

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2018-0059**

**ADOPTION OF AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR THE
SAN FRANCISCO BAY/SACRAMENTO-SAN JOAQUIN DELTA ESTUARY AND FINAL
SUBSTITUTE ENVIRONMENTAL DOCUMENT**

WHEREAS:

1. The State Water Resources Control Board (State Water Board) and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) (Porter-Cologne Act) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state. (Wat. Code, §§ 13000, 13001.)
2. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable. (Wat. Code, § 13170.)
3. The State Water Board has undertaken a proceeding under its water quality authority to amend the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan), adopted in 1978 and amended in 1991, 1995, and in 2006. The Bay-Delta Plan establishes water quality objectives for the protection of beneficial uses in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta) and a program of implementation to achieve the objectives. Diversions of water within and upstream of the Bay-Delta are a driver of water quality in the Bay-Delta. As a result, much of the implementation for the Bay-Delta Plan relies upon the combined water rights and water quality authorities of the State Water Board.
4. The 2006 Bay-Delta Plan identified emerging issues requiring additional action by the State Water Board, including San Joaquin River flows and Delta salinity. In the 2008 Strategic Workplan for Activities in the San Francisco Bay/ Sacramento-San Joaquin Delta Estuary, the State Water Board committed to undertake a review of the southern Delta salinity and San Joaquin River flow objectives and their implementation. The State Water Board further reiterated its commitment in the 2009 Staff Report on the Periodic Review of the San Francisco Bay/ Sacramento-San Joaquin Delta Estuary.
5. Native fish species that migrate through and inhabit the Delta have experienced dramatic population declines in recent years, bringing some species to the brink of extinction. Approximately 70,000 fall-run Chinook salmon adults returned to the San Joaquin Basin in 1985. The number of returning adults dropped to approximately 40,000 in 2000 and dropped again to 8,000 returning adults in 2013. Returning fall-run adults were estimated to be approximately 10,000 in 2017. This is an 85 percent net loss in returning adult fall-run Chinook salmon from 1985 to 2017. While multiple factors are responsible for the decline, the magnitude of diversions out of the Sacramento, San Joaquin, and other rivers feeding into the Bay-Delta is a major factor in the ecosystem decline. The State Water Board has authority over both water quality and water diversion and use.

6. The State Water Board adopted the southern Delta salinity objectives for agriculture in the 1978 Delta Plan. The objectives are based on conditions, crops, and irrigation practices in the southern Delta at the time the objectives were adopted. Recent analysis of southern Delta water quality and crop salinity requirements shows that the existing salinity conditions in the southern Delta are suitable for all crops and that the existing April through August salinity objective is lower than what is needed to reasonably protect agricultural beneficial uses.
7. The State Water Board commenced the process to amend the Bay-Delta Plan to reasonably protect fish and wildlife beneficial uses in the Lower San Joaquin River (LSJR) and its three eastside salmon-bearing tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta in 2009 as follows:
 - a. On February 13, 2009, the State Water Board issued a Notice of Preparation (NOP) and of Scoping Meeting for Environmental Documentation for the Update and Implementation of the Bay Delta Plan: Southern Delta Salinity and San Joaquin River Flows. The public had an opportunity to submit written comments and to participate in the scoping meeting held on March 30, 2009. On April 1, 2011, the State Water Board issued a revised NOP and notice of additional scoping meeting, which provided for a written comment period and a scoping meeting on June 6, 2011. The notice included potential draft language for the southern Delta salinity objectives, San Joaquin River flow objectives, and the program of implementation.
 - b. On April 22, 2009, the State Water Board staff held a public staff workshop to receive information and conduct detailed discussions regarding potential amendments or revisions to the southern Delta salinity and San Joaquin River flow objectives included in the Bay-Delta Plan and their implementation. It held other workshops including two workshops to receive and respond to public comments on a draft study report on the salt tolerance of crops in the southern Delta on August 13, 2009, and November 4, 2009, and a workshop on a draft technical report on the scientific basis for alternative San Joaquin River flow and southern Delta salinity objectives on January 6 and 7, 2011.
 - c. On December 31, 2012, the State Water Board released for public review and comment a draft substitute environmental document (2012 Draft SED) in support of proposed changes to the Bay-Delta Plan to adopt new and revised narrative and numeric flow water quality objectives for the LSJR, including the Stanislaus, Tuolumne, and Merced Rivers, a revised salinity water quality objective in the southern Delta, and a program of implementation to achieve the objectives (2012 Draft Amendments). On March 20 and 21, 2013, it held a public hearing on the 2012 Draft SED and 2012 Draft Amendments. The deadline for written comments was March 29, 2013, and the State Water Board received numerous comments.
 - d. On September 15, 2016, the State Water Board recirculated for public review and comment a revised draft substitute environmental document (Recirculated SED) in support of revisions to the 2012 Draft Amendments (2016 Draft Amendments). The Recirculated SED and 2016 Draft Amendments made substantial changes to the 2012 Draft SED and 2012 Draft Amendments in consideration of the large number of public comments received concerning those drafts, in light of additional information,

