held several workshops and public meetings to receive input related to the Sacramento/Delta update to the Bay-Delta Plan (see the *Public Comment and Outreach*

section below and Chapter 12, *Public Participation*). Oral comments provided at those workshops and meetings informed the processes but are not part of the written responses to comments.

The State Water Board regularly received correspondence outside of a formal comment period related to the Sacramento/Delta update to the Bay-Delta Plan. Written comments that were received after the comment deadline were considered to be late. The State Water Board reviewed and considered these comments; however, late comments may not have received an individual response.

## Requirements for Responding to Comments

One of the purposes of public review of the Staff Report and response to comments is to evaluate the adequacy of the environmental document and its analysis for compliance with CEQA. (Cal. Code Regs., tit. 23, § 3779, subd. (d).) The State Water Board's water quality control planning program has been certified by the Secretary of the Natural Resources Agency as exempt from the requirements for the preparation of environmental impact reports, negative declarations, and initial studies. (Cal. Code Regs., tit. 14, § 15251, subd. (g).) Accordingly, the State Water Board may prepare a substitute environmental document (SED) that meets the requirements of CEQA. (Cal. Code Regs., tit. 14, § 15252, subd. (a).) The entire Staff Report can be considered the SED that fulfills the requirements of CEQA and the State Water Board's CEQA regulations (Cal. Code Regs., tit. 23, § 3775 et seq.) to analyze the environmental effects of the proposed Plan, as well as requirements of the Porter-Cologne Act and other applicable requirements. The State Water Board's certified regulatory program is "subject to the broad policy goals and substantive standards of CEQA." (*City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1422; Cal. Code Regs., tit. 23, § 3720, subd. (c)(2).) The Staff Report also cites the State CEQA Guidelines where appropriate and relevant to help guide or inform the CEQA analysis consistent with CEQA's goals and standards.

The State CEQA Guideline section 15088 describes the evaluation that CEQA requires in the response to comments:

(c) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

(d) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should consider either: (1) revising the text in the body of the EIR, or (2) including marginal notes showing that the information is revised in the response to comments.

(Cal. Code Regs., tit. 14, § 15088, subd. (c) and (d).) Lead agencies are not obligated to undertake every suggestion given them, provided that the agency responds to significant environmental issues and makes a good faith effort at disclosure in a reasoned way. Given the above, the State Water Board does not respond to comments unrelated or not germane to the Sacramento/Delta update to the Bay-Delta Plan or the evaluation of potential environmental impacts or economic effects.

Another purpose of public review and responses to comments is to respond to significant comments, criticisms, and suggestions about the Sacramento/Delta update to the Bay-Delta Plan. The State

Water Board must respond to comments made under the Clean Water Act's public participation requirements, which require the State Water Board to solicit and consider public comments and prepare a responsiveness summary on significant comments, criticisms, and suggestions. (40 C.F.R. §§ 25.8, 25.10.) The State Water Board is also required to set forth specific responses in terms of modifications of the proposed action or an explanation for rejection of proposals made by the public. (40 C.F.R. § 25.8.) The decision-making process requires the State Water Board members to objectively consider the record of this proceeding, including all timely comments made and received during the public hearing and comment period. The State Water Board recognizes the controversial nature of the Sacramento/Delta update to the Bay-Delta Plan and while not all stakeholders will feel satisfied with the ultimate decision, it is the State Water Board's hope that all stakeholders feel that their concerns have been heard and fairly considered.

## Individual Responses to Comments

Responses to individual comments are provided in Chapter 4, *Responses to Comments Tables*, of Volume 3. The State Water Board reviewed written comments in the exact form they were provided by commenters. This included review of comments with misspellings, grammatical errors, or unclearly written or stated comments that may not have been fully understood. Every attempt was made to understand the comments in order to provide a response, however, the State Water Board cannot infer meaning or intent of comments. If the comment was not clearly understood, the State Water Board often noted it in the response. If a comment letter included bolded, shaded, or italic text, this type of formatting was not replicated in the comment response tables due to complexities that creates in processing comments.

Recordings of the public hearings were transcribed by a court reporter. The transcripts were reviewed by the State Water Board and are included in the responses to comments. In some cases, the oral comments may not have been understood, due in part to the dynamic and conversational nature of some of the oral comments. As with written comments, every attempt was made to understand oral comments in order to provide a response, but the State Water Board cannot infer the meaning or intent of comments that were not clearly articulated. Additionally, the State Water Board is not required to respond to questions or statements made by its members or staff during the public hearing and no written responses to those communications are provided. Although they were not responded to, statements from State Water Board members and staff during the public hearing on the 2023 draft Staff Report were included in comment response tables. Statements from State Water Board members and staff during the public hearing on the 2025 partially recirculated draft Staff Report were not included in comment response tables.

Comments were assigned an identifying letter and number. Within each letter, comments are generally numbered sequentially in the order they appear in the original comment letters. Some comments are labeled alphanumerically (e.g., 1a, 1b, 1c) or with decimals (e.g., 1.1, 1.2, 1.3). In some instances, similar comments may have been grouped together in a way that makes them appear somewhat out of the sequence in which they appear in the original comment letter or transcript. Some comment and letter numbers were skipped. Letter and comment order and numbering is an artifact of the process to review and consider all comments and does not mean that comments were treated or considered differently by the State Water Board.

Slides presented at the public hearing on the 2023 draft Staff Report were included in the comment response tables, but were generally not included for slides presented at the public hearing on the 2025 partially recirculated draft Staff Report. However, even if not represented in the comment

response tables, the whole of a presentation, including slides if presented, was considered in responding to transcribed oral comments. Similarly, exhibits within written comment letters (e.g., figures, tables, images) and attachments of documents that did not contain comments on the Staff Report (e.g., scientific journal articles, prior comments on other projects) were included in the comment response tables for comments received on the 2023 draft Staff Report, but not for comments received on the 2025 partially recirculated draft Staff Report. However, all components of written comment letters were reviewed and considered in responding to comments.

Note that some commenters alleged the State Water Board conceded or admitted points when it actually had not done so. It is not necessary for the State Water Board to deny each and every such allegation when responding to comments, and any lack of denial does not constitute agreement with the commenter. Instead, the responses to comments provide the reader with correct information about the State Water Board's analyses and proceedings.

## Common Responses to Comments

Common responses to comments are provided in Chapter 2, *Common Responses*, of Volume 3. The State Water Board prepared common responses to provide comprehensive responses to frequently raised topics, themes, or issues, and to avoid repetition. If one or more common responses apply to an individual comment, the response to that comment refers the commenter to the relevant common response(s). Common response topics and reference numbers are organized to generally correspond to the structure of the Staff Report (with the exception of Common Responses 1.1 through 2.1). The common response may contain more up-to-date information than an individual response, depending on when the individual response was drafted.

The introduction to Volume 3, Chapter 2, *Common Responses*, identifies the topics that are addressed in each common response. The common response numbers and titles are listed below for reference.

- Common Response 1.1, *General Comments*
- Common Response 1.2, *Water Quality Control Planning Process*
- Common Response 1.3, *Revised Proposed Plan Amendments*
- Common Response 1.5, *Trinity River*
- Common Response 2.1, *Presentation of Data and Results in the Staff Report and Responses to Comments*
- Common Response 3.1, *Fish Protection*
- Common Response 4.1, *Harmful Algal Blooms*
- Common Response 4.2, *Drought and Climate Change*
- Common Response 6.1, *Sacramento Water Allocation Model and Changes in Hydrology and Water Supply*
- Common Response 6.2, *Baseline and No Project Alternative*
- Common Response 6.3, *Water Supply and Other Water Management Actions*
- Common Response 7.1, *General CEQA and Approach to the Analysis*
- Common Response 7.4, *Agricultural Resources*

- Common Response 7.6.2, *Aquatic Biological Resources and Cold Water Habitat*
- Common Response 7.8, *Energy and Hydropower*
- Common Response 7.10, *Greenhouse Gas Emissions and Mitigation*
- Common Response 7.12.2, *Groundwater and Sustainable Groundwater Management Act*
- Common Response 7.20, *Utilities and Service Systems*
- Common Response 7.23, *Cumulative Impact Analysis*
- Common Response 7.24, *Alternatives Analysis*
- Common Response 8.1, *Economic Analysis and Other Considerations*
- Common Response 10.1, *Economically Disadvantaged Communities*
- Common Response 11.1, *Tribal Engagement and Tribal Beneficial Uses*

## Comments That Do Not Raise Specific Environmental Impacts or Economic Effects

The State Water Board considered all content submitted by commenters in light of the regulatory requirements identified above and through the process of receiving, processing, and reading comment materials. Numerous responses to individual comments state: “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.” As stated above, CEQA contains certain requirements for responding to comments that raise specific environmental impacts of the project and these comments were vetted to ensure that they received the requisite response. This is important for evaluating the adequacy of the environmental document for compliance with CEQA. Other comments raising technical issues or comments with supporting evidence were vetted to ensure adequate and substantive responses were provided as appropriate. That does not mean that other general comments or non-CEQA comments were not important. To the contrary, general comments and non-CEQA comments are very important and valuable to inform the planning process. General comments were responded to with reference to this common response and may have also received references to additional common responses or individualized responses.

General comments included but were not limited to introductory information, personal and professional background about the commenter or their organization, claims without supporting evidence, and general support or opposition to the project or its alternatives. Many commenters shared very personal experiences and strongly-held beliefs that provided meaningful context. The State Water Board appreciates receiving this information and thanks all who participated in this process for sharing their comments. Though they may be general in nature, these comments are valued and play an important role in the State Water Board’s consideration of Sacramento/Delta updates to the Bay-Delta Plan.

