



October 28, 2026

Joaquin Esquivel, Chair, and members

State Water Resources Control Board

Sacramento, CA

Via email: SacDeltaComments@waterboards.ca.gov

Re: Comment Letter – Final Draft Bay-Delta Plan Objection to adoption of the edits to Sections 4.4.9.1, 4.4.4, 4.4.2.3, and 4.4.2.2 proposed at the October 28, 2026 Board meeting and in Change Sheet #1

Dear Chair Esquivel, Water Board members and staff,

California Water Research objects to adoption at this meeting of last minute changes to the final draft Plan presented by water agencies at the October 28, 2026 meeting.

The most sweeping changes were a slide deck presented by Jon Rubin, Board Executive Officer and Executive Advisor for Water Resources and Capital Improvements of the Metropolitan Water District of Southern California, on behalf of a group identified as the Public Water Agencies. Before joining Metropolitan in 2023, Mr. Rubin was general counsel and assistant general manager of Westlands Water District. The “Public Water Agencies” proposed to amend the Base Flow Balancing Provision in Section 4.4.9.1, strike the implementation language for the interior Delta flow objectives in Sections 4.4.4 and 4.4.4.1, and delete the carryover storage provisions for cold water pool management in Section 4.4.2.3, including Tables 7 and 8.

The Board previously received a letter from Westlands Water District, a CVP contractor, stating that they would withdraw from the HRL if changes were not made to the Plan amendments (responses to comments, page 17). Westlands’ general counsel and assistant general manager until September 2023 presented these edits. They would relieve the state-side HRL parties of replacing the outflow that a CVP withdrawal would remove.

The second change proposed as a footnote to Section 4.4.2.2 by the Regional Water Authority, which would extend the WSAs to amounts authorized under existing permits but not currently diverted. The change is related to the set of changes to Sections 4.4.2.2 and 4.4.9.1 in staff's Change Sheet #1, circulated October 16, 2026.

These comments respond to these proposals first made public at the meeting or after the close of written comments. We ask that they be entered into the record. Part 1 states the objection. Parts 2 through 5 explain what each change would do. Part 6 states our requests.

1. None of these changes should be adopted at this meeting

They have not been through public comment. The Board's August 19, 2026 notice limited comments to changes made since the December 2025 draft and closed written comments on September 18 (notice, pages 1 and 3). Change Sheet #1 was posted with the agenda on October 16, twelve days before the meeting, with no noticed written comment period. The Regional Water Authority letter is dated October 22. The Public Water Agencies' deck was shown for the first time at the meeting. Water Code section 13170 authorizes the Board to adopt water quality control plans "in accordance with the provisions of Sections 13240 to 13244, inclusive, insofar as they are applicable," and section 13244 provides that no plan may be adopted "unless a public hearing is first held, after the giving of notice of such hearing." The hearing was noticed for the August text.

These changes have not been analyzed, and they change the project. The Staff Report is the Board's environmental document under its certified regulatory program (notice, page 3; Public Resources Code section 21080.5; California Code of Regulations, title 23, section 3775 and following). It must be supported by substantial evidence and circulated before Board action, and it must describe the project (title 23, section 3777, subdivisions (a) and (b)). The Staff Report analyzed the August text. The Board's October 2026 responses to comments state the standard for what happens when the project changes after notice: CEQA Guidelines section 15088.5 "requires recirculation of an environmental document when significant new information such as changes in the project or environmental setting is added to an EIR after public notice prior to certification" (responses to comments, page 39). The responses conclude that recirculation is not required because the Base Flow Balancing Provision "provides for consistency between the Staff Report's analysis and conclusions and the Plan" (page 39).

The Public Water Agencies' edits would remove that consistency. CEQA requires that "An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR," and that "The defined project and not some different project must be the EIR's bona fide subject" (County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185,

193, 199). When the project description changed in December 2025, the Board recirculated a new Chapter 13 “that included an updated project description” and took comment (notice, page 2). As Bob Wright, counsel for the Sierra Club stated at the meeting, the remedy for changing it again is a revised and recirculated Staff Report.