including information learned from the recent drought, and in response to the state's adoption in 2014 of a state policy for sustainable groundwater management (Wat. Code, § 113) and passage of the Sustainable Groundwater Management Act (Wat. Code, §§ 10720 et seq.), which provide a roadmap and directive for sustainable local groundwater management.

- e. The State Water Board held a five-day public hearing, commencing in November 2016 and concluding in January 2017, on the Recirculated SED and 2016 Draft Amendments. State Water Board staff also held numerous workshops and outreach meetings. The State Water Board provided a six-month written comment period that closed on March 17, 2017. The State Water Board received thousands of comments.
 - f. On July 6, 2018, the State Water Board released the proposed final SED (Final SED), which includes proposed final amendments to the Bay-Delta Plan (Plan Amendments) and written responses to comments on the Recirculated SED and the 2016 Draft Amendments. It also provided notice of a public meeting to consider the adoption of the proposed Plan Amendments and Final SED, and solicited comments on the changes to the regulatory language in the proposed Plan Amendments. The Final SED, including the Plan Amendments, includes modifications that clarify, amplify, or refine information, primarily in response to comments. These modifications do not result in new significant environmental effects or a substantial increase in the severity of effects disclosed in the Recirculated SED.
 - g. At a public meeting on August 21-22, 2018, the State Water Board heard oral comments and considered the adoption of the proposed Plan Amendments and Final SED. The State Water Board continued final action to December 12, 2018. Change Sheets 1 to 3 were released to the public on August 20, 2018, and October 25, 2018, and include modifications to the Plan Amendments and the SED. Neither those changes nor the changes made by the State Water Board to this Resolution at the December 12, 2018, meeting result in new significant environmental effects or a substantial increase in the severity of effects disclosed in the Final SED.
8. The Plan Amendments' new and revised flow water quality objectives for the LSJR and a revised southern Delta salinity water quality objective are based on sound scientific rationale and contain sufficient parameters to protect fish and wildlife and agricultural beneficial uses.
 9. Pursuant to Health and Safety Code section 57004, the scientific basis of the Plan Amendments underwent external scientific peer review through an interagency agreement with the University of California. Peer review was solicited on August 12, 2011, and completed on November 21, 2011.
 10. In establishing and revising the flow water quality objectives for the LSJR and the salinity water quality objective for the southern Delta, the State Water Board has duly considered the factors set forth in Water Code section 13241. These factors include: (1) past, present, and probable future beneficial uses of water; (2) environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto; (3) water quality conditions that could reasonably be achieved through the coordinated control of all factors that affect water quality in the area;

(4) economic considerations; (5) the need for developing housing within the region; and (6) the need to develop and use recycled water. The information supporting the State Water Board's consideration of these factors is in the Final SED, including the comments and responses to comments contained therein.

