



State Water Resources Control Board

June 24, 2022

Mills Legal Clinic
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305-8610

Re: Decision on Petition to Revise Bay-Delta Water Quality Standards

Mss. Sivas, Safdi, Cooley, and Speizman:

Thank you for your petition for rulemaking, submitted by Mills Legal Clinic at Stanford Law School on behalf of the Winnemem Wintu Tribe, Shingle Springs Band of Miwok Indians, Save California Salmon, Little Manila Rising, and Restore the Delta (collectively "Petitioners"). The State Water Resources Control Board (State Water Board) accepted receipt of the petition via electronic mail on May 24, 2022. The State Water Board acknowledges the Petition was supported by City of Stockton Councilmember Kimberly Warmsley, NAACP Stockton Chapter, Nopal: Community Cultura Activism Educación, Catholic Charities Diocese of Stockton, With Our Words, Public Health Advocates, San Joaquin County Historical Museum, Edge Collaborative, P.U.E.N.T.E.S, Reinvent Stockton Foundation, Sierra Club, Delta-Sierra Group, Third City Coalition, and Reinvent South Stockton Coalition in a letter dated June 13, 2022, and the San Francisco Baykeeper in a letter dated June 17, 2022.

The petition requests action pursuant to California Constitutional article 1, section 3; Government Code section 11340.6; Water Code section 13320; and as a public trust complaint. The action requested is that the State Water Board (1) immediately undertake and timely complete review of water quality standards in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan); (2) engage in meaningful government-to-government consultation with affected tribes and center opportunities for meaningful public participation by other impacted Delta communities in the review and revision process; (3) revise beneficial uses in the Bay-Delta Plan to incorporate tribal beneficial uses and non-tribal subsistence fishing beneficial uses; (4) issue new and revised water quality standards adequate to protect the full range of beneficial uses and public trust interests; and (5) initiate a rulemaking to regulate all recognized rights to Bay-Delta water—including pre-1914 appropriative rights—and limit water diversions and exports to levels consistent with the revised water quality standards.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

The State Water Board recognizes, respects, and shares the concerns of Petitioners regarding the urgent need to further revise and implement updated standards for the Bay-Delta Plan, including to protect California's iconic salmon species who are integral to the identity, culture, spirituality, and way of life of Petitioners Winnemem Wintu Tribe, Shingle Springs Band of Miwok Indians, and other tribal nations who have lived in this place we now call California since time immemorial. Providing reasonable protection for native fishes, including salmon, across the entire Delta watershed is a core objective of the State Water Board's ongoing work to update the Bay-Delta Plan, which is already a high priority project for the Board.

Foundational aspects of your request are part of the State Water Board's quasi-legislative action to update the Bay-Delta Plan. In light of this ongoing effort and for the reasons stated in this letter, the State Water Board denies the Petition. However, that denial does not foreclose further meaningful consideration of the important issues that Petitioners raise. Specifically, as discussed further in Sections V and VI below, the State Water Board would like to meet with Petitioners Winnemem Wintu Tribe, Shingle Springs Band of Miwok Indians, and other interested tribal representatives to further discuss the inclusion of tribal beneficial uses in the Bay-Delta Plan as well as explore ways to provide additional opportunities for meaningful participation by other impacted Delta communities.

Introduction

In 2018, the State Water Board amended the Bay-Delta Plan to update flow requirements for the protection of fish and wildlife beneficial uses in the watershed of the Lower San Joaquin River, including its three eastside, salmon-bearing tributaries, the Stanislaus, Tuolumne, and Merced Rivers. At that same time, because of the influence of Lower San Joaquin River flows upon the southern Delta, the State Water Board amended the plan to update salinity requirements for the protection of agricultural beneficial uses in the southern Delta (collectively "LSJR/SD update"). As described in greater detail below, the State Water Board is now undertaking multiple actions set out in the LSJR/SD update program of implementation. However, because water quality control plans are not self-implementing, the State Water Board must now undergo a subsequent water right or water quality proceeding to assign responsibility to water right holders and claimants to implement the plan. The State Water Board is considering a rulemaking as one potential avenue for implementation of the LSJR/SD update, but no final decision has been made.

