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January 29, 2026

Via Electronic Email Only

State Water Resources Control Board
SacDeltaComments@waterboards.ca.gov

Administrative Hearings Office
State Water Resources Control Board

Re: Comment Letter-Revised Draft Sacramento/Delta Bay-Delta Plan Updates & Ch. 13 of Draft Staff Report

Dear State Water Resources Control Board:

By this letter, our public interest organizations comment pursuant to CEQA on the State Water Resources Control Board (Board) December 12, 2025, draft of potential updates to the *Water Quality Control Plan for the San Francisco Bay/Sacramento San Joaquin Delta Watershed* (Bay Delta Plan), and on Chapter 13. All of these comments are CEQA -related comments. The Board's new document will be referred to herein as the *2025 Draft Updates*.

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These comments are submitted by Sierra Club California, AquAlliance, Center for Biological Diversity, California Water Impact Network, and the Planning and Conservation League.

Our organizations object to approval of the Revised Proposed Plan Amendments, the Voluntary Agreements (VAs), and the Regulatory Pathway (55 w/WSAs.)

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It is time for the "full environmental disclosure" required by the California Environmental Quality Act (CEQA) to the people of the State of California if the Board is going to adopt the 2025 Revised Proposed Plan Amendments; the Voluntary Agreements (VAs) and/or the Regulatory Pathway (55 w/WSAs.) The 55 w/WSA's means "new water supply adjustments that lower flow requirements under all but wetter conditions and includes changes to export constraints..." (Chapter 13, p. 13-44.) The Revised Proposed Plan Amendments will do nothing to halt the worsening conditions for endangered and threatened fish species. They will do nothing to halt the worsening public health conditions for Delta residents and users resulting from worsening Hazardous Algal Blooms (HABs) and other water quality violations. The reason is that freshwater flows must be increased through the Delta meaning that water exports must be reduced. The Voluntary Agreements export reductions range from nothing to trivial—by comparison to the September 28, 2023, *Staff Report/SED* proposed Plan amendments. As the 2023 *Staff Report/SED* explained, accurately and honestly, "*Current Delta outflow requirements are far below protective levels.*" (Ch. 5, p. 5-28.) (Emphasis added.)

Chapter 13 explains that "Due to its importance in preventing sea water intrusion, the most important hydrologic driver for Delta water quality is Delta outflow." (Chapter 13, p. 13-358.)

It is time for the Board to, in compliance with CEQA, disclose to Californians that adoption of the Revised Proposed Plan Amendments with the trivial export reductions will continue toward the extinction of endangered and threatened fish species and worsen public health for Delta residents and users. Given that the project purpose "is a restoration project that is intending to improve aquatic habitat conditions" (2023 *Staff Report/SED*, Ch. 7, pp. 7.24-51, -52), the Revised Proposed Plan Amendments are not even a feasible alternative. The Board continues to say, "It is important that the CEQA

impact conclusions be understood in the context of the nature of the proposed project, which is intended to be a restoration action." (Chapter 13, p. 13-420.)

One reason for the lack of full environmental disclosure so far is the Board's apparent agenda to accommodate new proposed projects that would *increase* water diversions and further *reduce* flows such as the Department of Water Resources' (DWR) proposed Delta Conveyance Project-- the Delta Water tunnel.¹

The Board said in its December 12, 2025, "NOTICE OF LIMITED RECIRCULATION AND NOTICE OF AVAILABILITY AND OPPORTUNITY FOR PUBLIC COMMENT AND HEARING ON..." the Revised Proposed Plan Amendments, that "The Board is not accepting further comments on the remainder of the draft Staff Report that was previously released for public comment." (Board Notice p. 3.) That document will be referred to herein as "*Staff Report/SED*." The *Staff Report/SED*, being a Substitute Environmental Document, is the *only* environmental review document prepared by the lead agency-the Board--other than Chapter 13. The *Staff Report/SED* contains substantial evidence that the Revised Proposed Plan Amendments would worsen rather than improve the "ecological crisis" in the Bay-Delta ecosystem.

The Board's *Staff Report/SED* provides environmental disclosure in stating "Native species in the Bay-Delta ecosystem are experiencing an ecological crisis" (Ch. 7, p. 7.12.1-1) and that "Current Delta outflow requirements are far below protective levels." (Ch. 5, p. 5-28.)

The reductions proposed in the Revised Proposed Plan Amendments range from nothing to trivial by comparison to the *Staff Report/SED* High Flow alternative and also the 2023 Proposed Plan amendments. The 2025 *Draft Updates* appear to be an effort to hide by voluminous verbiage the deliberate failure to disclose the significant adverse environmental impacts that will result if the Revised Proposed Plan Amendments are adopted.

¹ Because these comments include statements about the proposed Delta Conveyance Project, these comments are also being served on the Administrative Hearings Office and all parties to the ongoing Water Board administrative Hearing in which DWR seeks approval for the new points of diversion to accommodate its proposed Project.

The Board's December 12, 2025, Notice, and Chapter 13 say, "Both the **final** Staff Report and final **draft** of the Plan will be available for public review and comment before being considered for adoption by the [State Water] Board at a future Board meeting." (Notice p. 4; Chapter 13, p. 13-1.) (Emphasis added.)

The Staff Report/SED and Chapter 13 are not adequate under CEQA, the CEQA Guidelines, and the Board's own Regulations with respect to the Voluntary Agreements and the Regulatory Pathway (55 w/WSAs.) The Board will fail to proceed in the manner required by CEQA, the Guidelines, and the Board's own Regulations if it adopts the Revised Proposed Plan Amendments without having prepared and recirculated an adequate **draft** EIR or revised **draft** *Staff Report/SED* on their environmental impacts and feasible alternatives.

The environmental documentation issued by the Board so far including Chapter 13 has been so "fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded" with respect to reasonably foreseeable significant adverse environmental impacts associated with the Revised Proposed Plan Amendments. Chapter 13 has also omitted analysis of reasonable alternatives including the Board's own 2023 proposed Plan amendments and High Flow Alternative. (See CEQA Guidelines § 15088.5(a) and the Board's Regulation 23 Code Cal. Regs § 3777(b).)²

A. CEQA COMMENTS ON DECEMBER 2025 REVISED DRAFT PLAN AND CHAPTER 13 OF THE DRAFT STAFF REPORT

1. THE REVISED PROPOSED PLAN AMENDMENTS AND CHAPTER 13 DO NOT PROVIDE THE FULL ENVIRONMENTAL DISCLOSURE REQUIRED BY CEQA

A CEQA goal is "transparency in environmental decision-making." (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 136.) "CEQA requires full environmental disclosure..." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 88.) "'While foreseeing the unforeseeable is not possible, an agency

² The CEQA Guidelines are codified at 14 Cal. Code Regs § 15000 et seq.

must use its best efforts to find out and disclose all that it reasonably can.’ (Guidelines, § 15144.)” (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 5th 918, 938) (Emphasis added.)

The Board is acting under a certified regulatory program. “A certified regulatory program is subject to the broad policy goals and substantive standards of CEQA. [Citation omitted.] It is said that the substitute documents serve as the functional equivalent of an EIR.” (E.g., *Conway v. State Water Resources Control Board* (2015) 235 Cal.App.4th 671, 680.)

In contrast to providing full environmental disclosure, the *2025 Draft Updates* falsely state “The Bay-Delta Plan is periodically updated.” (*2025 Draft Updates* p. 6.) The Environmental Protection Agency (EPA) January 19, 2024, comment letter on the *Staff Report/SED* stated, “EPA notes that water quality standards for the water bodies covered in this Staff Report were last updated in 1995, despite a Clean Water Act requirement that States consider and as appropriate, make such updates at least once every three years. CWA § 303(c)(1).” (EPA Letter at 1 fn.1.) The truth about being last updated in 1995 is also set forth in the *Staff Report/SED*. (Ch. 5, p. 5.3.)

It is false to claim, “This plan was informed by environmental reports prepared in compliance with Public Resources Code section 21080.5.” (*2025 Draft Updates* p. 6.) That is a reference to the *Staff Report/SED*. As will be shown in this comment letter, the Revised Proposed Plan Amendments including the Voluntary Agreements are *contrary* to the *Staff Report/SED*.

2. THE VOLUNTARY AGREEMENTS REDUCTIONS IN EXPORTS RANGE FROM NOTHING TO TRIVIAL

Despite the crisis for endangered and threatened fish species, “The last major update to the flow objectives for the protection of fish and wildlife beneficial uses in the Sacramento River watershed and Delta occurred in 1995.” (*Staff Report/SED*, Ch. 5, p. 5-3.) Enhanced flows are the principal means identified to implement the objectives discussed in Chapter 5. (*Id.* pp. 7-10.) “In response to declines of several native aquatic

species since the Bay-Delta Plan was last comprehensively updated, the State Water Board is in the process of updating and implementing the Bay-Delta Plan to provide for the reasonable protection of native fish and wildlife.” (*Staff Report/SED*, Ch. 1, Executive Summary p. 1.) The Executive Summary explained,

Existing regulatory minimum Delta outflows would not be protective of the ecosystem, and without additional instream flow protections, existing flows may be reduced in the future, particularly with climate change and additional water development absent additional minimum instream flow requirements that ensure flows are preserved instream when needed for the reasonable protection for fish and wildlife. (*Id.* p. 1-9.)

The proposed minimum inflow objective was 55% of unimpaired flow within an allowed adaptive range between 45 % and 65% from Sacramento/Delta tributaries. (*Staff Report/SED*, Ch. 5, p. 5-17.) The outflow objective included, “Inflow-based Delta outflows that would require inflows required as part of the Bay-Delta Plan, including from the Sacramento/Delta tributaries and San Joaquin River and tributaries, to be provided as outflows.” (*Staff Report/SED*, Ch. 7.2, Description of Alternatives, p. 7.2-2.) “Changes in hydrology would increase annual Delta outflow in all months except August.” (*Id.*, p. 7.12.1-77.) Water exports and upstream diversions have combined to reduce the average annual Delta net outflow 33% from 1948 to 1968 and 48% from 1986 to 2005 compared with unimpaired conditions. Moreover, “Since the 1990s, there also has been a significant decline in spring outflow and a reduction in the variability of Delta outflow throughout the year (see Figure 2. 4-71 Chapter 2, Hydrology and Water Supply) due in part to water diversions as well as hydrology.” (*Staff Report/SED*, Ch. 5, p. 5-27.) Chapter 5 explained,

Outflows are needed to provide for ecological processes, including continuity of flows from tributaries and the Delta to the Bay to protect native estuarine and anadromous aquatic species that inhabit the Bay-Delta and its tributaries throughout the year as juveniles or adults. Those outflows are needed to provide appropriate habitat conditions for migration and rearing of estuarine and anadromous fish species. (*Id.*)

Chapter 5 said, “*Current Delta outflow requirements are far below protective levels.*” (*Id.* p. 5- 28)(Emphasis added.) “The proposed Delta outflow objectives, working with the inflow objectives, are intended to provide a comprehensive integrated flow regime that protects fish and wildlife from natal streams out to the ocean. The changes are proposed both to enhance Delta outflow protections and to ensure that existing protections are not diminished.” (*Id.*) The proposed narrative Delta outflow objective includes, “Maintain Delta outflows sufficient to support and maintain the natural production of viable native, anadromous fish, estuarine fish, and aquatic species populations rearing in or migrating through the Bay-Delta estuary.” (*Id.*)

