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11.208.01

July 27, 2018

Via Email

[LSJR-SD-Comments@waterboards.ca.gov](mailto:LSJR-SD-Comments@waterboards.ca.gov)

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

**Re: Comment Letter - Revisions to Proposed Bay-Delta Plan Amendments**

Ms. Townsend:

**I. INTRODUCTION**

On behalf of the North Coast Rivers Alliance (NCRA), Pacific Coast Federation of Fishermen's Associations (PCFFA), Institute for Fisheries Resources (IFR) and the California Sportfishing Protection Alliance (CalSPA), we submit these comments on the proposed Amendment to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Plan Amendment") and Final Substitute Environmental Document ("SED"). The proposed Plan Amendment (Alternative 3) would establish San Joaquin River flow objectives to be measured on the Stanislaus, Tuolumne, and Merced Rivers, and alter the Southern Delta salinity objectives and their point of compliance.

As a preliminary matter, the State Water Resources Control Board (the "Board") has failed to rectify the serious deficiencies in the Plan Amendment – and the Substitute Environmental Document ("SED") – identified in our March 17, 2017 comment letter.<sup>1</sup> The Plan Amendment changes identified in double underline and double strike-through in Appendix K fail to provide the flows necessary for fish populations to return from the brink of extinction, let alone thrive. The changes do not sufficiently alter the reactive and speculative adaptive management program to protect fish from the diversions by those irrigation districts, agricultural interests, and municipal water agencies whose actions continue to threaten fishing jobs and place fish populations and other public trust resources in serious jeopardy. Further, the changes fail to correct the overly relaxed salinity standards identified in our March 17, 2017 comments. For these reasons, we reiterate that the Board should adopt a modified version of Alternative 4 – not Alternative 3, as proposed – at its August 2018 hearing.

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<sup>1</sup> Comment WQCP1.1206, available in Appendix 4A to the SED, is incorporated herein by reference.

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In addition, the Board's revisions to Appendix K's flow requirements, water quality objectives, salinity standards, and adaptive management protocols require additional changes. The Board removes important data from consideration, and creates confusion by including contradictory information in the Plan Amendment. These changes increase the Plan Amendment's potential for harm to fish, as discussed below. The Board must correct these serious errors and deficiencies.

## **II. THE BOARD'S REVISIONS TO APPENDIX K HARM FISH AND WILDLIFE BENEFICIAL USES**

### **A. FLOW REQUIREMENTS**

Appendix K, as revised, removes the statement that the "required percentage of unimpaired flow is in addition to flows in the [Lower San Joaquin River ("LSJR")] from sources other than the LSJR Tributaries." Appendix K, p. 29. This change further reduces the total flow in the LSJR, even as the existing flow requirements in Appendix K continue to be insufficient to allow for species recovery. Indeed, the SED states that benefits to salmonid smoltification on the Stanislaus and Merced Rivers can *only* occur with flows at 50% of unimpaired flow *and higher*, during April and May. SED 19-20. And most of the temperature benefits in the Lower San Joaquin River occur when March flows are at least 60% of unimpaired flow. *Id.* Further *reduction* in total flow, as would result from this change, will further prevent temperature and flow benefits to assist struggling species. The Board must reverse this change.

### **B. PELAGIC ORGANISM DECLINE AND WATER QUALITY OBJECTIVES**

The Plan Amendment's water quality objectives for fish and wildlife beneficial uses previously included a reference to pelagic organism decline ("POD") studies. Appendix K, page 13. As revised, Appendix K no longer states that "[A]fter completion of the POD studies, the State Board will review the study results and may consider amending this Plan to improve water quality protections for fish and wildlife in the Estuary." *Id.* Indeed, its current form Appendix K is contradictory about the role of POD studies in informing the Board's updates to the Water Quality Control Plan. *Compare* pp. 8, 13 (removing references) *with* pp. 71-72 (discussing use of POD studies to modify objectives). While the POD management team has not provided additional updates to the Board since the creation of the Delta Stewardship Council, the Board must continue to address POD and regime shift in the Bay-Delta Estuary, and be prepared to alter the Water Quality Control Plan when needed to protect these fish and wildlife beneficial uses.

California Department of Fish and Wildlife employee Randall Baxter, a member of the Interagency Ecological Program ("IEP") POD team, testified before the Board in the WaterFix Change Petition Hearing regarding POD and affirmed that the POD team in 2010 hypothesized that changes in outflow, salinity gradient, landscape, temperature, turbidity, nutrients, contaminants, and "harvest" were the environmental driver behind the POD regime shift – in that

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order. April 11, 2018, California WaterFix Change Petition Hearing Transcript, pp. 11:16-16:25. The Board is tasked with considering this testimony while determining “appropriate Delta flow criteria” under Water Code section 85086. The Board must continue to address POD and regime shift in the Bay-Delta Estuary, and be prepared to alter the Water Quality Control Plan to protect these fish and wildlife beneficial uses based upon additional studies addressing POD. The Board must rely upon best available science to protect the fish and wildlife beneficial uses in the Bay-Delta Estuary, including information on POD.

