

Common Response 11.1

Tribal Engagement and Tribal Beneficial Uses

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 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.

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. 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. 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 voluntary agreement (VA) pathway that incorporates commitments identified in the Healthy Rivers and Landscapes (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.

With respect to the CEQA impact conclusions, it is important that they be understood in the context of the overall nature of the proposed project, which is intended to be an environmental restoration action. CEQA only considers changes that could negatively impact the existing environment and does not recognize or offset negative changes with improvements that could result from an environmentally beneficial project. Here, the impacts that could potentially result from implementation of the restoration action occur in a system that has been highly altered, and the project would be expected to improve conditions for native fish and wildlife in the Sacramento/Delta watershed over time. However, the project will also result in changes in hydrology and changes in water supply that could result in some potentially significant adverse environmental impacts at certain times and locations that must be analyzed under CEQA. These potentially significant environmental impacts should be viewed in light of the overall purpose and goals of the Sacramento/Delta update to the Bay-Delta Plan.

This common response addresses comments expressing concerns about the tribal outreach and engagement efforts undertaken by the State Water Board as part of the Bay-Delta Plan Update process. Many commenters emphasized the importance of including tribal voices in the Bay-Delta Update as it could affect over 100 tribes and their traditional homelands. Commenters advocated for continuous engagement from tribes as cultural stewards to create an effective Bay-Delta Plan that seriously considers all forms of science, including Traditional Ecological Knowledge (TEK), which has been an effective scientific tool for tribes since time immemorial. This common response details how TEK will be incorporated into State Water Board processes including the formation of a Bay-Delta Tribal Advisory Group. Additionally, many commenters asked questions about how Tribal Beneficial Uses (TBUs) will be addressed as part of the Bay-Delta Plan update. Commenters also raised questions about how tribal reserved water rights will be integrated into implementation of the Bay-Delta Plan. This common response provides an overview of tribal reserved water rights and how those rights will be considered as a part of implementation. This common response also addresses comments expressing tribal concerns related to the proposed Bay-Delta Plan amendments, including those related to the VAs, which are also referred to as the Healthy Rivers and Landscapes (HRL) proposal.

The State Water Board reviewed all tribal related comments and developed this common response to address recurring comments and common themes. This common response addresses but is not limited to the following topics.

- Tribal outreach and engagement
- Traditional Ecological Knowledge/Tribal Knowledge
- Tribal outreach and engagement provisions of the revised proposed Plan amendments

- Tribal Beneficial Uses
- Tribal reserved water rights
- CEQA and Assembly Bill 52
- Tribal comments on the voluntary agreements

Table of Contents

Common Response 11.1 Tribal Engagement and Tribal Beneficial Uses	1
Introduction.....	1
Background.....	5
Tribal Outreach and Engagement.....	5
Traditional Ecological Knowledge/Tribal Knowledge	8
Tribal Outreach and Engagement Provisions of the Revised Proposed Plan Amendments	11
Summary of Tribal Outreach and Engagement Provisions	11
Responses to Comments	13
Tribal Beneficial Uses	15
Tribal Reserved Water Rights	18
CEQA and Assembly Bill 52	23
Tribal Comments on the Voluntary Agreements	24
References Cited.....	28

Background

This section provides a brief background on where in the Staff Report the reader can find content related to tribal outreach and engagement, TEK, and TBUs. Chapter 11, *Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses*, of the final Staff Report describes the tribal outreach and engagement efforts related to the Sacramento/Delta Update to the Bay-Delta Plan. The chapter also contains a brief overview and background on California Native American Tribes. The overview is not meant to be exhaustive and is instead provided as a contextual backdrop for the information that follows it related to TEK, TBUs, and the impacts to tribes from harmful algal blooms (HABs). The discussion on TEK contained within that chapter recognizes the vast knowledge and experience held by tribes, the inherent difficulties associated with disconnecting that generational knowledge from tribes when attempting to describe it and highlights the benefits of incorporating TEK into water resource management practices. The chapter also includes a discussion on incorporating TBUs into the Bay-Delta Plan and the designation of Tribal Tradition and Culture (CUL) beneficial use as part of the Sacramento/Delta Update to the Bay-Delta Plan. Content in Chapter 11 has been revised in response to comments received on the 2023 draft Staff Report and throughout the Sacramento/Delta Update process.

Section 13.3.9.4, *Tribal Engagement and Traditional Ecological Knowledge*, of the Staff Report, describes tribal outreach and engagement provisions and provisions for considering TEK in the Bay-Delta Plan update and implementation processes that were developed in response to public comments on Chapter 11, *Tribal Engagement*, of the 2023 draft Staff Report.

Staff Report Section 13.3.7, *Designation of Tribal Tradition and Culture (CUL) and Incorporation of Tribal and Subsistence Fishing Beneficial Uses*, describes that the revised proposed Plan amendments designate CUL specifically due to the cultural and spiritual importance of native fish and wildlife that migrate throughout the watershed, particularly salmon, to tribes. Tribal Subsistence Fishing (T-SUB) and Subsistence Fishing (SUB) beneficial uses are incorporated into the revised proposed Plan amendments but are not designated for any waterbodies in the Bay-Delta watershed. Chapter 11, *Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses*, of the Staff Report describes the relationship among tribes, salmon, and other native species in the Bay-Delta watershed that provides the basis for the CUL designation, and Section 13.7.2, *Environmental Analysis of CUL Tribal Beneficial Use Designation*, includes the environmental analysis supporting the CUL designation. See the section below on *Tribal Beneficial Uses* for responses to tribal comments on TBUs and for more information about incorporation of TBUs and designation of CUL in the Bay-Delta Plan.

Tribal Outreach and Engagement

Many comments received on the draft Staff Report suggested that the tribal outreach and engagement activities the State Water Board performed related to the Sacramento/Delta Update to the Bay-Delta Plan were insufficient or inadequate. Commenters emphasized the importance of including tribal voices in the Bay-Delta Plan Update and implementation efforts as these efforts could affect over 100 tribes and their traditional homelands. Commenters also advocated for continuous engagement with tribes as cultural stewards to create an effective Bay-Delta Plan. Section 11.3, *Tribal Outreach and Engagement*, of the final Staff Report details policies of the State of California for tribal outreach and engagement and State Water Board policies on tribal outreach and

engagement for the Sacramento/Delta Update to the Bay-Delta Plan. That section describes the various executive orders, assembly bills, policies, and protocols that prescribe tribal outreach and engagement requirements. In addition to these requirements, State Water Board staff have engaged with tribes and tribal representatives through listening sessions, conferences, meetings, tribal briefings, and State Water Board hearings, and workshops. Please see Chapter 11, *Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses*, of the final Staff Report for a full description of tribal outreach and engagement activities.

Additionally, the State Water Board's Office of Public Engagement, Equity and Tribal Affairs (OPEETA) has added resources to assist with the State Water Board's effort to engage and consult with California Native American Tribes including hiring a Tribal Affairs Program Manager. The State Water Board has also committed to updating and revising the State Water Board's Tribal Consultation Policy consistent with AB 923.

In addition to the policies and protocols outlined in Chapter 11, *Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses*, of the Staff Report and those described above, in order to bolster the State Water Board's tribal engagement and outreach efforts, the Sacramento/Delta updates to the Bay-Delta Plan include establishing State Water Board requirements related to tribal outreach and engagement. Chapter 13, *Revised Proposed Plan Amendments*, of the Staff Report, along with Section 4.5.3, *Tribal Engagement and Traditional Ecological Knowledge*, of the revised proposed Plan amendments describe the commitments the State Water Board has made to tribal engagement. These commitments were developed in response to the tribal comments and other feedback received through the State Water Board's substantial outreach and engagement efforts with tribes throughout the Sacramento/Delta Update process.

The State Water Board will develop and regularly update a tribal engagement plan in coordination with California Native American Tribes for consultation, outreach, and engagement to incorporate tribal knowledge and perspectives into its Bay-Delta Plan Update, and implementation efforts. Additionally, the State Water Board will hold tribal listening sessions with interested California Native American Tribes at least once per year in conjunction with annual and periodic reviews to hear feedback from tribes on the Bay-Delta Plan, its implementation, and any needed updates. In advance of those meetings, State Water Board staff will meet with tribes to provide updates on Bay-Delta Plan processes. In addition, staff will meet more often with tribes on a frequency agreeable to interested tribal representatives outside of formal meetings to share updates and hear feedback. Section 4.5.3 of the revised proposed Plan amendments also describes that as part of the Sacramento/Delta updates to the Bay-Delta Plan, the State Water Board will form, in conjunction with tribes, a Bay-Delta Tribal Advisory Group to provide input to the State Water Board on Bay-Delta Plan Update and implementation issues and related matters. The composition, structure, and meeting frequency will be determined by the members. Additionally, the State Water Board will utilize available contracting mechanisms to support outreach and engagement with tribes on Bay-Delta planning efforts.

