



Westlands Water District

October 22, 2026

State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Via email to: commentletters@waterboards.ca.gov

Re: 10/28-29/2026 BOARD MEETING – ITEM 1: Westlands Water District’s Comments on October 28-30, 2026, Meeting on Adoption of Amendments to the Draft Bay-Delta Water Quality Control Plan

Dear Chair Esquivel and Members of the State Water Resources Control Board:
Westlands Water District (“Westlands”) provides this comment letter on Agenda Item 1 of the State Water Resources Control Board’s (“Board”) upcoming October 28-30, 2026, meeting under which the Board will consider adoption of amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed (“Bay-Delta Plan” or “Plan”) and the supporting final Staff Report/Substitute Environmental Document (“Staff Report”).

Westlands has participated in every step of this process, having collaborated in the development of the 2022 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 (“2022 MOU”) and having submitted comments on the October 2023, October 2024, July 2025, December 2025, and August 2026 drafts and on the Staff Report.¹ Westlands remains committed to the concepts embodied in the 2022 MOU and the program of flow actions, non-flow actions, governance, and science and adaptive management described in the 2022 MOU and the Term Sheet attached thereto (now called the “Healthy Rivers & Landscapes Program” or “HRL Program”). Westlands further acknowledges that the status quo is not working for native fish species, the environment, water users and communities. And it affirms that the best path forward is for the parties to come together on equal footing as partners to an enforceable agreement to implement solutions that cannot be achieved by the Board through regulation alone.

It is now, however, abundantly clear that the Board has rejected collaboration and agreement in favor of the failed status quo. Although the Plan is replete with the terms “HRL” and “VA

¹Westlands submitted comments on each prior draft of the Bay-Delta Plan, as well as the draft Staff Reports released in September 2023 and December 2025, and incorporates those prior comments by reference.

pathway,” they obfuscate and conceal that what is actually in the Plan is not the program envisioned in the 2022 MOU. Rather, the Plan clearly demonstrates that the Board has substituted an enforcement and regulatory based directive masquerading as the HRL Program originally produced by a robust deliberative process that established a comprehensive agreement; one endorsed by other agencies and departments within State government, including the Natural Resources Agency, the Department of Fish and Wildlife and the Department of Water Resources, and that would protect the viability of native fish species and promote stable water supplies. At its core, the HRL Program was a negotiated undertaking in which public water agencies would voluntarily contribute water, money and cooperation in furtherance of narrative objectives.

Westlands cannot agree to proceed on the HRL pathway as it is now described in the current Plan (referred to herein as the “VA Pathway”) because it fails to honor the negotiated commitments in the HRL Program that were identified and agreed to in the 2022 MOU. Curiously, the current form does not seek to rely upon consent through agreement, once believed necessary by the State, and now adopts the view it had the authority to impose its will by regulation. As such it both lacks legal footing and represents a continuation of the failed status quo, under which the environment and communities will continue to suffer.

The Plan’s alternative enforcement based regulatory pathway (the “UIF Pathway”) also remains deeply flawed. Requiring that a fixed percentage of unimpaired flow stay instream each year, regardless of season or need, is a radical and abrupt reversal of more than a century of California water policy. Moreover, the approach to protecting beneficial uses of water represented by the UIF Pathway is inconsistent with declarations and findings enacted in 2025, through Senate Bill 72 (The California Water Plan: long-term supply targets) in which the Legislature found, inter alia, that: “(a) To thrive as a state, California needs a reliable supply of water for urban, agricultural, and environmental uses that is resilient to climate change. . . . (s) It is essential for our economy, environment, and well-being that California increases the resilience of the states [sic] water supplies. . . . (v) The Sacramento-San Joaquin Delta Reform Act of 2009 establishes a state policy to meet California’s future water needs through the coequal goals for the Delta of increased water supply reliability and Sacramento-San Joaquin Delta ecosystem restoration.” (Sec. 1, Chapter 210, Statutes of 2025.)