## Comments On Other Projects

The State Water Board received multiple comments on other projects and regulatory activities. Some commenters provided re-submitted comments on other documents and processes, such as the January 2023 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 (Scientific Basis Report Supplement) and comments on documents produced for the 2018 Lower San Joaquin River and southern Delta salinity (LSJR/SD) update to the Bay-Delta Plan. The State Water Board is not required to respond to comments that have previously been addressed, comments on other documents, or comments on separate processes outside the scope of the Bay-Delta Plan update. For more information and responses to comments regarding the interaction of the Sacramento/Delta update to the Bay-Delta Plan with other State Water Board regulatory activities (including water quality certifications pursuant to Clean Water Act section 401 and the 2018 LSJR/SD update to the Bay-Delta Plan) see Common Response 1.2, *Water Quality Control Planning Process*.*

In addition, the State Water Board received comments on other projects and regulatory actions that the commenter connected to the proposed project but are separate and distinct from the State Water Board's consideration of approval of the Sacramento/Delta updates to the Bay-Delta Plan. For responses to those comments (which include topics related to temporary urgency change petitions, long-term operations of the Central Valley Project (CVP) and State Water Project (SWP) (collectively Projects), and other water supply projects) see Common Response 1.3, *Revised Proposed Plan Amendments*.

## Form Letters

The State Water Board received numerous form letters (i.e., the same letter provided by multiple commenters). The State Water Board identified examples of form letters as *primary forms*. The comments in the primary form were reviewed and responded to one time instead of responding to the same form letter repeatedly. The remaining form letters were reviewed to confirm consistency with the primary form and counted. Volume 3, Chapter 3, *Primary Forms and Indices of Commenters*, identifies the form letters, the number of form letters received, and where the responses to the form letters can be found in Volume 3, Chapter 4, *Responses to Comments Tables*. In addition, the State Water Board identified whether any unique comments were submitted as part of a form letter. The unique portion of the comments from these letters (referred to as *form plus letters*) were responded to separately from the form letter portion of the comment.

## Attachments and Exhibits

Many commenters included attachments and exhibits with their comment letters. Attachments are items appended to a comment letter and may include technical reports, studies, PowerPoint presentations, and newspaper articles or excerpts. Exhibits include non-text visual aids such as maps, charts, graphs, illustrations, and cartoons. The State Water Board provided individual responses to information contained in an attachment or exhibit to a comment letter if it commented on substantive issues related to the Plan amendments or the analyses contained in the Staff Report. If an attachment or exhibit did not meet those criteria, it was generally not responded to directly. For example, this could include attachments and exhibits that were not explained or sufficiently used as support in the substantive comment, did not make discrete comments on the environmental or economic analyses, or were comments provided by the commenter on a different project. Although a specific response may not have been provided, the attachments and exhibits were reviewed and considered in responding to any substantive comments in which they were cited. The numbers and descriptions given to attachments and exhibits were assigned during comment processing for reference purposes.

## Adequacy of Public Process

This section addresses comments regarding the public participation process, including the length of the Staff Report, adequacy of public outreach, duration of the comment periods, and accessibility of public meetings. For responses to comments regarding engagement and outreach with California Native American Tribes, see Common Response 11.1, *Tribal Engagement and Tribal Beneficial Uses*.

### Length of Staff Report

Some commented that the Staff Report was difficult to review because of the document's length and technical contents, including modeling results and other information. Some commenters asserted that the general public, communities, and non-governmental organizations may not have the time or expertise to sufficiently review the document. Given the complexities of the Bay-Delta Plan and the science supporting the various alternatives, the State Water Board has made every attempt to present information in plain language as clearly formatted as possible. CEQA recommends summarizing information to reduce paperwork and to make the environmental documents understandable. (See 14 Cal. Code Regs § 15147.) The State Water Board attempted to do this throughout the Staff Report, including but not limited to the following.

- Chapter 1, *Executive Summary*, provides an introduction and background that summarizes the project and the purpose and need for the Sacramento/Delta update to the Bay-Delta Plan. Chapter 1 also describes the organization of the Staff Report and provides an overview of the environmental analysis and associated results including impact and mitigation measure summary tables.
- Chapter 5, *Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta*, includes a description and discussion of the proposed Plan amendments as described at the time that the 2023 draft Staff Report was released for public review and comment.
- Chapter 6, *Changes in Hydrology and Water Supply*, describes the changes in hydrology and water supply that could occur as a result of the proposed Plan amendments. Section 6.1.1, *Presentation of Results*, explains that model results are presented in graphical and tabular formats that facilitate comparison of the statistical properties of streamflow, reservoir storage, and water supply among modeling scenarios, with descriptions indicating how to interpret the quantitative results, including examples of a generic boxplot and exceedance curve to assist the reader.
- Section 7.1, *Introduction, Project Description, and Approach to Environmental Analysis*, includes the project purposes and goals, the plan area and study area, the approach to the environmental analyses, and where more detailed information is located in the Staff Report. In addition, Section 7.1 includes a description of the proposed Plan amendments as they originally existed, including reasonably foreseeable methods of compliance and response actions to inform the environmental analysis. Section 7.1 also provides an overview of modeling tools used in the Staff Report and identifies the appendices that contain detailed descriptions, methodologies, and results for those modeling tools.
- Section 7.2, *Description of Alternatives*, and Section 7.24, *Alternatives Analysis*, describe and evaluate project alternatives evaluated in the Staff Report. Impact and mitigation measure summary tables that detail the potential environmental impacts of the No Project Alternative (Alternative 1), Low Flow Alternative (Alternative 2), and High Flow Alternative (Alternative 3)

on various resource areas are presented in Appendix F, *Impact Summary Tables for Alternatives 1, 2, and 3*. Impact and mitigation measure summary tables are provided in Chapter 1, *Executive Summary*, of the 2023 draft Staff Report for the proposed Plan amendments and proposed VAs, and in Chapter 13, *Revised Proposed Plan Amendments*, for the revised proposed Plan amendments.

- Chapter 8, *Economic Analysis and Other Considerations*, analyzes the economic effects of changes in hydrology and water supply on agricultural and municipal use. Section 8.4.1, *Approach to Analysis*, describes the modeling tools that informed the economic analysis. Methods to estimate municipal water supply economic effects are described in Section 8.5.1, *Approach to Analysis*.
- Chapter 9, *Proposed Voluntary Agreements*, includes analyses of the proposed VAs. These analyses are combined in Chapter 9 because the VAs were received after much of the 2023 draft Staff Report was prepared. Chapter 9 provides model results and an evaluation of potential environmental impacts of the proposed VA alternative for all resource topics. This chapter relies on the environmental analyses presented in Chapter 7, *Environmental Analysis*, where possible for efficiency and to avoid redundancy. The economic effects of the proposed VAs are also evaluated in this chapter.
- Chapter 10, *Economically Disadvantaged Communities*, provides an overview of economically disadvantaged communities (DACs) and their water supplies. It incorporates information from several other sections and chapters to summarize possible effects of the Sacramento/Delta update to the Bay-Delta Plan on DACs under current regulatory conditions. The State Water Board is at the forefront of assisting DACs with obtaining clean, safe, and reliable water supplies, and this chapter also discusses relevant State Water Board financial and technical assistance programs.
- Chapter 11, *Tribal Engagement*, of the 2023 draft Staff Report describes outreach and engagement with California Native American Tribes on the Sacramento/Delta update to the Bay-Delta Plan, Tribal Beneficial Uses, and traditional ecological knowledge.
- Chapter 12, *Public Participation*, summarizes the public participation activities that occurred during the environmental review and water quality control planning processes for the Sacramento/Delta update to the Bay-Delta Plan, which included several opportunities for interested parties to provide input.
- Chapter 13, *Revised Proposed Plan Amendments*, constitutes the components of the 2023 draft Staff Report that were recirculated and released with the December 2025 revised draft Plan. Section 13.1, *Introduction*, provides descriptions of the Chapter 13 sections in a bulleted list to assist the reader. Section 13.3, *Revised Proposed Plan Amendments*, provides a detailed description of the revised proposed Plan amendments. Section 13.7.22, *Impact Summary*, provides a summary of the potential impacts and beneficial environmental effects from changes in hydrology and water supply under the revised proposed Plan amendments, and includes an impact and mitigation measures summary table for the revised proposed Plan amendments (Table 13.7.22-1 in the 2025 partially recirculated draft Staff Report).
- Throughout the chapters and sections of the Staff Report, maps, charts, diagrams, and other means of presenting information graphically are included to enhance clarity. (See 14 Cal. Code Regs § 15147; *City of Fremont v San Francisco Bay Area Rapid Transit Dist.* (1995) 34 Cal.App.4th 1780, 1787.)

While CEQA guidelines suggest that EIRs of unusual scope or complexity should normally be less than 300 pages, CEQA imposes no mandatory limit on the length of a EIR. (14 Cal. Code Regs. § 15141.) CEQA places a greater focus on adequacy and completeness of the analysis than on document length. (14 Cal. Code Regs. § 15003 (i).) Further, the Staff Report was prepared to meet not only the requirements of CEQA, but other state requirements. Due to the highly technical and complex nature of the Sacramento/Delta update to the Bay-Delta Plan, the Staff Report necessarily contains a significant amount of information.

In addition to public hearings in 2023 and 2026 (described below under *Public Comment and Outreach*), the State Water Board provided multiple opportunities for interested parties to obtain additional information about the State Water Board's update to the Bay-Delta Plan and the Staff Report during the public comment period to assist commenters with their review of the draft Staff Report. The State Water Board held a staff workshop on October 19, 2023, to provide an overview of the 2023 draft Staff Report, and a second staff workshop on November 2, 2023, focused on modeling. A tribal workshop on the 2023 draft Staff Report was held on November 9, 2023. All three workshops provided an opportunity for participants to obtain additional information to assist with their review of the 2023 draft Staff Report. Presentations from these workshops are available on the State Water Board's website. In addition, a video titled *Overview of Sacramento/Delta Update to Bay-Delta Plan and Draft Staff Report* was developed as an on-demand resource and posted on the State Water Board's website in October 2023. The State Water Board's website contains contact information for questions related to the update to the Bay-Delta Plan and Staff Report. Staff remained available throughout the public process for meetings to provide additional clarification upon request.

