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*Via Electronic Mail*

Joaquin E. Esquivel  
State Water Resources Control Board  
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**RE: Response to State Water Resources Control Board Community Engagement and Consultation Requests**

Dear Chair Esquivel:

We write on behalf of the Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, Little Manila Rising, Restore the Delta, and Save California Salmon (collectively, “Coalition”) in response to outreach from the State Water Resources Control Board in recent weeks seeking to meet, listen, or consult on matters related to water quality standards for the San Francisco Bay/Sacramento-San Joaquin Delta (“Bay-Delta”). Although this outreach should have taken place years ago – at the inception of the Bay-Delta Plan update process rather than its conclusion – we appreciate the Board’s efforts to engage impacted tribes and communities, however tardy. Nevertheless, we approach this engagement with significant concern and trepidation based on past experience before the Board and the timing of this outreach. We write to explain these concerns and to set forth parameters for meaningful and good-faith tribal and community engagement.

As the Board is aware, its requests for meetings and consultation do not come in a vacuum; they follow years or even decades of frustration stemming from similar engagement that left participants feeling unheard and their cautions and requests unheeded. Consultation and community engagement by the Board is experienced far too often as a “check-the-box” exercise, occurring after policies have been largely or even entirely formulated and with little and incomplete noticing for tribes and impacted communities. Indeed, the fact of consultation and community engagement can be experienced as a means of legitimizing policies with which participants did not agree, in the formulation of which they did not meaningfully participate, and to which they did not consent. For tribes and community groups with limited resources, engagement requires significant sacrifice in both resources and personnel time, and it is not taken lightly.

We remind the Board that it has obligations under the law and its own policies to meaningfully engage tribes and other impacted communities in decision-making processes and meaningfully consider their recommendations. *See, e.g.*, Cal. Gov. Code § 65040.12(e) (“environmental justice” includes “[a]t a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions”). These obligations include the Board’s own commitments to “involve[] and partner[] with tribes, stakeholders, and other interested parties in [the Board’s] decision-making processes,” to improve communication, and to address barriers for public participation. State Water Bd. Res. No. 2021-0050, ¶ 10. And they include state law requirements that the Board create opportunities for tribal

governments to provide meaningful input into regulatory and policy development and to conduct consultations at the inception of the planning process and in a way that is mutually respectful of each party's sovereignty. Exec. Order B-10-11; Cal. Gov. Code § 6532.4; Cal. Pub. Res. Code § 21080.3.1(b).

The Coalition remains committed to working with the Board toward solutions to the crisis in the Bay-Delta and its headwaters, and we are receptive to engaging with the Board in a process that meaningfully incorporates input from all impacted tribes and stakeholders. Accordingly, we ask the Board to adopt the following practices for meaningful community and tribal engagement going forward:

- Tribal consultation and community engagement, to be meaningful, must begin at the inception of the planning process and carry through to its conclusion. Even where state law does not mandate express timelines for engagement (*see, e.g.*, Cal. Pub. Res. Code §21080.3.1(d)), early outreach should be the norm. Tribes and communities should be consulted and engaged in all stages of the planning process.
- The Board should ensure that all impacted tribes and community groups are effectively engaged in the decision-making process. Because decision-making on Bay-Delta water quality standards impacts the entire watershed – from the headwaters to the San Francisco Bay and including the Trinity and Klamath watersheds – notices must be sent to all tribes across this entire geographic extent. And the Board should shoulder the work of making sure that lists of impacted tribes are complete and contacts are current. Likewise, the Board should engage with leaders of community-based organizations from rural and urban disadvantaged Delta communities to ensure that they are aware of public processes regarding Bay-Delta water quality standards and educated about opportunities for engagement.
- Noticing of opportunities for public engagement should occur as early as possible prior to the event taking place to allow for effective tribal and community participation. The typical ten-day noticing is not sufficient for many impacted groups, particularly where significant materials need to be considered in advance of the meeting. This was the case, for instance, with the Board's provision of only 10-days notice of its January 19, 2023 meeting on the 350-page Draft Scientific Basis Report Supplement on the Voluntary Agreements for the Bay-Delta Plan Update. Whenever possible, the Board should provide at least 30-days notice of public workshops or hearings on significant reports and 60-days notice for written comments.
- Tribal consultation must occur with the relevant decision-makers. This is infrequently the case. In particular, tribes have had no opportunity to date to either informally discuss or enter into Government-to-Government consultation with relevant decision-makers on the Voluntary Agreements. To the extent that the Voluntary Agreements will be incorporated in any meaningful respect into the Bay-Delta Plan or considered as alternatives, the Governor's Office and California Natural Resources Agency – as the primary drivers of the agreements and the

negotiation framework – must provide opportunity for consultation with their key decision-makers.

- Likewise, to the extent that Voluntary Agreements are considered as part of Bay-Delta water quality standard planning, decision-makers from the California Natural Resources Agency and Governor’s Office involved in Voluntary Agreement negotiations and integration into the Bay-Delta Plan should be directly involved in community engagement sessions and should interface and dialogue directly with members of community groups and the public.
- To facilitate participation by resource-constrained tribes and community groups, the Board must ensure that meetings take place in various locations that are convenient for impacted communities and tribes, with Zoom-attendance options. This may necessitate visits by staff and decision-makers to impacted communities and tribes themselves. The Board should also consider making funding available by way of grants or compensation to build capacity for attendance by resource-constrained organizations. Removing travel and funding barriers to participation would help ensure that everyone is able to have their voices heard.
- The Board should provide significantly greater public clarity and transparency on the timeline and process for the Bay-Delta Plan update. If timelines change, the Board must provide accessible and prompt notice to the public. And when workshops, listening sessions, or hearings on matters related to Bay-Delta water quality standards or the Voluntary Agreements take place, the Board should clearly and plainly explain their connection to the Bay-Delta planning process.
- Tribes and community groups need to see that the input they provide is incorporated into and reflected in final decisions. While listening sessions may be part of the process, they leave attendees feeling frustrated and demoralized when they do not translate into concrete policy outcomes.
- Toward that end, Board staff must be empowered, trained, and given adequate resources to meaningfully engage and problem-solve with tribes and communities. Board staff are often best positioned to sensitively interface with tribes and community groups, including through in-person meetings in accessible locations where policy options can be fully discussed and information exchanged. This engagement should be a core part of the work of Board staff, and there should be an expectation that staff incorporate the results of this decision-making into policies, reports, and other agency documents. In particular, where policy and planning efforts by the Board do not address water quality needs raised by stakeholders, or could worsen conditions identified by stakeholders, Board staff should be empowered to work with stakeholders to develop vehicles to mitigate these problems so that all impacted communities are served by Board action.
- Whenever feasible, the Board should work toward agreement with and consent of impacted communities and tribes. *See* Cal. Gov. Code § 65352.4. The Board, however, must be cognizant that consultation is not consent. Just because

community groups or tribes have participated in the public process or in consultation sessions does not mean that they agree with or consent to the results. Nor should agencies convey the mere act of their engagement with tribes as accomplishing “meaningful” or “successful” consultation.

We appreciate the Board’s efforts to connect with tribes and community groups on Bay-Delta planning and respectfully request that the Board act on the measures outlined above to further meaningful and effective engagement.

Respectfully,



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CC: Secretary Wade Crowfoot, Deputy Secretary Nancy Vogel, Deputy Legislative Secretary Christine Aurre, Vice-Chair Dorene D’Adamo, Board Member Laurel Firestone, Board Member Sean Maguire, Board Member Nichole Morgan, Executive Director Eileen Sobeck, Tina Cannon Leahy, Adriana Renteria