
State Water Resources Control Board

NOTICE OF OPPORTUNITY FOR PUBLIC COMMENT AND WORKSHOP ON DRAFT SACRAMENTO/DELTA UPDATES TO THE WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY/SACRAMENTO-SAN JOAQUIN DELTA WATERSHED

NOTICE IS HEREBY GIVEN that State Water Resources Control Board (State Water Board or Board) staff has released for public review and comment a draft of potential updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed (Bay-Delta Plan).¹ The draft updates to the Bay-Delta Plan are focused on the portions of the plan relevant to the Sacramento River watershed, Delta eastside tributaries (including the Calaveras, Cosumnes, and Mokelumne Rivers), and Delta (Sacramento/Delta) for the reasonable protection of fish and wildlife beneficial uses. The draft Sacramento/Delta updates to the Bay-Delta Plan include options for incorporating what is referred to as the “regulatory pathway” or “regulatory provisions” based on concepts described in the Board’s September 2023 [draft Staff Report](#) that includes new Sacramento/Delta tributary inflow and cold water habitat provisions and inflow-based Delta outflows, as well as other provisions. The draft also includes provisions based on voluntary agreements (VAs) proposed by public water agencies and state and federal agencies known as the [Healthy Rivers and Landscapes Proposal](#) and referred to as the “VA pathway” or “VA provisions” that would also be regulatory provisions if incorporated into the Bay-Delta Plan. The State Water Board has not yet made a decision on how to move forward with the Sacramento/Delta updates to the Bay-Delta Plan and is seeking public input on the potential updates and options identified in the draft plan.

NOTICE IS ADDITIONALLY HEREBY GIVEN that the State Water Board will receive public comments on the draft Sacramento/Delta updates to the Bay-Delta Plan, both in writing and orally at a multiday Board workshop, in accordance with this notice.

BACKGROUND

State law requires that the State Water Board adopt water quality control plans to reasonably protect beneficial uses of water. The Board is required to periodically review its water quality control plans and to update those plans as needed through a public process. The Board protects water quality that affects beneficial uses of water in the Bay-Delta, in part, through its Bay-Delta Plan. The Bay-Delta Plan identifies (1) beneficial uses of water in the Bay-Delta, which currently include municipal,

¹ The Bay-Delta Plan was last amended in 2018 when the State Water Board adopted updates relevant to Lower San Joaquin River flows for the reasonable protection of fish and wildlife and southern Delta salinity for the reasonable protection of agriculture.

industrial, agricultural, and fish and wildlife uses; (2) largely flow-based water quality objectives to reasonably protect the beneficial uses; and (3) a program of implementation to achieve the objectives, including monitoring and reporting requirements.

The draft updates to the Bay-Delta Plan include options based on alternatives described in the Board's September 2023 [draft Staff Report](#) in support of potential Sacramento/Delta updates to the Bay-Delta Plan. The draft Staff Report analyzes the potential benefits and impacts associated with Sacramento/Delta updates to the Bay-Delta Plan and identifies potential options for updating the Sacramento/Delta portions of the plan. Specifically, the draft Staff Report included specific regulatory text for the objectives and a summary of potential provisions of the program of implementation. The draft updates to the Bay-Delta Plan include refinements to the draft objectives described in the draft Staff Report and specific program of implementation text, all of which was informed by public comments on the draft Staff Report and associated multi-day public hearing, as well as a multi-day public workshop on VAs. The draft changes to the Bay-Delta Plan include options for incorporating either a regulatory pathway that would not include VAs, or a pathway that would include VAs with regulatory provisions applying to parties not covered by the VAs and to VA parties if the VAs are approved but later discontinued. Additionally, the draft updates include options for two modular alternatives (Alternative 5a and Alternative 6a) that were also described in the draft Staff Report.

Based on comments on this draft, State Water Board staff will develop a revised draft of proposed updates to the Bay-Delta Plan for additional public comment and Board consideration.

DOCUMENT AVAILABILITY

State Water Board staff has released a complete draft of potential updates to the Bay-Delta Plan with possible Sacramento/Delta updates and other minor updates and edits to improve clarity and readability. A summary of the format of the draft document and the draft updates to the Bay-Delta Plan are provided in Attachment A to this notice.

The draft updates to the Bay-Delta Plan are available for review on the [Board's website](#). If you need assistance accessing the document, email staff at SacDeltaComments@waterboards.ca.gov.

WRITTEN PUBLIC COMMENTS

Written comments on the draft updates to the Bay-Delta Plan must be received no later than **December 19, 2024**, as specified below. The Board is not accepting further comments on the draft Staff Report that was previously released for public comment.