Contrary to the policies underlying these findings and declarations, as well as the mandate of Article X, section 2 of the California Constitution to avoid waste and unreasonable use of water, the unimpaired flow objectives threaten substantial water supply losses for benefits to species that almost certainly will not be realized. The Board has implicitly acknowledged this by again failing to assess whether the UIF Pathway will achieve biological goals. The Board’s approach is first to require flows and to figure out later whether these flows actually benefit species. This approach does not meet the exacting requirements of Article X, section 2, which requires that the needs of all beneficial uses be met under reasonable means, and is otherwise not the reasonable protection of all beneficial uses the Porter-Cologne Act requires.

The Board has also chosen an ill-suited, impermissible tool to implement that change: imposing detailed water rights requirements, without the adjudication and due process required to impose such requirements, through the water quality planning process. If the Plan is approved, the Board will eliminate the distinction between the due process traditionally accorded to water rights holders and its quasi-legislative authorities arising under Porter Cologne, a result inconsistent with the *Racanelli* decision. (*United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82.) In addition, the Final Staff Report also fails to cure the California Environmental Quality Act (“CEQA”) deficiencies identified in our prior comments, and its responses to those comments do not provide the good faith, reasoned analysis CEQA requires.

I. The Plan Must be Clarified to Include a Process to Affirmatively ‘Opt in’ to the VA Pathway or to Remove all References to Westlands’ Commitments from Appendix B.1

As stated in its September 18, 2026, letter on the August 2026 Final Draft Plan, Westlands cannot participate in the VA Pathway as described in the Plan because it is inconsistent with the principles of agreement in the 2022 MOU. Given the Board’s lack of regulatory authority to compel participation in the VA Pathway, the 2022 MOU anticipated a process by which HRL participants would affirmatively “opt-in” to the VA Pathway. However, the Plan appears to circumvent that critical step by assuming assent has already been given and assigning parties, including Westlands, to the VA Pathway. This is false. Westlands has not consented and we see no recorded consent by the United States, among others. Yet, the Plan contemplates, instead, that VA Pathway participants must “request” to withdraw from the program, subject to public comment and review by the Board’s Executive Director. However, it is an indisputable fact that as of this writing, neither Westlands nor any other party to the 2022 MOU has made a formal commitment to the VA Pathway and, in fact, none of the agencies assigned to the VA Pathway, including the Department of Water Resources, has conducted any public CEQA process or made a formal commitment to undertake the flow and non-flow measures assigned to them by the Plan. Had they made such a commitment, it would have been pre-decisional (and would raise concerns of compliance with CEQA and Brown Act obligations of the individual public water agencies).

This concern was previously raised in a joint comment letter submitted to the Board on September 18, 2026, and signed by multiple water agencies—including Westlands. In response, the Board Meeting Agenda posted on October 16, 2026, included proposed changes to the August 2026 Final Draft Plan, which include additional definition of the procedure for “requesting” withdrawal from the VA Pathway, but which do nothing to address the fundamental concern that this process removes the ‘voluntariness’ of the VA Pathway.²

Accordingly, if the Board refuses to update the Plan to clarify a mechanism by which parties affirmatively opt into the VA Pathway, Westlands must respectfully notify the Board that the

² See also Response to Comments at 19 (noting that the Board is not clear if Westlands “will withdraw from the VA pathway,” which presupposes that Westlands is already *in* the VA pathway—which it is not).

Board must amend Appendix B.1 of the Plan to remove all references to commitments by Westlands.

II. The Plan, if Adopted, Would Violate California Law

The newest updates to Plan do not otherwise address the primary concerns and serious legal deficiencies previously raised by Westlands and other water users.