By increasing Delta inflows and outflows the proposed Plan amendments lead to reductions in exports. Chapter 7.6.2 explained there would be reduced exports for irrigation for agriculture and the Metropolitan Water District of Southern California (MWD.) (*Staff Report/SED*, Ch. 7.6.2, pp. 7.6.2-96-98.) “Implementation of the proposed Plan amendments will result in changes in Sacramento/Delta water supply, including reductions to agricultural and municipal uses,..” (Ch. 7, p. 7.1-17.) The impacts of reductions in exports from the Sacramento/Delta for agricultural and municipal uses are discussed in Chapter 7.12 on Hydrology and Water Quality. (Ch. 7.12 pp. 7.12.1- 96-100.) According to the Chapter 6 explanation of the simulation period of 93 water years, 16% of years are critical, 23% are dry, and 18% are below normal collectively making up 57% of the water years. (*Staff Report/SED*, Ch. 6, Changes in Hydrology and Water Supply, p. 6-52.) Under the proposed flow objectives of 55% unimpaired flow, exports from the Sacramento/Delta supply to the San Joaquin Valley region would be reduced by 383 TAF (thousand acre-feet per year) in critical years, 707 TAF in dry years, 510 TAF in below normal years, 277 TAF in above normal years, and 96 TAF in wet years. (*Id.* Table 6.4-20, p. 6-74.) Exports from the Sacramento/Delta supply to the Southern California region would be reduced 177 TAF in critical years, 673 TAF in dry years, 655 TAF in below normal years, 541 TAF in above normal years, and 265 TAF in wet years. (*Id.* Table 6.4-24, p. 6-79.) The referenced tables give the reductions under all scenarios under all 3 alternatives presented in the *Staff Report/SED*.

There would be a significant reduction of water exports under the proposed 2023 Plan amendments. The January 10, 2025, comments on the October 25, 2024, draft of potential updates to the Bay-Delta Plan submitted by Sierra Club California, AquAlliance, Center for Biological Diversity, California Water Impact Network, and the Planning and Conservation League pointed out that the Voluntary Agreements reductions in exports were minuscule compared to the *Staff Report/SED* proposed Plan amendments. (*Sierra Club California et al. January 2025 Comments*, pp. 10-11.) None of the inadequacies under CEQA pointed out by the *Sierra Club California et al. January 2025 Comments* have been corrected so far by the Board.

A review of the December 2025 *Draft Updates* Table 9, p. 67, and Chapter 13 Table 13.3-1, p. 13-21 shows that nothing has changed in this regard. “Delta foregone exports” under the Voluntary Agreements (VAs) would be the same as shown in the October 24, 2025, Draft. The *Staff Report/SED*, Table 6.4-10, p. 6-74, and Table 6.4-24, p. 6-79, show the reductions in exports to the San Joaquin Valley Region (Table 6.4-20) and to the Southern California Region (Table 6.4-24), that would occur for water year types Critical, Dry, Below normal, Above normal, and Wet under alternatives including the *Staff Report/SED* proposed Plan amendments objective of 55% of unimpaired flow. The differences are:

Critical Years (C)

VAs	no foregone exports
<i>Staff Report/SED</i>	560 TAF (thousand acre feet per year)

Dry Years (D)

VAs	125 TAF
<i>Staff Report/SED</i>	1,380 TAF

Below Normal Years (BN)

VAs	125 TAF
<i>Staff Report/SED</i>	1,165 TAF

Above Normal Years (AN)

VAs	175 TAF
<i>Staff Report/SED</i>	818 TAF

Wet Years (W)

VAs	no foregone exports
<i>Staff Report/SED</i>	361 TAF

Again, in stark contrast to the 2023 *Staff Report/SED* proposed Plan amendments, the export reductions to increase flows in the Voluntary Agreements range from nothing to trivial.

3. THOUGH NATIVE SPECIES IN THE BAY-DELTA ECOSYSTEM ARE EXPERIENCING AN ECOLOGICAL CRISIS THE REVISED PROPOSED PLAN AMENDMENTS ARE NOT A SERIOUS EFFORT TO INCREASE FRESHWATER FLOWS

Chapter 7 of the *Staff Report/SED* explained that,

The purpose of the project, as elaborated in Section 7.1.2, California Environmental Quality Act, is to establish water quality objectives and a program of implementation for the reasonable protection of fish and wildlife beneficial uses in the Sacramento/Delta watershed. Fundamentally, *the project is a restoration project that is intending to improve aquatic habitat conditions in the broad geographic area of the Sacramento/Delta watershed from current impaired and declining conditions.* Implementation of the proposed Plan amendments is expected to benefit aquatic biological resources that are associated with healthy rivers, healthy estuaries, and a functioning watershed. (*Staff Report/SED*, Ch. 7, pp. 7.24-51, -52) (Emphasis added.)

Contrary to the 2023 proposed Plan amendments, the 2025 Revised Proposed Plan Amendments including the Voluntary Agreements are not a “restoration project that is intending to improve aquatic habitat conditions in the broad geographic area of the Sacramento/Delta watershed from current impaired and declining conditions.”

Chapter 7 of the *Staff Report/SED* sets forth the Environmental Analysis for the Document. The Chapter explains, “The Sacramento/Delta update to the Bay-Delta Plan is

critically important to the health and survival of the Bay-Delta ecosystem. Native species in the Bay-Delta ecosystem *are experiencing an ecological crisis.*” (Ch. 7.12, Hydrology and Water Quality, 7.12.1 Surface Water, p. 7.12.1-1) (Emphasis added.) The Chapter goes on to explain the quality of water in the channels has been degraded and,

There has been a substantial overall reduction in flows and significant changes in the timing and distribution of those flows, and species have been cut off from natal waters. These issues have led to *severe declines, and in some cases extinctions, of native fish* and other aquatic species. The overall health of the estuary for native species is in trouble, and expeditious action is needed on the watershed level to address the crisis, including actions by the State Water Board, fisheries agencies, water users, and others to address the array of issues affecting the watershed. (*Id.*)

Chapter 7.23 of the Environmental Analysis explains in similar fashion,

The Delta is experiencing *an ecological crisis* in the watershed *and the prolonged and precipitous decline* in numerous native species of spring-run and winter-run Chinook salmon, longfin smelt, Delta smelt, Sacramento splittail, and other species, and the factors involved in those declines...

Failing to take actions proposed by the proposed Plan amendments could result in the loss of Delta function beyond restoration of its original function and, therefore, would result in a significant irreversible environmental change. (Ch. 7.23, Cumulative Impact Analysis, Growth-Inducing Impacts, and Significant Irreversible Environmental Changes, p. 7.23-69) (Emphasis added.)

Chapter 7.6.2 of the Environmental Analysis explains, “Anadromous salmonids, which use habitat in the Bay-Delta estuary and upstream tributaries, have also exhibited substantial declines in population abundance in recent decades.” (Ch. 7.6.2, Aquatic Biological Resources, p. 7.6.2-4.) The Chapter goes on to explain,

It is estimated that the average annual natural production of Sacramento River winter-run Chinook salmon, Sacramento River spring-Chinook salmon, Sacramento River fall-run Chinook salmon (mainstem), and Sacramento River late fall-run Chinook salmon (mainstem) decreased between 1967 and 1991 and between 1992 and 2015 by 89, 61, 43, and 52 percent, respectively (see Table 3.4-3 in Chapter 3). Available data also show a long-term decline in escapement of steelhead from the Sacramento and San Joaquin River basins (McEwan 2001). Hatcheries now provide most of the salmon and steelhead caught in the commercial and recreational fisheries. (*Id.* p. 7.6.2-4.)

“The population abundance of Sacramento splittail, Delta smelt, and longfin smelt have declined by 98, 98, and 99 percent, respectively, since sampling began in 1967.” (Ch. 3, Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, p. 3-134.) Chapter 7.6.2 explains how the proposed increases in Delta inflows and outflows would improve flow and habitat conditions for anadromous, estuarine, and resident fish conditions to support their life stage needs. (Ch. 7.6.2, p. 7.6.2-36 and pp. 7.6.2-35-39.)

Escapement of winter-run Chinook salmon was 100,000 fish in the 1960s, as high as 35,000 fish in 1976, since declining to a few thousand. (Ch. 3, p. 3-23.) Spring-run Chinook salmon runs were as large as 600,000 fish from 1880 to 1940 but now average around 14,500 fish. (*Id.* p. 3-25.) Higher flows are protective of all Central Valley Chinook salmon and steelhead as they migrate through the Delta as juveniles. (*Id.* p. 3-42.)

“Delta outflow also affects biological resources in San Francisco Bay and the nearshore coastal ocean.” (*Id.* p.3-10.) “Increased Delta outflows provide higher water quality and habitat complexity, leading to positive effects on native fish species and foodwebs.” (*Id.*) “The abundance, reproductive success, and mortality rate of Orca whales that migrate and specialize in feeding on salmon outside the Golden Gate have been affected by the major salmon declines in recent years (Ford and Ellis 2006; Ford et al. 2010; Ward et al 2009). Their populations are limited by the availability of salmon prey, highlighting the importance of Delta outflow all the way to the top of the aquatic chain.” (*Id.*) The abundance of longfin smelt is positively correlated to Delta outflow. (*Id.* p. 3-56.

Chapter 2 of the *Staff Report/SED* explains,

The combined effects of water exports and upstream diversions have contributed to reduce the average annual net outflow from the Delta by 33% and 48% during the 1948 through 1968 and 1986 through 2005 periods, respectively, compared with unimpaired conditions (Fleenor et al. 2010). Dayflow data also show a trend for decreasing Delta outflow through time. Since the 1990s, there has been a reduction in spring outflow and a reduction in the variability of Delta outflow throughout the year (Figure 2.4-7) due largely to the combined effects of exports,

diversions, and variable hydrology. (Ch. 2, Hydrology and Water Supply, p. 2-106.)

“The species evaluations indicate that multiple aquatic species in the Bay-Delta estuary are in crisis. Recovery of native species would require both habitat restoration and increased flow in Central Valley tributaries and the Delta. Successful recovery of native species is not possible without parallel investment in both efforts.” (*Id.* p. 3-134.) Most of the fish species mentioned so far are listed as endangered or threatened under the federal Endangered Species Act (ESA) and/or the California Endangered Species Act (CESA).³

There is nothing in Chapter 13 contending that the 2023 *Staff Report/SED* was incorrect in its explanation of the ecological crisis threatening listed fish species. To the contrary, Chapter 13 states, “As discussed in Chapter 3 [of the 2023 *Staff Report/SED*] several Bay-Delta fish species are threatened or endangered, and natural flow regimes are key to their recovery.” (Ch. 13, p. 13-538.)

One of the listed fish species, Delta Smelt, has already become virtually extinct. For 8 years in a row now, the California Department of Fish and Wildlife has not found any Delta Smelt in its Fall Midwater Trawl survey in the Delta conducted in September, October and November of 2025. (Memorandum, p. 2, from Margaret Johnson, Environmental Scientist, Bay Delta Region to Erin Chappell, Regional Manager, Bay Delta Region, Department of Fish and Wildlife, December 22, 2025.)