Tribes have raised concerns regarding resource limitations for participating in State Water Board processes and asked what efforts the State Water Board is taking to facilitate tribal participation. In 2023, Bay-Delta staff within the Division of Water Rights began exploring possible funding opportunities available to compensate tribes for their expertise and input in Bay-Delta planning and implementation efforts. Due to state contracting constraints, the State Water Board does not have a readily available mechanism to contract directly with tribes. Due to these contract constraints, staff initially worked to identify a consultant/contractor that would be able to accept available funds and

subcontract with interested tribes. Staff were unable to make this approach work at this time due to the inability to identify a suitable consultant/contractor and other constraints, including on resources. Staff continue to explore options consistent with state budget and contracting constraints.

Staff also researched mechanisms for contracting directly with tribes. This included discussions with the Department of Water Resources' Office of Tribal Affairs centered on the Tribal Contract and Rate System developed for compensating tribal services including subject matter expertise on Native American cultural resources for studies, investigations, and treatment of cultural resources for Department of Water Resources (DWR) projects that may impact tribal cultural resources. Bay-Delta staff presented this approach to the State Water Board's Tribal Affairs team to ensure consistency with other State Water Boards' tribal contracting efforts and to determine if additional funding sources were available for Bay-Delta tribal contracting. In order to maintain consistency, it was determined that the State Water Board would standardize the process for directly contracting with tribes. This standardized method would then provide the mechanism that individual Offices and Divisions of the State Water Board could use to contract directly with tribes. This method is still in development.

In addition to the State Water Board developing methods to directly contract with tribes, on March 17, 2026, the State Water Board adopted Resolution 2026-0009, establishing a one-time pilot program to develop a new grant solicitation. This solicitation will distribute \$5 million from the Cleanup and Abatement Account (CAA). The CAA, created by Water Code sections 13440-13443, provides funding to cleanup or abate water pollution when there are no viable responsible parties available to undertake the work. The CAA is funded through court judgments and administrative civil liabilities issued by the State Water Board and the regional water boards. The pilot grant program will award \$5 million to projects that benefit disadvantaged environmental justice communities or tribal communities as assessed using the CalEnviroScreen mapping tool. Eligible projects must cleanup or abate the effects of waste on waters of the state and must include an outreach and engagement component. The \$5 million would be available for tribes to solicit grants for projects to fund water quality improvements that support TBUs or related other beneficial uses, including tribal participation in Bay-Delta Plan implementation.

As described in the revised proposed Plan amendments, the State Water Board will continue working to improve its tribal engagement processes using existing resources and will devote additional resources toward this process as they become available. The State Water Board will continue to offer California Native American Tribes the opportunity to engage in formal government-to-government consultation on State Water Board actions, policies, and processes that may affect tribes and will continue to engage with tribes outside of formal consultation. The State Water Board will utilize available contracting mechanisms to support outreach and engagement with tribes on Bay-Delta planning efforts. The State Water Board will also identify opportunities for collaboration with other State agencies, academia, and Non-Governmental Organizations to augment tribal outreach efforts and to provide specific outreach and engagement training for State Water Board staff to bolster current engagement processes.

The State Water Board appreciates the input and feedback provided by tribes and tribally affiliated groups throughout the process for the Sacramento/Delta updates to the Bay-Delta Plan. Tribal representatives have shared traditional knowledge and unique perspectives that would not have informed this process absent tribal participation. During the 2023 State Water Board Informational Item on TBUs, tribal representatives shared with the State Water Board an understanding of what

TBUs mean to tribes. That explanation of the intrinsic connection between salmon, the ecosystem, and tribal culture led to the State Water Board designating CUL beneficial use watershed wide as part of the Sacramento/Delta updates to the Bay-Delta Plan. Tribal participation and comments also led to the State Water Board committing to form, in conjunction with tribes, a Bay-Delta Tribal Advisory Group which would provide input to the State Water Board on Bay-Delta Plan Update and implementation issues and related matters. Additionally, tribal feedback highlighted the significance of TEK, which will be considered in a full and complementary way alongside non-Indigenous scientific approaches. The State Water Board looks forward to continuing tribal participation in the implementation phase of the Bay-Delta Plan.

The State Water Board appreciates these comments and the overall active participation and engagement by the Shingle Springs Band of Miwok Indians, the Winnemem Wintu Tribe, and Buena Vista Rancheria of Me-Wuk Indians in the Sacramento/Delta updates to the Bay-Delta Plan. The State Water Board and its staff have learned from tribal engagement with these tribes and based on this input recognize the unique connection tribes have with water and how that perspective aligns with the purposes and goals of the Bay-Delta Plan Update. These comments and other similar and powerful testimony serve as the basis for the State Water Board's designation of CUL in the Bay-Delta watershed.

Traditional Ecological Knowledge/Tribal Knowledge

The State Water Board also received comments regarding the significance of TEK in resource management and the importance of integrating that knowledge into the Bay-Delta Plan. Traditional Ecological Knowledge is often defined in the academic literature as “a cumulative body of knowledge, practice, and belief, evolving by adaptive processes and handed down through generations by cultural transmission, about the relationship of living beings (including humans) with one another and with their environment” (Berkes et al. 2000). Section 11.4.2, *Description of Traditional Ecological Knowledge*, of the final Staff Report contains additional information on the definition of TEK, including addressing its significance and Section 11.4.6, *Incorporating Traditional Ecological Knowledge into the Bay-Delta Plan Implementation*, of the final Staff Report discusses incorporating TEK into Bay-Delta Plan implementation. The State Water Board recognize the importance of TEK and Indigenous Knowledge as they relate to natural resource management. TEK will be considered in a full and complementary way alongside non-Indigenous scientific approaches.

During public outreach and engagement activities in support of proposed Sacramento/Delta updates to the Bay-Delta Plan, the State Water Board received requests from California Native American Tribes to incorporate TEK into Plan amendments and implementation measures to inform reasonable protection of beneficial uses and TBUs. As a result of these requests, State Water Board staff have engaged in efforts to describe TEK and traditional stewardship practices of federally recognized and non-federally recognized tribes whose historical lands fall within the Bay-Delta watershed, including its tributaries. Part of these efforts included a literature review of TEK, which has formed the bulk of the State Water Board's initial knowledge of TEK relevant to the Sacramento/Delta Update to the Bay-Delta Plan. However, the availability, applicability, and accuracy of TEK in the literature is limited due to many factors including the sensitive or sacred nature of TEK. Staff realized that any inclusion of TEK through literature review would be disconnected, incorrect, or incomplete. The State Water Board has learned through tribal engagement that appropriately incorporating TEK into the Sacramento/Delta Update to the Bay-

Delta Plan requires tribal participation in the process, tribal consent, relationship building and ongoing dialogue with tribal representatives. In response to tribal comments on the Sacramento/Delta Update process, and through conversations with tribal representatives, State Water Board staff have developed Bay-Delta Plan provisions for tribal input to inform decision-making. These provisions include the formation of a Bay-Delta Tribal Advisory Group to provide input to the State Water Board on the Bay-Delta Plan and its implementation, provisions to continue regular tribal listening sessions, informal meetings between tribal representatives and staff, and the development of a tribal engagement plan that would further outline the process for outreach and engagement to ensure that TEK informs implementation of the Bay-Delta Plan and protection of TBUs. See Section 4.5.3, *Tribal Engagement and Traditional Ecological Knowledge*, of the revised proposed Plan amendments for more information. Responses to comments on the tribal outreach and engagement provisions are provided below under *Tribal Outreach and Engagement Provisions of the Revised Proposed Plan Amendments*.

The State Water Board has heard and acknowledges that TEK includes the recognition of the Delta and its watershed, and the native species that depend on it as a tribal cultural resource. This acknowledgement is reflected in the State Water Board's decision to designate CUL beneficial use and in provisions that provide for tribal input on the Bay-Delta Plan moving forward. (See *Tribal Beneficial Uses*, below.)

Commenters raised concerns about how tribal data, once submitted to or obtained by the California water boards, would be treated. Commenters recommended that the State Water Board adopt formal indigenous data protocols as assurances that tribes would retain their data sovereignty. The State Water Board recognizes and respects the importance of protecting the confidentiality of tribal knowledge, cultural resources, sacred sites, objects, and features of cultural value to a tribe and honors the government-to-government relationship with Native American tribes. Currently, there are no laws that offer confidentiality protections for all types of tribal information submitted to the water boards. For this reason, tribes and the California water boards should first discuss what information is needed to protect TBUs and whether that information can be protected. As the State Water Board works to develop its own indigenous data protocols, it is envisioned that the Bay-Delta Tribal Advisory Group would provide valuable input and feedback on that process. While those protocols are developed, the State Water Board will uphold the Collective Benefit, Authority to Control, Responsibility, Ethics (CARE) principles for indigenous data governance (See Section 4.5.3, *Tribal Engagement and Traditional Ecological Knowledge*, of the revised proposed Plan amendments). As outlined in the revised proposed Plan amendments, to ensure adherence to the CARE principles, the State Water Board will request tribal review by the Bay-Delta Tribal Advisory Group of any Bay-Delta Plan related documents incorporating TEK and will revise documentation of TEK based on that feedback.