Written comments specific to the workshop topics scheduled for January 23, 2025, may be submitted after the December 19 deadline identified above. Comments limited to Alternative 5a and Alternative 6a must be received no later than **January 30, 2025**.

Comments should be submitted via email to SacDeltaComments@waterboards.ca.gov with the subject “**Comment Letter – Draft Sacramento/Delta Bay-Delta Plan Updates.**” If comments exceed email file size limitations, please send an email to the above address at least 24 hours in advance of the comment deadline for assistance with submitting documents via the Board’s File Transfer Protocol (FTP) site.

WORKSHOP AGENDA

Although a quorum of the Board is expected to be present at the workshop, the State Water Board will not take any formal action. The workshop will include both a physical meeting location and an option to participate remotely as described below.

November 20, 2024, beginning at 9:00 am

Joe Serna Jr. CalEPA Building
Coastal Hearing Room
1001 I Street, Second Floor
Sacramento, CA 95814

November 22, 2024, beginning at 9:00 am

Joe Serna Jr. CalEPA Building
Coastal Hearing Room

December 3, 2024, beginning at 9:00 am

Joe Serna Jr. CalEPA Building
Coastal Hearing Room

December 12, 2024, beginning at 9:00 am

Joe Serna Jr. CalEPA Building
Coastal Hearing Room

January 23, 2025, beginning at 9:00 am

Joe Serna Jr. CalEPA Building
Sierra Hearing Room

And via Video and Teleconference

The purpose of the multiday public workshop is to discuss the draft potential Sacramento/Delta updates to the Bay-Delta Plan. The multiday workshop will address specific topics planned for each workshop day, as described in the agenda below. Each workshop day will include: (1) introductory remarks from the Board Chair and Board members; (2) staff presentations on the topics identified for that day; and (3) topic specific panel presentations and individual comments. To the extent possible, individual comments should address the topics covered that day. **Other general public comments not specific to a topic will be heard in the afternoon of December 12, 2024.**

November 20, 2024

Topic: Draft Sacramento/Delta Regulatory Provisions in the Bay-Delta Plan

- Introductory remarks from the Board
- Staff presentation
- Topic specific panel presentations and individual comments

Presentations on this topic should address the following questions:

- Are the draft regulatory provisions appropriate or should changes be made?
- What, if any, of the regulatory options described should the Board move forward with for consideration?

November 22, 2024

Topic: Draft Sacramento/Delta VA Provisions in the Bay-Delta Plan

- Introductory remarks from the Board
- Staff presentation
- Topic specific panel presentations and individual comments

Presentations on this topic should address the following questions:

- Are the draft VA provisions appropriate or should changes be made?
- What, if any, of the VA options described should the Board move forward with for consideration?

December 3, 2024

Topic: VA Flow and Habitat Accounting

- Introductory remarks from the Board
- Staff presentation
- Topic specific panel presentations and individual comments

Presentations on this topic should address the following questions:

- Are the draft conditions VA flow and habitat accounting must meet that are included in the program of implementation appropriate or should changes be made?
- What changes, if any, should be made to the specific VA flow accounting protocols developed by VA parties in order to meet the above conditions for incorporation in Appendix B (Voluntary Agreements Accounting Protocols)?
- What changes, if any, should be made to the habitat accounting protocols described in Appendix B?

Flow measure accounting as developed by VA parties is available on the Board's [VA website](#).² See Appendix B of the draft potential updates to the Bay-Delta Plan for draft non-flow (habitat) accounting procedures developed by Board staff that were informed by habitat accounting procedures developed by VA parties.

December 12, 2024

Topic: Tribal Focused Topics (Half Day) and General Comments (Half Day)

- Introductory remarks from the Board
- Staff presentation
- Tribal presentations
- Any other panel presentations and individual comments
- Other general comments

January 23, 2025

Topic: Potential Provision to Protect Base Delta Outflows During Drought Periods (Alternative 5a) and Potential Provision to Protect VA Flows and the Base They Are Added to From New Projects (Alternative 6a)

- Introductory remarks from the Board
- Staff presentation
- Topic specific panel presentations and individual comments

Presentations on this topic should address the following questions:

- Should the State Water Board incorporate provisions based on either of these two options into the Bay-Delta Plan?
- Are there other options the Board should consider that would achieve similar purposes, including: 1) avoiding the need to modify minimum Delta outflows and other minimum water quality requirements during drought conditions; and 2) protecting the base VA flows are intended to be added to from new water supply projects, including new water right applications and change petitions that may result in increased diversions from the Bay-Delta watershed that diminish overall additive VA flows except during wetter conditions?