11. The Plan Amendments include a program of implementation for achieving the LSJR flow water quality objectives and the salinity water quality objective for the southern Delta in accordance with Water Code section 13242. To help ensure transparency and accountability in evaluating compliance with the water quality objectives, to inform ongoing implementation, and to foster and accommodate the development of scientific information, the Plan Amendments require monitoring and reporting on annual and longer-term bases.
12. The water quality control planning program is a regulatory program that has been certified by the State's Secretary for Resources as exempt from the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) to prepare an environmental impact report (EIR) or negative declaration. (Cal. Code of Regs., tit. 14, § 15251, subd. (g); Cal. Code of Regs., tit. 23, § 3775.) The Final SED is in lieu of an EIR and has been completed in compliance with the requirements applicable to the State Water Board's certified exempt regulatory programs. The State Water Board has evaluated the potential environmental effects of reasonably foreseeable methods of compliance with the Plan Amendments in accordance with Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187.
13. The Final SED comprises Volumes I to III (which includes responses to comments), as amended by change sheets; Comment Summary and Responses released in August 2018 to respond to comments solicited on July 6, 2018, on the changes to the language in the proposed Plan Amendments; Comment Responses released in October 2018 to respond to oral comments at the August 21-22, 2018, public meeting; and this resolution and its attachments, as amended by Change Sheet 1. (Cal. Code Regs., tit. 23, § 3779.5, subd. (b).) The Final SED includes sufficient environmental and technical analysis to satisfy the requirements of CEQA and other applicable laws.
14. In accordance with California Code of Regulations, title 23, section 3779.5, subdivision (c), and California Code of Regulations, title 14, section 15091, subdivision (a), Attachment 1 sets forth the CEQA Findings and Statement of Overriding Considerations Prepared for Amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and is incorporated herein. It includes findings for each significant environmental effect that may occur from implementation of the Plan Amendments and describes measures to reduce significant effects. The State Water Board recognizes that despite mitigation measures described in the Final SED and in Attachment 1, implementation of the Plan Amendments would have significant and unavoidable effects on the environment. As explained in the statement of overriding considerations in Attachment 1, the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of the Plan Amendments outweigh the unavoidable significant environmental effects of the Plan Amendments. Attachment 2 is the Mitigation and Monitoring Program that sets forth and ensures implementation of mitigation measures within the State Water Board's authority and is incorporated herein.

15. It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Wat. Code, § 106.3 and State Water Board [Resolution No. 2016-0010](#).) The State Water Board has considered this policy and the Plan Amendments include a statement that the State Water Board “will take actions as necessary to ensure that the implementation of the flow objectives does not impact supplies of water for minimum health and safety needs, particularly during drought periods.” The State Water Board will continue to consider this policy through the technical and financial assistance programs it administers for at-risk communities, including disadvantaged communities within the area covered by the Plan Amendments.
16. Adoption of the Plan Amendments is consistent with the state Antidegradation Policy (State Water Board [Resolution No. 68-16](#)) and the federal Antidegradation Policy (40 C.F.R. § 131.12).
17. The Bay-Delta Plan, as amended by the Plan Amendments, supplements the other water quality control plans that cover the Bay-Delta Estuary watershed. Together they include all necessary elements of water quality control plans in accordance with the Porter-Cologne Act and federal requirements. The Bay-Delta Plan supersedes any regional water quality control plans for the same waters to the extent of any conflict. (Wat. Code, § 13170.)
18. The Bay-Delta Plan will be reviewed every three years in compliance with Water Code section 13240 and federal Clean Water Act section 303(c) (33 U.S.C. § 1313(c)).
19. The State Water Board has complied with all notice and hearing requirements and carefully considered all timely oral and written comments, responses to comments, the Final SED, and all of the evidence in the administrative record. The Final SED reflects the independent judgment and analysis of the State Water Board.
20. The Plan Amendments will be submitted to the Office of Administrative Law (OAL) and become effective upon OAL approval. The water quality standards, as defined under the federal Clean Water Act, in the plan also will be submitted to the U. S. Environmental Protection Agency (U.S. EPA) in accordance with the federal Clean Water Act (33 U.S.C. § 1251 et seq.). Other portions of the Bay-Delta Plan, such as the program of implementation, are to be submitted to U.S. EPA as part of the continuing planning process, but do not require approval.
21. The State Water Board is aware of ongoing negotiations between interested stakeholders and various other state agencies to achieve voluntary agreements to implement the Plan Amendments. In particular, robust voluntary agreements can help inform and expedite implementation of the LSJR flow objectives and provide durable solutions in the Bay-Delta watershed while also providing reasonable protections for fish and wildlife.
 - a. The State Water Board encourages stakeholders to continue to work together to reach voluntary agreements that incorporate a mix of flow and non-flow measures that meet or exceed the new and revised water quality objectives and protect fish and wildlife beneficial uses, and to present those voluntary agreements to the State Water Board for its review as soon as feasible.