Although Assembly Bill 52 does not apply to the Sacramento/Delta updates to the Bay-Delta Plan, (see *CEQA and Assembly Bill 52*, below for discussion), information about tribal cultural resources shared during formal Assembly Bill 52 tribal consultation under the CEQA process is intended to remain confidential and protected from public disclosure. Tribal cultural resources are defined by the Public Resources Code as "sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American Tribe that are either included or determined to be eligible for inclusion in the California Register of Historical Resources or included in a local register of historical resources" or resources determined by a lead agency to be culturally significant. (Public Res. Code, § 21074(a)(1)-(2)). Outside of tribal cultural resources protected within the CEQA AB 52 context, once information is shared with the California water boards, it may

become subject to public records act requests under California Public Records Act (Govt. Code, § 7920.000 et seq.). Although the California Public Records Act contains protections against disclosure of specified categories of sensitive information, it likely does not protect all forms of sensitive tribal information. However, in September 2025, AB 1004 was enacted into law and exempted any record that contains financial information provided by a tribe to a state or local agency, as a condition of or requirement for receiving financial assistance, to be confidential, not a public record, and not open to public inspection. It may be possible for similar bills, exempting tribal data from public disclosure, to be enacted in the future.

Tribes suggest that TEK could be helpful in implementing the adaptive implementation provisions for the regulatory pathway. Provisions for adaptive implementation of the numeric inflow requirements of the regulatory pathway are provided in the revised proposed Plan amendments 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. Any decision to approve or direct adaptive implementation must be informed by best available scientific information, monitoring and evaluation of the effectiveness of the measures in meeting the narrative objectives, and biological goals when available. Best available scientific information includes TEK. More information on the adaptive implementation provisions can be found in Section 4.4.2.2, *Narrative Inflow Objective for Sacramento/Delta Tributaries*, of the revised proposed Plan amendments.

Tribes also suggest that TEK could be helpful in implementing other ecosystem protection measures, including habitat restoration, as part of local cooperative solutions. Water right holders may propose local cooperative solutions to comply with the applicable Sacramento/Delta inflow and cold water habitat requirements identified in Section 4.4.2.2, *Narrative Inflow Objective for Sacramento/Delta Tributaries*, and Section 4.4.2.3, *Sacramento/Delta Cold Water Habitat Objective*, of the revised proposed Plan amendments. Local cooperative solutions may utilize the adaptive implementation provisions referenced above and detailed in Section 4.4.2.2, including shaping of flows and operating lower in the required inflow range by implementing those flows in combination with other complementary ecosystem protection measures, including habitat restoration. Prior to submittal of any proposed local cooperative solution to the State Water Board, participants must consult with the California Department of Fish and Wildlife, appropriate California Native American Tribes, the United States Fish and Wildlife Service, the National Marine Fisheries Service, and other appropriate entities and provide any comments to the State Water Board for consideration.

In addition to avenues for integrating TEK into habitat restoration projects through the regulatory pathway, the revised proposed Plan amendments contain provisions specific to the VA pathway's non-flow habitat restoration actions that also provide for the incorporation of TEK. Section 4.4.9.5, *HRL Non-Flow Habitat Restoration Actions*, states that VA habitat restoration projects must include provisions for incorporating input from California Native American Tribes and other interested parties during the development, implementation, and assessment of non-flow habitat restoration measures, including input from tribes on TEK and other relevant information. In addition, as described in Staff Report Section 13.3.4.9, *HRL Governance*, the VA parties (also referred to as HRL participants in Chapter 13, *Revised Proposed Plan Amendments*) will be required to engage with California Native American Tribes and consider their input in decision-making affecting governance of the VAs, including but not limited to tribal participation in the VA science committee.

As described in the revised proposed Plan amendments (see Section 13.3, *Revised Proposed Plan Amendments* of the Staff Report), the State Water Board will work with California Native American Tribes to incorporate TEK in the Bay-Delta Monitoring and Evaluation Program (BDMEP). Inclusion of TEK in the BDMEP will inform adaptive implementation under both the VA and regulatory pathways, as information produced through the BDMEP will inform annual and periodic reviews of the Bay-Delta Plan.

The incorporation of TEK through the Bay-Delta Tribal Advisory Group and other input from tribes will also inform the protection of TBUs and whether updates are needed to the Bay-Delta Plan or its implementation to reasonably protect TBUs. Please see the *Tribal Beneficial Uses* section below for an expanded discussion regarding the protection of TBUs.

Tribal Outreach and Engagement Provisions of the Revised Proposed Plan Amendments

The State Water Board values the input and feedback provided by tribes and tribally affiliated groups throughout the process for the Sacramento/Delta updates to the Bay-Delta Plan. Tribal representatives have shared traditional knowledge and unique perspectives that would not have informed this process absent tribal participation. That input led directly to the State Water Board designating CUL beneficial use watershed wide as part of the Sacramento/Delta updates to the Bay-Delta Plan. The tribal provisions contained within the revised proposed Plan amendments were developed as a direct result of the input and feedback received from tribes and tribally affiliated groups. Those provisions describe tribal outreach and engagement requirements and the State Water Board's commitment to integrating TEK and developing a Bay-Delta Tribal Advisory Group. The tribal provisions also detail VA parties' tribal engagement responsibilities related to implementation of the VA pathway including the development of a VA-specific tribal engagement plan and the incorporation of tribal input and feedback on habitat restoration projects. A summary of the tribal provisions contained within the revised proposed Plan amendments are provided below.

Summary of Tribal Outreach and Engagement Provisions

Section 13.3.9.4, *Tribal Engagement and Traditional Ecological Knowledge*, of the Staff Report, and Section 4.5.3, *Tribal Engagement and Traditional Ecological Knowledge*, of the revised proposed Plan amendments, describe tribal outreach and engagement provisions and provisions for considering TEK in the Bay-Delta Plan Update and implementation processes that were developed in response to public comments on Chapter 11, *Tribal Engagement*, of the 2023 draft Staff Report and throughout the planning process. As described in those sections, the State Water Board would develop and regularly update a tribal engagement plan in coordination with California Native American Tribes for consultation, outreach, and engagement to incorporate tribal knowledge and perspectives into its Bay-Delta Plan Update and implementation efforts. The State Water Board would also hold tribal listening sessions with interested California Native American Tribes at least once per year in conjunction with annual and periodic reviews to hear feedback from tribes on the Bay-Delta Plan, its implementation, and any needed updates. The State Water Board would form, in conjunction with tribes, a Bay-Delta Tribal Advisory Group to provide input to the State Water Board on Bay-Delta

Plan Update and implementation issues and related matters. The composition, structure, and meeting frequency will be determined by members.

The State Water Board will consider and incorporate TEK, tribal feedback, and perspectives shared by California Native American Tribes to inform the State Water Board's efforts to update and implement the Bay-Delta Plan. TEK should be considered a full, equal, and complementary knowledge system alongside non-Indigenous scientific approaches. As the State Water Board develops specific policies and guidelines regarding incorporation of TEK, those policies and guidelines will be adhered to. In addition, the State Water Board's consideration and incorporation of TEK and tribal feedback and perspectives will follow CARE principles. The CARE principles help ensure Indigenous People the collective benefit of their own data, authority to control their data, and that data holders engage respectfully so that the use of Indigenous data helps strengthen tribal communities. Indigenous Peoples' ethics will inform the use of Indigenous data. To ensure adherence to the CARE principles, the State Water Board will request tribal review by the Bay-Delta Tribal Advisory Group of any Bay-Delta Plan related documents incorporating TEK and will revise documentation of TEK based on that feedback.

The State Water Board will continue working to improve its tribal engagement processes using existing resources and will devote additional resources toward this process as they become available. The State Water Board will continue to offer California Native American Tribes the opportunity to engage in formal Government-to-Government Consultation on Board actions, policies, and processes that may affect tribes and will continue to engage with tribes outside of formal consultation.

As described in Section 4.5.1.2, *Comprehensive BDMEP*, of the revised proposed Plan amendments, the State Water Board will work with California Native American Tribes to incorporate TEK in the Bay-Delta Monitoring and Evaluation Program to the extent practicable. Partner monitoring with California Native American Tribes may help fulfill monitoring requirements and fill geographic gaps (e.g., on tributaries) or gaps in monitoring elements. Any component of monitoring and assessment incorporating TEK will follow the CARE principles.

In addition to the tribal outreach and engagement provisions described above, the revised proposed Plan amendments include provisions for the VA parties to engage with tribes on implementation of the VA pathway. As described in Section 13.3.4.9, *HRL Governance*, of the Staff Report, and Section 4.4.9.9, *HRL Governance*, of the revised proposed Plan amendments, the VA parties will be required to engage with California Native American Tribes and consider their input in decision-making affecting governance of the VAs, including but not limited to tribal participation in the VA science committee. VA parties will be required to develop a tribal engagement plan in coordination with tribes, describing specific tribal engagement opportunities related to VA pathway milestones that must be approved by the Executive Director prior to year one of the initial eight-year term of the VA pathway. The tribal engagement plan must include the designation of a tribal coordinator responsible for engaging with tribes and liaising between the VA parties and the State Water Board on tribal matters relevant to the VA pathway. The tribal engagement plan must also include regular tribal engagement meetings to inform tribal leaders of progress toward achieving the VA pathway objectives and opportunities for tribal representatives to contribute feedback on implementation and adaptive management of the VA pathway.