The *Staff Report/SED* also details the potential impacts of the Bay-Delta Plan updates on semi-aquatic and terrestrial species and ecosystems. The *Staff Report* explains that many different terrestrial habitat types are present in the plan area, including but not limited to riparian, riverine, oak woodland, many different types of wetlands,

³ Chinook Salmon, Sacramento River Winter-Run ESU (evolutionary significant unit) are endangered under both the federal and state Endangered Species Acts (ESAs). Chinook Salmon, Central Valley Spring-Run ESU are threatened under both federal and state ESAs. Steelhead, California Central Valley DPS (distinct population segment) are threatened under the federal ESA, not listed under the state ESA. Green Sturgeon, Southern DPS are threatened under the federal ESA, SSC (species of special concern) under state law. Delta Smelt are threatened under the federal ESA, endangered under the state ESA. Longfin Smelt, San Francisco Bay-Delta DPS are now endangered under the federal ESA, and threatened and SSC under state law.

groundwater-dependent ecosystems, and agricultural lands. (Ch. 7.6.1, Terrestrial Biological Resources, 15-41). All of these ecosystems support diverse assemblages of semi-aquatic and terrestrial species, and all would be impacted by reductions in Sacramento and Delta flows. For example, the Staff Report notes that “riparian habitat is key for the continued existence of many special-status plant and wildlife species because the loss of riparian vegetation has been an important factor in their decline” (*Id.* p. 55). In fact, 60% of amphibian species, 16% of reptiles, 34% of birds and 12% of mammals in the Pacific Coast ecoregion depend on riparian-stream systems for survival (Kelsey & West, 1998). Many other species use riparian areas and natural ridgelines as migration corridors or foraging habitat (Dickson et al., 2005; Hilty & Merenlender, 2004; Jennings & Lewison, 2013; Jennings & Zeller, 2017). Similarly, floodplains are some of the most productive ecosystems on earth, supporting high levels of aquatic, riparian, and terrestrial biodiversity, including many threatened and endangered species (Opperman et al., 2010; Ward et al., 1999). This diversity and productivity results from the dynamic and variable nature of the connectivity between floodplains and rivers, which sustains important hydrological and biogeochemical processes and creates diverse habitats that support countless wildlife and plant species (Opperman et al., 2010). These are just two examples of highly biodiverse ecosystems that depend on water flowing through the Sacramento River and the Delta and would be harmed by the increased exports and decreased flows allowed by the VAs.

The *Staff Report* states that “Generally, changes in hydrology in the Sacramento/Delta would result in a more natural flow regime that would be expected to benefit special-status species that are adapted to these hydrologic conditions.” (*Id.* p. 55). However, this conclusion is based on the Plan amendments, not the Voluntary Agreements. The VAs provide no such guarantee. Rather, Chapter 13 Revised Proposed Plan Amendments released in December 2025 (“Chapter 13”) minimizes the potential harms of the VAs by failing to provide an adequate analysis of alternatives, modifying the primary alternative (the 55% WSA) to create a lower-flow default scenario with

which to compare the VAs, and failing to analyze the impacts of water supply adjustments that may happen after plan approval and implementation.

In the 2023 Staff Report, several flow alternatives were defined for potential analysis, including the Low Flow Alternatives (35%-45% unimpaired flow), the proposed plan amendments (45-65% unimpaired flow, with analyses focused on 55% unimpaired flow), and a High Flow Alternative (65-75% unimpaired flow) (Staff Report, Ch. 7, p. 7.24-16, -24). However, in its updated analysis of impacts of the VAs on biological resources, Chapter 13 fails to analyze all of these flows. In particular, Chapter 13 fails to consider a high flow alternative at all. As described in the Staff Report, the High Flow scenario includes criteria for inflows, outflows, and interior flows that prioritize fisheries protection (Staff Report p. 7/24-24). If the Bay-Delta Plan is meant to “to improve aquatic habitat conditions in the broad geographic area of the Sacramento/Delta watershed from current impaired and declining conditions,” (Staff Report, Ch. 7, pp. 7.24-51, -52), the bare minimum for an adequate analysis in Chapter 13 would be inclusion of a high flow alternative. By limiting the analyses of the impacts of the VAs to only intermediate or low flow alternatives, and failing to compare impacts of these scenarios to the single flow scenario that prioritizes fisheries (the high flow alternative), the Bay-Delta Plan not only violates CEQA, but also makes the biological and ecological impacts of the VAs appear less significant. CEQA requires the lead agency to prepare an EIR that meaningfully considers the suggested alternatives in detail. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 873 [holding that because the discussion of alternatives omitted relevant, crucial information, it subverted the purposes of CEQA and was legally inadequate].) Here, the updated Bay-Delta Plan, including Chapter 13, has failed to meet this standard regarding the proposed Voluntary Agreements, instead narrowing the scope of analysis to a subset of alternatives that do not include the environmentally superior scenario.

Instead, Chapter 13 focuses on comparing the VAs to the 55% WSA flow scenario. Importantly, this scenario was updated to include lower flow requirements than

previous versions of the Bay-Delta Plan (Chapter 13, pp. 13-44). By decreasing required flows in this intermediate alternative, the updated Plan conveniently minimizes the apparent differences between this scenario and the VAs. This change in the default flow scenario is inappropriate and unjustified. The Plan should not be reducing flow requirements for any scenario, especially the primary scenario that is included in its impact analysis. As described above, the Delta is in crisis. By reducing flow requirements in the 55% WSA scenario, and by comparing the VAs to these reduced flows, the Plan improperly minimizes the impacts of the VAs.

Throughout the analysis of VA impacts, Chapter 13 also fails to account for the inherent uncertainty of future water supply adjustments. As noted numerous times in its analyses of Terrestrial and Aquatic Biological Resources, changes to water supply adjustments, water purchases, or changes in regulations could all result in changes to flows with potential impacts on biological resources. For example, the following excerpts all highlight the fact that the VA pathway contains significant uncertainty, and that flow and water supply scenarios analyzed in Chapter 13 may change after Plan approval: “The VA pathway could result in a change in total Sacramento/Delta supplies to the San Joaquin Valley region. The overall effect would be dependent on the sources of the unspecified water purchases, which are not fully known at this time.” (Chapter 13, p. 13-246); “The effects of the VA pathway on crop acreage could vary from modeled outcomes... However, the unspecified water purchases would be provided from willing sellers that choose to participate in the water purchase program, and outcomes would likely differ to some extent from modeled outcomes.”; (*Id.*, p. 13-265) “...actual operation could vary to some degree from modeled outcomes and there could be additional changes in streamflows beyond the modeled changes.” (*Id.*, p. 13-284); “Actual operation could vary to some degree from modeled outcomes and there could be additional changes in streamflows, reservoir levels, and water temperatures beyond the modeled changes.” (*Id.*, p. 13-287). Thus, the full extent of potential impacts of the VAs have not been fully analyzed, contrary to CEQA (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70 [EIR must disclose impacts from the full

extent of the permitted activity].) By limiting the scope of its impact analysis in these ways, Chapter 13 amounts to an incomplete, conclusory analysis of the full potential impacts of the VAs on biological resources.

Finally, the Bay-Delta Plan fails to account for the cumulative impacts of other water diversions along with Delta exports, which will compound the harms to aquatic and terrestrial ecosystems. As stated in the *Staff Report*, “Based on available information regarding several proposed water diversion and conveyance projects and pending water right applications that propose surface water diversions during the wet season, it is assumed that streamflows may be reduced during the winter and spring under the no project alternative, which could result in potentially significant impacts on aquatic and terrestrial species and habitats in the Sacramento/Delta watershed.” (Ch. 7.24, Alternatives Analysis, p. 7.24-9.)

The Voluntary Agreements, as outlined in the updated Bay-Delta Plan and analyzed in Chapter 13, thus provide no guarantee that they will increase flows. Instead, the potential impacts are minimized and not fully analyzed. The VAs are rife with uncertainty, and as described above, prioritize exports, contrary to the stated goal of ecosystem and fisheries restoration.

Delta outflows must be increased. That means exports must be reduced. The Revised Proposed Plan Amendments including the Voluntary Agreements do virtually nothing to increase inflows or outflows, and the Plan’s analysis of the impacts of the VA’s is woefully inaccurate, in violation of CEQA.

4. THOUGH DELTA WATER QUALITY IS IMPAIRED THE REVISED PROPOSED PLAN AMENDMENTS ARE NOT A SERIOUS EFFORT TO INCREASE FRESHWATER FLOWS

Delta water quality is impaired by reason of low dissolved oxygen, mercury, nutrients, salinity, and/or temperature in many specific locations of the Delta as shown in *Staff Report/SED*, Ch. 7.12, Table 7.12.1-3, Impaired Waterbodies in the Study Area. (pp. 7.12.1-13, -14.) “The Delta is on the 303 (d) list for salinity, chloride, mercury, trace metals, legacy contaminants, pathogens, invasive species, and current use pesticides

(SWRCB 2022). In addition, bromides and HABs [Harmful Algal Blooms] are issues of concern.” (*Id.* p. 7.12.1-35.)

The 2025 *Draft Updates* recognize that,

Salinity problems in the southern Delta primarily result from low flows, tidal action, diversions by the CVP, SWP and local water users, agricultural return flows, poor circulation, and channel capacity. As early as the 1991 Bay-Delta Plan, the State Water Board recognized the need to meet the salinity objectives largely through regulation of water flow. (*2025 Draft Updates*, p. 31.)

“Several studies indicate that low flows through the Delta are associated with increased HAB formation... In the southern Delta, blooms tend to be more severe when flows associated with Delta exports are low (Hartman et al. 2022).” (*Staff Report/SED*, Ch. 7, p. 7.12.1-38.)

Reduced flushing flows during the winter and spring could exacerbate harmful algal blooms. (*Staff Report/SED*, Ch. 7.24, p. 7.24-9.) “Reduced Delta inflows during the summer and fall months could also exacerbate water quality issues associated with harmful algal blooms in the Delta.” (*Id.* p. 7.24-27.)

“Harmful algal blooms (HABs) have become a regular occurrence in the Delta since 1999 (Lehman et al. 2005, 2013; Kurobe et al. 2013). In freshwater systems like the Delta, HABs are mostly attributable to cyanobacteria (Kudela et al. 2023).” (*Staff Report/SED*, Ch. 4, Other Aquatic Ecosystem Stressors, p. 4-16.) “Cyanobacteria species secrete hepato and central nervous system toxins, *which can be toxic to humans and aquatic wildlife* (Lehman et al. 2008; Berg and Sutula 2015). (*Id.* p. 4-16) (Emphasis added.) “Delta communities have expressed significant ongoing concerns regarding proliferation of HABs in the Delta and requested that the Water Boards take actions to address these concerns. HABs are a component of the phytoplankton community with *potentially severe impacts* on fish and wildlife, as well as *on human and pet health and safety*. HABs have been increasing in recent years, especially in the Bay-Delta, although different species and toxins tend to occur in the more saline San Francisco Bay than in the fresher Delta (Kudela et al. 2023). HAB occurrence is related to flow such that HABs benefit from lower inflows, high residence times, and higher stratification (Kudela et al.