The base flow edits change what was peer reviewed. Health and Safety Code section 57004 requires external scientific peer review of “the scientific basis for any rule proposed for adoption” (subdivision (b)), defines a rule to include a Board policy under the Porter-Cologne Act “that has the effect of a regulation” (subdivision (a)(1)(B)), and defines the scientific basis as “those foundations of a rule that are premised upon, or derived from, empirical data or other scientific findings, conclusions, or assumptions establishing a regulatory level, standard, or other requirement” (subdivision (a)(2)). No rule may be adopted in final form unless the agency has submitted to the reviewers “the scientific portions of the proposed rule, along with a statement of the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based” (subdivision (d)).

The Scientific Basis Report Supplement was submitted for review in October 2023 and reviewed by seven scientists (CalEPA External Scientific Peer Review Program, final response letter, February 21, 2024). The assumption put before them was that the HRL flows are additive to a protected base: the Board’s request states that the VA flows “are intended to be added to the Delta outflows required by State Water Board Decision 1641 (D-1641) and resulting from the 2019 federal Biological Opinions” (peer review package, Attachment 1, page 9 of 21). The base was later moved to the 2024 ROD and ITP “at the request of the HRL participants, including Reclamation” (responses to comments, page 18); the assumption did not change. One reviewer, Stephen L. Katz of Washington State University, found the VA flow allocations “average out to between 1.24% (Yuba River) to 5.5% (Feather River) over baseline,” with changes in flux of “1%-3%,” and wrote that “Details about the precision of the accounting mechanisms would increase confidence in Conclusion #2” (package, page 31).

The reviewed benefits are increments of a few percent above a protected base. A base reduction of the same few percent, with no replacement, leaves no increment above the base that was analyzed. Reclamation has stated that if the Plan is adopted it will “cease any further participation or funding under HRLs or similar state pathways” and “maximize deliveries under existing authorities and recent Records of Decision” (Reclamation letter, September 4, 2026, page 2). The pathway that would then operate under the Public Water Agencies’ edits, state-side HRL flows on a base lowered by CVP operations with no

replacement owed, was analyzed in neither VA scenario, in the Staff Report, nor in the peer review.

The program of implementation would no longer describe the actions that achieve the objectives. Water Code section 13242 requires “a description of the nature of actions which are necessary to achieve the objectives,” a time schedule, and surveillance. Each of the Public Water Agencies’ edits removes an action and leaves the objective standing: replacement water for lost base outflow, the update of the Projects’ water rights to implement the interior Delta flow objectives, and the reservoirs and carryover storage ranges that implement the cold water habitat objective.

The Plan itself provides the vehicle for changes of this kind: the annual or periodic review, and for the Base Flow Balancing Provision the long-term change process, which requires “scientific and technical analysis justifying the change” and provides that “The Board shall comply with all applicable laws, including any necessary environmental review, prior to approving proposals for long-term changes under this provision” (page 67).

2. The Public Water Agencies’ edits to Section 4.4.9.1

The edits would insulate the State Water Project (SWP) from making up Delta outflow lost when the Central Valley Project (CVP) reduces storage releases or increases exports, and from replacing the outflow the Delta Conveyance Project (DCP) would remove.

The August text. A Relevant Change is a new ROD for the CVP, a new or amended ITP for the SWP, “or other operational changes that result in a substantial reduction in Delta outflow” below the analyzed base (page 66). The affected HRL parties must submit an interim plan within 30 days “to provide a commensurate increase in HRL flow commitments to address any such reduction in Delta outflow” (page 66), and the Board intends that the water supply beneficiaries of the change provide the water (page 67).

Change Sheet #1 (October 16). Staff revised the provision so that the interim plan goes to the Executive Director “for Executive Director determination of whether possible conditions or modifications are necessary” rather than for approval, and added a new step: if the Executive Director determines the plan does not adequately address the reduction, Reclamation or DWR, the HRL parties, and Board staff “shall meet and confer regarding the determination and any appropriate next step” (Change Sheet #1, pages 6 to 7). The responses to comments describe these as edits that “do not change the operative requirements of the provision” (page 26).

The Public Water Agencies’ edits, drawn on the change sheet text, would then:

(a) Strike the trigger for other operational changes that result in a substantial reduction in Delta outflow, leaving only a formal new ROD or ITP.

(b) Declare that operations within the flexibility of the 2024 ROD and ITP do not reduce the analyzed flows. The change sheet text excludes such operations only when they “do not result in a substantial reduction”; the proposed text says the provision does not apply to them “because they do not result in a substantial reduction.” A question of fact becomes a recital. Reclamation’s stated plan to maximize deliveries under existing authorities is operation within that flexibility.