The Executive Director of the State Water Board will consider feedback received from tribes on the VA tribal outreach and engagement processes and may require improvements to those processes after opportunity for public comment.

Section 4.4.9.5, *HRL Non-Flow Habitat Restoration Actions*, states that VA habitat restoration projects must include provisions for incorporating input from California Native American Tribes and other interested parties during the development, implementation, and assessment of non-flow habitat restoration measures, including input from tribes on TEK and other relevant information.

Responses to Comments

Many commenters asked for more clarity regarding the proposed Bay-Delta Tribal Advisory Group, including more information on membership composition, frequency of meetings, and meeting discussion topics. Commenters also suggested that the State Water Board should commit to holding tribal listening sessions more than once per year. Commenters also expressed concern that the Bay-Delta Tribal Advisory Group would not have the same authority as the Stanislaus, Tuolumne and Merced Working Group (STM Working Group) and asked for clarity on the role of the different groups and how they would interact.

The STM Working Group is part of the Bay-Delta Plan updates for the Lower San Joaquin River (LSJR) adopted in 2018. The Bay-Delta Plan requires the formation of an STM Working Group to act as a regional watershed group that will coordinate activities in the LSJR and the three eastside tributaries. The STM Working Group will assist with implementation of the LSJR tributary and base flow objectives, including coordination of tributary flows, monitoring and assessment, and evaluation of the LSJR flow objectives. The State Water Board will seek recommendations from the STM Working Group on biological goals, compliance methods for the tributary flow objectives, procedures for implementing adaptive methods, annual adaptive operations plans, and the San Joaquin River Monitoring and Evaluation Program.

Upon initially forming the STM Working Group, the State Water Board invited specific participants from organizations with expertise in the Lower San Joaquin, Stanislaus, Tuolumne, and Merced River fisheries management, hydrology, operations, monitoring, and assessment needs. Organizations and individuals with appropriate expertise who are interested in becoming members of the STM Working Group but were not directly invited should submit a request to join the STM Working Group via email to STM-WorkingGroup@waterboards.ca.gov. Tribes are encouraged to submit a request to join the STM Working Group. The Santa Rosa Rancheria Tachi Yokut Tribe submitted such a request and joined the STM Working Group in 2023.

The revised proposed Plan amendments for the Sacramento/Delta updates to the Bay-Delta Plan direct the State Water Board to form, in conjunction with tribes, a Bay-Delta Tribal Advisory Group to provide input to the State Water Board on Bay-Delta Plan Update and implementation issues and related matters. Unlike the STM Working Group, the Bay-Delta Tribal Advisory Group would be comprised solely of tribal representatives and would focus on the entire watershed, not just the Lower San Joaquin, Stanislaus, Tuolumne, and Merced Rivers. The Bay-Delta Tribal Advisory Group is envisioned as an opportunity for California Native American Tribes to organize and be recognized by the State Water Board as a group that provides input to the State Water Board on the Bay-Delta Plan. The input provided by the Bay-Delta Tribal Advisory Group could range from input focused on the tribal-related provisions including Traditional Ecological Knowledge/tribal knowledge and tribal outreach and engagement, to flow and non-flow measures. The State Water Board encourages

tribal input throughout the Bay-Delta Plan Update and implementation measures, including habitat restoration that may occur under the regulatory pathway through adaptive implementation, local cooperative solutions, and temperature management plans.

The Bay-Delta Tribal Advisory Group could also function as a method for providing input and feedback to the State Water Board on how VA parties are engaging with tribes and considering their input in VA decision-making. The State Water Board does not want to infringe upon tribal sovereignty by determining the composition of members, frequency of meetings, or topics discussed of the Bay-Delta Tribal Advisory Group and would instead appreciate a group formed and governed by tribes that could offer input and feedback to the State Water Board. Although the Tribal Advisory Group is envisioned as a group formed and governed by its members, State Water Board staff will be available to assist with logistics and planning. Staff would also be available for facilitation assistance, providing outreach, helping to organize meetings, and compiling input and feedback developed during meetings to be presented to the State Water Board. Further details of the Tribal Advisory Group's functions will be developed through implementation of the tribal provisions, including through tribal feedback on the tribal engagement plan.

In addition to the formation of a Tribal Advisory Group, the State Water Board will hold tribal listening sessions with interested California Native American Tribes at least once per year in conjunction with annual and periodic reviews to hear feedback from tribes on the Bay-Delta Plan, its implementation, and any needed updates. Tribal listening sessions will follow previously held tribal listening session formats, open to all who are interested. The State Water Board is open to ways in which tribal outreach and engagement can be improved whether through tribal listening sessions, the proposed Bay-Delta Tribal Advisory Group, one-on-one meetings, or any other avenue for interaction. In addition to tribal listening sessions or formal meetings, staff will meet more regularly with tribes on a frequency agreeable to interested tribal representatives to share updates and hear feedback.

Commenters also asked for additional information regarding the two tribal engagement plans identified in the revised proposed Plan amendments: the State Water Board tribal engagement plan and the HRL tribal engagement plan required under the VA pathway. The State Water Board tribal engagement plan, developed in coordination with tribes and regularly updated, will prescribe the tribal outreach and engagement efforts associated with the Bay-Delta Plan Update and implementation processes, regardless of pathway. The tribal engagement plan will also describe the framework for the Bay-Delta Tribal Advisory Group and include information on how input and feedback will be relayed from the Bay-Delta Tribal Advisory Group to the State Water Board and at what frequency. The details specific to State Water Board tribal outreach and engagement and the formation of the Tribal Advisory Group contained within the tribal engagement plan are expected to be developed in coordination with interested tribes after the adoption of the Plan amendments. As the tribal engagement plan will be developed with tribes, and regularly updated, it is expected that the tribal engagement plan will be able to address new needs for engagement as they develop, with input directly from tribes and the Tribal Advisory Group.

Commenters also requested clarification of the VA tribal engagement plan and how it would interact with the State Water Board tribal engagement plan. The VA developed tribal engagement plan would be specific to VA processes and decision-making and would require review by the Executive Director of the State Water Board to ensure that the plan is adequate in including tribes in implementation of the VA pathway commitments. It is anticipated that there would be some overlap in tribal groups participating in the Bay-Delta Tribal Advisory Group and the VA processes. This

crossover would provide opportunities for members of the Bay-Delta Tribal Advisory Group to share feedback with State Water Board staff and the State Water Board on the VA pathway tribal engagement and with evaluating VA parties' tribal engagement efforts during annual and periodic reviews of the Bay-Delta Plan. The VA tribal engagement plan designated tribal coordinator would be expected to closely work with State Water Board staff, tribes, and VA parties to ensure information, input, feedback, and concerns are shared broadly. Although the two engagement plans operate independently due to the distinct processes, there will be coordination across the tribal outreach and engagement efforts occurring through the two engagement plans, primarily through the VA designated tribal coordinator and the Bay-Delta tribal coordinator.

Commenters asserted that the State Water Board has an obligation to respect TEK in the same manner as western science and to take measurable and proactive steps to ensure that TEK informs the Bay-Delta Plan. Some commenters suggested that the State Water Board had rejected the incorporation of TEK or failed to make a minimum commitment towards incorporating TEK. The State Water Board appreciates and values the TEK provided by tribes and tribally affiliated groups throughout the process for the Sacramento/Delta updates to the Bay-Delta Plan. Tribal representatives have shared TEK illustrating the intrinsic connection between salmon, the ecosystem, and tribal culture which led to the State Water Board designating CUL beneficial use watershed wide as part of the Sacramento/Delta updates to the Bay-Delta Plan. Tribal feedback highlighted the significance of TEK, which will be considered in a full and complementary way alongside non-Indigenous scientific approaches. Recognition of the significance of TEK also led to the State Water Board committing to form, in conjunction with tribes, a Bay-Delta Tribal Advisory Group which would provide input to the State Water Board and ensure TEK was treated appropriately and respectfully. More information on the State Water Board's effort to incorporate TEK can be found in the *Traditional Ecological Knowledge/Tribal Knowledge* section of this common response.

Tribal Beneficial Uses

The State Water Board received comments on the 2023 draft Staff Report requesting that the State Water Board clarify how the Sacramento/Delta Update to the Bay-Delta Plan would treat T-SUB and SUB beneficial uses, how the State and regional water boards would work together to protect TBUs, and comments emphasizing that standards to protect those uses would need to be developed in concert with tribes. Section 11.5, *Tribal Beneficial Uses*, of the final Staff Report discusses TBUs. When the Staff Report was initially drafted the State Water Board had not yet made a decision on how to proceed with the designation of TBUs. Section 13.3.7, *Designation of Tribal Tradition and Culture (CUL) and Incorporation of Tribal and Subsistence Fishing Beneficial Uses*, of the Staff Report contains additional information on incorporating T-SUB and SUB, along with a discussion related to the decision to designate CUL, due to the intrinsic connection between salmon and tribal culture. Additionally, the Staff Report contains an environmental analysis supporting the CUL beneficial use designation in Section 13.7.2, *Environmental Analysis of CUL Tribal Beneficial Use Designation*.