See Attachment A and sections 4.4.4.1 (Drought Provision) and 4.4.10.1 (Protection of the VA Flows Base Applicable to New Water Supply Projects) of the draft changes to the Bay-Delta Plan for more information on these options.

WORKSHOP PARTICIPATION INFORMATION

For those who only wish to watch the meeting, a webcast will be available at youtube.com/user/BoardWebSupport/ and video.calepa.ca.gov/ (closed captioning available) and should be used unless you intend to comment.

For those who wish to provide a panel presentation, please email SacDeltaComments@waterboards.ca.gov by the deadlines identified below with the

² In October 2024, the Board received additional updated draft VA documents from VA parties. Those documents are also available on the Board's VA website.

following information: (1) the date of the workshop the panel is requesting to present at; (2) the names, affiliations, and email addresses of each member of the panel; (3) and whether each panel member will present in person or remotely. Panel presentations should be limited to the topics covered on each workshop day as described in the agenda. Panel presentations will be limited to 10-20 minutes (depending on the number of panel requests) unless otherwise directed. Panels that would like to make a PowerPoint presentation must submit their PowerPoint presentation to SacDeltaComments@waterboards.ca.gov by the deadlines identified below.

For those who wish to provide an individual comment, individual comments will be heard at the end of each workshop day. As described above, individual comments should address the topics covered that day. Individual comments will be limited to 3 minutes unless additional time is otherwise requested and approved. If you wish to make an individual comment, please fill out a [virtual speaker card](#) by the deadlines identified below. For those that plan to participate virtually, the Clerk to the Board will respond to your form one day before the workshop with the information needed to join the meeting.

To ensure a well-organized and efficient workshop, please adhere to the following deadlines:

Workshop Day and Topic	Deadline	Date
November 20, 2024: Potential Regulatory Provisions	Panel presentation requests	November 13
	PowerPoint presentations	November 15
	Virtual speaker cards	November 18
November 22, 2024: Potential VA Provisions	Panel presentation requests	November 15
	PowerPoint presentations	November 19
	Virtual speaker cards	November 20
December 3, 2024: VA Flow and Habitat Accounting	Panel presentation requests	November 22
	PowerPoint presentations	November 27
	Virtual speaker cards	November 27
December 12, 2024: Tribal Focused Topics and General Comments	Panel presentation requests	December 5
	PowerPoint presentations	December 9
	Virtual speaker cards	December 10
January 23, 2025: Alternative 5a and Alternative 6a	Panel presentation requests	January 14
	PowerPoint presentations	January 17
	Virtual speaker cards	January 21

FUTURE NOTIFICATIONS

To receive future email notifications about the Bay-Delta Plan processes, [subscribe](#) to the “Bay Delta Notices” topic (listed under Water Rights). Any change in the date, time, and place of the public meetings described above will be noticed via the email subscription list.

AVAILABILITY OF LANGUAGE SERVICES

To request oral interpretation or sign language services, please submit your request at least 10 business days before the meeting by contacting the Office of Public Participation at (916) 341-5254 or OPP-LanguageServices@waterboards.ca.gov.

Telecommunications device for the deaf (TDD) users may contact the California Relay Service at: TTY (800) 735-2929 or voice line at (800) 735-2922.

VISITING THE CALEPA BUILDING

All visitors to the CalEPA Building are required to sign in at the security guard station located just inside the main entrance. Visit the [CalEPA website](#) for additional information on traveling to the CalEPA Building.

CONTACT INFORMATION

For questions regarding this notice, email SacDeltaComments@waterboards.ca.gov.

October 25, 2024
Date



Courtney Tyler
Clerk to the Board

State Water Resources Control Board

ATTACHMENT A

SUMMARY OF DRAFT SACRAMENTO/DELTA UPDATES TO THE WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY/SACRAMENTO-SAN JOAQUIN DELTA WATERSHED

Format of Draft Potential Updates to the Bay-Delta Plan

State Water Board staff has released a complete draft of the potential updates to the Bay-Delta Plan, including substantive Sacramento/Delta updates and other minor updates and edits to improve clarity and readability. Due to the extent of the draft updates to the Bay-Delta Plan and reorganization of information, a redline version (e.g., underline and strikeout) is not provided. Instead, staff is providing this summary to explain the options being considered for updating the Bay-Delta Plan.