In addition, the State Water Board is currently drafting a Staff Report to support an update to flow requirements for the reasonable protection of fish and wildlife beneficial uses in the Sacramento River watershed, its tributaries, and the interior Delta and its tributaries (Sacramento/Delta update). That Staff Report will include options for updating the Bay-Delta Plan as well as an environmental analysis of the proposed options, among other information.

In updating the Bay-Delta Plan, the State Water Board has, and continues to, use transparent public processes and to receive and meaningfully consider public input. The State Water Board also takes the public trust into account as it balances competing interests in adopting water quality objectives and formulating a program of implementation to achieve those objectives.¹ As your petition makes multiple requests, some of which rely upon specific statutes and legal bases, the State Water Board will address each in turn. In addition, as noted below, because your petition makes a request pursuant to Government Code section 11340.6, parts of this response are summarized in the attachment to this letter entitled “Decision on Petition to Amend the Bay-Delta Plan and Initiate a Rulemaking to Regulate All Recognized Rights to Bay-Delta Water.” This decision to deny the petition, as summarized in the attachment, was submitted for publication in the California Regulatory Notice Register as required by Government Code section 11340.7, subdivision (d).

I. California Constitution article 1, section 3

California Constitutional article 1, section 3, states that “the people have the right to instruct their representatives, petition government for redress of grievances, and assembly freely to consult for the common good.” This Constitutional provision cites specifically to maintaining public access to meetings and records, including through the California Public Records Act (Gov. Code, § 6250 et seq.) and Ralph M. Brown Act (Gov. Code, § 54950).

The State Water Board conducts its board meetings in public and provides opportunity for public comment. In developing the LSJR/SD update, the State Water Board included a six-month comment period, held 5 days of public hearings, and multiple public workshops. In addition, State Water Board members and staff met and discussed the Water Quality Control Plan update with many interested parties. Since the development and adoption of a water quality control plan is a quasi-legislative action, meeting with interested parties to discuss the plan is appropriate and, in fact, can encourage creative solutions. In this spirit, and as discussed below in Sections V and VI, the State Water Board would like to meet with Petitioners, including but not limited to Tribal Petitioners Winnemem Wintu and Shingle Springs Band of Miwok Indians to discuss the request to amend the Bay-Delta Plan to include tribal beneficial uses.

¹ For a more in-depth explanation of the State Water Board’s balancing of its public trust responsibilities, please see the *Final Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality* (July 2018) (Final LSJR/SD SED), Master Response 1.2, *Water Quality Control Planning Process*, at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2018_sed/docs/mr1.2.pdf

II. Petition for Rulemaking Pursuant to Government Code Section 11340.6

The petition does not identify specific provisions in the California Code of Regulations that Petitioners are requesting be adopted, amended, or repealed. Petitions are requesting changes to the Bay-Delta Plan and that the State Water Board initiate a rulemaking to regulate all recognized rights to Bay-Delta water. The State Water Board notes that when amendments to the Bay-Delta Plan were adopted in 2018 to update Lower San Joaquin River flows and southern Delta salinity requirements, those amendments were summarized in California Code of Regulations, tit. 23, section 3002.1 and conforming amendments were made to California Code of Regulations, tit. 23, section 3002, summarizing the previous amendments to the Bay-Delta Plan in 2006.

The Petition references multiple bases for the State Water Board to take the requested action including the federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.), the public trust doctrine (*Nat. Audubon Society v. Super. Ct.* (1983) 33 Cal.3d 419), and state prohibitions on the waste or unreasonable use of water or unreasonable method of diversion (Cal. Const., art. X, § 2; Water Code §§ 100, 275, 1050, 1831, and 85023). As described in greater detail below, the Petition is denied as the State Water Board is already taking action to update the Bay-Delta Plan, including through and in consideration of these authorities, and to assign responsibility for the Plan's implementation. With respect to amending the Bay-Delta Plan to include tribal beneficial uses, the Petition is denied as the State Water Board needs further engagement with affected tribes and other parties to fully evaluate the scope of Petitioners' proposal and its potential application in the context of the Bay-Delta Plan.