(c) Add a new paragraph: “A Relevant Change shall initiate review of whether the revised operations, together with HRL measures, provide reasonable protection of fish and wildlife beneficial uses, considering all factors under Water Code section 13241. Reduced Delta outflow alone shall not require replacement water or other mitigative action.” The section 13241 factors include economic considerations and the need for housing.

(d) Replace “ecological benefits comparable to what would have occurred absent the Relevant Change,” the standard an interim plan must meet, with “a level of protection for the fish species” comparable to that condition, in both places it appears. The benefits the Supplement attributes to the VA pathway are benefits “for native species in tributaries and the Bay-Delta ecosystem” (Conclusion 2). The new standard is narrower and the Plan does not define it.

Why this insulates the SWP. “Early termination or modification of the VA pathway for some or all HRL water rights is the primary enforcement mechanism for the VA pathway within the Board’s authority” (Staff Report, Common Response 1.2, page 60). Under the August text, a CVP change that reduces base outflow leaves a deficit the Board can address only by terminating or modifying the VA pathway for the HRL rights that do not cover it, and those rights then fall onto the regulatory pathway, where the SWP’s large HRL rights mean reduced SWP diversions. The edits cut that chain at the first link: a CVP change produces a review, the SWP’s commitments stay where they are, and the estuary absorbs the loss. The same edits cover the SWP’s own changes.

3. The Public Water Agencies’ edits to Sections 4.4.4 and 4.4.4.1

The deck would strike from Section 4.4.4 the sentence “As necessary, as part of the process to implement the Sacramento/Delta updates to the Bay-Delta Plan, the State Water Board will update the water right or other regulatory requirements of the SWP and CVP, as appropriate, to implement these objectives consistent with the Bay-Delta Plan” (page 62). From Section 4.4.4.1 it would strike the description of how the narrative objective is implemented, through compliance by the SWP and CVP with the numeric

objectives and the Endangered Species Act requirements for the export facilities, and the commitment that in annual or periodic review the Board “will evaluate the effectiveness of the interior Delta flow objectives and implementation actions and any needed changes to the Bay-Delta Plan or its implementation to ensure the reasonable protection of fish and wildlife beneficial uses, including to provide for consistent operations of the CVP and SWP export facilities for the reasonable protection of fish and wildlife” (page 62). In its place: “as described Section 4.4.”

The Board has already relied on the language the deck would strike. Commenters raised the prospect of uncoordinated operations between the SWP and CVP if Reclamation withdraws from the VA pathway. Staff answered that “The implementation provisions for the narrative interior Delta flows objective specifically identify that the Board will consider the need for additional implementation actions to provide for consistent operations of the CVP and SWP export facilities for the reasonable protection of fish and wildlife as part of the annual and periodic review processes or other water right process as necessary” (responses to comments, pages 19 to 20). On the Delta Cross Channel gates, staff answered that if the long-term operations of the Projects change, “the Plan amendments provide for reviewing and considering additional actions by the State Water Board to address those changes and consider other measures to implement the objective, including any provisions needed to provide for consistent operations between the SWP and CVP” (page 11). Strike the language and those answers have nothing behind them.

The timing matters. Reclamation has told the Board that “a federal Record of Decision or biological opinion does not require State Board staff permission to be implemented” and that it will operate under the governing Biological Opinion, Records of Decision, and Executive Order 14181 (Reclamation letter, page 2). The interior Delta flow objectives are the export limits and gate closures. Removing the Board’s stated commitment to implement them through the Projects’ water rights, and to address inconsistent operations of the two export facilities, at the moment one Project has announced it will operate independently, leaves the objectives with no described means of achievement under section 13242.

4. The Public Water Agencies’ deletion of the carryover storage provisions and Tables 7 and 8

The slide reads: “Delete the provisions establishing mandatory reservoir carryover storage for cold-water-pool management, including Tables 7 and 8.” That reaches the Carryover Storage Requirements subsection (page 54), under which the operators listed in Table 7 must propose end-of-September carryover storage requirements within the ranges in Table 8 as part of their long-term temperature management strategies, and it reaches Table 7

itself, which also identifies the operators required to submit those strategies and annual temperature management plans (pages 52 to 54). The presenter stated that the concern on this item had come from others, not from Metropolitan.