This document and the draft plan amendments refer to a “regulatory pathway” that describes a suite of potential numeric and narrative requirements for tributary inflows, cold-water habitat, Delta outflows, interior Delta flows, and monitoring. It is important to note, however, that any amendments adopted by the State Water Board, including amendments that incorporate VAs, would constitute regulatory requirements.

Regulatory pathway provisions and VA pathway provisions under consideration are presented in a single document. The draft updates to the Bay-Delta Plan include “notes to reader” that explain options that are under consideration or provide context for some of the potential draft changes. These notes are depicted in bracketed italics labeled “note to reader” throughout the document. Additionally, the draft updates to the Bay-Delta Plan include boxes with specific optional program of implementation text with an accompanying note to reader explaining the option. Some of these options are based on regulatory provisions developed by staff, while others are based on VA proposals. The notes to reader and boxes are intended to explain options and other issues under consideration in the draft on which the Board is seeking input. That input and other input received during the planning process will inform the specific changes to the plan that are brought to the Board for consideration at a future date.

Summary of Draft Updates

There are no substantive changes to the water quality objectives for the protection of municipal and industrial uses (Table 1) or agricultural uses (Table 2) or associated program of implementation provisions from the current (2018) version of the Bay-Delta Plan. There are also no substantive changes to the fish and wildlife objectives and associated program of implementation provisions from the current version of the

Bay-Delta Plan for Lower San Joaquin River flows, dissolved oxygen, or San Joaquin River salinity. While there are also no proposed changes to the salmon protection objective from the current version of the Bay-Delta Plan, there are possible changes to the implementation provisions applicable to this objective, and only minor changes are proposed to the plan related to Suisun Marsh and Suisun Bay.

Possible substantive additions are included for the following fish and wildlife provisions of the Bay-Delta Plan: Sacramento River and Delta tributary inflows and cold water habitat, Delta outflows, and interior Delta flows. In addition, there are possible substantive changes to monitoring, special study, evaluation and reporting provisions, and general provisions. For VAs there are also additional possible non-flow habitat restoration provisions.

The following list summarizes the major draft Sacramento/Delta updates to the Bay-Delta Plan for the reasonable protection of fish and wildlife that are described in more detail below:

- Potential regulatory provisions (referred to as the regulatory pathway) that are being considered in the absence of VAs, including: 1) in the event the Board does not proceed with VAs; 2) for non-VA parties in the event the Board moves forward with VAs; and 3) as a possible backstop to VAs if VAs are discontinued after being implemented. The potential new regulatory provisions include the following:
 - Narrative and numeric objectives and implementation provisions requiring inflows from the Sacramento River, its tributaries, and Delta eastside tributaries;
 - A narrative cold water habitat objective and implementation provisions to protect cold water habitat for salmonids;
 - An inflow-based Delta outflow objective and implementation provisions that would require required inflows to be provided as outflows;
 - A possible narrative interior Delta flow objective and implementation provisions;
 - Changes to the existing Delta Cross Channel Gate closure objective and implementation provisions; and
 - Other more minor provisions.
- Potential provisions to incorporate VAs, including a new narrative ecosystem protection objective and VA flow and habitat actions to implement the proposed new objective and existing salmon protection objective.
 - An option to include a possible provision to protect base flows to which the VA flows would be added from increased diversion resulting from new water supply projects.

- A provision to develop an implementation methodology to administer water rights and protect the flows resulting from the regulatory or VA provisions, building on the methodology used in the last drought for curtailments.
- An option to include a drought provision that would help to meet minimum (base) Delta outflows during dry periods, potentially reducing the need for temporary urgency changes in the future.
- Incorporation of tribal (TBUs) (CUL and T-SUB) and subsistence fishing (SUB) beneficial uses into the Bay-Delta Plan as they relate to the reasonable protection of fish and wildlife.
 - An option to consider formal designation of the CUL beneficial use in the Bay-Delta watershed as part of the update to the Bay-Delta Plan or another subsequent appropriate proceeding.
- Updates to monitoring, special study, evaluation, and reporting measures, including required harmful algal bloom monitoring.
- Provisions to establish biological goals for Sacramento/Delta tributaries and the Delta.
- Provisions for set annual and periodic review processes to evaluate progress on implementation of the Bay-Delta Plan and possible needed changes, including provisions for adaptive implementation.