## Public Comment and Outreach

The State Water Board received approximately 1,550 written comment letters amounting to more than 47,000 pages during the multiple comment periods on the Staff Report and draft Bay-Delta Plan. The State Water Board made electronic copies of all written comment letters publicly available via a file transfer protocol (FTP) site. In addition, the State Water Board heard oral comments from hundreds of individuals during two multi-day public hearings. The State Water Board held many additional public meetings and workshops to receive input on the Staff Report and draft Plan as described further below. Recordings of the hearings and workshops are posted on the State Water Board's website.

In subsequent comment periods, some commenters expressed frustration that their prior comments had not yet been publicly responded to. The State Water Board acknowledges that commenters may feel dissatisfied with not receiving a formal written response earlier in the process. Although the State Water Board had not published a formal response to comments, the State Water Board was reviewing and considering all comments received throughout the public process. Those comments continually informed revisions to the Staff Report and draft Bay-Delta Plan. Formal responses to comments are included in this final Staff Report.

Some commenters expressed that the comment periods were too short on such long and complex documents. The State Water Board acknowledges the complexity of the Staff Report and draft Bay-Delta Plan. However, the public review process for the Staff Report and draft Bay-Delta Plan was extensive and exceeded legal requirements. The public comment periods for the 2023 draft Staff Report and 2025 partially recirculated draft Staff Report both lasted longer than the 45-day public review period required under the State Water Board's CEQA regulations or the federal Clean Water

Act. The 2023 draft Staff Report was released for public comment on September 28, 2023, for a nearly 4-month public review period that ended on January 19, 2024. The State Water Board originally released the document for a 78-day review period from September 28, 2023, to December 15, 2023. However, in response to public requests for additional time for review, the comment period was extended until January 19, 2024, for a total duration of 113 days. The 2025 partially recirculated draft Staff Report was released for public review on December 12, 2025, for a 52-day comment period that ended on February 2, 2026.

In addition to the comment periods on the Staff Report, the State Water Board held additional written comment periods on the draft Bay-Delta Plan. The State Water Board originally released the first draft of the Bay-Delta Plan for a 55-day comment period from October 25, 2024 to December 19, 2024. In response to public requests for additional time for review, the comment period was extended until January 10, 2025, for a total duration of 77 days. The 2024 draft Plan was revised based on public comments and a revised draft Plan was released for public comment on December 12, 2025, for a 52-day comment period that ended on February 2, 2026. The State Water Board previously released a revised draft Plan in July 2025; however, in September 2025, the State Water Board delayed the public comment period on that draft to make refinements to the draft Plan and to coordinate the public process with the limited recirculation of the draft Staff Report that occurred in December 2025. Although the July 2025 comment period was canceled, the July 2025 revised draft Plan remained available on the State Water Board's website for public review. As such, the public had nearly five additional months to review changes from the 2024 draft Plan that were reflected in the July 2025 revised draft Plan before the additional refinements were released in December 2025. With the release of the final Staff Report, the State Water Board also released the final draft Plan for additional comments prior to consideration of adoption.

During the public comment periods on the Staff Report and draft Bay-Delta Plan, the State Water Board held several public meetings to provide opportunities for engagement with staff and State Water Board members and to provide input on the Staff Report and draft Plan as described below.

- Two virtual staff workshops to provide information and answer questions on the 2023 draft Staff Report.
- 3-day hearing on the 2023 draft Staff Report where the State Water Board heard oral comments from 17 panels and 133 individual speakers.
- 3-day workshop on the proposed VAs where the State Water Board heard oral comments from 18 panels and 43 individual speakers.
- 5-day workshop on the 2024 draft Plan where the State Water Board heard oral comments from 17 panels and 115 individual speakers.
- 11 two-hour long, virtual staff-led working meetings to receive input on the 2024 draft Plan.
- 3-day public hearing on the December 2025 revised draft Plan and the 2025 partially recirculated draft Staff Report where the State Water Board heard oral comments from 11 panels and 188 individual speakers.

In addition, before the 2023 draft Staff Report was released, the State Water Board held a separate public process on the Scientific Basis Report Supplement. A public workshop was held on January 19, 2023, to discuss and receive oral comments on the draft Scientific Basis Report Supplement, and written comments were accepted between January 5, 2023, and February 8, 2023. The State Water Board also held a separate public process from 2016 to 2017 on the *Scientific Basis Report in Support*

*of Possible New and Modified Requirements for Inflows from the Sacramento River and Its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows* (Scientific Basis Report), which included a public workshop and written comment period.

Due to the large amount of interest in the Sacramento/Delta update to the Bay-Delta Plan, the State Water Board prepared for multi-day public workshops and hearings to ensure ample time for interested persons to provide oral comments. In addition, all in-person public meetings included an option to participate remotely for those who were unable to attend in-person. Video recordings of public meetings, when available, were timely posted on the State Water Board's website for those who were unable to join or were interested in referencing the meeting afterwards. In addition to the public meetings listed above, State Water Board staff engaged in numerous group and one-on-one meetings with interested parties throughout the planning process to discuss the Staff Report and updates to the Bay-Delta Plan.

Some commenters stated that it was unclear whether the State Water Board made specific outreach efforts to connect with underserved communities and whether those communities were able to participate given their more limited resources. At least one commenter stated that public meetings were held during business hours while members of the public were working, and held via teleconferencing, which may not be available to everyone. As described in Chapter 12, *Public Participation*, the State Water Board held two environmental justice focused listening sessions to receive input on the Bay-Delta Plan from environmental interests, representatives of economically disadvantaged communities, and representatives of black, indigenous, and people of color organizations. Both environmental justice listening sessions began in the afternoon and continued past regular business hours (5:00 p.m.). Additionally, the State Water Board held one of its three hearing days on the 2023 draft Staff Report beginning at 4:00 p.m. and continuing after business hours. Although it was infeasible to hold all public meetings after regular business hours, the State Water Board attempted to be as accommodating as possible by scheduling some meetings to begin in the afternoon. Often times, many of the public hearings and workshops naturally ended after business hours due to the large number of speakers who attended to provide input. It is also important to note that holding public meetings with an option to participate via teleconference only increases opportunities for engagement and the State Water Board's ability to reach more Californians, including those in underserved communities.

Additional details regarding the public process can be found in Chapter 12, *Public Participation*. For a summary of the State Water Board's engagement and government-to-government consultation with California Native American Tribes, see Chapter 11, *Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses*.

## Release of Plan Separately from Staff Report

As stated above, in September 2023, the State Water Board released the 2023 draft Staff Report evaluating different alternatives for the Sacramento/Delta update to the Bay-Delta Plan for public review and comment. The 2023 draft Staff Report included draft water quality objectives and described how the program of implementation would implement the objectives. Following release of the 2023 draft Staff Report, the State Water Board released draft amendments to the Bay-Delta Plan in October 2024 (2024 draft Plan) for public review and comment that incorporated alternatives identified in the 2023 draft Staff Report with revisions based on public comments.

Some commenters stated that the separate comment periods on the draft Plan and Staff Report hindered the ability of the public to comprehensively review and comment on the proposed action, and suggested that the State Water Board re-release the entirety of the proposed edits to the Bay-Delta Plan along with the supporting analysis and environmental documentation provided in the Staff Report. More specifically, some comments on the 2023 draft Staff Report expressed concern regarding a lack of a “program of implementation” (referring to Chapter 4, *Program of Implementation*, of the Bay-Delta Plan), which identifies how the Bay-Delta Plan’s objectives will be met. Although draft updates to the Bay-Delta Plan were not publicly available at the time the 2023 draft Staff Report was released, Chapter 5, *Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta*, and Chapter 9, *Proposed Voluntary Agreements*, included a thorough and adequate description of program of implementation elements under consideration in sufficient detail for the purposes of the analysis. In addition, Chapter 1, *Executive Summary*, of the 2023 draft Staff Report clearly stated that the specific changes to the Bay-Delta Plan, including the program of implementation, had not been developed yet and that comments on the 2023 draft Staff Report would help inform the specific regulatory language for the Plan. For additional discussion of the Plan’s program of implementation, see Common Response 1.3, *Revised Proposed Plan Amendments*.

The State Water Board held an additional public process on the draft Bay-Delta Plan, including releasing multiple drafts for public comment and holding several multi-day public workshops. The State Water Board was not required to circulate a draft Bay-Delta Plan or program of implementation at the same time as the supporting analyses in the Staff Report, and ultimately the timing of the document releases had no bearing on the public’s ability to engage in this process and provide meaningful input on the Bay-Delta Plan and Staff Report. However, the 2025 partially recirculated draft Staff Report and revised draft Bay-Delta Plan were released together for public comment, as described above.

## VA Development Process

The State Water Board received many comments regarding the process in which the VAs were developed. Some commenters, including many California Native American Tribes, environmental justice communities, and environmental non-governmental organizations, asserted that the VAs were developed through a process that was discriminatory, inequitable, and excluded tribes, fishing interests, environmental interests, Delta communities, and others. Some commenters stated that the VAs were created by powerful water interests without consideration of preserving tribal cultural resources and protecting the health of disadvantaged communities that live near and depend on the Bay-Delta. During the 2023 and 2026 hearings, Secretary Wade Crowfoot of the California Natural Resources Agency, an HRL participant and signatory to the HRL Memorandum of Understanding (MOU), acknowledged that at the time the VA negotiations started, water users and environmental groups were the key stakeholders involved, although environmental groups were not involved in the later stages of the negotiations. Since then, the agency has recognized that there is a broader set of stakeholders, including California Native American Tribes, environmental justice communities, and others. Secretary Crowfoot also acknowledged that California Native American Tribes are stewards of nature, that the agency has been actively working to improve partnership with tribes over the past several years, and that moving forward it will have a “very high standard of government-to-government consultation with California tribes.”