Table 7 lists the reservoirs and water right holders subject to the initial cold water habitat implementation actions, including Shasta and Keswick, Whiskeytown, Folsom, and Black Butte (Reclamation), and Oroville (DWR) (page 52). Table 8 sets the end-of-September carryover storage target ranges within which those operators must propose carryover storage requirements in their long-term temperature management strategies (pages 54 to 55). Operators may propose levels outside the ranges on a showing that they protect cold water habitat (page 54). Without the tables, the narrative objective has no identified reservoirs and no carryover ranges.

The tables are also mitigation. The Staff Report explains that the inflow requirements “could subsequently result in reductions in reservoir storage and lower reservoir cold water pool volume in summer and fall months,” and that “as a complementary measure to the inflow requirements, the revised proposed Plan amendments include a new cold water habitat objective ... intended to minimize redirected impacts on cold water habitat from the new inflow and Delta outflow requirements” (Common Response 1.2, page 57). Deleting the tables removes the complementary measure while keeping the inflow requirement it was meant to balance. That is new information of the kind the Board’s own recirculation standard describes.

The deletion tracks Reclamation’s objection that “The Draft Plan directly regulates federal reservoirs through carryover storage targets enumerated therein, and subject to Executive Director approval of temperature management strategies” (Reclamation letter, page 2).

Cold water pool is one of the most important requirements for the survival of anadromous fish in a warming climate. The Staff Report states that “During summer and fall, when warm air temperatures exert a strong influence on river temperatures, the release of cold water from reservoirs is critical for maintaining suitable cold water habitat,” and that temperature management below reservoirs is a concern “especially during droughts and critically dry periods” (Common Response 1.2, pages 56 to 57). The Plan commits the Board to assess “changes in air and water temperatures” and the “frequency and severity of droughts” under climate change (Section 4.6.1, page 127). The record of 2014 shows what is at stake. The Shasta temperature management plan developed by Reclamation with the fisheries agencies and the Board records that “Shasta Reservoir ran out of sufficiently cold water in September 2014,” that there was then “insufficient cold water available for release to the Sacramento River to manage temperatures,” and that this “was a primary factor contributing to the loss of 95% of last year’s year class of wild Sacramento River winter-run

Chinook” (Shasta Temperature Management Plan, Key Components, June 2015, page 2). The carryover storage ranges in Table 8 exist so that the cold water is there the next September.

5. Section 4.4.2.2: Change Sheet #1 and the Regional Water Authority footnote

Change Sheet #1 revised the sentence that ties the water supply adjustments (WSAs) to existing rights. It now reads: “The starting point for the inflow requirement for any water rights approved on or before December 31, 2025, includes WSAs for the level of diversions authorized under that right as of December 31, 2025. Unless supported by any necessary environmental and scientific documentation and incorporated (1) as part of a decision or order following a water rights proceeding concluding after OAL approval of the current Plan amendments or (2) as approved in the annual or periodic review process, WSAs do not apply to water rights other than those identified in the prior sentence.” Footnote 5, which defined new water supply projects, was deleted (Change Sheet #1, page 3).

The Regional Water Authority now proposes a footnote providing that “the level of diversion authorized” includes, “consistent with Water Code section 106.5, the full volume of diversion available for future municipal use” under permits issued before the end of 2025, with corresponding footnotes in Section 4.4.9.

The change is substantive. In the August text the WSAs attached to “the level of diversions occurring” under each right as of 2025 (page 47). The water between the WSA floor and 55 percent of unimpaired flow was available to existing diverters up to their 2025 use, in order of priority, and demand above that level was served only from water above 55 percent.

Authorized amounts under existing permits exceed the diversions that occur, in many cases by large margins. Moving the baseline to authorized amounts extends the WSA band to water that is not being diverted today, and the Regional Water Authority footnote makes the extension to unexercised future municipal volumes explicit. The responses to comments acknowledge that the VA pathway analysis “did not include evaluation of significant new diversions from the system that could reduce base flows and the additive effect of the HRL flows” (page 14). The same is true of the regulatory pathway analysis, which rests on diversions as they exist. In the driest third of years the river could be drawn to the 35 percent floor by demand that does not exist today.

The Board acts on the Sites Reservoir water right on November 4. The edits would not reach that decision, which concludes before OAL approval, but it would reach the Term 96 conformance proceeding or any change petition that follows, and the draft permit ties Sites to the Plan “consistent with any future amendments” (draft decision, pages 104 to 105).