2023), as well as temperature, and nutrients.” (Ch. 5, Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta, p. 5-60)(Emphasis added.) “*Cyanobacterial blooms can release toxins (cyanotoxins) that are hazardous to humans* and are therefore a concern for recreational waters and municipal and domestic water supplies (specifically drinking water).” (Ch. 7.22, New or Modified Facilities, p. 7.22-85) (Emphasis added.)

Delta flows must be increased to prevent further worsening of Delta water quality and increasing the health risk to Delta residents and users. The Voluntary Agreements do virtually nothing to protect Delta residents and users from HABs.

5. IN CONTRAST TO THE NEEDS TO INCREASE DELTA OUTFLOWS, PLANNED FORESEEABLE NEW PROJECTS INCLUDING THE DELTA CONVEYANCE PROJECT, WOULD INSTEAD REDUCE OUTFLOWS SIGNIFICANTLY

The *Staff Report/SED* establishes the dangers posed by new diversions and points of diversion. “New or changed points of diversion could affect special-status fish species and interfere with the movement of native resident or migratory fish during periods of diversion, if present.” (Ch. 7.22, p. 7.22-42.) “For larger projects, new or modified reservoirs and points of diversion would require extensive analysis and evaluation and would likely have significant environmental impacts. New or modified reservoirs and points of diversion would require State Water Board approval of either a new water right, or a change of an existing right.” (*Id.* p. 7.22-5.) Operation of points of diversion can affect biological resources and pose potential long-term adverse effects on aquatic biological resources. (*Id.* pp. 7.22-40-41.) Adverse effects of new points of diversion pose “likely long-term significant impacts on hydrology and water quality.” (*Id.* p. 7.22.100.)

According to the *Staff Report/SED*, “altered flow regimes can reduce or eliminate important geomorphic processes and floodplain inundation, decrease habitat conductivity, alter temperatures to the detriment of cold water species, and alter salinity gradients and circulation patterns in the Delta. Importantly, the purpose of the proposed Plan amendments is to restore a more natural hydrologic flow regime to protect the ecosystem that supports fish and wildlife beneficial uses.” (Ch. 7.22, p. 7.22-100.)

New “points of diversion reduce streamflows, which could injure water right holders, alter water quality, affect surface water-groundwater interactions, and affect groundwater recharge. Changes in flows could alter water temperature, dissolved oxygen, conditions associated with HABs and growth of invasive aquatic vegetation, and Delta salinity, as well as dilute contaminants.” (Ch. 7.22, New or Modified Facilities, pp. 7.22-100-101.)

Increasing Delta outflows and reducing exports is imperative to protect listed fish species and the health of Delta residents and users. DWR, however, commented on the *Staff Report/SED* that any limitations on the Voluntary Agreements “would significantly reduce the viability of the Delta Conveyance Project (and other proposed water projects) by reducing water supply yield and increasing the cost per acre-foot.”⁴

The *Staff Report/SED* establishes that *increasing Delta outflows is necessary* to prevent more extinction of endangered and threatened fish species. Increasing Delta flows would also protect public health in the Delta from worsening impairment of Delta water quality including the dangers posed by harmful algal blooms. *The Delta Conveyance Project, however, would actually reduce Delta outflows by,*

758 TAF (thousand acre-feet) in wet years

1,061 TAF in above normal years

649 TAF in below normal years

326 TAF in dry years and

156 TAF in critical years. (*Staff Report/SED*, Ch. 7.24, Table 7.24-1, p.7.24-7.)

The collective reductions in Delta outflows including the DCP and 6 other proposed water infrastructure projects would amount to,

1,219 TAF in wet years

⁴ January 22, 2024, Comment Letter from Karla A. Nemeth, Director, DWR, to State Water Resources Control Board, at unnumbered p. 3.

1,528 TAF in above normal years

921TAF in below normal years

433 TAF in dry years and

199 TAF in critical years. (*Staff Report/SED*, Ch. 7.24, Table 7.24-1, p.7.24-8.)

It gets worse. The Board explained by its Chief Counsel in the ongoing Board Hearing on DWR's petition to add upstream diversions for its proposed Delta Conveyance Project in the May 12, 2025, letter,⁵

As previously explained by the AHO [Board's Administrative Hearings Office], the fact that the deadline to maximize the beneficial use of water under the SWP permits was December 31, 2009, means that, as a matter of law, diversion and use under the permits is limited to the maximum amount of water actually diverted and used before the deadline, whether the DCP [Delta Conveyance Project] is approved or not, unless the Board grants an extension of time to further develop appropriative water rights under the permits. DWR has not fully developed its rights by maximizing the full 'face value' of its permits before the deadline.

Approval of a time extension would increase significantly the amount of water DWR could divert using existing SWP infrastructure, as well as the additional capacity that would be added to the SWP by the DCP. Thus, the uncertainty concerning the status of the SWP permits has engendered uncertainty concerning how the DCP would be operated, the extent of the water supply benefits of the project, and the nature and extent of the project's potential impacts on other legal users of water and the environment.

On September 30, 2025, DWR issued a Notice of Preparation (NOP) of an EIR on its Time Extension Petition to the Board. DWR determined "that an EIR would be required for the proposed project." (DWR NOP p. 2.) Under the heading "Potential Environmental Effects" DWR's NOP lists "Biological Resources; aquatic biological resources" "Surface Water Hydrology" "Surface Water Quality" "Tribal Cultural Resources" and "other CEQA discussions, which may include discussion of cumulative

⁵ Letter from Michael A.M. Lauffer, Chief Counsel, State Water Resources Control Board, to Jennifer Pierre, General Manager, State Water Contractors, May 12, 2025.

impacts, growth inducement, climate change and resiliency, and environmental justice. (DWR NOP p.4.)

So, the Delta Conveyance Project could, if DWR's Time Extension Petition is approved, result in even greater increases in exports than shown in the above Tables. In any event, the Voluntary Agreements di minimis export reductions appear to be part of an agenda to accommodate further water diversion projects including the Delta Conveyance Project.

6. THE VOLUNTARY AGREEMENTS CANNOT BE ADOPTED IN LIEU OF REGULATORY ACTIONS BY THE BOARD

Our January 10, 2025, comments on the October 25, 2024, draft of potential updates to the Bay-Delta Plan explained this violation in detail. (*Sierra Club California et al. January 2025 Comments*, pp. 3-8.) Those Comments are incorporated herein by this reference.

To summarize, the Board cannot substitute an adjudicatory settlement process--the Voluntary Agreements--for the required rulemaking and standard-setting. (*Sierra Club California et al. January 2025 Comments*, pp. 3-7.) Moreover, the Board has prepared a Substitute Environmental Document "acting under a certified program to assess the environmental effects of their actions within the decision-making document instead of a separate environmental impact report or negative declaration." (2025 Draft Updates p. 6.) Adopting the Voluntary Agreements instead of applying the new standards to all would require preparation of an EIR instead of a substitute environmental document. (*Sierra Club California et al. January 2025 Comments*, pp. 7-8.)

7. THE BOARD HAS NOT DISCLOSED OR ANALYZED HOW THE REVISED PROPOSED PLAN AMENDMENTS INCLUDING THE VOLUNTARY AGREEMENTS DO VIRTUALLY NOTHING TO ACCOMPLISH THE STATED GOALS OF THE PROJECT—RESTORE THE IMPAIRED DELTA ECOSYSTEM

The previous section of these comments shows that under CEQA the Board must prepare an EIR before considering for adoption or adopting the Voluntary Agreements. And before that, the Board would have to prepare and circulate for public comment a

Draft EIR. The Board has not done that. The Board has instead prepared the *Staff Report/SED* of September 28, 2023, and Chapter 13 issued December 12, 2025.

Even if the Board could lawfully proceed by way of preparing a Substitute Environmental Document (*SED*) instead of an EIR, the Board has still not prepared and issued for public comment a Draft *SED* that adequately addresses the Voluntary Agreements' environmental impacts under CEQA.

The *only SED* the Board has issued addressing proposed updates to the Bay Delta Plan is the September 28, 2023, *Staff Report/SED* and the December 12, 2025, Chapter 13.

Again,

The purpose of the project, as elaborated in Section 7.1.2, California Environmental Quality Act, is to establish water quality objectives and a program of implementation for the *reasonable protection of fish and wildlife* beneficial uses in the Sacramento/Delta watershed. Fundamentally, *the project is a restoration project that is intending to improve aquatic habitat conditions in the broad geographic area of the Sacramento/Delta watershed from current impaired and declining conditions.* (*Staff Report/SED*, Ch. 7, pp. 7.24-51, -52)(Emphasis added.)

Yet not a clue was given in *Staff Report/SED* Chapter 9 including the 2 paragraphs on "Significant Irreversible Environmental Changes" (pp. 9-169, -170), 3 paragraphs "Impact Summary" (p. 170), or Table 9.7-13. Impact and Mitigation Measure Summary, (p. 9-176), that the Revised Proposed Plan Amendments including the Voluntary Agreements would do little or nothing in comparison to the 2023 proposed Plan amendments to improve fish habitat conditions by significantly *increasing* freshwater flows by significantly *reducing* exports. The same is true of the December 2025 *Draft Updates* and Chapter 13.

The same is true of the *Staff Report/SED* Chapter 9 section 9.7.6.2 on "Aquatic Biological Resources" (pp. 9-107 through -119.) There was no disclosure or analysis there or in the *2025 Draft Updates* and Chapter 13, of the likelihood that the Voluntary Agreements would continue the "severe declines, and in some cases extinctions, of native fish and other aquatic species." The baseline is a continuation of the diversions for exports

that have lowered freshwater flows causing the severe declines of fish species. Though “Exposure of Chinook salmon and steelhead populations to elevated water temperature is a major factor contributing to their decline...” “the VAs do not include an explicit commitment to cold water temperature provisions. It is possible that there would be some instances on some streams where temperatures could increase.” (*Staff Report/SED*, Ch. 9, p. 9-109, also 9-111.) With respect to Delta inflow, outflow, and Interior Delta flows, “unspecified water purchasers” “could result in additional Delta outflow. The comparisons are to the baseline. (*Id.* p. 9-112.) “There could also be decreases in July-December Delta outflow during below normal, above normal, and wet water year types for the VAs with and without San Joaquin contributions compared to baseline.” (*Id.*, p. 9-113.) With respect to Interior Delta flows, “The proposed VAs would not result in changes to the existing Bay-Delta Plan or D-1641 E’1 or I:E requirements.” (*Id.*, p. 9-117.) In fact, “Overall, results suggest that annual average of Delta exports for the VA scenario would be higher than baseline...” (*Id.*. p. 9-45.)

So, the purpose of the Project is “to improve aquatic habitat conditions in the broad geographic area of the Sacramento/Delta watershed from current impaired and declining conditions.” Though CEQA requires full environmental disclosure, the Board has provided no disclosure that the Voluntary Agreements would continue the severe declines of native and other fish species. CEQA is a procedural statute. CEQA does not prevent a public agency from approving a project that has one or more significant environmental effects if “the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.” (Pub. Res. Code § 21081(b.) CEQA, however, requires full environmental disclosure of the Project’s significant environmental effects.