Tribal Beneficial Uses are a group of beneficial uses comprising activities specific to Native American Cultures and their uses of California waters, including consumption of non-commercial fish or shellfish. California Native American Tribes use California's surface waters in a manner unique to tribal culture, tradition, ceremonies, and lifeways. TBUs provide a way to recognize certain uses of water that directly relate to Native American cultures. In 2017, in collaboration with California

Native American Tribes and the public, the State Water Board established and defined two beneficial uses unique to California Native American Tribes and a third beneficial use unique to people and communities who engage in subsistence fishing, which are CUL, T-SUB, and SUB. Together, these beneficial uses are generally referred to as TBUs.

Tribal and Subsistence Fishing Beneficial Uses, along with other water quality control planning related beneficial uses such as Agriculture (AGR), Municipal and Domestic Supply (MUN), Water Contact Recreation (REC-1), amongst others identified in the Bay-Delta Plan and other water quality control plans issued by either the State Water Board or one of the nine regional water boards are beneficial uses for water quality control planning efforts under the Clean Water Act (CWA). These CWA identified beneficial uses are distinct from the beneficial use or purpose of use identified in a water right or claim. The beneficial use or purpose of use identified in a water right or claim relates to the use the water being diverted under a water right or claim is put to. For more information on Water Quality Control Plans, please refer to Common Response 1.2, *Water Quality Control Planning Process*.

The Sacramento/Delta Update to the Bay-Delta Plan incorporates TBUs in the context of providing reasonable protection of fish and wildlife. Aquatic life beneficial uses identified in the Bay-Delta Plan form the basis for implementation actions related to flow, water project operations, and physical habitat restoration for the reasonable protection of fish and wildlife. The State Water Board recognizes the centrality that vital fish populations and aquatic life have for cultural, spiritual, ceremonial, and traditional rights and lifeways. Activities within the CUL use may be directly supported by flow actions, including for example, navigation, gathering of natural resources, immersion ceremonies, and ceremonies that involve thriving fisheries. Similarly, while T-SUB and SUB relate to the risks to human health from consumption of noncommercial fish or shellfish at higher rates and were not developed to in and of themselves protect aquatic life, a thriving fish population could support fishing at higher consumptive rates; therefore, flow actions for the reasonable protection of fish and wildlife are related to the T-SUB and SUB beneficial uses on the same waters. Implementation measures for the reasonable protection of fish and wildlife also will inure to the benefit of subsistence fishing by tribes and non-tribal communities.

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. Incorporating TBUs into the revised proposed Plan amendments recognizes California Native American Tribes' voices and participation in this process.

In addition to incorporation of CUL, T-SUB, and SUB beneficial uses in the Bay-Delta Plan, the State Water Board will proceed with the formal designation of CUL in the Bay-Delta watershed as part of the Sacramento/Delta Update to the Bay-Delta Plan. CUL is being formally designated due to the cultural importance of water and native fish and wildlife, particularly salmon, to tribes. The Bay-Delta Plan could incidentally protect other culturally significant aspects of the watershed consistent with providing for the reasonable protection of fish and wildlife.

For many tribes within the Bay-Delta watershed, rivers are essential sources of food, particularly fish. Fish, especially salmon, and fishing itself are integral to the cultural identity of certain tribes and serve as more than a source of food. Salmon hold particular cultural significance for tribal communities in the Bay-Delta watershed both as a nutritional source of food and in tribal culture, including creation stories. Other foods associated with waterways, such as tule roots and bivalves,

are also essential to tribal tradition and culture and the act of gathering these sources of food is an integral component of the fabric of tribal culture. Additional instances of the significance of salmon to tribal culture, shared by tribal representatives, can be found in Chapter 11, *Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses*, of the final Staff Report.

Many tribes expressed frustration that the revised proposed Plan amendments did not designate or commit to designating T-SUB and SUB for the Bay-Delta watershed, despite testimony demonstrating the integral role subsistence fishing plays in the Delta and other areas in the watershed. The revised proposed Plan amendments designate CUL specifically due to the cultural and spiritual importance of native fish and wildlife, particularly salmon, to tribes. As stated in Section 13.7.2, *Environmental Analysis of CUL Tribal Beneficial Use Designation*, to the extent that other tribal uses and activities encompassed within the CUL use may be directly supported by flow actions, including for example, navigation, gathering and consumption of natural resources, and immersion ceremonies, the implementation actions protecting the fish and wildlife beneficial uses may also incidentally support those cultural activities and lifeways. That said, T-SUB and SUB are not proposed for designation for any waterbodies by the Sacramento/Delta Update to the Bay-Delta Plan due to the risks to human health from consumption of noncommercial fish or shellfish at higher rates. Individual stream segments could be designated for T-SUB and SUB beneficial uses, as appropriate by the regional water boards. The State Water Board will work with the regional water boards to consider these designations in future planning efforts.

The environmental analysis provides an evaluation of reasonably foreseeable water quality regulatory controls that may be developed through the State Water Board's Division of Water Quality and the regional water boards' water quality authorities. Note also that the California water boards are obligated to protect beneficial uses, including TBUs, on a case-by-case basis even if the beneficial uses are not formally designated. A case-by-case approach requires the tribe to participate and provide evidence related to the tribe's beneficial uses at every Water Board proceeding that could adversely affect the tribe's beneficial uses. Under federal law, existing uses are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards. Designated uses are those uses specified in water quality standards for each water body or segment whether or not they are being attained. (40 CFR 131.3 (e) & (f).) In California, an existing use is one that has occurred any time since 1968. The CEQA analyses can be used to streamline future designations for specific stream segments as appropriate.

The State Water Board is committed to developing standards through water quality control planning, water quality certifications, permitting, and other authorities and responsibilities vested within the California water boards, to ensure the reasonable protection of TBUs. In order to develop meaningful standards that offer protection for TBUs, the State Water Board will need to receive input from tribes on the standards, objectives, and requirements necessary for protection. TEK from tribes would be valuable when developing standards, objectives and requirements for the protection of TBUs. As detailed in the revised proposed Plan amendments, and previously discussed, State Water Board staff envision the Bay-Delta Tribal Advisory Group as one way to ensure the State Water Board receives tribal input, including TEK, related to protecting beneficial uses of water and the effectiveness of the Bay-Delta Plan.

As previously mentioned, the California water boards are comprised of a State Water Board and nine regional water boards. The nine regional water boards are required to develop and adopt water quality control plans, also referred to as basin plans. The regional water boards review their basin plans every three years and determine a list of basin-planning priority projects as part of their

triennial review process. The regional boards implement their priority planning projects by amending their respective basin plans.

Although the State Water Board established T-SUB and SUB beneficial uses in 2017, the nine regional water boards must initiate and complete a basin-planning process for the beneficial uses to be incorporated into their respective basin plans. However, incorporating T-SUB and SUB beneficial uses does not designate any specific waterbodies with the use. For TBUs to be established in water body segments in a region and for the development of water quality objectives to protect the uses, there are several basin-planning actions a regional water board could take, including adding one or more of the beneficial use definitions to the basin plan and then designating one or more water bodies with one or more of those beneficial uses.

Incorporating T-SUB and SUB beneficial uses and their definitions does not automatically designate those beneficial uses to any particular waterbody. Designating new beneficial uses to specific waterbodies is primarily the responsibility of the regional water boards and requires a public process. Generally, the regional water boards designate specific waterbodies within their region where the use applies. When determining what designations to make, the regional water boards will consider all of the evidence in the record and may consider whether the beneficial use is an existing use or a probable future use.

The nine regional water boards are in different stages of their basin plan amendment process to include T-SUB and SUB beneficial uses and designate surface waters. If you are looking to get involved with the regional board designation efforts, contact your regional water board Tribal Coordinator to set up a time to meet and learn about TBUs. You can also submit a letter of support to a regional water board, attend a regional water board meeting and encourage your tribe or allies to submit letters of support. To learn more, visit the California water boards Tribal Beneficial Uses website at, https://www.waterboards.ca.gov/tribal_affairs/beneficial_uses/.

Tribal Reserved Water Rights

The State Water Board received comments on the 2023 draft Staff Report related to federal reserved water rights, including unquantified Winters rights, protection of those rights through State Water Board actions, and accounting for those (possibly unquantified) rights when implementing the Bay-Delta Plan. Commenters asserted that the Sacramento/Delta Update to the Bay-Delta Plan must address and quantify tribal water rights but provided no additional detail beyond text explaining federally reserved rights generally and stating that many unquantified reserved rights exist in the State. This response provides background information on federally reserved rights, a summary of which has been added to Chapter 11, *Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses*, of the final Staff Report. It also provides information on the State Water Board's Division of Water Rights functions, including its ability to consider unquantified tribal reserved rights in water right proceedings.

First, it is important to clarify some overlapping terminology on tribal water rights and TBUs. This is important because the designation of TBUs in the Bay-Delta Plan is not a quantification of a tribal water right. In water quality law, water quality objectives are established for the "reasonable protection of beneficial uses." Water quality beneficial uses are designated in a Water Quality Control Plan (basin plan), which governs the regulation of wastes discharges and other controllable water quality factors such that the actual water quality is sufficient to reasonably protect the use.