The Delta Conveyance change petition decision will conclude after OAL approval, so the edits reach it directly. There is a further question the Board should answer on the record: whether diversions at the DCP's north Delta intakes, which add points of diversion under existing SWP permits, would count as diversions "authorized under that right as of December 31, 2025" and receive WSAs without any decision at all.

Section 106.5 protects a municipality's right to hold water "for existing and future uses," but it also provides that no municipality shall hold a right "to prevent the appropriation and application of water in excess of its reasonable and existing needs to useful purposes by others." Both halves belong before the Board.

6. Requests

We ask the Board:

1. Not to adopt the Public Water Agencies' edits to Sections 4.4.9.1, 4.4.4, 4.4.4.1, and 4.4.2.3, or the Regional Water Authority footnote, at this meeting.
2. To restore "occurring" in Section 4.4.2.2 and footnote 5, or to direct staff to analyze the water supply, flow, and outflow effects of the "authorized" baseline before adopting it.
3. If the Board is inclined to consider any of these changes, to continue the item, place the full text in the record, direct staff to analyze the effects on the Staff Report's flow, water supply, storage, and temperature results and on the additivity assumption in the Scientific Basis Report Supplement, and recirculate the revised analysis for public comment, as the Board did with Chapter 13 in December 2025.
4. To retain in the meantime the interim plan remedy and the beneficiary-pays intent in Section 4.4.9.1, the "ecological benefits" standard, the implementation language in Sections 4.4.4 and 4.4.4.1, and the carryover storage provisions and Tables 7 and 8 in Section 4.4.2.3.
5. To state on the record who the "Public Water Agencies" proposing edits are; whether the DCP's ITP amendment carries a replacement obligation under Section 4.4.9.1; who holds the interim plan obligation if Reclamation withdraws from the HRL program; whether route (1) is intended to reach the Sites conformance proceeding and the DCP decision; and whether diversions at the DCP intakes would be treated as authorized under existing SWP permits as of December 31, 2025.

Sincerely,

A handwritten signature in black ink, appearing to read 'DDJ', with a small apostrophe at the end.

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Documents cited

Final draft Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed (August 2026), Section 4.4.2.2, page 47; Section 4.4.2.3 and Tables 7 and 8, pages 52 to 55; Sections 4.4.4 and 4.4.4.1, page 62; Section 4.4.9.1, pages 66 to 67; Section 4.6.1, page 127.

Change Sheet #1, 10/28/2026 Board Meeting, Item 1 (circulated October 16, 2026), pages 3 and 6 to 7.

Responses to Comments on the August 2026 Final Draft Sacramento/Delta Updates to the Bay-Delta Plan (October 2026), pages 11, 13 to 14, 18 to 20, 26 to 27, and 39.

Final Staff Report, Sacramento/Delta Update to the Bay-Delta Plan (August 2026), Common Response 1.2, pages 56 to 57, 60, and 68.

State Water Resources Control Board, Notice of Opportunity for Public Comment and Board Meeting to Consider Adoption of Sacramento/Delta Updates to the Bay-Delta Plan, August 19, 2026, pages 1 to 3.

CalEPA External Scientific Peer Review Program, Final Response to Request for Review of the Final Draft Scientific Basis Report Supplement, February 21, 2024, including the State Water Board's request for review (Attachment 1, page 9 of 21) and the review by Stephen L. Katz, Washington State University (package page 31).

Bureau of Reclamation, letter to the State Water Resources Control Board, August 2026 Draft Water Quality Control Plan, Reclamation's Principal Concerns, September 4, 2026, page 2.

Shasta Temperature Management Plan, Key Components (Bureau of Reclamation with NMFS, USFWS, DWR, CDFW, and the State Water Board), June 2015, page 2.

Administrative Hearings Office, draft decision on Sites Project Authority Application 25517X01, March 20, 2026 (revised September 2026), pages 104 to 105.

Water Code sections 106.5, 13170, 13241, 13242, and 13244; Health and Safety Code section 57004; Public Resources Code section 21080.5; California Code of Regulations, title 23, sections 3775 and 3777; CEQA Guidelines section 15088.5; County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185.

Metropolitan Water District of Southern California, biography of Jon Rubin. Westlands Water District, press release, Westlands Water District Announces Departure of Key Personnel, September 15, 2023.