Under CEQA, the policy of the State includes, “Prevent the elimination of fish or wildlife species due to man’s activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.” (Pub. Res. Code § 21001(c.) Yet nowhere do the Board’s *2025 Draft Updates*

including Chapter 13 disclose or analyze whether the Voluntary Agreements will, or will not, prevent the elimination of the endangered and threatened fish species due to diversions of freshwater flows for the State Water Project and other water diverters.

CEQA mandates that, “*The purpose of an environmental impact report is to identify the significant effects on the environment of a project*, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.” (Pub. Res. Code § 21002.1(a) (Emphasis added.)

CEQA provides in pertinent part that,

The purpose of an environmental impact report is to provide public agencies and the public in general *with detailed information* about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project. (Pub. Res. Code § 21061) (Emphasis added.)

State agency EIRs “*shall* include a *detailed statement* setting forth *all* of the following:

(1) *All* significant effects on the environment of the proposed project.” (Pub. Res. Code § 21100 (b)(1) (Emphasis added.)

The Board’s own regulations require that a *SED* include “An identification of *any* significant or *potentially* significant adverse environmental impacts of the proposed project;” 23 Cal. Code Regs 3777(b)(2) (Emphasis added.)

The court held in *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116-1117, “Law is not required to abandon common sense. Here, our common sense informs us that the mitigation measures will not effectively replace the water that could be lost to the neighboring landowners.” The court rejected the argument it should defer to the Board of Supervisors’ finding that the mitigation measures were effective, saying “we decline to do so where the Board’s findings are not supported by substantial evidence or *defy common sense.*” (*Gray*, 167 Cal.App.4th at 1116) (Emphasis added.)

Both the substantial evidence in the 2023 *Staff Report/SED* and common sense inform that the Revised Proposed Plan Amendments including the Voluntary Agreements will not reasonably protect fish and wildlife--the stated purpose of the project.

“Formulation of mitigation measures shall not be deferred until some future time.” (CEQA Guidelines §15126.4(a)(1)(B.)” (*King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 856 (CEQA water case); *Gray*, 167 Cal.App.4th 1099, 1118)(CEQA water case.) At minimum, there must be specific performance standards at the time of project approval. (*King & Gardiner Farms, LLC*, 45 Cal.App.5th 814, 856; *Gray*, 167 Cal.App.4th 1099, 1119.)

As the Court said in *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1052,

The cumulative impact analysis contained in the final EID [environmental impact document] has never been subjected to public review and criticism. If we were to allow the deficient analysis in the draft EID to be bolstered by a document that was never circulated for public comment, we would not only be allowing appellants to follow a procedure which deviated substantially from the terms of the writ, but we would be subverting the important public purposes of CEQA. Only at the stage when the draft EID is circulated can the public and outside agencies have the opportunity to analyze a proposal and submit comment.

The Court in the *Mountain Lion Coalition* case was reviewing an environmental document prepared in a certified program. (*Mountain Lion Coalition*, 214 Cal.App.3d 1043, 1046 fn. 4.) The public and other agencies must be able to review and comment on a detailed environmental analysis of *any* and *all* significant or *potentially* significant adverse environmental impacts of the Voluntary Agreements in a draft environmental document—not see it for the first time in a final environmental document.

Chapter 13 says the “The flows are intended to be additive to required flows under D-1641)…” (Chapter 13, p. 13-22.) That is oblivious to the crisis recognized by the *Staff Report/SED* --"Native species in the Bay-Delta ecosystem are experiencing an ecological crisis" (Ch. 7, p. 7.12.1-1) and that "Current Delta outflow requirements are far below protective levels." (Ch. 5, p. 5-28.) Chapter 13 admits that “D-1641 outflow requirements are very minimal…” (Chapter 13, p. 13-22.)

According to the *Staff Report/SED*,

The analyses in the resource sections of this chapter (Sections 9.7.3 through 9.7.20) are largely focused on environmental impacts that may result from changes in hydrology and changes in water supply, excluding other water management actions that entities may take to offset reductions in Sacramento/Delta surface water supply. (Ch. 9, p. 9-83.)

So, there is neither disclosure nor analysis comparing the Voluntary Agreements' little to nothing improvement in the impaired Delta ecosystem for fish habitat to the substantial improvement that would take place under the 2023 proposed Plan Amendments or the High Flow Alternative.

The Impact Summary of the *Staff Report/SED* states in Chapter 9 on the proposed Voluntary Agreements,

The impacts that could potentially result from implementation 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, changes in hydrology and changes in water supply could result in some environmental impacts at certain times and locations that must be analyzed under CEQA.* These potential environmental impacts should be viewed in light of the overall purpose and goals of the Sacramento/Delta update to the Bay-Delta Plan. (*Staff Report/SED* Ch. 9, Proposed Voluntary Agreements, section p.7.22, Impact Summary, p. 9-170.)

There is no disclosure or analysis of how the Voluntary Agreement do virtually nothing to accomplish the goals of the Project—restore the impaired Delta ecosystem. That analysis must be in a draft EIR or in a revised and recirculated Draft *SED*.

8. THERE IS STILL NO ADEQUATE CEQA ALTERNATIVES ANALYSIS EVALUATING THE REVISED PROPOSED PLAN AMENDMENTS IN COMPARISON TO THE 2023 PROPOSED PLAN AMENDMENTS AND OTHER CHAPTER 7 ALTERNATIVES

Again, "A certified regulatory program is subject to the broad policy goals and substantive standards of CEQA. [Citation omitted.] It is said that the substitute documents serve as the functional equivalent of an EIR." (E.g., *Conway v. State Water Resources Control Board* (2015) 235 Cal.App.4th 671, 680.)

CEQA policy includes,

Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs *and to consider alternatives* to proposed actions affecting the environment. (Pub. Res. Code § 21001(g.) (Emphasis added.)

CEQA states,

The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed *if there are feasible alternatives* or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects *and the feasible alternatives* or feasible mitigation measures which will avoid or substantially lessen such significant effects. (Pub. Res. Code § 21002) (Emphasis added.)

CEQA also states, “The purpose of an environmental impact report is to identify the significant effects on the environment of a project, *to identify alternatives to the project*, and to indicate the manner in which those significant effects can be mitigated or avoided. (Pub. Res. Code § 21002.1(a) (Emphasis added.) Moreover, state policy is that “Environmental impact reports omit unnecessary descriptions of projects and *emphasize* feasible mitigation measures and *feasible alternatives* to projects.” (Pub. Res. Code § 21003(c) (Emphasis added.)

The EIR on a state project “shall include a detailed statement setting forth all of the following:...” **(b)**... (4) *Alternatives* to the proposed project. (Pub. Res. Code § 21100 (b)(4) (Emphasis added.)

CEQA requires with respect to certified regulatory programs that,

- (2) The rules and regulations adopted by the administering agency for the regulatory program do all of the following:
 - (A) Require that an activity will not be approved or adopted as proposed if there *are feasible alternatives* or feasible mitigation measures available that would substantially lessen a significant adverse effect that the activity may have on the environment. and,
- (3) The plan or other written documentation required by the regulatory program does both of the following:

(A) Includes a description of the proposed activity with *alternatives* to the activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity. (Pub. Res. Code § 21080.5 (d)(2)(A) and (3)(A) (emphasis added.)

The Board's own regulations require that a *SED* include, “*An analysis of reasonable alternatives* to the project and mitigation measures to avoid or reduce any significant or potentially significant adverse environmental impacts;” (23 Cal. Code Regs § 3777(b)(3) (Emphasis added.)

According to the California Supreme Court,

The [CEQA] Guidelines [codified at 14 Cal. Code Regs § 15000 e seq.] require that an EIR ‘[d]escribe a reasonable range of alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project *and evaluate the comparative merits of the alternatives*. (Guidelines, § 15126, subd. (d).) These alternatives must be discussed, ‘even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.’ (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 400) (Emphasis added.)

There has been *no evaluation of the comparative merits* of the Revised Proposed Plan Amendments including the Voluntary Agreements with the 2023 proposed Plan amendments or the analyzed alternatives in Chapter 7 of the *Staff Report/SED*. Chapter 9 explains, “Because the State Water Board received the proposed VAs after much of this Staff Report had been prepared, the proposed VAs are analyzed separately in this chapter. The environmental analysis for the proposed Plan amendments and other project alternatives is provided in Chapter 7, Environmental Analysis. (*Staff Report/SED*, Ch. 9, p. 9-2.) Likewise, “Impacts of the proposed Plan amendments (or regulatory implementation pathway) are described and analyzed in sections 7.3 through 7.20 and are not evaluated in this section.” (*Staff Report/SED*, Ch. 9, p. 9-83.) So, the 2023 *SED* the Board did not even treat the Voluntary Agreements as an alternative.

The Voluntary Agreements are similar to the No Project Alternative analyzed in Chapter 7 of the *Staff Report/SED*. According to Chapter 7,

For the purposes of this analysis, the No Project Alternative is the continuation of the Bay-Delta Plan as implemented by State Water Board Decision 1641 (D-1641)

(revised March 15, 2000), with the existing hydrology and water supply conditions described in Chapter 2, Hydrology and Water Supply. (Ch. 7,p. 7.24-3)

The No Project Alternative would not result in beneficial environmental effects, and it *would not benefit native aquatic and aquatic-dependent species*, aquatic and riparian that are supported by a natural flow regime. Under the No Project Alternative, it is expected that inflows and outflows would decrease over time due to increasing water demands over time in the absence of additional instream flow protections, which would further impair conditions for native fish and wildlife. (*Id.*, p. 7.24-11)

The No Project Alternative would not result in beneficial environmental effects, and it would not satisfy the purpose and goals of the State Water Board's current efforts to update and implement the Bay-Delta Plan, including providing reasonable protection of fish and wildlife beneficial uses. As discussed in prior chapters, implementation of the current Sacramento/Delta provisions of the Bay-Delta Plan has not been adequate to protect fish and wildlife throughout the watershed and throughout the year. (*Id.*, p. 7.24-15) (Emphasis added.)

Should the Board consider adopting or adopt the Voluntary Agreements, the Board must first prepare and circulate for public review and comment a draft EIR or revised draft SED disclosing and analyzing the comparative merits of the Voluntary Agreements with the 2023 proposed Plan amendments and other Chapter 7 alternatives.

9. THE REVISED PROPOSED PLAN AMENDMENTS HAVE ELIMINATED ANY REASONABLE ALTERNATIVES

The 2023 *Staff Report/SED* included the 2023 Proposed Plan amendments which required significantly higher flows and also the High Flow alternative which required higher flows than the 2023 Proposed Plan amendments.

The 2025 *Draft Updates* Regulatory Pathway now is the “55/w/WSAs scenario” which “includes new water supply adjustments that lower flow requirements under all but wetter conditions...” (Chapter 13, p. 13-44.) The reductions under the 55/w/WSAs scenario “would be more similar to those under the Low Flow Alternative (35 and 45 scenarios).” (Chapter 13, p. 13-189.) “Changes in hydrology and Sacramento/Delta water supply from baseline would be smaller under the revised proposed Plan amendments than the changes previously evaluated under the [2023] proposed Plan amendments and

Chapter 7 due to lower flow requirements under the VA pathway, and the water supply adjustments under the starting point for the regulatory pathway.” (Chapter 13, p. 13-224.)