The State Water Board understands commenters’ concerns that the development of the VAs felt exclusionary to some groups. However, it is important to note that the State Water Board was not

part of the development of the VAs and is not a signatory to the MOU or other HRL documents. Since receiving the VAs in 2022 as a proposed alternative for updating and implementing the Bay-Delta Plan, the State Water Board included consideration of the VAs in the public process. The State Water Board provided multiple opportunities for public comment on the VAs, including during a three-day public workshop specific to the VAs in 2024, public comment on the 2024 draft Plan that specifically requested input on the possible inclusion of VAs, and public comment on subsequent drafts of the Plan that incorporated a VA pathway for implementation of the HRL commitments. The State Water Board also created a separate webpage for posting VA and related documents to ensure the public had access to that information throughout the public process.

Although the State Water Board was not involved in the initial development of the VAs, the State Water Board has made substantial effort to incorporate a VA pathway for implementation of the HRL commitments into the Bay-Delta Plan while still maintaining its regulatory decision-making authority and oversight. In addition, the State Water Board incorporated important feedback from California Native American Tribes and others to bolster requirements for tribal outreach and engagement during implementation of the VA pathway. The State Water Board remains dedicated to providing a transparent and inclusive public process throughout the update and implementation of the Bay-Delta Plan.

See Common Response 10.1, *Economically Disadvantaged Communities*, for responses to additional comments from representatives of economically disadvantaged communities and environmental justice organizations related to the VAs. For responses to additional comments from California Native American Tribes related to the VAs, see Common Responses 11.1, *Tribal Engagement and Tribal Beneficial Uses*.

## Scope of Staff Report and Plan Flexibility

The State Water Board received many comments expressing general concern regarding the broad scope of the Staff Report and the flexibility provided in the Bay-Delta Plan. Many commenters expressed concern regarding a lack of a stable project description and lack of necessary detail of the Bay-Delta Plan's program of implementation to adequately evaluate the impacts and meaningfully participate in the planning process. Commenters expressed concern that without a clear project description, the public could not focus its attention on the State Water Board's actual proposal nor compare the environmental effects of the alternatives with the intended State Water Board action. It is understandable that commenters might feel overwhelmed given the large scope of the task to update the Sacramento/Delta portions of the Bay-Delta Plan and the breadth of analyses presented to inform the decision before the State Water Board. However, the Staff Report and multiple iterations of the draft Bay-Delta Plan ultimately provided sufficient detail to inform the public and decision makers.

The Staff Report fully satisfies the basic purposes of CEQA, which are to: (1) inform governmental decision makers and the public about the potential significant environmental effects of proposed activities; (2) identify ways that environmental damage can be avoided or significantly reduced; (3) prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible; and (4) disclose to the public why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved. (Cal. Code Regs., tit. 14, § 15002, subd. (a).) To fulfill these functions, an evaluation of the environmental effects need not be

exhaustive, but the sufficiency of an environmental analysis is to be reviewed in light of what is reasonably feasible and CEQA documents need not be perfect. CEQA documents should be adequate, complete, and represent a good faith effort at full disclosure. (*Id.*, § 15151.) See Common Response 7.1, *General CEQA and Approach to the Analysis*, for a discussion of the level and scope of analysis, and approach to CEQA requirements.

The Staff Report intentionally covers a range of alternatives to support the State Water Board's water quality control planning process. The range of alternatives in the Staff Report included both stand-alone alternatives and modular alternatives that could be layered onto the stand-alone alternatives. While one alternative in the 2023 draft Staff Report was identified as the proposed Plan amendments, Chapter 1, *Executive Summary*, clearly stated that the State Water Board had not yet made a decision on how to move forward with the Sacramento/Delta update to the Bay-Delta Plan, and that all alternatives were available for consideration and adoption during the public planning process. This makes sense and is consistent with water quality control planning that is a certified regulatory program under CEQA (Pub. Resources Code, § 21080.5, subd. (b)(2); Cal. Code Regs., tit. 23, § 3775 et seq.). In a significant rulemaking process such as updating the Bay-Delta Plan, it is appropriate and important to keep all options available for consideration and not prejudice the outcome prior to receiving public input. That said, the Staff Report contained sufficient information and project detail for meaningful public participation, as evidenced by the numerous and constructive public comments that informed the planning process. Many commenters claimed that the CEQA analysis was inadequate for various reasons that are addressed in Common Response 7.1, *General CEQA and Approach to the Analysis*. However, many of those commenters relied extensively on the information presented in the Staff Report to make detailed and meaningful comments about the project, suggesting that the document was useful in informing the discussion and the planning process.

Many commenters raised arguments regarding the CEQA baseline for the project and no project alternative, the base/reference conditions to which HRL flows are added, the point of reference for the analyses in the Scientific Basis Reports, and related issues. Many commenters confused these issues, conflated them, or otherwise advocated for a different CEQA baseline or different base/reference conditions for HRL flows, or other changes. Common Response 6.2, *Baseline and No Project Alternative*, addresses these comments in detail. As described in Common Response 6.2, the CEQA baseline for this project is generally the conditions that have existed during the majority of the planning process for the Sacramento/Delta update to the Bay-Delta Plan with incorporation of some enduring changes that occurred during the process. While federal Endangered Species Act (ESA) related provisions for the CVP were unsettled at various times during the planning process due to litigation and related issues, the applicable operational requirements for the CVP were largely consistent with the Staff Report CEQA baseline until the end of the planning process in 2025 when the 2024 Record of Decision (ROD) began to be implemented and again in 2026 when the 2025 ROD began to be implemented. Smaller changes to SWP operations also occurred with the implementation of the 2024 Incidental Take Permit (ITP) for the SWP in 2025, and there may be other longer-term changes to SWP operations resulting from a 2026 request by the Department of Water Resources to modify provisions of the 2024 ITP. The Staff Report and Common Response 6.2 explains the shifting (particularly recently) nature of the ESA-related requirements and the rationale and appropriateness of the stable CEQA baseline assumptions for this project. Similarly, the Scientific Basis Report and Scientific Basis Report Supplement describe the rationale and appropriateness for the consistent analyses between those two reports.

Further, the Staff Report and Common Response 6.2 explain the differences between the CEQA baseline and the base/reference conditions to which the HRL flows are intended to be additive to pursuant to the HRL MOU. As described in the revised proposed Plan amendments, the Staff Report, and Common Response 6.2, the HRL base includes flows required by State Water Board Decision (D-1641) and flows resulting from implementation of the 2024 ROD/Biological Opinions, including required flows and other flows that would be in the system under those operations consistent with the analyses in the Scientific Basis Report Supplement and Staff Report. Notable differences between the CEQA baseline and the base/reference conditions to which HRL flows are intended to be added are differences in export constraints associated with the San Joaquin River inflow to export rate requirements that applied to the CVP until the end of 2024. Under the CEQA baseline these export constraints are included and under the base/reference conditions these export constraints are removed consistent with the 2024 ROD/Biological Opinions removal in place of HRL export reduction commitments. This difference reduces the magnitude of expected increases in Delta outflows under the HRL when comparing the HRL flow commitments to baseline and the analytical reference point in the Scientific Basis Report Supplement, as do other details associated with the HRL proposal, including whether flows are accounted for as Delta outflow or not. These differences have been disclosed and appropriately evaluated in the Scientific Basis Report Supplement and Staff Report.

Related to the HRL flow base, some have argued that the HRL flow base only includes D-1641 and 2024 ROD/Biological Opinions required Delta outflows and not other flows in the system. This interpretation is not consistent with the analyses in the Scientific Basis Report Supplement or Staff Report that assumes the HRL flows would contribute net additive Delta outflows. This is particularly true given that as described in the Staff Report, minimum required Delta outflows (MRDO) are less than 4 million acre-feet (MAF) on average, current Delta outflows are greater than 15 MAF on average, and HRL flow commitments are less than 1 MAF on average. If HRL flows were only added to MRDO, they would not necessarily produce net additive Delta outflows. Further, the 2024 ROD/Biological Opinions do not include substantial Delta outflow requirements, but instead include requirements that constraint exports to varying degrees.

As discussed above, the revised proposed Plan amendments bring together in the Bay-Delta Plan program of implementation a VA pathway that incorporates flow and non-flow commitments identified in the HRL proposal and would apply to specified HRL water rights and a regulatory pathway that would apply to other water rights and to any HRL water rights no longer covered under the VA pathway. In addition, both pathways contain certain flexibilities that can be applied throughout implementation. For example, provisions for adaptive implementation of the numeric inflow requirements under the regulatory pathway 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. The environmental analyses evaluate a complete range of impacts in the event that water users do not utilize adaptive implementation, as well as the potential impacts from implementation of adaptive implementation.

The Staff Report supports the Sacramento/Delta updates to the Bay-Delta Plan currently being considered by the State Water Board and could provide the required analyses for any future updates to the Plan that were evaluated in this Staff Report. The State Water Board will initiate annual and periodic reviews to assess and report on progress on implementation of the Bay-Delta Plan and any needed changes to the Plan or its implementation to provide for the reasonable protection of beneficial uses. Annual and periodic reviews will be critically important in assessing the

effectiveness of the Bay-Delta Plan and providing the opportunity to consider future updates to the Bay-Delta Plan. Any future updates to the Bay-Delta Plan that were not evaluated in this Staff Report would be considered in a separate process and would be supported by any necessary appropriate additional analyses.