Additional minor revisions to the draft Bay-Delta Plan include:

- Editorial and formatting changes (e.g., new heading numbering, more consistent usage of abbreviations and acronyms, etc.).
- Update to the title of the Bay-Delta Plan to replace “Estuary” with “Watershed.”
- Addition of a map (Figure 1B) that displays the entire Bay-Delta watershed.
- Reformatting and minor revisions and updates to other components of Table 3, “Water Quality Objectives for Fish and Wildlife Beneficial Uses,” of the Bay-Delta Plan and the associated program of implementation, including moving relevant text from the footnotes into the objectives and program of implementation.
- Removal of compliance stations S-97, S-35, and “Water supply intakes for waterfowl management areas on Van Sickle and Chipps islands” for the Western Suisun Marsh salinity objective from Table 3 and instead modifying them to be monitoring stations in the Water Quality Compliance and Baseline Monitoring that is included in the Bay-Delta Monitoring and Evaluation Program (BDMEP) (Appendix A).
- Relocation of Table 5, “Water Quality Compliance and Baseline Monitoring,” and the associated map of monitoring stations from the current (2018) Bay-Delta Plan to a separate document, the BDMEP.

- Minor edits to program of implementation text for Lower San Joaquin River flows and southern Delta salinity to clarify language (e.g., changing “this amendment” to “2018 amendments”) and to reflect actions that have been completed (i.e., Biological Goals).
- Removal of outdated language.

The Lower San Joaquin River flow and southern Delta salinity objectives and provisions that were adopted in 2018 remain substantively unchanged. However, some of the draft changes included in the draft updated Bay-Delta Plan, if adopted, would generally apply to the entire Bay-Delta watershed, including the Lower San Joaquin River. This includes annual and periodic reviews and integration of the San Joaquin River Monitoring and Evaluation Program into the BDMEP.

Regulatory Pathway Provisions

The regulatory pathway described in the draft updates to the Bay-Delta Plan is based on the “proposed Plan amendments” described in the draft Staff Report. The regulatory pathway includes new Sacramento/Delta tributary inflows and cold water habitat, and inflow-based Delta outflow provisions, as well narrative interior Delta flow provisions and updates to Delta Cross Channel Gate closure requirements. The draft Bay-Delta Plan identifies that if VAs are adopted, the VA water right holders would not be subject to the new regulatory pathway provisions for inflows, cold water habitat, and inflow based Delta outflows during the term of the VAs, but instead would be subject to the specific VA provisions identified in the program of implementation.

Potential Sacramento/Delta Tributary Inflow Provisions

The draft updates include new narrative and numeric inflow provisions for Sacramento/Delta tributaries. The narrative describes the needs for inflows to provide appropriate conditions in tributaries and to contribute flows to the Delta, and describes the conditions the numeric inflows and other provisions in the Bay-Delta Plan are intended to produce. The numeric components would require a portion of the unimpaired tributary flows to remain in the stream for environmental purposes.

The inflow requirements would apply throughout the Sacramento/Delta watershed, including on upstream tributaries and all Sacramento/Delta tributaries that support or contribute to the protection of anadromous fish species. The draft Staff Report identified proposed inflows from Sacramento/Delta tributaries of 55 percent of unimpaired flow, within an allowed adaptive range between 45 and 65 percent of unimpaired flow. As described further below, the draft program of implementation includes a provision that would require lower inflows of 35 and 45 (depending on the conditions) percent of unimpaired flow during extreme dry periods. The State Water Board is still in the process of considering the percent of unimpaired flow range and is seeking input on an

adaptive range between 35 to 75 percent, including any appropriate circumstances that may justify moving up or down in the range.

The numeric inflow requirements for the Sacramento/Delta tributaries would be implemented in order of water right priority. Water bypassed to meet the requirements would be dedicated to instream flows and would not be available for diversion. In order to implement the numeric inflow requirements in accordance with water right priorities, demands for water that exceed the available supplies while preserving the instream flows and amounts needed to serve senior water right demands would be subject to water right curtailment in order of water right priority unless an exception to curtailment applies.

If the VAs are approved and implemented, VA water rights would not be subject to the curtailments for the required inflows, but would be subject to curtailments if water is not available at their priority of right (e.g., during droughts). Bypasses to contribute to inflows by non-VA water right holders are proposed to be calculated in order of water right priority without adjustments for VAs. These provisions would ensure that non-VA water rights are not allocated more or less responsibility than would occur absent the VAs and would also ensure that VAs do not impact senior water right holders.

Adaptive implementation of the numeric inflows could be used to optimize flows to achieve benefits to fish and wildlife while also allowing for consideration of other beneficial uses, and to allow the numeric inflows to be implemented in conjunction with cold water habitat provisions. Adaptive implementation would allow for shaping of the flow and moving in the range of the percent of unimpaired flow where the best available scientific information supports a different flow pattern, or a combination of flow and non-flow actions that would better protect fish and wildlife beneficial uses. Adaptive implementation could occur on a seasonal, annual, or long-term basis, including as part of local cooperative solutions provided for in the draft Bay-Delta Plan.