As a result, the Revised Proposed Plan Amendments including the VA alternative have not been evaluated in comparison to the 2023 proposed Plan amendments and High Flow alternative and their higher flow requirements resulting from higher export reductions. The VA alternative is evaluated against the Regulatory Pathway (55/w/WSAs scenario) to deceive the reader into believing the VA alternative is not so bad in comparison to a Regulatory Pathway. That is true with respect to:

Table 13.7.6.2-1 Summary of Potential effects of 55/w/WSAs and VA Scenarios on All Races of Chinook Salmon on the Sacramento River (Chapter 13, p. 13-289)

Table 13.7.6.2-2 Summary of Potential effects of 55/w/WSAs and VA Scenarios on Central Valley Steelhead and Green Sturgeon on the Sacramento River (Chapter 13, pp. 13-290,-291)

Table 13.7.6.2-3 Summary of Potential effects of 55/w/WSAs and VA Scenarios on Winter-Run and Fall-Run Chinook Salmon and Central Valley Steelhead on the American River (Chapter 13, pp. 13-291,-292)

Table 13.7.6.2-4 Summary of Potential effects of 55/w/WSAs and VA Scenarios on Winter-Run, Spring-Run, and Fall-Run Chinook Salmon on the Feather River (Chapter 13, p. 13-294)

Table 13.7.6.2-5Summary of Potential effects of 55/w/WSAs and VA Scenarios on Central Valley Steelhead and Green Sturgeon on the Feather River (Chapter 13, pp. 13-295,-296)

Table 13.7.6.2-6 Summary of Potential effects of 55/w/WSAs and VA Scenarios on Spring-Run and Fall-Run Chinook Salmon on the Yuba River (Chapter 13, p. 13-297)

Table 13.7.6.2-7Summary of Potential effects of 55/w/WSAs and VA Scenarios on Central Valley Steelhead and Green Sturgeon on the Yuba River (Chapter 13, pp. 13-297,-298)

An EIR must include discussion of “the comparative environmental effects of a range of reasonable alternatives to the proposed project, including a “no project” alternative,..” (*County of Butte v. Department of Water Resources* (2022) 13 Cal.5th 612, 627.) CEQA Guidelines section 15126.6(d) provides in pertinent part, “Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow

meaningful evaluation, analysis, and comparison with the proposed project.” The EIR “must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation.” (CEQA Guidelines § 15126.6(a.)

The 2023 proposed Plan amendments and the High Flow alternative were required reasonable alternatives that had been developed by the Board and accomplish far more of the declared project purpose of restoration than the 2025 Revised Proposed Plan Amendments including the Regulatory Pathway 55/w/WSAs and VA Scenarios. Everything the Board has issued so far including the *2025 Draft Updates* and Chapter 13 fail to comply with CEQA because they do not include discussion of the comparative environmental effects of a range of reasonable alternatives to the proposed project. That is because the 2023 proposed Plan amendments and the High Flow alternative have not been compared to the Revised Proposed Plan Amendments.

10. CHAPTER 13 HAS FAILED TO DISCLOSE AND ANALYZE THAT THE REVISED PROPOSED PLAN AMENDMENTS INCLUDING THE VOLUNTARY AGREEMENTS ARE CONTRARY TO RELATED REGULATORY REGIMES

“Evaluation of project alternatives and mitigation measures is ‘the core of an EIR.’” (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 937.) “The Supreme Court explained in *Banning Ranch Conservancy*, 2 Cal.5th 918, 936-937:

An EIR must “describe a range of reasonable alternatives to the project,” or to its location, that would “feasibly attain” most of its basic objectives but will “avoid or substantially lessen” its significant effects. (Guidelines, § 15126.6, subd. (a.)) Among the factors relevant to the feasibility analysis are “other plans or regulatory limitations, [and] jurisdictional boundaries (projects with a regionally significant impact should consider the regional context).”

“The range should provide ‘enough of a variation to allow informed decision-making.’” (*Save Our Capitol v. Department of General Services* (2023) 87 Cal.App.5th 655, 703.) The Supreme Court said more in *Banning Ranch Conservancy*:

The Guidelines [§ 15126.6(f)(1)] specifically call for consideration of related regulatory regimes, like the Coastal Act, when discussing project alternatives.... Thus, the regulatory limitations imposed by the Coastal Act's ESHA provisions should have been central to the Banning Ranch EIR's analysis of feasible alternatives. (*Banning Ranch Conservancy*, 2 Cal.5th 918, 936-937)(Emphasis added.)

The California Supreme Court said in *Mountain Lion Foundation v. Fish and Game Com.* (1997) 16 Cal.4th 105, 125, “[f]or example, CESA [the California Endangered Species Act] establishes a policy adding significant weight to the CEQA balancing scale on the side favoring protection of a listed species over projects that might jeopardize them or their habitats. (Fish & G. Code, § 2053.)” Fish and Game Code section 2053(a) and (b) require development of alternatives focused on preserving endangered and threatened species. CEQA establishes the policy of the state to, “[p]revent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.” (Pub. Res. Code § 21001(c).) The Supreme Court has explained, “Bay-Delta ecosystem restoration to protect endangered species is mandated by both state and federal endangered species laws, and for this reason water exports from the Bay Delta ultimately must be subordinated to environmental considerations.” (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1168.)⁶

Pursuant to the Delta Reform Act, the established State policy is “*to reduce reliance on the Delta* in meeting California's future water supply needs through a statewide strategy of investing in improved water supplies, conservation, and water use efficiency.” (Water Code § 85021, emphasis added.) Another policy established by the Act is to “[r]estore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.” (Water Code § 85020(c).)

⁶ The decision held that under the CALFED Program at the time a reduced exports alternative was not required. (43 Cal.4th at 1169.) The decision was handed down June 5, 2008. The Delta Reform Act including state policy to reduce reliance on the Delta, Water Code § 85021, became effective February 3, 2010.

Before the Board could consider adopting or adopt the Revised Proposed Plan Amendments including the Voluntary Agreements, the Board must issue a draft EIR or revised draft *SED* disclosing and analyzing the contrast between the 2023 proposed Plan amendments and High Flow Alternative which are consistent with the Endangered Species Act, the Delta Reform Act, and other related regulatory regimes, with the Revised Proposed Plan Amendments and Voluntary Agreements which are *not* consistent with related regulatory regimes.

11. CHAPTER 13 HAS NOT ADDRESSED THE REASONABLY FORESEEABLE IMPACTS OF EXPORTING WATER AT THE LEVELS OF THE VOLUNTARY AGREEMENTS

The Supreme Court held in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431,

But the future water sources for a large land use project and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis. An EIR evaluating a planned land use project must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, *the impacts of providing water to the entire proposed project.* (40 Cal.4th at 431) (Emphasis added.)

The Court held, “CEQA's informational purpose ‘is not satisfied by simply stating information will be provided in the future.’” (40 Cal.4th at 441.) Yet that is in essence what the Voluntary Agreements do. Water diversions and exports would continue for eight years similar to what led to the extinction crisis and then the situation would be evaluated again.

The Court also emphasized,

The ultimate question under CEQA, moreover, is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project. (*Vineyard Area Citizens*, 40 Cal.4th at 434)(Emphasis in original.)

The Court held the County failed to proceed in the manner required by CEQA because the EIR did “not discuss the impacts of new surface water diversions, enforceable

measures to mitigate those impacts, or the remaining unmitigated impacts.” (*Vineyard Area Citizens*, 40 Cal.4th at 444) (Emphasis added.)

The Board must prepare a draft EIR or revised draft *SED* that analyzes the impacts of diverting the water for exports under the Voluntary Agreements, and reducing flows for proposed projects such as the Delta Conveyance Project,

**12. THE BOARD IN A DRAFT EIR OR REVISED DRAFT SED MUST
DISCLOSE AND ANALYZE THE EXTENT OF WASTE OR
UNUSABLE USE OR METHOD OF USE OF THE EXISTING EXPORT
QUANTITIES**

The Delta Reform Act mandates that “[t]he longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta.” (Water Code § 85023.) With respect to the reasonable use requirement, the California Constitution establishes that the right to water or the use or flow of water “does not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water... .” (Cal. Const. art. X, § 2.)

Before considering for adoption or adopting the Revised Proposed Plan Amendments including the Voluntary Agreements, the Board must issue a draft EIR or revised draft *SED* to disclose and analyze whether the comparatively high diversions for exports authorized extend to “the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.”

**13. THE BOARD IN A DRAFT EIR OR REVISED DRAFT SED MUST
DISCLOSE AND ANALYZE THAT THE EXPORT QUANTITIES ARE
BASED ON QUANTITIES OF WATER THAT DO NOT ACTUALLY
EXIST**

Chapter 2 of the *Staff Report/SED* pointed out the “paper water” problem with the Sacramento/Delta watershed being over authorized for diversion by a total volume over 5 times the total annual average unimpaired outflow for the watershed. Specifically,

A review of the water right records in the Sacramento/Delta watershed included in the demand dataset shows that the total volume of water authorized for diversion

in the Sacramento/Delta watershed exceeds the annual average unimpaired outflow from the Bay-Delta watershed. The total average unimpaired outflow from the Bay-Delta watershed is about 28.5 MAF [million acre-feet]/yr. The face value, or total volume of water authorized for diversion, of the active consumptive post-1914 appropriative water right records in the Sacramento/Delta watershed is approximately 159 MAF/yr (Table 2. 7-1a), *which is over five times the total annual average unimpaired outflow for the entire Bay-Delta watershed.* This total face value amount excludes statements of diversion and use (including riparian and pre-1914 appropriative claims), which are not assigned a face value amount, but account for many of the water right records in the Sacramento/Delta watershed. (Ch. 2, p. 2-117)(Emphasis added.)

Current State Water Project (SWP) and Central Valley Project (CVP) authorized contract quantities have no basis in reality because they are not based on water quantities that actually exist. Before considering for adoption or adopting the Revised Proposed Plan Amendments the Board must disclose and analyze the impacts of not reducing exports to quantities based on water quantities that actually exist.

14. THE BOARD MUST PRESENT INFORMATION ABOUT THE IMPACTS OF THE VOLUNTARY AGREEMENTS IN A MANNER CALCULATED TO ADEQUATELY INFORM THE PUBLIC

“The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. [I]nformation scattered here and there in EIR appendices or a report buried in an appendix, is not a substitute for a good faith reasoned analysis.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.) (Internal quotation marks omitted.) Here, the Board’s *SED* did not even analyze the Voluntary Agreements in the same chapter as the Chapter 7 analysis of the proposed Plan Amendments and project alternatives. The Revised Proposed Plan Amendments are discussed in Chapter 13 issued more than 2 years after the 2023 *Staff Report/SED*. And, the Board states it “is not accepting further comments on the remainder of the draft Staff Report that was previously released for public comment.” (Notice p. 3.)

The Board is failing to proceed in the manner required by CEQA because it is piecemealing the environmental review of the project. The only meaningful CEQA analysis provided by the Board so far with respect to the need to significantly increase flows to protect endangered and threatened fish species is in the 2023 Staff Report/SED.