Due to the complexity of Sacramento/Delta water supply and use, the environmental analyses in the Staff Report are necessarily broad to cover the wide range of foreseeable compliance measures and responses that may result from the project. In addition, the project description must be viewed in consideration of the nature of the Bay-Delta Plan itself, which is necessarily designed to be flexible in response to various contingencies. The Bay-Delta watershed supplies drinking water to millions of Californians; provides much of the water supply for farmland throughout the State; supports an exceptionally diverse array of migratory and resident fish, birds, and other valued wildlife and plants; and is vital to California Native American Tribes whose cultures and way of life are deeply entwined with the watershed and ecosystem. Providing balanced protection of all beneficial uses of water is incredibly important and requires careful consideration. Because of the size and complexity of the Bay-Delta watershed and the time it takes to complete the process to update and implement the Bay-Delta Plan, it is imperative that the Plan can adjust to changing circumstances and future conditions.

For information regarding the provisions in the program of implementation of the Bay-Delta Plan, see Common Response 1.3, *Revised Proposed Plan Amendments*. For discussion of a stable project description, see Common Response 7.1, *General CEQA and Approach to the Analysis*.

## Support and Opposition for Plan Amendments, VAs, and Other Flow Alternatives

The State Water Board received numerous comments expressing general support or opposition of elements of the proposed Plan amendments, proposed VAs, and other flow alternatives that were evaluated in the 2023 draft Staff Report. Those comments on the 2023 draft Staff Report were received prior to the State Water Board incorporating the VA pathway into the draft Plan and recirculating the Staff Report with the revised proposed Plan amendments. The State Water Board received additional general comments on the revised proposed Plan amendments, which included a regulatory pathway based on the proposed Plan amendments with modifications and a VA pathway for implementation of the HRL flow and non-flow commitments.

Generally, commenters who expressed support for elements of the proposed Plan amendments opposed the VAs. Conversely, commenters who supported the VAs generally opposed the proposed Plan amendments. Many commenters who opposed the VAs also criticized the revised proposed Plan amendments for including the VA pathway for implementation of the HRL commitments. Some commenters who supported the VAs also expressed concerns with elements of the revised proposed Plan amendments.

This section summarizes and responds to comments that generally raise various concerns related to the proposed Plan amendments, the VAs, and subsequently, the regulatory pathway and VA pathway of the revised proposed Plan amendments. Responses to more specific comments on the regulatory and VA pathways are provided in Common Response 1.3, *Revised Proposed Plan Amendments*. For responses to more specific comments on the range of alternatives evaluated in the Staff Report,

including those that are addressed in this section, see Common Response 7.24, *Alternatives Analysis*. Where appropriate, other relevant common responses are referenced.

## Proposed Plan Amendments and Other Flow Alternatives

The Staff Report assesses a range of flow scenarios from 35 to 75 percent of unimpaired flow from the Sacramento/Delta tributaries. Many commenters expressed support for a percent of unimpaired flow to remain in rivers to reasonably protect fish and wildlife beneficial uses. Many commenters supported an unimpaired flow requirement that was consistent with or higher than the proposed Plan amendments (i.e., 55 percent with an adaptive range of 45 to 65 percent). Some requested higher flow requirements and stated that at least 65 or 75 percent of unimpaired flow is necessary to improve current conditions in the Bay-Delta ecosystem. Other commenters stated that 55 percent of unimpaired flow was insufficient, but did not provide supporting information for their claims. Conversely, many commenters expressed concern with an unimpaired flow requirement altogether.

Commenters who were supportive of the high flow alternative often cited to the State Water Board's 2010 *Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem* (Delta Flow Criteria Report), which identified a Delta outflow criteria of 75 percent unimpaired Delta outflow from January through June and an inflow criteria of 75 percent unimpaired Sacramento River inflow from November through June. The Delta Flow Criteria Report made a number of findings and identified specific criteria for inflows, outflows, and interior Delta flows if fishery protection was the sole purpose for which waters were put to beneficial use without considering the need for cold water reserves and balancing of supplies for other beneficial uses of water. The report noted that Delta waters support many other important beneficial uses, such as municipal, industrial, agricultural, hydropower, recreation, and other environmental uses such as wetlands and refuge water supplies that must be considered when determining regulatory flow requirements. The report also noted that the State Water Board is required by law to establish flow and other requirements that ensure the reasonable protection of beneficial uses and that for any flow requirements to be reasonable, the State Water Board will consider and balance competing uses of water in its decision-making. For discussion of reasonable protection of fish and wildlife and consideration of other beneficial uses, see Common Response 1.2, *Water Quality Control Planning Process*.

Many commenters were generally supportive of increased flow requirements based on a percentage of unimpaired flow, stating the need for increased flow and a healthier Bay-Delta ecosystem. These commenters emphasized the importance of more flow for several reasons, including improving native fish populations, mitigating water quality concerns (including HABs), and improving water temperature conditions. Some commenters, including the National Marine Fisheries Service and U.S. Environmental Protection Agency, expressed support for year-round inflow requirements to support anadromous and estuarine fish species. Additional commenters more generally expressed that current flows are inadequate to maintain viability of many native fishes and that increased flows are required to restore fish populations and mitigate existing HABs conditions. Chapter 3, *Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations*, documents the best available science on flow needs for the protection of fish and wildlife beneficial uses. Additional information and responses to comments regarding the flow and habitat benefit analyses and the use of best available science is provided in Common Response 3.1, *Fish Protection*. For responses to comments regarding HABs, see Common Response 4.1, *Harmful Algal Blooms*.

While many commenters expressed support for the proposed Plan amendments or a higher percent of unimpaired flow, many commenters expressed concern with a 55 percent of unimpaired flow

requirement on the basis that increasing instream flows would negatively impact other resources, such as agricultural and municipal water supplies. Some commenters requested lowering the percent of unimpaired flow requirement, and some did not agree with the use of unimpaired flow as the basis for a flow requirement. Many commenters, including local agencies and water suppliers, expressed concern that an unimpaired flow requirement would negatively impact reservoir storage levels and threaten the reliability of municipal water supply, especially in dry years. For responses to comments on impacts to municipal water supply, see Common Response 6.3, *Water Supply and Other Water Management Actions*, and Common Response 7.20, *Utilities and Service Systems*. For responses to comments on impacts to agriculture resulting from changes in water supply, see Common Response 7.4, *Agricultural Resources*.

Some commenters that expressed opposition to an unimpaired flow requirement incorrectly characterized the proposed Plan amendments as a flow only approach or a one-size-fits-all approach that disregards the needs of individual tributaries. While the regulatory pathway would require a percent of unimpaired flow, the regulatory pathway also includes provisions for adaptive implementation and local cooperative solutions that enable tailoring implementation of the flow requirements to individual tributaries, including the ability for watersheds to self-organize, propose habitat restoration and other non-flow measures for compliance with the inflow and cold water habitat requirements, and manage flow requirements and habitat restoration in concert to maximize benefits. In addition, complimentary measures including habitat restoration are included as general provisions in the Plan amendments.

While an unimpaired flow requirement was a topic frequently raised by commenters, the State Water Board received many comments on other elements of the proposed Plan amendments, including the cold water habitat objective. Many commenters more generally raised concerns regarding water temperature and the need for cold water management actions. Some commenters, including the California Department of Fish and Wildlife (CDFW), were supportive of incorporating cold water management in the Bay-Delta Plan update. Conversely, many commenters opposed establishing temperature management requirements and disagreed with carryover storage targets included in the regulatory pathway. Flow requirements and cold water habitat protection are intricately linked, with each objective complementing the other. For discussion of and responses to comments regarding the Plan's cold water habitat objective, see Common Response 1.3, *Revised Proposed Plan Amendments*. For responses to comments related to water temperature, cold water habitat, and carryover storage targets, see Common Response 7.6.2, *Aquatic Biological Resources and Cold Water Habitat*.

## Proposed VAs (HRL Proposal)

Many commenters who opposed an unimpaired flow requirement supported the HRL proposal, often calling it an integrated approach that includes flow and non-flow actions (i.e., habitat restoration) that would improve Bay-Delta ecosystem conditions. Supporters of the HRL proposal referred to it as a collaborative partnership among various agencies and interests. However, many commenters raised concerns with the way in which the VAs were developed, citing lack of inclusion of California Native American Tribes, environmental justice communities, environmental and fishing organizations, and the general public. For responses to these comments, see the *VA Development Process* section above. See also Common Response 10.1, *Economically Disadvantaged Communities*, for responses to comments from representatives of economically disadvantaged communities and

environmental justice organizations related to the VAs. For responses to tribal comments on the VAs, see Common Response 11.1, *Tribal Engagement and Tribal Beneficial Uses*.

Many commenters expressed support for the HRL proposal, stating that it would provide a means for adaptive management of the watershed and would improve ecosystem conditions while balancing water supply reliability. Conversely, many commenters expressed concern that the VAs do not include an adequate adaptive management plan and would not protect the Bay-Delta ecosystem if adopted. Many commented that the total amount of flow contributed by HRL participants would be insufficient and would not reasonably protect fish and wildlife or adequately improve current ecosystem conditions. Some commenters stated that the VAs seek to substitute physical habitat for flow and acknowledge that while habitat restoration is important, restoration of the ecosystem will require adequate flows. Commenters also suggested that the VAs would seek to receive credit for habitat restoration activities that would occur regardless of adopting the VA pathway, and thus would not meaningfully increase available habitat. Many commenters expressed concern that the VAs would not provide adequate flows for fish and would not reduce the occurrence of HABS. Commenters also frequently claimed that the VAs are not based on science. The science supporting the anticipated benefits of the VAs is documented in the Scientific Basis Report Supplement. For responses to comments on the flow and habitat benefit analyses for the VAs, see Common Response 3.1, *Fish Protection*. For responses to comments regarding HABS, see Common Response 4.1, *Harmful Algal Blooms*.