Potential Cold Water Habitat Provisions

The new draft cold water habitat provisions would require that cold water flows from reservoirs are maintained and timed to provide for downstream temperatures to protect salmon species at critical times of year, or that alternate protective measures are implemented (e.g., passage above dams) to ensure that fish below dams are kept in good condition. The regulatory cold water habitat provisions would apply to all of the Sacramento/Delta tributaries that support salmon species that do not have approved VAs.

Water right holders that own or operate specific reservoirs would be responsible for undertaking actions to comply with the cold water habitat provisions. Those reservoir owners/operators would be required to develop temperature management strategies for approval by the Executive Director of the State Water Board describing how the inflow and cold water habitat provisions would be implemented together, including meeting carryover storage levels identified in the draft program of implementation and/or

alternate proposed measures that would provide an equivalent level of protection. In the absence of an approved temperature management strategy, the owners/operators of these reservoirs would be required to meet the initial tributary-specific end of September carryover storage levels identified in the draft program of implementation. These carryover storage requirements are intended to provide for maintenance of cold water supplies during the fall months and into the subsequent water year. The required carryover storage levels could be updated by the Board's Executive Director after an opportunity for public review and comment.

In addition to the long-term temperature management strategy, the reservoir owners/operators identified in the draft program of implementation would be required to submit annual operations plans consistent with the approved long-term strategy to the Board's Executive Director for approval each year. At a minimum, the annual operations plans would describe how the initial tributary-specific end of September carryover storage requirements (or approved alternate approved measures) would be implemented in combination with the inflow provisions.

Possible Exceptions and Variations to New Inflow and Cold Water Habitat Provisions

The draft updates to the Bay-Delta Plan identify that water right holders could propose local cooperative solutions to comply with the applicable Sacramento/Delta inflow and cold water habitat provisions. Local cooperative solutions could use the adaptive implementation provisions, including shaping of flows and operating lower in the required inflow range by implementing those flows in combination with other complementary ecosystem protection measures and cold water habitat protection measures, including habitat restoration, passage, improvements in cold water management structures, or other measures that provide equivalent or greater expected benefits as would be expected absent the local cooperative solution. The draft program of implementation identifies possible required components of local cooperative solutions and the process for their approval.

The draft program of implementation also identifies provisions for exceptions to curtailment for non-consumptive uses (e.g., flow through power operations), minimum human health and safety water supplies, and wildlife refuge water supplies, as well as an option to provide exceptions to curtailment for irrigation of lands below sea level in the Delta where curtailments would not reduce water use.

Potential Delta Outflow Provisions

The draft updates to the Bay-Delta Plan identify narrative Delta outflow and inflow-based Delta outflow provisions. The narrative portion describes the outflow conditions that protect native fish and aquatic species populations and the conditions the numeric outflows are intended to produce along with other measures in the watershed.

The new inflow-based Delta outflow provisions would require that the required inflows from the Sacramento/Delta tributaries, including equivalent accretions from the Sacramento Valley Floor and Delta, and required inflows from the Lower San Joaquin

River, are provided as Delta outflows with adjustments for downstream natural depletions. Absent VAs, the required outflow would be calculated by adding up the applicable required inflows in the Bay-Delta Plan and making appropriate adjustments for natural losses and gains. If VAs are approved and implemented, the required outflow would be calculated by adding up the VA outflows and the additive flows provided from other water rights subject to the regulatory pathway.

Implementation Methodology

To implement the new inflow and inflow-based Delta outflow provisions, the draft updates to the Bay-Delta Plan identify that the State Water Board would develop an implementation methodology to identify when water is not available under specific water rights, building on methods developed during the 2021–2023 drought. Water unavailability would be determined assuming that the required percent of unimpaired flow is not available for diversion. If adequate flows are not available for all demands for water, water right holders would be curtailed in order of priority where there are shortages. If the State Water Board approves the VAs, curtailments to meet the percent of unimpaired flow requirement would only apply to non-VA water rights, but curtailments when water is not available at a water right holder's priority of right regardless of instream flows would apply to all water right holders (unless exceptions apply). Flows provided through the VAs would need to be available for dedication (i.e., not curtailed when it is provided) and would be protected from diversion by other water right holders consistent with water right priorities using the methodology. The implementation methodology would be developed through a separate public process and would be subject to update as needed over time based on improved information and tools after opportunity for public review and comment.