Also, instead of being included in Chapter 9 on the Voluntary Agreements, “Additional details regarding the VAs are included in Appendix G, including the final draft Scientific Basis Report in support of the VAs that is being submitted to independent peer review.” (*Staff Report/SED*, Ch. 9, p. 9-2.) The independent peer review, not having been done, was not included in the *SED*. Then there are also the materials referenced previously that would be submitted “by the end of the year” by the VA parties. (*Id.*) A public agency pursuant to CEQA, is to “circulate draft documents that reflect its independent judgment.” (Pub. Res Code § 21082.1(c)(2.)

Even DWR has pointed out that the *SED* lacked sufficient information “to analyze the magnitude of potential impacts of the proposed plan updates...” DWR's January 22, 2024, comment letter on the *Staff Report/SED* said,

The Staff Report does not include the State Water Board's draft Program of Implementation (POI) for the proposed updates to the Bay-Delta Plan, which DWR understands is in development and presently anticipated for release in the summer. The ability of DWR to *analyze the magnitude of potential impacts of the proposed updates*, including the Staff Report's proposed inflow and outflow objectives, on the State Water Project (SWP), and to operationalize the proposed flow requirements, is *highly dependent on the intended POI*. (Emphasis added.)⁷

There is still more. There are the October 25, 2024, July 24, 2025, and December 12, 2025, Plan updates, including the 120 page Water Quality Control Plan, 215 page Appendix B, Voluntary Agreement Pathway Accounting Protocols, and 546 page Chapter 13 plus 12 appendices submitted with the December 12, 2025, Plan updates. The December 12, 2025, documents included at least 3,322 pages of draft regulatory text and updated environmental analysis.

⁷ Letter from Karla A. Nemeth, Director, DWR ,to State Water Resources Control Board, at unnumbered p. 1. (This letter is the same letter identified in footnote 3.)

The information about the impacts of the Revised Proposed Plan Amendments including the Voluntary Agreements has not been “presented in a manner calculated to adequately inform the public.” Instead of providing “a good faith reasoned analysis” about the impacts of the Voluntary Agreements, the information has been “scattered here and there.”

Before considering for adoption or adopting the Voluntary Agreements, the Board must supply a good faith reasoned analysis of Voluntary Agreements impacts in a draft EIR or revised draft *SED*.

B. CEQA COMMENTS ON CHAPTER 13 OF THE DRAFT STAFF REPORT

1. CHAPTER 13 IDENTIFIES POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS IN CONCLUSORY STATEMENTS BUT LACKS ANALYSIS AND OMITS THE MAGNITUDE OF THE IMPACTS

The following are some examples from Chapter 13 of identifications of potentially significant environmental impacts that are conclusory, lack analysis, and omit the magnitude of the impacts.

After listing the enormous quantities of freshwater flows that would be diverted for proposed new or modified projects including the Delta Conveyance Project *which has a diversion capacity of 6000 cubic feet per second (cfs)*, Sites Reservoir project, Shasta Dam and Reservoir Enlargement Project, Sisk Dam, and Del Puerto Reservoir Project (Chapter 13, pp. 406-408), Chapter 13 simply states, “lower Delta outflows could impact candidate, sensitive, or special-status species and could interfere with the movement of native resident or migratory fish in the Delta.” (Chapter 13, p. 13-408.) The enormous quantities of freshwater flows diverted annually for those proposed projects are set forth above in section A5 of these comments as reported in the *Staff Report/SED*. (Chapter 7.24, 7.24-1, pp. 7.24-7, -8.)

With respect to cumulative impacts that would result from proposed new water projects, Chapter 13 states, “this chapter identifies a potentially significant cumulative impact on aquatic biological resources in the Delta.” (Chapter 13, p. 13-227.)

Chapter 13 states, "temperature impacts on special-status fish species from changes in flows and reservoir levels remain potentially significant." (Chapter 13, p. 13-303.)

Chapter 13 states, "the overall impact of the revised Plan amendments on recreation from incremental increases in HAB production would be potentially significant." (Chapter 13, p. 13-385.)

Chapter 13 includes Table 13.7.22-1 "Impact and Mitigation Measure Summary-Changes to Hydrology and Supply." (Chapter 13, p. 13-422.) Under the heading in the Table "BIOLOGICAL RESOURCES-AQUATIC" two impacts are listed:

"Impact AQUA-a: Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U. S. Fish and Wildlife Service

Impact AQUA-d: Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites" (Chapter 13, p.13-429.)

Chapter 13 provides seven one-sentence "Impact Conclusions" about potentially significant impacts:

"Potentially Significant

Changes in reservoir levels could affect downstream lows and water temperatures below some reservoirs

Changes in interior Delta flows could affect native anadromous and estuarine fish species residing in or migrating through the Delta during the spring of some years

Reduced Sacramento/Delta supply to agriculture could affect habitat for special status species that depend in part on Sacramento/Delta water supply for habitat (i.e., irrigation runoff in agricultural drain for desert pupfish)

Changes in water supply could affect WWTP effluent discharge which could result in effects on water quality and flow that could affect special-status aquatic species occurring in these locations

Lower groundwater levels could affect streamaquifer interactions and streamflows in some locations

Diversion of surface water for groundwater storage and recovery could reduce peak flows that provide ecological and habitat functions (e.g., floodplain inundation)

Water transfers could alter hydrologic patterns and affect aquatic biological resources in some locations" (Chapter 13, p. 13-429.)

Under the heading in the Table “HYDROLOGY & WATER QUALITY-SURFACE WATER” two impacts are listed:

“Impact SW-a: Violate any water quality standards or waste discharge requirements
Impact SW-f: Otherwise substantially degrade water quality” (Chapter 13, p. 13-435.)

Chapter 13 provides twelve “Impact Conclusions” about potentially significant impacts:

“Potentially Significant

Reduced streamflows could result in less dilution and increased concentration of contaminants in some locations

YCFCWCD HRL flow commitment could increase contaminant (e.g., boron, nitrate, and mercury) concentrations to harmful levels and could increase cyanobacteria, cyanotoxins, or HABs in Putah Creek

Increased flows could result in increased input of mercury and methylmercury production downstream in some locations

Increases in water level fluctuation at some reservoirs could result in increased bioaccumulation of methylmercury in fish

Changes in reservoir levels and lowered streamflows below reservoirs could result in increased water temperature in some locations and times of year

Changes in reservoir levels could result in increased production of HABs in some locations

Lower summer and fall flows in some Delta channels could result in incremental increased production of HABs and invasive aquatic plants

Reduced streamflows could result in temporary exceedances of waste discharge requirements and/or water quality standards

Changes in water supply, including use of alternative lower water quality sources in response to reduced Sacramento/Delta supply to municipal use could result in site-specific exceedances of waste discharge requirements due to changes in wastewater treatment plant (WWTP) influent and effluent quality and quantity

Reductions in delivery of higher quality Sacramento/Delta supplies to wildlife refuges and managed wetlands could affect water quality

Reductions in groundwater accretions could cause decreases in water quality associated with lower streamflows or higher temperatures

Diversion of surface water for groundwater storage and recovery could limit the dilution effect of existing flows and exacerbate existing water quality impairments

Increased use of water transfers could affect water quality in some locations” (Chapter 13, pp. 13-435,-436.)

Chapter 13 includes similar labeling of impacts as being significant without any analysis of the nature and magnitude of the adverse effect under other resource categories. All Chapter 13 provides is conclusory labeling of some impacts as being potentially significant.

2. CHAPTER 13's LABELING OF CERTAIN ENVIRONMENTAL IMPACTS AS POTENTIALLY SIGNIFICANT IN SHORT CONCLUSORY LANGUAGE WITHOUT DESCRIBING THE NATURE AND MAGNITUDE OF THE ADVERSE EFFECT FAILS TO COMPLY WITH CEQA

The California Supreme Court explained in *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514-515, that,

an EIR's designation of a particular adverse environmental effect as 'significant' does not excuse the EIR's failure to reasonably describe the nature and magnitude of the adverse effect. [Citation omitted] ['The EIR's approach of simply labeling the effect 'significant' without accompanying analysis of the project's impact on the health of the Airport's employees and nearby residents is inadequate to meet the environmental assessment requirements of CEQA.']; [Citation omitted] An adequate description of adverse environmental effects is necessary to inform the critical discussion of mitigation measures and project alternatives at the core of the EIR. (See Guidelines, § 15151 ['An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.'].)

The Supreme Court explained in *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 514), that under CEQA, "whether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A *conclusory* discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence." (Emphasis added.)

The conclusory labeling of certain environmental impacts as potentially significant lacking analysis and omitting the magnitude of the impact set forth in the preceding

section of these comments fails to comply with CEQA. The final draft of the Plan promised by the Water Board and revised *draft* SED required by CEQA must include sufficient analysis and the magnitude of the impacts to comply with CEQA and to provide a basis for informed public review and comment.

3. CHAPTER 13 IS NOT EVEN FOCUSED ON THE PURPOSE OF THE PROJECT WHICH IS ECOLOGICAL RESTORATION INCLUDING PREVENTING THE EXTINCTION OF ENDANGERED AND THREATENED SPECIES

Chapter 13 says,

the environmental analysis presented in the Section 13.7 resource sections evaluates the potential impacts on resources that may result from changes in hydrology or changes in water supply under the revised proposed Plan amendments. Changes in hydrology include changes in streamflows and reservoir storage levels. Changes in water supply include reduced Sacramento/Delta supplies for agriculture, municipal, and wildlife refuge uses, as well as potential changes in groundwater levels and use, including increased groundwater pumping in response to reduced Sacramento/Delta supply. (Chapter 13, pp. 13-221,-222.)⁸

The declared purpose of the project is restoration including preservation of endangered and threatened fish and other species. Instead of being focused on the purpose of the project, Chapter 13 is focused on agriculture and other uses diverting the freshwater flows. This approach ignores the declared purpose of the project. Chapter 13 is "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded" in terms of finding out what is necessary to preserve the listed species. As part of that deception, the 2023 Staff Report proposed Plan amendments and High Flow Alternative were not included in the comparative analysis of the 2025 Revised Proposed Plan Amendments.

4. PREPARATION OF A REVISED DRAFT STAFF REPORT AND RECIRCULATION IS REQUIRED BECAUSE THE STAFF REPORT/SED INCLUDING CHAPTER 13 IS SO INADEQUATE AND CONCLUSORY WITH RESPECT TO THE REVISED PROPOSED

⁸ There are some technical problems with Chapter 13. It appears there are two different versions of some pages including pages 13-215,-222. The version of pages 221and 22 that we cite are in section 13.7 entitled "Environmental Analysis."

PLAN AMENDMENTS INCLUDING THE VOLUNTARY AGREEMENTS THAT MEANINGFUL PUBLIC REVIEW AND COMMENT WERE PRECLUDED

As shown above, the Chapter 13 labeling of impacts as being potentially significant in short conclusory sentences without any analysis of the nature and magnitude of the adverse effect fails to comply with CEQA. Excluding reasonable alternatives such as the Board's own 2023 proposed Plan amendments and the 2023 high flow alternative from comparative analysis to the Revised Proposed Plan Amendments likewise fails to comply with CEQA. Moreover, this means that the Board's environmental documentation so far has been so "fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded."