## Revised Proposed Plan Amendments

The State Water Board developed the revised proposed Plan amendments in response to comments and concerns raised; however, the State Water Board acknowledges that many commenters remained concerned with various elements of the revised proposed Plan amendments. It is understandable and expected that commenters would express differing opinions on such important, complex issues. There are many important water uses that must be considered carefully when determining regulatory flow requirements for fish and wildlife, including municipal, industrial, agricultural, hydropower, and recreational uses, as well as other environmental uses, such as wetlands and refuges. While many commenters acknowledge the need for Californians to balance water use among various competing interests, the State Water Board recognizes that many commenters have strongly held beliefs regarding the best approach for doing so as part of the Sacramento/Delta update to the Bay-Delta Plan.

The State Water Board's Bay-Delta planning and implementation efforts are part of a multi-faceted approach to address protection of fish and wildlife in the Bay-Delta and reconcile an altered ecosystem. The State Water Board has responsibility and authority for addressing flow and other water quality impairments, but ecosystem recovery in the Delta depends on more than adequate flows. It also requires implementation of complementary measures, including habitat restoration, fisheries management, control of waste discharges and invasive species, and other efforts by other agencies and entities in the watershed that are responsible for these actions. These actions are discussed in more detail in Chapter 5, *Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta*, and the revised proposed Plan amendments.

The State Water Board developed Chapter 13, *Revised Proposed Plan Amendments*, for a limited recirculation to provide clarifying information and further analysis of the revised proposed Plan amendments to ensure that the public had the opportunity for additional meaningful public review and comment. Chapter 13 builds upon the analysis of the proposed Plan amendments, the proposed

VAs, and the alternatives presented in the 2023 draft Staff Report, with revisions. The regulatory pathway is based on the proposed Plan amendments described in Chapter 5, *Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta*, and analyzed in Chapter 6, *Changes in Hydrology and Water Supply*; Chapter 7, *Environmental Analysis*; and Chapter 8, *Economic Analysis and Other Considerations*, with changes, including incorporation of flows identified in the Low Flow Alternative (35 and 45 percent of unimpaired flow). The VA pathway is based on the proposed VAs analyzed in Chapter 9, *Proposed Voluntary Agreements*, with revisions, including changes to the water quality objectives that the VA pathway would implement, the addition of new HRL participants and associated commitments, and other refinements. The VA pathway would apply to water rights included in the approved VA pathway, and the regulatory pathway would apply to water rights not included as part of the approved VA pathway and would also apply to HRL water rights in the event the VA pathway is discontinued, with both pathways having regulatory effect if adopted. The revised proposed Plan amendments are presented as the proposed project that is comprised of elements from the range of reasonable alternatives already evaluated.

The regulatory pathway of the revised proposed Plan amendments is the implementation pathway for water rights not covered by the VA pathway for the Sacramento/Delta inflow and cold water habitat objectives and the inflow-based Delta outflow objective. In response to public comments expressing concerns that the inflow requirements of the proposed Plan amendments would have significant water supply impacts and could result in drawing down reservoir storage, with associated temperature impacts, modifications to the starting point for the inflows under the regulatory pathway were incorporated into the revised proposed Plan amendments that reduce water supply impacts and allow more water to be stored in reservoirs at the outset of Plan implementation. These modifications are referred to as water supply adjustments (WSAs) and provide for lowering the required percent of unimpaired flow during all but the wettest hydrologic conditions down to 45 or 35 percent of unimpaired flow, with additional tributary-specific water supply adjustments for three rainfall and municipal supply dominated tributaries (the Mokelumne and Calaveras Rivers and Putah Creek).

The VA pathway of the revised proposed Plan amendments includes a combination of flow and habitat restoration commitments intended to improve fish and wildlife conditions at lower water supply costs than the regulatory pathway. The VA pathway includes differing amounts of flow commitments, depending on water year type, and 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 and in the Delta. The Scientific Basis Report Supplement found that the HRL proposal would be expected to result in benefits for fish and wildlife, although there are uncertainties in the magnitude of those benefits and whether they would result in population-level improvements. To address the uncertainty, the VA pathway includes supplemental science and monitoring activities that would monitor and evaluate the effectiveness of the VA pathway at achieving the applicable narrative objectives and reasonably protecting fish and wildlife to inform a State Water Board decision on whether to continue, modify, or terminate the VA pathway.

Many commenters expressed support that the revised proposed Plan amendments included the VA pathway for implementation of the HRL flow and non-flow commitments. However, some supporters of the HRL proposal expressed concern that the VA pathway does not incorporate critical components of the HRL proposal. Some commenters expressed concern with the regulatory pathway applying to HRL participants in the event the VA pathway is discontinued. Some commenters were supportive of the inclusion of WSAs in the regulatory pathway while others stated

that the regulatory pathway even with WSAs would still cause concerns for water supply. Some commenters opposed the regulatory pathway entirely and some requested that the State Water Board consider modifications to the VA pathway. For responses to specific comments on the regulatory and VA pathways, as well as other provisions of the draft Bay-Delta Plan, see Common Response 1.3, *Revised Proposed Plan Amendments*.

Many commenters expressed uncertainty about whether the HRL commitments will be met and result in sufficient improvements for the reasonable protection of fish and wildlife. Because of the size and complexity of the Bay-Delta watershed and the time it takes to complete the process to update and implement the Bay-Delta Plan, it is imperative that the Plan can adjust to changing circumstances and future conditions. The revised proposed Plan amendments provide for the VA pathway to remain in effect for a term of eight years after the effective date, unless the VA pathway is terminated before eight years or extended beyond eight years as discussed in Staff Report Section 13.3.4.10, *Continuation, Modification, or Termination of the VA Pathway*. The revised proposed Plan amendments also provide for possible modification or termination of the VA pathway as part of annual and periodic review processes, including before year eight, due to the HRL participants' failure or inability to implement HRL commitments as described in the VA pathway, or 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. The revised proposed Plan amendments also include a regulatory pathway that would apply for water rights not included as part of the approved VA pathway and would also apply to HRL water rights in the event the VA pathway is discontinued. The State Water Board would conduct annual and periodic reviews to discuss progress on implementation of the Bay-Delta Plan, effectiveness at providing for the reasonable protection of beneficial uses, and possible needed changes to the Bay-Delta Plan and its implementation. The State Water Board would hold public meetings to act on various approvals or adjustments provided for in the Plan, receive updates on progress in implementing the Bay-Delta Plan, and to receive input from California Native American Tribes and the public. As part of the periodic review process, HRL participants would be required to provide updates to the State Water Board on implementation of the VA pathway.

The State Water Board has consistently encouraged voluntary actions that are consistent with provisions included in the updated Bay-Delta Plan for their potential to provide large-scale benefits that will amplify the ecological benefit of new and existing flows beyond what may be provided by flow and water project operations alone. Successful voluntary measures to implement the Bay-Delta Plan could provide comprehensive, enduring, and timely benefits to the ecosystem.

A frequent concern expressed by commenters is the potential impact that implementation of the Plan amendments will have on their existing water supplies. The State Water Board understands and acknowledges that reductions in Sacramento/Delta supplies for consumptive uses are difficult and a concern for many parties that rely on this water. However, minimum flow protections are necessary and urgent to protect fish and wildlife from unnaturally frequent drought-like conditions caused by the development and use of water supply (Swanson 2025). The Plan amendments would provide a regulatory regime that addresses comprehensive minimum instream flow and cold water habitat provisions and distribute the responsibilities more broadly across the watershed in a way that adjusts to available supplies and provides for flexibility. The revised proposed Plan amendments were developed to improve flow and water quality conditions over a large geographic area, and particularly for fish and wildlife beneficial uses in the Sacramento/Delta. In addition, the WSAs and VA pathway are responsive to water supply concerns, and are provided as components of staged implementation toward fully achieving the new water quality objectives in the Plan. The

revised proposed Plan amendments are broad and contain needed flexibility to adaptively implement the flow and related requirements, which will allow the Plan to adjust in the future without having to start over with another lengthy update process.

Many commenters stated that the update to the Bay-Delta Plan is overdue and encouraged the State Water Board to move forward with the updates to the Bay-Delta Plan as expeditiously as possible. The State Water Board acknowledges that the update to the Bay-Delta Plan has taken a significant amount of time due to the complexity of providing for the reasonable protection of beneficial uses in such a large and complex watershed that is integral to the ecosystem, tribal ways of life, the State's water supplies, and numerous other uses. The State Water Board is working as expeditiously as possible to complete the Sacramento/Delta update to the Bay-Delta Plan and begin the critical step of implementation in a manner that provides the needed flexibilities to move from the current more narrow implementation of the Plan by a few parties to broader implementation over the entire watershed, which has not historically occurred.

The current Bay-Delta Plan is primarily implemented through water right requirements included in State Water Board Water Right Decision 1641 (D-1641). Currently, the CVP and SWP have primary responsibility for meeting Bay-Delta Plan objectives that apply to the Sacramento/Delta watershed. While a limited number of junior water right holders include a provision in their water right permits and licenses (Standard Water Right Term 91) that limits their diversions when the Projects are providing water from storage to meet objectives in the Delta, most water users in the watershed currently are not subject to such provisions. The revised proposed Plan amendments would distribute responsibilities more broadly across the watershed while allowing for flexibility. The State Water Board would implement the flow components of the Sacramento/Delta updates to the Bay-Delta Plan through water right or water quality actions, as necessary, including and primarily through water right curtailments based on water right priorities.

For responses to comments regarding the State Water Board's authority to adopt and implement the Plan amendments, as well as reasonable protection of fish and wildlife and consideration of other beneficial uses, see Common Response 1.2, *Water Quality Control Planning Process*. For more information and responses to comments regarding the revised proposed Plan amendments, see Common Response 1.3, *Revised Proposed Plan Amendments*.