### **C. SALINITY STANDARD**

Appendix K states that in Decision 1641 (“D-1-641”) the U.S. Bureau of Reclamation (“USBR”) and the Department of Water Resources (“DWR”) are required to implement electrical conductivity (“EC”) levels of 0.7 [millimhos per centimeter (“mmhos/cm”)] from April through August and 1.0 mmhos/cm from September through March.” Page 42. The prior version of Appendix K included language that required USBR and DWR to instead “comply with the 1.0 [deciSiemens per meter (“dS/m”)]<sup>2</sup> water quality objective year-round as a condition of their water rights,” *but this sentence has been removed. Id.* Yet in Table 2, on page 15 of Appendix K, the salinity standard is set at 1.0 dS/m year-round at all compliance points – including Vernalis. While Appendix K now states that the Board “will amend DWR’s and USBR’s water rights to continue to require implementation of the interior southern Delta salinity water quality objectives consistent with this plan,” the current contradiction between Table 2 and the changes on Page 42 makes this language inherently unclear and potentially ineffectual.

In the Response to Comments on the SED, the Board relies upon the existing EC limit of 0.7 at Vernalis from April to August to conclude that the Plan Amendment will not impact biological resources. SED Response to Comments, Comment Letter: 12000-1225, Comment 1206-10. Yet as written, Appendix K is ambiguous as to the salinity standard that applies to USBR and DWR. Table 2 currently sets the year-round salinity standard at Vernalis at 1.0 dS/m. Appendix K, p. 15. Absent clarifying modifications to the Plan Amendment in Appendix K, the Board’s conclusions regarding the potential biological impacts of the Plan Amendment lack support.

### **D. ADAPTIVE MANAGEMENT**

Despite the prior failures of adaptive management in the Delta, Appendix K continues to require consensus from the Stanislaus, Tuolumne and Merced Working Group (“STM Working Group”) before allowing the Executive Director to approve any annual adjustment to the required percentage of unimpaired flow. Appendix K, p. 30. While the Board adjusted the language addressing its approval process for adaptive adjustments for flow, these changes still

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<sup>2</sup> 1.0 mmhos/cm is can also be expressed as 1.0 dS/m.

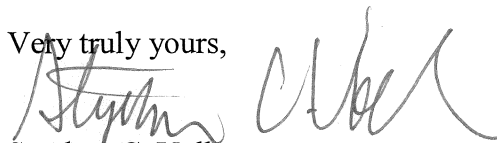
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leave the Board hamstrung in the adaptive management process. Appendix K, pp. 30-31. This must be corrected.

### III. CONCLUSION

There can be no dispute that the Bay-Delta is in ecological crisis. The Board has been presented with compelling evidence that the Plan Amendment in Appendix K will fail to remedy this crisis. It lacks the specific, protective and enforceable standards needed to restore the Delta's beleaguered fisheries. We ask the Board to adopt the long-overdue water quality reforms that are needed to restore these rivers' ecological integrity and historically abundant fish and wildlife, instead of jeopardizing the survival of the very imperiled species that the Plan Amendment purports to protect.

Very truly yours,



Stephan C. Volker

Attorney for North Coast Rivers Alliance, Pacific Coast  
Federation of Fishermen's Associations, Institute for  
Fisheries Resources and the California Sportfishing  
Protection Alliance

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**From:** Stephan Volker <svolker@volkerlaw.com>  
**Sent:** Friday, July 27, 2018 10:28 AM  
**To:** LSJR-SD-Comments@waterboards.ca.gov; WQCP1Comments  
**Cc:** 'Noah Oppenheim'; 'William Jennings'; 'Bill Jennings'; ddj@cah2oresearch.com  
**Subject:** Comment Letter - Revisions to Proposed Bay-Delta Plan Amendments  
**Attachments:** 2018-07-27 NCRA et al. Comment Letter - Revisions to Proposed Bay-Delta Plan Amendments.pdf

**Importance:** High

**Categories:** Red Category

Dear Ms. Townsend:

The attached comment letter is submitted on behalf of the North Coast Rivers Alliance, Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources and the California Sportfishing Protection Alliance pertaining to the proposed Amendment to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and Final Substitute Environmental Document.

The original comment letter is also being sent to you in paper form via U.S. Post.

Please make these comments part of the public record.

Stephan C. Volker

Attorney for North Coast Rivers Alliance, Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources and the California Sportfishing Protection Alliance

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