A. The Proposed Changes are Substantive and Warrant Additional Opportunity for Public Comment

As an initial matter, the updates to the Plan posted on October 16, 2026, contain substantive changes to the regulatory provisions of the Plan that should be recirculated for additional public comment. These include, but are not limited to: (1) changes to Section 4.4.2.2 providing an additional mechanism by which water rights can qualify for Water Supply Adjustments (“WSAs”); (2) new language in Section 4.4.9 incorporating an expanded procedural process and substantive obligations related to requests for removal from the VA Pathway; (3) new language in Section 4.4.9.1 providing additional meet and confer requirements related to the base flow balancing obligations; and (4) updates to the provisions governing permanent state water purchases.³

B. Constitutional Violations

The Board has failed to undertake the assessment required by Article X, section 2 of the California constitution to determine reasonableness of water allocation. The Plan would require that large blocks of water stay instream based on nothing more than aspirations concerning benefits for native fish species. The Board simply lacks sufficient information to conclude the dedication of these volumes of water to fish and wildlife use are required in the amounts identified as being reasonable and will not constitute waste. It is not sufficient for the Board to use vast quantities of water to address an instream need without a demonstration that the amount is reasonable under the facts and circumstances presented. Additionally, provisions like the base-flow balancing lock in measures that have been scientifically proven to be ineffective and are therefore per se a wasteful and unreasonable use of water.

As noted above the Plan’s provisions also modify water rights inconsistent with *Racanelli* and without the adjudicative hearing necessary to protect the due process rights of those water rights holders as guaranteed by the 14th Amendment and the Article I, section 7 of the California Constitution. The Plan imposes limitations on diversions, including through anticipated curtailments by regulatory action, conditioning water rights without a water rights hearing and without any legal basis for prioritizing refuge deliveries consistent with water rights

³ The Board staff appear to recognize these as substantive edits, given the change sheet separates “Changes to the August 2026 Final Draft Bay-Delta Plan” from “Other Minor and Typographical Edits to the August 2026 Final Draft Plan.”

priorities. The Plan also anticipates “more stringent controls” indicating an automatic tightening of relevant limitations on use of water rights without a proceeding.⁴

C. Porter-Cologne Act Violations

The Board’s authority to adopt the Bay-Delta Plan is based on the Porter-Cologne Act, which directs the Board to (1) establish water quality objectives that provide reasonable protection of beneficial uses after consideration of all relevant factors, and (2) to achieve the highest reasonable water quality in consideration of all demands, as well as economic and social considerations. Adoption of the Plan would exceed the Board’s authority under Porter-Cologne, for reasons including:

- Flow-rate parameters and facility operations are not lawful water quality objectives.
- The Board’s statements in Chapter 13 that establishing “reasonable protection” for fish and wildlife uses does not involve “analysis of competing water allocations” violates the mandate in Water Code section 13000 to consider all demands being made on water.
- The Plan and supporting documents contain insufficient evidence to support a finding that flow volumes are necessary to provide reasonable protection given there are no set biological goals.
- The Board did not undertake an adequate consideration of economic impacts as required by Water Code section 13241.
- Imposition of water rights conditions such as carryover storage, temperature plans, and curtailments exceeds the bounds of the Board’s water quality planning authority
- Improper reliance on legal standards outside of Porter-Cologne’s “reasonable protection” standard, including Fish and Game Code section 5937, the federal Endangered Species Act, and the California Endangered Species Act.

D. Administrative Procedure Act (“APA”) Violations

As required by Government Code section 11353, the provisions of the Plan must comply with the standards outlined in the APA. The Plan fails to do so, and its adoption by the Board will violate the APA in multiple ways.

- Adoption of the Plan exceeds the Board’s authority under Porter-Cologne, including for the reasons identified above.
- The Plan is inconsistent with existing law. In addition to violating the California Constitution and the Water Code as discussed above, the Plan contradicts federal law governing operations of the Central Valley Project (“CVP”). Without limitation, the Plan (1) violates the intergovernmental immunity doctrine by regulating federal operations of the CVP such as storage carryover requirements, Shasta operations, and temperature management as well as imposing more stringent requirements on the federal government than other regulated parties; (2) conflicts with federal law by imposing

⁴ For example in footnote 7, the Plan states that as between the Plan and existing water rights orders, the “more stringent requirements apply” – essentially admitting that the Plan’s provisions would supplement terms imposed through water rights proceedings.