## Water Supply

The State Water Board received many comments about whether the Plan amendments would leave enough fresh water in the watershed for the ecosystem and the species and people that rely on it. Many commenters expressed concern about the amount of Sacramento/Delta water that is delivered for agricultural use. The State Water Board also received many comments from irrigation districts and municipal water suppliers expressing concern about water supply reductions that could occur from implementation of updates to the Bay-Delta Plan (particularly under the regulatory pathway), arguing that instream flow requirements would not leave sufficient water supply to support water uses for communities, industries, and agriculture that have helped grow California into the nation's top farm-producing state and the world's fifth largest economy, along with access to safe drinking water, recreation, and hydropower. Many comments also expressed general support for water conservation and efficiency, and relying on alternate supplies. For discussion of and responses to comments concerning water supply and other water management actions, including groundwater storage and recovery, water transfers, water recycling, water

conservation and efficiency, and new and modified facilities, see Common Response 6.3, *Water Supply and Other Water Management Actions*.

## Consistency with Other Laws, Policies, and Agreements

This section addresses common comments that made statements regarding the potential consistency or inconsistency with other local, state, or federal laws, plans, programs, agreements, or policies. California faces a multitude of water management challenges that requires a comprehensive set of actions that range from local to multi-state and federal activities. Many water policy and planning efforts have been undertaken with goals of ensuring water supply reliance and conservation, developing alternative water supply sources, providing for equitable rights of water for the people of California, and adapting to climate change. For the protection of flora and fauna, California and the United States have promulgated separate Endangered Species Acts that could result in plans or actions to avoid the jeopardy of listed species. In addition, many regional or watershed specific agreements or programs have been implemented to address specific species or water supply issues. The following subsections describe more details of some other efforts cited by commenters and their potential interactions with the Plan amendments.

Comprehensively addressing all of the state's water management needs is outside of the State Water Board's role and purview, and beyond the scope of the Sacramento/Delta update to the Bay-Delta Plan. The State Water Board is considering the Sacramento/Delta update to the Bay-Delta Plan pursuant to its independent obligation and responsibility to protect the quality of the waters of the state to protect beneficial uses. The State Water Board's process to update the Bay-Delta Plan is separate and distinct from other programs, plans, projects, and proceedings.

## Water Resources Programs

Multiple commenters made statements regarding consistency with other state policies, directives, and programs that describe the priorities or strategies to prepare the state to maintain sufficient water resources in the future, including the Water Supply Strategy, Water Resilience Portfolio, and the Human Right to Water. Several commenters stated generally that the HRL proposal or VA pathway were consistent with these statewide policies to secure water supplies, and that the unimpaired flow alternatives were inconsistent with these policies. These policies are described below.

### Human Right to Water

In September 2012, Governor Edmund G. Brown, Jr. signed Assembly Bill 685, which legislatively recognized the human right to water by adding to Water Code section 106.3. Section 106.3 statutorily recognizes that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." The human right to water extends to all Californians, including disadvantaged individuals and groups and communities in rural and urban areas.

In February 2016, the State Water Board adopted a resolution identifying the human right to water as a top priority and core value of the State Water Board and Regional Water Quality Control Boards. The resolution stated that the Water Boards will work to "preserve, enhance, and restore, the quality of California's water resources, and drinking water for the protection of the environment, public

health, and all beneficial uses, and to ensure proper water resource allocation and efficient use for the benefit of present and future generations.” The resolution directs programs to identify and track communities that are at risk of not having access to suitable water, explore opportunities for partnerships to work toward realizing the human right to water, engage in stakeholder and community outreach to provide technical assistance and financial resources pertinent to the human right to water, and consider the human right to water in pertinent programs, policies, decisions, or actions.

## California Water Resilience Portfolio

In April 2019, Governor Gavin Newsom issued Executive Order N-10-19 directing the California Natural Resources Agency, California Environmental Protection Agency, and California Department of Food and Agriculture, in consultation with the Department of Finance, to prepare a water resilience portfolio that meets the needs of California’s communities, economy, and environment through the 21<sup>st</sup> century. In July 2020, the California Water Resilience Portfolio was released to improve California’s capacity to prepare for disruptions, withstand and recover from climate-related shocks, and adapt into the future. The portfolio helps empower local and regional entities to meet their unique challenges, while delivering on the state’s responsibility to provide tools and leadership, advance projects of statewide scale and importance, and help address challenges that are beyond the scope of any region (CNRA et al. 2020).

The portfolio includes four categories of goals and actions:

- **Maintain and diversify water supplies:** State government will continue to help regions reduce reliance on any one water source and diversify supplies to enable flexibility as conditions change. Diversification will look different in each region based on available water resources, but it will strengthen water security and reduce pressure on river systems across the state.
- **Protect and enhance natural ecosystems:** State leadership is essential to restore the environmental health of many of our river systems in order to sustain fish and wildlife. This entails effective standard setting, continued investments, and more adaptive, holistic-environmental management.
- **Build connections:** The state aims to improve physical infrastructure to store, move, and share water more flexibly and integrate water management through shared use of science, data, and technology.
- **Be prepared:** Each region must prepare for new threats, including flashier floods, deeper droughts, and hotter temperatures. State guidance will enable preparation, protective actions, and adaptive management to weather these stresses.

## Water Supply Strategy

In August 2022, Governor Gavin Newsom released *California’s Water Supply Strategy—Adapting to a Hotter, Drier Future*, which outlines a strategy and priority actions to adapt and protect water supplies from the effects of rising temperatures and drier conditions due to climate change (CNRA et al. 2022). The first quarter of the 21<sup>st</sup> century proceeded with unprecedented weather whiplash that has resulted in the need for three separate declarations of drought emergencies in California. The Water Supply Strategy includes four major sets of actions that would put to use water that would otherwise be unusable, stretch supplies with efficiency, and expand California’s water storage:

- Create storage space for up to 4 million acre-feet of water, allowing the state to capitalize on big storms when they do occur and store water for dry periods.
- Recycle and use at least 800,000 acre-feet of water per year by 2030, enabling better and safer use of wastewater currently discharged to the ocean.
- Free up 500,000 acre-feet of water through more efficient water use and conservation, helping make up for water lost due to climate change.
- Make new water available for use by capturing stormwater and desalinating ocean water and salty water in groundwater basins, diversifying supplies and making the most of high flows during storm events.

Steps the State Water Board has taken to implement the Water Supply Strategy include identifying near-term potential water recycling projects, convening a Recycled Water Strike Team to track and resolve permitting and funding obstacles, characterizing water available for brackish groundwater desalination, and streamlining the permitting process for seawater desalination.

## Conclusion

The Sacramento/Delta update to the Bay-Delta Plan is consistent with these other water resource planning and related efforts because it does not preclude any of the goals or potential implementation actions of these efforts. The updated Bay-Delta Plan will continue to reasonably protect municipal and domestic supply beneficial uses, which will support the human right to water. In addition, an intent of the updates to the Bay-Delta Plan is to improve the water quality conditions in the Bay-Delta watershed which should help to facilitate the treatment of drinking water. Furthermore, the impetus for the updates to the Bay-Delta Plan was to improve aquatic ecosystem conditions to benefit native fish and wildlife, which is a common goal of these water supply efforts. Reducing demand, diversifying water supplies, conservation, water recycling, and desalination all help to reduce Californians' reliance on watersheds that may be impacted by water development and will help to maintain adequate instream flow conditions for native species.

The water management actions described in the Human Right to Water, Water Resilience Portfolio, and Water Supply Strategy should occur regardless of updates to the Bay-Delta Plan, but the management actions of these efforts will help to provide flexibility to meet potential water supply reductions with implementation of the updates to the Bay-Delta Plan. Section 6.6, *Other Water Management Actions*, describes potential water management actions, including groundwater storage and recovery, water transfers, and water recycling, and the current and potential future use of these other water management actions.

## Delta Reform Act and the Delta Plan

### Delta Reform Act

The Sacramento-San Joaquin Delta Reform Act of 2009 (Act) was enacted by the Legislature in 2009, Senate Bill (SB) No. 1 (SBX7 1), as part of a landmark package of bills aimed at establishing new water policy for the state. The Act established as a state policy the management of the Delta and Suisun Marsh (together referred to as the "Delta" in the Act) in support of the coequal goals of "providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem." (Pub. Resources Code, § 29702, sub. (a).) Under the Act, the coequal goals are described as "the basic goals for the state for the Delta." (Pub. Resources Code, § 29702.) The Act

provides that the coequal goals “shall 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.” (Pub. Resources Code, § 29702, subd. (a).)

The Act contains numerous additional provisions and responsibilities that extend beyond the scope of the State Water Board’s authority. However, under the Act, (Legislative Counsel’s Digest, SBX7 1, § 1) the State Water Board was specifically directed to establish the following:

- New flow criteria of the Delta ecosystem.
- A Delta Watermaster.
- A system of Delta watershed diversion data collection and public reporting.

On August 3, 2010, the State Water Board adopted Resolution 2010-0039 approving a report identifying non-regulatory flow criteria for the Sacramento-San Joaquin Delta ecosystem to protect public trust if fishery protection was the sole purpose for which waters were put to beneficial use.

The State Water Board appointed the first Watermaster in 2010. The Watermaster is an independent officer of the state, appointed to a 4-year term by the State Water Board, reporting jointly to the Board and to the Delta Stewardship Council. The Watermaster is responsible for overseeing the day-to-day administration of water rights and, when necessary, for taking enforcement action related to water diversions within the Delta. The Watermaster also confers with and assists both the State Water Board and the Delta Stewardship Council as they carry out their respective legislative mandates to achieve the dual objectives of enhancing the Delta ecosystem and improving water supply reliability within the constraints of the water right system and the Delta being an ever-evolving place.

The Water Rights Online Reporting Program was established in 2009 with the passage of SB 8. SB 8 authorized the State Water Board to implement online (rather than paper) reporting of water right information. At that time, water right holders were required to report their water use information every 3 years. The Division of Water Rights collects approximately 38,500 annual water use reports from diverters with riparian (direct diversion and use) water rights, appropriative (storage) water rights, and some groundwater users. In 2025, the State Water Board launched the California Water Accounting, Tracking, and Reporting System (CalWATRS), a new online data system for water right holders to view water right records, file annual reports, and request water rights services. In addition, the State Water Board adopted revisions to the existing water measurement regulation to improve clarity, improve quality and usability of measurement data, simplify requirements where possible while still ensuring high-quality data, and align requirements with CalWATRS. The revisions to the water measurement regulation were approved by the Office of Administrative Law and go into effect in October 2026.