Except for instream beneficial uses that require an amount of water to be in the stream in order to exist, other beneficial uses are not allocated a certain amount of water (although the State Water Board considers other beneficial uses of water when determining the amount of water that needs to remain instream). These water quality beneficial uses can often be confused with the same term that is used for different reasons in water rights law, which governs the allocation and quantity of water for various uses. In water rights law, the term “beneficial use” is a different term of art with a different meaning. Under article X, section 2 of the California Constitution, water rights may only be developed for “beneficial use” and not for purposes that constitute a “waste.”

Federally reserved water rights are water rights explicitly or implicitly associated with lands the federal government withdraws from the public domain such as, parks, forests, and Indian reservations. Winters rights refer to the doctrine established in the U.S. Supreme Court case *Winters v. United States*, 207 U.S. 564 (1908). The Winters doctrine holds that when the federal government reserves land for a federal purpose, such as creating a reservation, it also implicitly reserves sufficient water to fulfill the purposes of the reservation.

“The power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. That the Government did reserve them we have decided, and for a use which would be necessarily continued through the years.” (*Winters v. United States*, 207 U.S. 564, 577 (1908).)

These reserved water rights are tied to the date the land was set aside or when the reservation was created (unless otherwise explicitly stated), whether through treaty, Executive Order, or Act of Congress, and relate specifically to the intended purpose of the federally reserved land. Other tribal reserved rights retain a “time immemorial” priority. (See *U.S. v. Adair*, 723 F.2d 1394, 1412-1414 (9th Cir. 1983) [treaty continued pre-existing hunting and fishing rights, so date of priority pre-dates date of reservation].) Federally reserved water rights cannot be lost through non-use, and the quantity of said water rights are tied to the primary purpose of the reserved land.

The United States Supreme Court has continued to recognize the principle derived from *Winters* for all federal reservations. In 1976, the Court noted that it “has long held that when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation.” (*Cappaert v. United States*, 426 U.S. 128, 138 (1976)). The priority and extent of federal reserved water rights is affected by the purposes of the reservation, the date when the reservation was created, the quantification of water sufficient to accomplish those purposes, and the sources of water that may be used to fulfill the particular purpose of the reservation.

There are different methods for quantifying Winters rights and the method for quantifying the right is directly related to the established purpose of the reservation. If an Indian reservation was established for the purpose of converting a group of Native Americans to an agrarian way of life, the Practicably Irrigable Acreage (PIA) Standard may be used to quantify the amount of water implicitly reserved at the time the reservation was established. The PIA Standard quantifies the amount of water needed to irrigate arable lands on a reservation but does not restrict the use of that water to agriculture alone. A tribal water right associated with a reservation established for agrarian purposes would be based on the amount of tribal lands capable of sustained irrigation at a reasonable cost, as well as the amount of water required to farm those lands (*Arizona v. California* 373 U.S. 546 (1963)).

If a reservation was established with the intended purpose for it to be a “Permanent Homeland” for a tribe, a different quantification method should be used to determine the associated tribal water rights. In *General Adjudication of All Rights to Use Water in the Gila River System*, 35 P.3d 68 (Ariz. 2001), the Arizona Supreme Court established the “Permanent Homeland Theory” for determining tribal water rights. It held that reservations are entitled to the minimal amount of water necessary to satisfy both the present and future needs for the reservation to serve as a permanent homeland and that water rights should be calculated to ensure its long-term viability. The Permanent Homeland Theory method for quantifying tribal water rights includes factors such as a tribe’s history, cultural practices, geography, and groundwater availability.

Winans rights, unlike Winters rights are established when tribes reserve their hunting and fishing rights to themselves in a treaty, to continue tribal practices and can include tribal fishing rights. In *United States v. Winans*, the U.S. government sought to ensure Yakima Nation Indians had continued access to traditional fishing sites and the ability to continue to exercise treaty-granted fishing rights along the Columbia River (*United States v. Winans*, 198 U.S. 371 (1905)). The 1859 treaty guaranteed the Yakima the right to fish at “usual and accustomed places” in common with citizens of the Territory of Washington. Landholders along the Columbia River had excluded the Yakima from fishing and exercising their treaty-guaranteed fishing rights. The Court held that the 1859 treaty reserved the Yakima’s fishing rights, reasoning that the treaty was not a grant of new rights to the tribe but a reservation of pre-existing rights that superseded subsequent land grants and state regulations.

When a treaty, act of Congress, or executive order establishes a Native American reservation, that establishing document may explicitly mention hunting or fishing rights reserved by the tribe. Habitat needs related to hunting or fishing rights explicitly detailed in the establishing treaty, act of Congress or executive order may also influence tribal water rights associated with the established reservation. If the purpose of the reservation is to continue and preserve activities that require water to remain instream, such as hunting, fishing, trapping, or gathering, the measure of the reserved water right is a needs-based analysis of the amount of water necessary to maintain the fishery and/or other resources.

Quantification of tribal reserved water rights can be a complex and litigious process and is typically done by a court ruling or through a settlement agreement subsequently ratified by Congress. States, such as California, may have the authority to adjudicate federal water rights, such as tribal reserved rights, but that adjudication must be comprehensive, inclusive of all the rights on a given stream or watercourse, for a state to assert jurisdiction over federal claims (*Dugan v. Rank*, 372 U.S. 609 (1963)). The McCarran Amendment enacted in 1952, waived all sovereign immunity claims from the United States related to water right adjudication and administration under state law. The statement of purpose includes that, “[i]n the administration of and the adjudication of water rights under State law the State courts are vested with the jurisdiction necessary for the proper and efficient disposition thereof, and by reason of the interlocking of adjudicated rights on any stream system, any order or action affecting one right affects all such rights. Accordingly, all water users on a stream, in practically every case, are interested and necessary parties to any court proceedings.” (S. Rep. No 755, 82nd Cong., 1st Sess. 2 (1951).) The statement of purpose went on to include that “[s]ince it is clear that the States have the control of the water within their boundaries, it is essential that each and every owner along a given water course, including the United States, must be amenable to the law of the State, if there is to be a proper administration of the water law as it has developed over the years.” As such, any large general stream adjudication involving tribal reserved

water rights, would require the inclusion of the United States as trustee for the tribe's reserved right.

Water Code sections 2500 to 2900 establish the statutory adjudication procedure to determine "all rights to water of a stream system whether based on appropriation, riparian right, or other basis of right." (Wat. Code, § 2501.) Statutory adjudication is a process by which the comprehensive determination of all water rights in a stream system is made. This happens if a claimant petitions the State Water Board for an adjudication and the State Water Board finds the action necessary and in the public interest. The California Supreme Court has held that claimants or petitioners can include not only water users, but also those seeking recognition of public trust values on a streamwide basis. After granting the petition, State Water Board staff investigate the matter and issue a report which includes a draft Order of Determination. A hearing is then held on objections to the draft report, after which the State Water Board adopts a final Order of Determination and files it with the appropriate Superior Court. Objections to the final order are heard in a court hearing, after which the court may determine their merits. The final step is a court decree that determines all water rights within the disputed system. The State Water Board may also be called upon to act as a "referee" in water right lawsuits, either recommending a decision on the entire case in dispute or answering questions of physical fact. To date, the State Water Board has conducted twenty-seven statutory adjudications. A map and list of California water right judgments and determinations is located here:

https://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/judgments/.

Additional information on tribal reserved water rights has been added to Chapter 11, *Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses*, of the final Staff Report. Where the federal government has reserved land for a federally recognized tribe, that reservation is presumed to encompass sufficient water to fulfill the "primary purpose" of the reservation as of the date it is created. Chapter 11 also discusses background and history of Native American Tribes that impact the tribal reserved rights framework, particularly in California. There are approximately 110 federally recognized tribes in California with around 81 tribes pursuing federal recognition. Chapter 11 of the final Staff Report now also adds that there are over 400 individual Native American allotments located both on reservations and in the public domain that are also subject to quantification of reserved tribal water rights.

To date, relatively few California tribes have quantified their reserved water rights in California. In the Sierra foothills of the San Joaquin region, the Tule River Tribe secured over 5 TAF of water for domestic, municipal and commercial use through a negotiated settlement (Tule River Tribe 2007). In Southern California, the Agua Caliente Band of Cahuilla Indians successfully litigated the issue of federally reserved tribal water rights in groundwater in the Coachella Valley aquifer to satisfy present and future needs and will move to the quantification phase of the trial (Agua Caliente Band v. Coachella Valley Water District, No. 15-55896). Courts have confirmed the senior reserved water rights of the Yurok and Hoopa Tribes to support subsistence and commercial fishing on the Klamath River (USDOT 1993).

Tribes may also hold other types of water rights, including riparian rights that attach to a parcel of land that is adjacent to a source of water. The State Water Board regulates California's surface water rights generally by issuing permits, licenses, and registrations for the diversion of water and investigating unauthorized diversion and unreasonable use of water. See Section 5.2.2, *Water Rights*, of the final Staff Report for an additional discussion of water rights. See <https://www.waterboards.ca.gov/waterrights/> for more information on Programs in the Division of

Water Rights and water right information generally. The State Water Board has an Office of Enforcement, which also acts to enforce California water rights law. Sometimes, the work of the Office of Enforcement includes the validation of water rights claims. Other times, water rights claims are validated during the water rights application process. Still other times, water rights claims are litigated between water rights holders, and a court determines their validity. The State Water Board can consider unquantified reserved water rights when acting on water right applications and other water right matters, although in the past, historic distrust of State agencies has likely chilled tribal participation.