Optional Drought Provision

The draft Staff Report includes a conceptual alternative (Alternative 5a) for reducing the need for temporary urgency changes to Delta outflow and other minimum water quality requirements during critical dry periods and to preserve cold water storage. The Board has not decided to move forward with this alternative yet, but it is considering this option for inclusion in the Bay-Delta Plan. This provision would apply during critical water years and declared droughts and would reduce the need for the State Water Project (SWP) and Central Valley Project (CVP) (collectively, Projects) to release previously stored water to meet the existing base Delta outflow objectives described in Table 3 (not including Table 4) of the Bay-Delta Plan. This would be expected to reduce the need for Temporary Urgency Change Petitions and reductions in cold water storage in Project reservoirs. Instead, other diverters, in addition to the Projects, would contribute by bypassing natural flows until the base Delta outflow objectives are met. The Projects would still have initial responsibility for bypassing flows to meet the objectives, but if more water was needed, other water right holders would also need to bypass flows, reducing the need for the Projects to release previously stored water. This provision is also presented as an option if the VAs are approved and incorporated into the Bay-Delta Plan and could possibly apply to VA water rights.

Interior Delta Flow Provisions

The draft potential updates to the Bay-Delta Plan include a possible new narrative interior Delta flow objective and implementation provisions, as well as proposed updates to the existing Delta Cross Channel Gate closure objective. The narrative would require flow conditions to be maintained in the interior Delta to reasonably protect native fish populations migrating through and rearing in the Delta. The draft program of implementation identifies that the narrative would be implemented by implementing the existing objectives in the Bay-Delta Plan, the updated Delta Cross Channel Gate objective, and through Biological Opinion and Incidental Take Permit requirements on Project operations. The draft program of implementation also identifies that, if needed in the future, the State Water Board could consider other measures needed to implement the narrative, including any provisions needed to provide for consistent operations between the SWP and CVP. The Delta Cross Channel Gate objective is proposed to be revised consistent with the National Marine Fisheries Service Biological Opinion to add October to the months under which the Delta Cross Channel gate could be required to be closed.

Potential Voluntary Agreement Provisions

Background

On March 29, 2022, the State Water Board received a Memorandum of Understanding Advancing a Term Sheet for proposed Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions (VA MOU). The VA MOU includes signatories from state and federal agencies, public water agencies, private companies, and a non-profit mutual benefit corporation (VA parties). The VA parties submitted the VAs as a proposed alternative for updating and implementing the Bay-Delta Plan to provide the VA parties' share toward achieving reasonable protection of fish and wildlife beneficial uses. The State Water Board received updates to the VA MOU in August 2022 and November 2022 to include additional parties and VA components.

The VAs include a combination of proposed flow and non-flow habitat restoration measures on a portion of the Sacramento/Delta tributaries over eight years (with the option to extend the term), including differing amounts of increased flows depending on water year type and non-flow habitat restoration actions targeted at improving spawning and rearing capacity for juvenile salmonids, estuarine species, and other native fish and wildlife. The VA MOU identified that VA flows would be additive to the Delta outflows resulting from revised State Water Board Decision 1641 (D-1641) and the 2019 Biological Opinions for the Projects. The flow and non-flow habitat actions are proposed as implementation measures for an existing and proposed new water quality objective in the Bay-Delta Plan. Specifically, the VAs propose: 1) a new narrative objective to achieve the viability of native fish populations; and 2) to contribute the participating parties' share of responsibility, during implementation of the VAs, for achieving the existing narrative salmon protection objective by 2050. The VAs also include proposed

governance and science programs to direct flows and habitat restoration, conduct assessments, and develop strategic plans and annual reports.

In 2023 and 2024 (most recently in October of 2024), the VA parties submitted several additional draft VA documents to the State Water Board, including a Strategic Plan; Governance Program; Science Plan; Global, Implementing, and Enforcement Agreements; Funding Plan; Science Committee Charter; Flow Accounting procedures; and Non-flow Accounting procedures. These draft documents have informed the draft updates to the Bay-Delta Plan.

VA Provisions

The draft updates to the Bay-Delta Plan include options for incorporating the operative provisions of the 2022 VA MOU into the Bay-Delta Plan, including options for provisions proposed by VA parties and staff-drafted options. The State Water Board has not made a decision on the VAs or other provisions of the Bay-Delta Plan and continues to seek public input on the possible incorporation of VAs, including if the VAs should be included and the specific program of implementation text.