Some commenters asserted that the proposed Bay-Delta Plan amendments were inconsistent with or violates the Act, while other commenters asserted that the Plan amendments were consistent with the Act. Multiple commenters opined regarding interactions between the Plan amendments and the coequal goals, including the requirement to comply with the Act.

The Act does not require the State Water Board to achieve the coequal goals of protecting water supply reliability and the Delta ecosystem in adopting water quality objectives in the Bay-Delta Plan.

Rather, water quality control plans must conform to the policies of the Porter-Cologne Act, which state that:

...activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. (Wat. Code, §§ 13000, 13170, 13240.)

In addition, in adopting water quality objectives, the State Water Board must consider factors including past, present, and future beneficial uses and economics. (Wat. Code, § 13241.)

Notwithstanding that the Act does not require the State Water Board to achieve the coequal goals, the Plan amendments would further the coequal goals by proposing flow water quality objectives that reasonably protect fish and wildlife while continuing to provide water supplies for other beneficial uses and protecting the unique values of the Delta as an evolving place.

## The Delta Plan

Similar to comments regarding the Delta Reform Act, some commenters suggested that the Plan amendments were or were not consistent with the Delta Plan. The State Water Board acknowledges the close link between the Bay-Delta Plan and the Delta Plan, as well as the importance of coordinated action across federal, State, and local levels.

Under the Delta Reform Act, certain actions are exempt from the Delta Stewardship Council's regulatory authority. (Wat. Code, § 85057.5, subd. (b).) A regulatory action of a state agency, such as the adoption of a water quality control plan by the State Water Board, is one such exemption. Consistent with the Act, the Delta Plan does not include the water quality control planning process as a covered action that would require a consistency determination. Rather, the Delta Plan recommends that the State Water Board update the flow objectives for the Delta and high-priority tributaries in the Bay-Delta Plan because they are key to achievement of the coequal goals (DSC 2022).

The Sacramento/Delta updates to the Bay-Delta Plan include flow objectives in Table 3, *Water Quality Objectives for Fish and Wildlife Beneficial Uses*. These objectives include a narrative Sacramento/Delta inflow objective, and Sacramento/Delta objectives for cold water habitat, Delta outflows, inflow-based Delta outflows, and interior Delta flows. These objectives would be implemented through both the regulatory and VA pathways. Under the regulatory pathway, these objectives would be implemented by flow, cold water habitat, and related requirements included in the program of implementation, including numeric inflow requirements. Under the VA pathway, these objectives would be implemented by flow, habitat, and other required and enforceable HRL commitments.

## Federal and State Endangered Species Acts

The federal ESA states that “various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern” and that “conservation and that other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction.” (16 U.S.C. § 1531, subd. (a).)

A species can be “listed” under ESA as “endangered” if it is “in danger of extinction throughout all or a significant portion of its range.” It can be listed under ESA as “threatened” if “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” ESA prohibits any activity that would “take” (i.e., kill, harm, etc.) listed species unless authorized. (16 U.S.C. § 1532, subds. (6), (20); § 1538,)

ESA Section 7 requires, in pertinent part, that federal agencies consult with the Secretary of Commerce (for marine species) or Secretary of Interior (for all other listed species) to ensure that any action authorized, funded, or carried out by such agency (agency action) is not likely to jeopardize the continued existence of any endangered species or threatened species. Following consultation, Section 7 states the Secretary shall issue an opinion regarding the agency action and, if the biological opinion finds that the taking of the species incident to the agency action will not jeopardize the continued existence of the species, shall provide statement authorizing such incidental take (incidental take statement). For Commerce, it is the National Marine Fisheries Service (NMFS) and for Interior it is the U.S. Fish and Wildlife Service (USFWS) that issues opinions.

ESA Section 10 permits the Secretary to permit, under such terms and conditions as they shall prescribe, any taking by a non-federal actor that would otherwise be prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. A non-federal actor can comply with ESA Section 10 by developing a habitat conservation plan (HCP). (16 U.S.C. § 1539.) An HCP is a planning document designed to accommodate economic development to the extent possible by authorizing the take of federally listed species. For example, the Calaveras River Habitat Conservation Plan, finalized in 2020, is an agreement between Stockton East Water District (SEWD) and NMFS as ESA coverage for SEWD’s activities in the lower Calaveras River.

The California Endangered Species Act (CESA) (Fish and Game Code § 2050 et seq.) is similar to the ESA in that it prohibits the take of species listed by the Fish and Game Commission as in danger of, or threatened with, extinction and allows CDFW to permit the taking of those species incidental to otherwise lawful activities. (Fish and Game Code §§ 2070, 2080, 2081.) Where a federal incidental take statement is sufficient to also meet CESA’s standards, CDFW can issue a “consistency determination” and no further permit is necessary. (Fish and Game Code § 2080.1.)

In contrast, the State Water Board’s legal obligation is to provide for the reasonable protection of fish and wildlife pursuant to the Porter-Cologne Act and Clean Water Act, including after considering various factors under Water Code section 13241. This differs from the stated purpose of either ESA or CESA, which can themselves be administered inconsistently. For example, in 2019, the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) received new federal biological opinions for CVP and SWP long-term operations and, on February 20, 2020, adopted a record of decision modifying operations in conformance with those biological opinions. That same day, the California Natural Resources Agency, California Environmental Protection Agency, and the California Attorney General in his independent capacity filed litigation in federal district court against Reclamation, NMFS, and the USFWS challenging the 2019 biological opinions and 2020 record of decision as insufficiently protective of threatened and endangered species, among other causes of action. (*California Natural Resources Agency et al., v. Raimondo* (E.D. Cal., Case No. 1:20-cv-00426-DAD-EPG).) As a consequence, CDFW could not find consistency with the federal incidental take statements and had to issue its own incidental take permit for SWP operations. In addition, depending on which federal administration is administering the ESA, it can be narrowly focused on the minimum measures necessary to prevent extinction or, it can wholly defer to the action agency

to decide whether consultation under ESA is even necessary as is the case under the 2025 ROD (Reclamation 2025).

Some commenters claimed that the State cannot have provisions for the protection of fish and wildlife in the Bay-Delta Plan that overlap with, and are more stringent than, the federal ESA as this will allegedly interfere with federal ESA authority. This is incorrect on its face. Under the Supremacy Clause of the United States Constitution, federal law “shall be the supreme Law of the Land” and “state and local laws that conflict with federal law are without affect.” However, ESA includes an express provision addressing preemption that states, “Any State law or regulation respecting the taking of an endangered or threatened species may be more restrictive than the exemptions or permits provided for in this chapter or any regulation which implements this chapter but not less restrictive than the prohibitions so defined.” (16 U.S.C. § 1535(f); *Art and Antique Dealers League of America, Inc. v. Seggos* (2024) 121 F.4<sup>th</sup> 423, 428-429.)

For these reasons, alleged consistency with ESA or even CESA is not a determination, legal or otherwise, of what species need for their reasonable protection and adopting standards under the Porter-Cologne Act that differ from agreements reached among entities under ESA, including which are more restrictive than those agreements, is not a violation. For example, the HCP discussed above is an agreement strictly for ESA compliance and the State Water Board is not a party. For more information regarding the Porter-Cologne Act, the Clean Water Act, and the factors the State Water Board considers, see Common Response 1.2, *Water Quality Control Planning Process*.

## Existing Efforts and Agreements

Multiple commenters stated that current efforts on Sacramento River and Delta tributaries to restore fish populations adequately address fishery issues in each of the respective tributaries and that the Plan amendments are unnecessary or will compromise these efforts. Examples of other efforts that were frequently referenced in comments include but are not limited to the Lower Mokelumne River Joint Settlement Agreement, Calaveras River Habitat Conservation Plan, Putah Creek Accord, and Yuba Accord. These agreements were often the result of previous litigation, ESA or CESA processes, or other regulatory processes that are focused on a single or few species. The State Water Board is not a party to any of these third-party agreements and is not bound to the terms of these agreements.

The State Water Board acknowledges significant efforts taken on various tributaries and some efforts have documented significant improvements in fish populations. As explained in Chapter 3, *Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations*, and Chapter 5, *Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta*, since the time the Bay-Delta Plan was last updated and implemented, natural populations of native aquatic species in the Bay-Delta watershed are still depressed or 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. There is a lack of evidence that self-sustaining viable populations are being supported. Scientific information indicates that restoration of more natural flow functions is needed to address these declines in an integrated fashion with physical habitat improvements.

The revised proposed Plan amendments were developed to improve flow and water quality conditions over a larger geographic area, and particularly for fish and wildlife beneficial uses in the Sacramento River watershed, Delta eastside tributaries, and Delta regions. Implementation of the revised proposed Plan amendments is expected to improve watershed functions and to provide

associated benefits to the aquatic ecosystem and biological resources within the tributaries, the Delta, and the Bay. Increased tributary flows will cumulatively improve conditions as they flow downstream to and through the Delta.

The State Water Board appreciates the existing and ongoing efforts to preserve and enhance the Bay-Delta watershed; however, these efforts do not replace the needed action of updating the Sacramento/Delta portions of the Bay-Delta Plan. The Plan amendments are intended to be complementary to existing regulatory requirements and other restoration efforts where they exist to provide sufficient flow for instream beneficial uses within a specific area and also downstream and through the Delta. Generally, if requirements contained in the Bay-Delta Plan differ from those contained in any water right order or water quality certification, the more stringent requirement would control. 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 requirements, water right orders, or other existing environmental requirements.

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