- b. At the December 12, 2018 meeting, the California Department of Water Resources and California Department of Fish and Wildlife presented updated information on voluntary agreements and the contours of a potential Delta watershed-wide agreement. The Delta watershed-wide voluntary agreement is a discrete project encompassing a larger area than the LSJR flow objectives and within the LSJR project area only includes the Tuolumne River. Additional work is necessary to develop an enforceable agreement, join additional parties, analyze the agreement and how it interacts with the Bay-Delta Plan, and assess what, if any, changes may be necessary to the Bay-Delta Plan for the agreement to serve as an implementation mechanism to reasonably protect beneficial uses in the Tuolumne River and applicable portions of the Bay-Delta watershed, while providing a suitable regulatory backstop. Final incorporation of a voluntary agreement that requires changes to the Bay-Delta Plan, as contemplated by Resolved ¶ 7 below would require additional public process, including compliance with procedures under the Porter-Cologne Water Quality Control Act and environmental review under CEQA.
- c. Regardless of whether the current negotiations ultimately result in an agreement, the State Water Board will consider voluntary agreements as part of its proceedings to implement the Plan Amendments, consistent with its obligations under applicable law. In evaluating any proposal, the State Water Board will consider whether the agreement will help achieve the water quality objectives, help protect the beneficial use, and be enforceable through Board action.
- d. If a voluntary agreement is reached after the adoption of the Plan Amendments, the State Water Board will consider the voluntary agreement and determine what, if any, actions are necessary to consider the agreement as a means of implementing the Bay-Delta Plan objectives, including a public process.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board hereby approves and adopts the [Final SED](#), including the Findings and Statement of Overriding Considerations ([Attachment 1](#)), and the Mitigation and Monitoring Program ([Attachment 2](#)) and the mitigation measures set forth therein.
2. The State Water Board hereby adopts the Plan Amendments, which are set forth in [Appendix K](#) to the Final SED.
3. The State Water Board authorizes the Executive Director or designee to submit the Plan Amendments and the administrative record to OAL for review and approval.
4. The State Water Board authorizes the Executive Director or designee to make minor, non-substantive modifications to the language of the Plan Amendments or the supporting documentation, if the State Water Board, State Water Board staff, or OAL determines that such changes are needed for clarity or consistency, and to inform the State Water Board of any such changes.
5. The State Water Board directs staff, upon approval by OAL, to file a Notice of Decision with the Secretary for Natural Resources and transmit payment of the applicable fee as may be required to the Department of Fish and Wildlife pursuant to Fish and Game Code section 711.4.

6. The State Water Board directs the Executive Director or designee to submit the Plan Amendments to the U.S. EPA for approval in accordance with requirements of the federal Clean Water Act (33 U.S.C. § 1251 et seq.).
7. The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.
8. The Plan Amendments adopted by this resolution are not self-implementing. Subsequent regulatory actions are required to implement the objectives and make them enforceable. The December 1, 2019 date of Resolved ¶ 7 provides a path for acceptance and approval of a voluntary agreement before regulatory actions to amend the water rights of water users on the Tuolumne River would occur and with sufficient time to complete any additional planning actions well in advance of the date that the LSJR flow objectives will be fully implemented.

CERTIFICATION


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 12, 2018.

AYE: Chair Felicia Marcus
Board Member Tam M. Doduc
Board Member E. Joaquin Esquivel
Board Member Sean Maguire

NAY: Board Member Dorene D'Adamo

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board