In addition to its water right functions, the State Water Board coordinates the statewide program for water quality control and serves as an appellate body for nine regional water boards meaning it is the entity to whom parties may appeal regional water board actions. The State Water Board itself adopts water quality control plans or other statewide policies for water quality. In the current process, the State Water Board, under its authority to protect water quality under the federal Clean Water Act and the state Porter-Cologne Act, is undertaking water quality control planning. The Bay-Delta Water Quality Control Plan or “Bay-Delta Plan,” covers two different regions with a recognition that discharges of waste are not the only sources of pollution affecting the Bay-Delta ecosystem. Instead, water diversions from rivers and streams have created an additional, significant nonpoint-source of pollution that is contributing to the decline of native fish populations. Because the State Water Board has jurisdiction over water rights, the Bay-Delta Plan is intended to regulate diversions of water and includes what we call flow-based water quality objectives. The Bay-Delta Plan works together with the regional basin plans to provide the foundational requirements for protecting beneficial uses of the Bay-Delta watershed. The Sacramento/Delta Update to the Bay-Delta Plan is intended to determine the environmental flows needed to protect public trust resources and instream beneficial uses. Similar to the quantification of reserved tribal water rights, setting instream flow requirements in California is inherently contentious and controversial because it reduces the amount of water available for diversion to other water right holders. To the extent that tribal uses are supported by instream flows (tribal reserved rights can include consumptive uses such as agricultural and municipal uses), the environmental flows established for aquatic beneficial uses will benefit tribal uses beyond the primary purpose of reservations, for tribes that are not yet federally recognized, and beyond the boundaries of a reservation or allotment.

As explained in the revised proposed Plan amendments, to implement the Sacramento/Delta updates to the Bay-Delta Plan, as necessary the State Water Board will issue water right curtailments based on water right priorities for appropriative rights and pre-1914 appropriative and riparian claims of right, including adjudicated rights. In order to inform the curtailments, the State Water Board will develop an implementation methodology to determine when water is not available at water right holders’ priorities of right. A draft version of this methodology will be developed through a public process within one year of approval of the Plan amendments by the Office of Administrative Law (OAL). Within two years of approval of the Plan amendments by OAL, the State Water Board will adopt curtailment regulations consistent with the provisions in the Plan that will identify specific curtailment procedures and requirements. Those requirements will include monitoring and reporting of diversions and related information needed to inform curtailment decisions, which may be in addition to other required monitoring and reporting. Any tribal water right, including quantified reserved tribal water rights would be integrated into the implementation methodology with the appropriate priority date and quantified volume associated with the reserved right.

Comments on tribal reserved water rights appropriately did not provide any specificity on any specific tribal water right. While the Sacramento/Delta updates to the Bay-Delta Plan are proposed to be implemented through water right management in order of priority, issues associated with specific water rights claims would be outside the scope of the water quality planning process. In the past, most water users in the watershed have not had any limitations on their diversions to ensure that the Bay-Delta Plan objectives are met, and water quality objectives have been implemented primarily by the Projects (the collective term for the Central Valley Project and the State Water Project). The only inflow objectives for the Sacramento River/Delta tributaries in the Bay-Delta Plan are minimal monthly average flows on the Sacramento River at Rio Vista for September through December that range from 3,000 to 4,500 cubic feet per second (cfs) based on water year types. There are currently no other instream flow requirements for the Sacramento River basin and Delta eastside tributaries in the Bay-Delta Plan. The revised proposed Plan amendments would provide a regulatory regime that addresses comprehensive minimum instream flow and cold water habitat provisions and would distribute the responsibilities for meeting the provisions more broadly across the watershed in a way that adjusts to available supplies and provides for flexibility. With the exception of recent emergency drought regulations, implementation of the water rights system watershed-wide has never been done before and will take time and effort. The State Water Board is already making a significant effort to improve its accounting and tracking of water rights more generally, and these efforts will assist in Bay-Delta Plan implementation moving forward.

Many comments focus on the inherent unfairness of the water right priority system. Tribes point out the water rights system of California was established with racist ideologies. The prior appropriation doctrine was adopted at a time when there was an active genocide occurring against the tribes who have lived in California since time immemorial. Commenters submit that this inequity and exclusion persists in the current water rights system and ask that the Staff Report make clear that the tribal relationship with water is different. The State Water Board appreciates the eloquent arguments and information provided by tribes in the Bay-Delta planning process and has attempted to articulate these concepts in various locations of the Staff Report. Chapter 11, *Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses*, of the final Staff Report cites the evidence provided by tribes about the cultural and sacred connection with water. The State has acknowledged the disparity and historic wrongs in various resolutions detailed in Chapter 11. However, the State Water Board is obligated to adhere to the property rights system that exists today and administer water rights within the established legal system.

CEQA and Assembly Bill 52

Comments received on the 2023 draft Staff Report suggested that the State Water Board fell short of Assembly Bill (AB 52) requirements, including consultation, and evaluation of tribal cultural resources related to the development of the 2023 draft Staff Report. The State Water Board actively sought, and continues to seek, consultation with interested California Native American Tribes consistent with Executive Order (EO) B-10-11 and its Tribal Consultation Policy. The State Water Board proceeded with EO B-10-11 because the provisions of AB 52 do not apply to a certified regulatory program or a project with a Notice of Preparation filed before July 1, 2015 (The Revised Notice of Preparation for the Sacramento/Delta Update to the Bay-Delta Plan was issued in 2012.). Agencies and tribal governments consulting on projects with Notice of Preparation (NOPs) filed before July 1, 2015, can utilize the EO B-10-11 process and those with NOPs filed on or after July 1, 2015, can employ either AB 52 or EO B-10-11. Although the Sacramento/Delta Update was initiated

prior to the passage of AB 52, the State Water Board has engaged with interested parties throughout the planning process consistent with EO B-10-11 and the State Water Board's Tribal Consultation Policy. The Tribal Consultation Policy is consistent with and builds upon the 2020 CalEPA Protocol and guides the agency and its boards, departments, and offices in their daily operations to ensure that they work with tribes in a knowledgeable, sensitive, and respectful manner. A more detailed description of State and agency policies associated with tribal outreach and engagement can be found in Chapter 11, *Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses*, of the final Staff Report.

AB 52 specifies that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource, as defined, is a project that may have a significant effect on the environment. AB 52 requires a lead agency to begin consultation with a California Native American Tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects and the tribe requests consultation, prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project. The Staff Report/Supplemental Environmental Document (SED) satisfies the CEQA requirement for an environmental impact report (EIR) evaluating the proposed project. Although AB 52 does not apply to the Sacramento/Delta Update to the Bay-Delta Plan evaluated in the Staff Report/SED, the State Water Board actively sought, and continues to seek, consultation with interested California Native American Tribes consistent with EO B-10-11 and its Tribal Consultation Policy. Should a tribe be interested in consulting with the State Water Board on effects of the Sacramento/Delta Update to the Bay-Delta Plan on tribal cultural resources and, specifically, wishes to share examples the State Water Board should consider to avoid or minimize project impacts on tribal cultural resources, tribes should please contact the Tribal Coordinator for Bay-Delta Plan Update and Implementation processes. Contact information is available at https://waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/tribal_coordination.html, or The State Water Board's Tribal Liaison, Adriana Renteria at Adriana.Renteria@waterboards.ca.gov.

Tribal Comments on the Voluntary Agreements

Multiple commenters expressed concerns related to the VA development process, which is also referred to as the HRL proposal. Several commenters asserted that the development process was exclusionary, and left out tribes, environmental justice organizations, and DACs. Commenters stated that the VAs were created by powerful water interests with no interest in preserving tribal cultural resources and no interest in protecting the health of disadvantaged communities that live near and depend on the Bay-Delta watershed. For tribes, salmon are a vital part of the culture whose traditional lands surround the waterways that salmon travel. Tribes submit that the severe loss of salmon has impacted California's native peoples who have already suffered having land and water taken through colonization, and that the VAs threaten to further exclude them, which means California Native American Tribes must fight harder for their water rights and for the rights of their salmon relatives.

The State Water Board has expressed concern about the VA process prior to its submittal to the State Water Board for consideration. As explained below, since receiving the VA proposal, the State Water Board has actively engaged in a public process that includes valuable input from tribes, NGOs,

DACs and others. Substantial modifications have been made to bring the VAs into the Bay-Delta Plan as an alternative implementation pathway. This is essential for the State Water Board to maintain its regulatory decision-making authority in monitoring and oversight and holding parties accountable. See Common Response 1.2, *Water Quality Control Planning Process*, for more discussion on State Water Board authorities related to the water quality control planning process. In addition, the State Water Board is moving forward with a regulatory pathway in the event that the commitments on VA pathway are not being met or are determined to not be effective. As explained in the revised proposed Plan amendments, several steps need to occur before the State Water Board will be able to implement numeric instream flow requirements under the regulatory pathway. The State Water Board will develop an implementation methodology to determine when water is not available at water right holders' priorities of right. This methodology will be developed through a public process within one year of approval of the Plan amendments by OAL. Within 2 years of approval of the Plan amendments by OAL, the State Water Board will adopt curtailment regulations consistent with the above that will identify specific curtailment procedures and requirements. In the interim, the VA pathway is an alternative pathway to provide for the reasonable protection of native fish and wildlife, and the ability for VA parties to incorporate tribal leadership is one component that the State Water Board will consider when making decisions on whether the VA pathway should continue.