The Board's own regulations state in pertinent part, "The State CEQA Guidelines (Cal. Code Regs., tit. 14, div. 6, Ch. 3 (commencing with section 15000)), including all subsequent amendments thereto, are hereby incorporated by reference as if fully set forth in this Chapter. (23 Cal. Code Regs, § 3720(c)(1.)

The Board's regulations, section 3777(b) requires that a "Draft SED shall include, at a minimum, the following information:"

The Draft SED shall include, at a minimum, the following information:

- (1) A brief description of the proposed project;
- (2) *An identification of any significant or potentially significant adverse environmental impacts of the proposed project;*
- (3) *An analysis of reasonable alternatives to the project and mitigation measures to avoid or reduce any significant or potentially significant adverse environmental impacts; and*
- (4) *An environmental analysis of the reasonably foreseeable methods of compliance. The environmental analysis shall include, at a minimum, all of the following:*
 - (A) An identification of the reasonably foreseeable methods of compliance with the project;
 - (B) *An analysis of any reasonably foreseeable significant adverse environmental impacts associated with those methods of compliance;*
 - (C) *An analysis of reasonably foreseeable alternative methods of compliance that would have less significant adverse environmental impacts; and*

(D) An analysis of reasonably foreseeable mitigation measures that would minimize any unavoidable significant adverse environmental impacts of the reasonably foreseeable methods of compliance. (23 Cal. Code Regs, § 3777(b)(1), (2), (3), (4.) (Emphasis added.)

There is no analysis of reasonable alternatives to the Voluntary Agreements such as the proposed 2023 Plan amendments and the High Flow Alternative. There is no analysis as opposed to conclusory one sentence labels of any reasonably foreseeable significant adverse environmental impacts associated with the Revised Proposed Plan Amendments.

The Board's Regulation section 3779(e) states,

At the close of the public hearing, the board may either take action or defer action to a subsequent meeting of the board. If the board defers action, the board must allow additional public comment on the Draft SED only *if recirculation would be required for an environmental impact report pursuant to California Code of Regulations, title 14, section 15088.5*, in which case the board may limit any additional public comment to the significant new information contained in the recirculated Draft SED. If the board defers action and recirculation would not be required, the board may consider the responses to comments, approve the SED, and adopt the project at a subsequent board meeting without accepting any additional public comment. (23 Cal. Code Regs, § 3779(e.) (Emphasis added.)

A revised Draft SED, meaning here the Staff Report including Chapter 13, and recirculation of same is required because it would be required for an EIR pursuant to CEQA Guidelines section 15088.5. Chapter 13 says, "The entire Staff Report can be considered the SED that fulfills the requirements of CEQA and the State Water Board's CEQA regulations (Cal. Code Regs., tit. 23, § 3775 et seq.) to analyze the environmental effects of the proposed regulatory activity,.." (Chapter 13, p. 13-215.)⁹

CEQA requires that,

When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again

⁹Our citation is to the version of page 13-215 that has the heading "13.7 Environmental Analysis" on the top of the page.

pursuant to Sections 21104 and 21153 before certifying the environmental impact report. (Pub. Res. Code § 21092.1)

As the California Supreme Court has explained,

recirculation is required, for example, when the new information added to an EIR discloses: (1) a new substantial environmental impact resulting from the project or from a new mitigation measure proposed to be implemented (cf. Guidelines, § 15162, subd. (a)(1), (3)(B)(1)); (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance (cf. Guidelines, § 15162, subd. (a)(3)(B)(2)); (3) a feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the project's proponents decline to adopt (cf. Guidelines, § 15162, subd. (a)(3)(B)(3), (4)); or (4) that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 263 Cal.Rptr. 104). (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130.)

The Court's holding is now set forth in CEQA Guidelines section 15088.5(a)(1)-(4.)

CEQA Guidelines section 15088.5(a)(1)-(4) requires,

(a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) *A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.*

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Mountain Lion Coalition v. Fish & Game Com. (1989) 214 Cal.App.3d 1043). Emphasis added.)

Chapter 13 states,

State CEQA Guidelines may be cited where appropriate and relevant to help guide or inform the CEQA analysis consistent with CEQA's goals and standards. California Code of Regulations, title 14, section 15088.5, subdivision (a) requires a lead agency to recirculate an EIR when significant new information is added, such as *changes in the project* or environmental setting as well as additional data or other information." (Chapter 13, p. 13-215.)

The Board has changed the project in the 2025 Draft Updates without providing adequate environmental review of the changed project. So, the Board must prepare and recirculate for public review and comment a draft EIR or revised draft Staff Report/SED.

Since the *Staff Report/SED* and the October 25, 2024, updates have been issued the new federal administration has issued an executive order to increase Central Valley Project (CVP) exports.

The federal government is going to do everything possible to further reduce Delta flows by increasing exports. The president issued Executive Order 14181 on January 24, 2025. The Executive Order is published at 90 Fed. Reg. 8747. The Executive Order includes Section 2(b) ordering,

In particular, the Secretary of the Interior and the Secretary of Commerce *shall immediately take actions to override existing activities that unduly burden efforts to maximize water deliveries.* The Secretary of the Interior and the Secretary of Commerce shall consider actions including those consistent with the "No Action Alternative" in the Final Environmental Impact Statement issued November 15, 2024, by the Bureau of Reclamation on Long-term Operation of the Central Valley Project and State Water Project. (Emphasis added.)

The Executive Order also includes Section 2(c) ordering,

The Secretary of the Interior, including through the Bureau of Reclamation, shall utilize his discretion to operate the CVP to deliver more water and produce additional hydropower, including by increasing storage and conveyance, and jointly operating federal and state facilities, to high-need communities, *notwithstanding any contrary State or local laws. The Bureau of Reclamation shall take all available measures to ensure that State agencies—including the California Department of Water Resources—do not interfere with the Bureau of Reclamation’s operation of the project to maximize water delivery to high-need communities or otherwise*, including but not limited to the issuance of a new Record of Decision maximizing water deliveries and consistent with the 2020 Record of Decision. (Emphasis added.)

Chapter 13 says, “Consistent with EO 14181, the U. S. Bureau of Reclamation (Reclamation) is proposing changes to CVP LTO to fulfill EO 14181. Overall, Action 5 would be expected to increase Delta exports and decrease Delta outflows compared to baseline and the 2024 LTO.” (Chapter 13, pp. 13-405,-406.)

The Board needs to disclose and analyze in a draft EIR or revised draft SED that the impacts of virtually continuing diversions and exports as usual should the Voluntary Agreements be adopted will be worsened by the increased CVP diversions and exports.

Also, according to the *Staff Report/SED* , “by the end of the year, the VA parties are planning to submit the following additional draft documents: draft Global Agreement, draft Enforcement Agreements, draft Implementing Agreements: draft Quantitative Flow Accounting Approach; draft Funding Plan; and draft Systemwide Governance Committee Charter.” (Ch. 9, p. 9-2.) So, none of that material was in the draft *SED*.

There is still more going on. According to the *2025 Draft Updates*,

The State Water Board is establishing the Bay-Delta Monitoring and Evaluation Program (BDMP) comprised of monitoring activities needed to implement the Bay-Delta Plan, including to assess code compliance, evaluate effectiveness, and inform potential future updates. (*2025 Draft Updates*. p. 108.)

Biological goals for the Sacramento/Delta will use scientific information to establish a numeric value or range of values for biological goals, will be expressed

in terms that are SMART (specific, measurable, achievable, relevant, and time-bound), and for anadromous salmonids will be based on viable salmonid population (VSP) parameters including abundance, life history and genetic diversity, productivity, and spatial structure. (*2025 Draft Updates*, pp. 116-117.)

That is the type of information that would have to be included in a draft EIR or a revised draft *SED* should the Board consider adoption of or adopt the Voluntary Agreements.

For all the reasons set forth in these comments, the Board must issue a draft EIR or revised draft *SED* and recirculate same for public review and comment before considering for adoption or adopting the Revised Proposed Plan Amendments including the Voluntary Agreements.

5. THE BOARD'S CEQA DOCUMENTS HAVE FAILED TO PROVIDE THE ACCURATE, STABLE, AND FINITE PROJECT DESCRIPTION REQUIRED BY CEQA

Pursuant to CEQA, “[a]n accurate, stable and finite project description is the *sine qua non* [absolutely indispensable requirement] of an informative and legally sufficient EIR. However, a curtailed, and enigmatic or unstable project description draws a red herring across the path of public input. Only through an accurate view of the project may the public and interested parties and public agencies balance the proposed project’s benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives.” (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654 [internal citations omitted].)

The *2025 Draft Updates* have changed the project description from restoration to minimizing reductions in exports to water diverters. Moreover, that has been done without the CEQA-required full environmental disclosure that the project description including the purpose of the project has been changed. The final draft of the Plan and CEQA-required draft Staff Report must disclose and provide an accurate, stable, and finite project description and description of the true purpose of the project.

6. THE BOARD IS FAILING TO PROCEED IN THE MANNER REQUIRED BY CEQA BY PIECEMEALING THE ENVIRONMENTAL REVIEW OF THE PROJECT

The court in *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592 noted CEQA’s broad definition of “project” avoids potential

piecemealing or segmentation of environmental analysis. The Board is piecemealing the environmental review of the project in more than one way.

First, the Board said in its December 12, 2025, Notice, “The Board is not accepting further comments on the remainder of the draft Staff Report that was previously released for public comment.” (Board Notice, p. 3.) So, instead of seeking informed review from the public including experts, the Board is trying to prohibit the public from pointing out such things as the 2025 Draft Updates are completely contrary to the 2023 *Staff Report/SED* substantial evidence that strong measures such as the High Flow alternative and 2023 proposed Plan amendments are necessary to restore the impaired Delta estuary and preserve endangered and threatened species.

Second, the Board has segmented the environmental review of the Bay-Delta Plan Updates from the ongoing review of projects including the Delta Conveyance Project. This has the effect of hiding from public review such undeniable facts that other projects such as the Delta Conveyance Project would do the exact opposite of increasing flows by reducing flows including by new points of diversion upstream from the impaired Delta.

The Board must prepare for public review and comment a draft EIR or revised **draft** Staff Report that does not piecemeal the environmental analysis of the project.

CONCLUSION

The Board will fail to proceed in the manner required by CEQA if it adopts the Revised Proposed Plan Amendments including the regulatory and/or VA pathways without having prepared and circulated for public review and comment a draft EIR or revised draft *SED* on the environmental impacts of the Revised Proposed Plan Amendments including the Voluntary Agreements. The contact for this comment letter is E. Robert Wright, Counsel, Sierra Club California (916) 557-1104 or email. We will do our best to answer any questions you may have.

Sincerely,



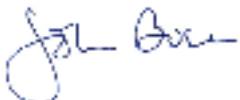
E. Robert Wright, Counsel
Sierra Club California



Miguel Miguel, Director
Sierra Club California



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Planning and Conservation League



John Buse, Senior Counsel
Center for Biological Diversity



Carolee Krieger, Executive Director
California Water Impact Network



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AquAlliance

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Cc.

Administrative Hearings Office and all parties in DCP Hearing

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