additional and inconsistent restrictions on operations approved by the Endangered Species Act permitting and the 2025 Record of Decision governing coordinated operations of the CVP and the State Water Project (“SWP”), including by implying the California Endangered Species Act governs operations of the CVP, and frustrating the purpose and acting as an obstacle to congressionally mandated goals and congressionally-approved operations of the CVP and coordinated operations of the CVP and SWP; and (3) unlawfully regulating federal property including through regulations on water rights, federal reservoirs, including Shasta Dam, and other federal facilities, including the Delta cross channel gates.⁵

- The Plan lacks clarity on key terms and is therefore not easily understood by the regulated community. Of particular concern are the numerous instances of delegated decision-making to the Board’s Executive Director. These delegations lack specific criteria or clear boundaries to allow the regulated community to understand what standards will guide future decisions and thereby improperly delegates the Board’s rulemaking authority to the Executive Director. Moreover, the Plan’s failure to provide adequate direction for the exercise of delegated authority would allow the Executive Director to apply standard(s) that will not have been adopted through the proper APA process. This poses not only a clarity issue, but an authority concern and risks an underground regulation. Some examples include, but are not limited to, (1) Section 4.4.9 granting the Executive Director authority to approve requests to withdraw from the VA Pathway but without specifying what standard will guide that decision; (2) Section 4.4.3.2 granting Executive Director authority to approve an exception to curtailments for wildlife refuge supplies without providing a framework for determining what qualifies as appropriate supporting information to qualify the need for such an exception; (3) Executive Director approval of changes to accounting procedures; (4) approval of carryover storage requirements in Section 4.4.2.3; (5) discretion for seasonal adjustments of numeric flow requirements; (6) approval of temperature management strategies and carryover storage targets; and (7) resolution of disagreements on operation of the Delta cross channel gates.
- The administrative record lacks substantial evidence demonstrating the necessity of certain provisions in the Plan. This includes but is not limited to (1) delegation of authority to the Executive Director; (2) the base-flow balancing provisions; (3) setting an arbitrary date of December 31, 2025 for application of the WSA framework or inclusion in the VA pathway; (4) discrepancies in treatment of WSAs for different tributary groups, for example the Mokelumne, Putah, and Calaveras tributaries, which benefit from less stringent unimpaired flow requirements; (5) Section 4.4.3.2’s exception from curtailments for refuges but not for other beneficial uses; and (6) shifting the

⁵ Westlands supports the comments submitted by the Bureau of Reclamation on September 4, 2026, and September 18, 2026 which address these concerns, as well as earlier comments submitted in February 2026 which raise many of these issues.

unimpaired flow requirement in ten percent increments versus five percent or other increments.

E. California Environmental Quality Act Violations

The Final Staff Report fails to comply with the requirements of CEQA. This includes use of a legally deficient project description as well as a failure to state project objectives. Westlands' prior comment letters raise numerous concerns with the Staff Report's analysis, including but not limited to unstable project description, improperly deferred objectives, failure to analyze adaptive scenario, unrealistic assumptions regarding groundwater impacts, and lack of model transparency. Furthermore, the Board's responses to comments are inadequate and fail to comply with CEQA. Finally, changes made beyond those in the August 2026 Final Plan created substantive changes requiring recirculation of the Staff Report. Given the inadequacy of the CEQA analysis, the findings and statement of overriding considerations are also not supported by substantial evidence.

III. Conclusion

Westlands appreciates the significant time commitment by the Board and its staff to finalize Plan. From the beginning, it was the intent of many, including Westlands that the process was intended to embrace collaboration and voluntary commitment to improve both environmental and public water supply outcomes in the public interest. However, as proposed by the Board, the Plan bears little resemblance to the principles embodied in the original undertaking. In its desire to reach a final outcome to this admittedly difficult process, the Board has completely abandoned these principles. The current Plan faces fierce resistance from all quarters. While it is true that fair conflict resolution may leave everyone somewhat dissatisfied, dissatisfaction is not a surrogate for good. Sometimes, a bad settlement is just a bad settlement. Nowhere is this more true than here. Westlands cannot participate in the VA Pathway as currently proposed.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Allison Febbo".

Allison Febbo
General Manager
Westlands Water District