If the VAs are adopted, the revised Bay-Delta Plan is proposed to include an appendix (Appendix B) that contains the VA flow and non-flow habitat accounting procedures given the importance of these procedures in defining the VA flow and habitat actions. A draft of Appendix B that contains possible VA accounting protocols for non-flow habitat is included. The flow accounting section of the draft Appendix B is currently blank since those protocols need to be further developed and will be the subject of an upcoming workshop on December 3, 2024.

Potential Provisions to Protect the VA Flow Base Applicable to New Water Supply Projects

The draft updates to the Bay-Delta Plan include options for a provision to protect the base flows to which VA flows are intended to be added from being substantially reduced by new water supply projects, specifically new water right applications and water right change petitions that result in increased diversions that could reduce VA base flows and overall additive flows provided by the VAs. Two options are described in the draft program of implementation, including 1) a provision based on Alternative 6a described in the draft Staff Report that would limit new projects to diverting during high flow events (when Delta outflows are above 42,800 cubic-feet per second), and 2) a new provision that would subject new projects to the regulatory pathway (i.e., an unimpaired flow bypass requirement). The State Water Board is expecting to receive an additional proposal from the Department of Water Resources for consideration as a third option.

Potential General Bay-Delta Plan Provisions

The general provisions described below are proposed to apply with or without incorporation of VAs into the Bay-Delta Plan.

Annual and Periodic Reviews

The draft updates to the Bay-Delta Plan include provisions for annual and periodic review of the Bay-Delta Plan. Public meetings would be held annually in order to discuss progress on implementation of the Bay-Delta Plan and adaptive implementation. Public hearings would also be held every three years to discuss any needed changes to the Bay-Delta Plan or its implementation in order to provide for the reasonable protection of beneficial uses.

Sacramento/Delta Biological Goals

The draft updates to the Bay-Delta Plan include provisions for developing numeric biological goals for the Sacramento/Delta tributaries and the Delta that would inform the continued update and implementation of the Bay-Delta Plan, including adaptive implementation; evaluation of the effectiveness of the Bay-Delta Plan and its implementation; the BDMEP; and future changes to the Bay-Delta Plan and its implementation. The draft updates to the Bay-Delta Plan identify that the Sacramento/Delta biological goals would be developed through a public process, with the opportunity for public comment, and approved by the State Water Board within two years of approval of the Sacramento/Delta updates to the Bay-Delta Plan by the Office of Administrative Law. The development and update of the Sacramento/Delta biological goals would be coordinated with the Lower San Joaquin River biological goals processes, where appropriate.

Monitoring, Special Studies, Evaluation, and Reporting

The draft updates to the Bay-Delta Plan identify updates to existing monitoring, special study, evaluation, and reporting requirements, including adding specificity to existing requirements for monitoring by the SWP and CVP, data quality standards, and processes for review and changes to monitoring surveys. In addition, the draft updates to the Bay-Delta Plan identify a process to develop expanded monitoring provisions that would apply to the tributaries and other water rights beyond the SWP and CVP in the future. All of these existing and potential future monitoring requirements would be included within the new BDMEP. The BDMEP would be integrated with the San Joaquin River Monitoring and Evaluation Program, as appropriate, once it is established.

If the VAs are adopted, the VA parties would be required to submit proposed VA hypotheses, metrics, targets, and associated monitoring provisions for approval by the Executive Director, including possible conditions, following VA approval and once approved these provisions would be part of the BDMEP and could meet needs for expanded monitoring in the watershed discussed above.

Tribal Beneficial Uses

The draft updates to the Bay-Delta Plan incorporate the definitions of Tribal Beneficial Uses (TBUs), including Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing (SUB) in Chapter 2, Beneficial Uses, and includes a description identifying that TBUs are incorporated in the context of providing reasonable protection of fish and wildlife. Chapter 2 describes that flow actions included in the Bay-Delta Plan may help support CUL beneficial uses, and protection of fish and wildlife could help support T-SUB and SUB beneficial uses.

The draft updates to the Bay-Delta Plan include a note to reader that the State Water Board will consider formal designation of CUL in the Bay-Delta watershed as part of the Sacramento/Delta update process or other subsequent appropriate process and is looking for input on that issue. Individual designation of stream segments for T-SUB and SUB beneficial uses would need to be conducted on a case-by-case basis by the Regional Water Quality Control Boards. The draft revised Bay-Delta Plan includes a commitment to coordinate with Tribes and the Central Valley and San Francisco Bay Regional Water Quality Control Boards to develop a timeline and process for formal designation and to expedite designation of stream segments for TBUs in the Bay-Delta watershed.