The State Water Board identified the need to update the Bay-Delta Plan and its implementation many years ago. The process for updating the Sacramento/Delta portions of the Bay-Delta Plan has been ongoing since 2012, when a supplemental Notice of Preparation was issued for the Sacramento/Delta updates to the Bay-Delta Plan. 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. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. Staff were directed to provide appropriate technical and regulatory information to assist the California Natural Resources Agency (CNRA) and others in developing a VA proposal as an alternative for a Bay-Delta Plan update to present to the State Water Board for consideration as early as possible after December 1, 2019.

Although the State Water Board was not part of the development of the VA proposal, the State Water Board has provided multiple opportunities for public review and comment on the VA proposal as an alternative implementation pathway for the Sacramento/Delta Update to the Bay-Delta Plan. On March 29, 2022, the State Water Board received a Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions (MOU) submitted by the Secretaries of the Natural Resources Agency and Environmental Protection Agency, and the Directors of the Department of Water Resources and the California Department of Fish and Wildlife, including many public water agencies and irrigation districts (collectively referred to as the "Parties"), along with the VA term sheets submitted to the State Water Board for evaluation and approval. After the MOU was submitted and during the development of the 2023 draft Staff Report, the VAs were renamed Healthy Rivers and Landscapes or HRL by the VA proponents. The March 2022 MOU and other VA

documents submitted to the State Water Board related to updates to the Bay-Delta Plan and other information are available on the State Water Board's website, including a link to the CNRA website for additional information on the proposal, to ensure the public has the opportunity to access those documents. In addition, documents available at the time of the release of the 2023 draft Staff Report were included in Appendix G1, *Voluntary Agreement Proposal*, of the 2023 draft Staff Report. Chapter 9, *Proposed Voluntary Agreements*, describes and evaluates the proposal as a possible option for the Sacramento/Delta Update to the Bay Delta Plan. Chapter 9 was included in the 2023 draft Staff Report and reflects that proposal at the time that the 2023 draft Staff Report was released for public review and comment.

The State Water Board provided several opportunities for tribes and the public to provide comments related to the VA proposal, which has informed the development of the revised proposed Plan amendments and final draft Bay-Delta Plan. For example, in April 2024, the State Water Board held a multi-day public workshop to discuss the VA proposal. The purpose of the workshop was for VA parties to provide a detailed overview of the VA proposal and receive input and answer questions from State Water Board members. The workshop also served as an opportunity for California Native American Tribes, representatives of DACs, and the general public to ask questions and provide input on the proposal. Comments on the 2023 draft Staff Report informed development of the revised proposed Plan amendments, which include both a regulatory pathway and a VA pathway that would provide a pathway for implementation of VA flow and non-flow habitat commitments. The State Water Board considered the VA documents and other comments received and exercised its independent judgement as it developed the VA pathway described in the revised proposed Plan amendments (including the flow and non-flow accounting provisions included in Appendix B).

After the release of the draft updates to the Bay-Delta Plan in October of 2024, State Water Board staff held additional workshops and working meetings to receive tribal and public input on the draft potential updates to the Bay-Delta Plan including the VAs. From November 2024 to January 2025, State Water Board staff held a multiday public workshop on the draft updates to the Bay-Delta Plan. The draft VA provisions within the draft Bay-Delta Plan were a topic for day two of the workshop on November 22, 2024. VA habitat accounting was a topic on December 3, 2024, and VA flow accounting was a topic on December 12, 2024. In addition to the workshop days following the release of the draft potential updates to the Bay-Delta Plan, State Water Board staff held a series of eleven working meetings to receive input on the draft provisions. Four of the eleven working meetings were focused on VA provisions including provisions for the continuation, modification or termination of the VAs, VA habitat and accounting provisions, monitoring and evaluation of VA provisions, and VA flow commitments and accounting.

On December 12, 2025, the State Water Board released a revised draft of updates to the Bay-Delta Plan for public review and comment. In addition on December 12, 2025, the State Water Board initiated a limited recirculation of the draft Staff Report by releasing a new Chapter 13, *Revised Proposed Plan Amendments*. The State Water Board conducted a multi-day public hearing on January 28 through 30, 2026 to receive oral comments on the December 2025 revised draft Plan and Chapter 13. On each hearing day, State Water Board staff provided an overview presentation followed by public panel presentations and individual public comments. Tribal panels were organized to provide input and feedback to the State Water Board on January 29, and 30. See Staff Report Chapter 11, *Tribal Engagement, Traditional Ecological Knowledge and Tribal Beneficial Uses*, of the final Staff Report for a summary of tribal engagement in the Sacramento/Delta Update, including consideration of the VAs.

In response to tribal comments on the VA pathway, the revised proposed Plan amendments include several provisions for California Native American Tribes and other interested parties including environmental justice communities to provide input and participate in activities related to Bay-Delta Plan implementation, monitoring, and periodic review, and requirements under the VA pathway for tribal outreach and engagement and opportunities to participate in the VA science committee and in decision-making affecting VA governance. Please see Common Response 1.3, *Revised Proposed Plan Amendments*, for a description of the revised proposed Plan amendments, and the *Tribal Outreach and Engagement Provisions of the Revised Proposed Plan Amendments* section of this common response for more information.

Many commenters questioned whether the VA pathway would provide adequate protection for both fish and wildlife beneficial uses and associated CUL beneficial use. Commenters highlighted the importance of flow for aquatic plant communities and fish and wildlife that tribal cultural uses depend upon. Commenters also highlight how California's water infrastructure has contributed to poor water quality and harmful algal blooms which impair beneficial uses of water including TBUs. Commenters also submit that the VA pathway will not provide enough water for fish habitat and that the regulatory pathway should be utilized instead because there is insufficient evidence that trading flows for habitat restoration measures will provide adequate protection for fish and wildlife, recreation, and other beneficial uses as well as public trust interests.

The revised proposed Plan amendments incorporate the VA pathway that includes a combination of proposed flow and non-flow habitat restoration measures on a portion of the Sacramento/Delta tributaries over 8 years (with the intent to extend the term), including varying amounts of increased flows, 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. The State Water Board has encouraged voluntary actions for their potential to provide large-scale benefits that will amplify the ecological benefit of new and existing flows beyond what the State Water Board could require through 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. However, as described in the Scientific Basis Report Supplement for the VA pathway, there is some uncertainty as to what the actual benefits of the VA pathway will be and as such whether those benefits will fully protect public trust resources and fully provide for the reasonable protection of fish and wildlife beneficial uses. Given this uncertainty, the regulatory pathway provides a necessary backstop if VA commitments are not met or are shown to be insufficient. The regulatory pathway would apply for water rights not included as part of the approved VA pathway and would also apply to VA water rights in the event the VA pathway is discontinued.

The State Water Board understands the concerns expressed by tribes and others and acknowledges that the VA pathway presents some uncertainty about whether the commitments will be met and result in sufficient improvements for the reasonable protection of fish and wildlife and associated tribal cultural uses. Due to 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 VA parties' failure or inability to implement VA commitments, or significant evidence that continuing implementation of the VA pathway will not provide reasonable protection of beneficial uses.

The VA pathway is designed to be informed by supplemental science and monitoring to evaluate effectiveness of the VA pathway and ensure compliance, as described in more detail in Staff Report Section 13.3.4.7, *Supplemental Science and Monitoring*. The revised proposed Plan amendments require that the VA science committee provide opportunities for tribal participation, which would enable TEK to inform the VA pathway supplemental science and monitoring. Further, the Bay-Delta Tribal Advisory Group could also provide input and feedback to the State Water Board on how the VA pathway affects tribal cultural resources and TBUs (see *Tribal Outreach and Engagement Provisions of the Revised Proposed Plan Amendments* above for more information), which could inform annual and periodic reviews and the process for evaluating whether to continue, modify, or terminate the VA pathway. Details on the process for continuing, modifying, or terminating the VA pathway are presented in Staff Report Section 13.3.4.10, *Continuation, Modification, or Termination of the VA Pathway*. The VA pathway is described in more detail in Staff Report Section 13.3.4, *Voluntary Agreement Pathway*. The alternative VA pathway is properly provided as a component of staged implementation toward fully achieving the new water quality objectives in the Bay-Delta Plan. The Plan provides opportunities for significant tribal input on implementation efforts and adaptive implementation moving forward. For an expanded discussion on reasonable protection of beneficial uses, please see Common Response 1.2, *Water Quality Control Planning*. Common Response 1.1, *General Comments*, provides additional responses to comments expressing general support and opposition of the VA pathway.

Some commenters also expressed concerns with aspects related to monitoring and evaluation provisions under the VA pathway. For additional discussion on the VA pathway and responses to these comments, please see Common Response 1.3, *Revised Proposed Plan Amendments*.

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