Reasons for the Decision

In 2018, the State Water Board updated the Bay-Delta Plan to (1) provide reasonable protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers; and (2) provide reasonable protection of agricultural beneficial uses in the southern Delta. Water quality control plans are not self-implementing. The State Water Board must assign responsibility for implementation to water right holders and claimants. This will require the State Water Board to undergo a water quality or water right proceeding including preparing the appropriate level of environmental review tiering from the State Water Board's adopted substitute environmental document for the 2018 update. In addition, the State Water Board is preparing a Staff Report to support an update to the Bay-Delta Plan for the Sacramento River and its tributaries and the Interior Delta and its tributaries. The State Report will present options for updating the Bay-Delta Plan and include the environmental analysis to support those options, among other information.

The State Water Board is committed to completing a review of water quality standards in the Bay-Delta Plan and has acknowledged Voluntary Agreement (VA) could be an element of that update, but no final decision has yet been made regarding VAs. At the time of the 2018 update, for example, the State Water Board advised it was “aware of ongoing negotiations between interested stakeholders and various other state agencies to achieve [VAs] to implement the Plan Amendments” and that “robust [VAs] 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.”² However, incorporating a VA into the Bay-Delta Plan would take a subsequent action of the Water Board and, meanwhile, those efforts do not preclude further progress on amending the Bay-Delta Plan.

In addition, at the State Water Board’s December 8, 2021, meeting, a Bay-Delta Plan update was provided, including a timeline that would implement San Joaquin River objectives and Sacramento River and Delta objectives by 2023. More recently, on March 29, 2022, the Secretaries of the California Environmental Protection Agency and the California Natural Resources Agency and certain water users publicly advanced a Term Sheet for VAs. However, as already stated, progress on the Bay-Delta Plan and progress on the VAs are not mutually exclusive.

I wholeheartedly agree that it is the responsibility of the State Water Board to establish and enforce water quality standards that protect public trust interests and prevent unreasonable use and diversion of water and I firmly believe that implementing and completing these updates will help to protect public trust interests and prevent the unreasonable use or diversion of water. However, the State Water Board is denying your request to initiate a rulemaking to regulate all recognized rights to Bay-Delta water. It will be the State Water Board’s current and ongoing rulemaking efforts and subsequent development and implementation of water quality standards that will allow the State Water Board to better limit water diversions and exports to levels in compliance with those standards, whether through regulations, water right proceedings, water quality certifications pursuant to section 401 of the Clean Water Act, or a combination of actions. In the near-term, for example, a rulemaking remains one option to implement the 2018 Bay-Delta Plan update, but no final decision has yet been made as to whether to proceed with a regulation.

The State Water Board is committed to meaningful engagement with representatives of affected tribes in the Bay-Delta watershed, including the Winnemem Wintu Tribe and Shingle Springs Band of Miwok Indians. The State Water Board is interested in continued dialogue with Tribes regarding the request to revise beneficial uses in the Bay-Delta Plan to incorporate tribal beneficial uses and non-tribal subsistence fishing beneficial uses but, as discussed further below, cannot commit to undergoing a rulemaking prior to understanding the full scope and application of such a request.

² State Water Resources Control Board Resolution 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*, at p. 5. See: https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf

III. Petition for Review of Regional Water Board Action Pursuant to Water Code Section 13320

The Petition alleges, in footnote 164, that “Water Code section 13320 likewise entitles aggrieved persons to petition the State Water Board, ‘[w]ithin 30 days of any action or failure to act by a regional board’” and asserts that, here, the “State Water Board is acting in the capacity of a regional water board in adopting the Bay-Delta Plan, making it the appropriate recipient of this petition regarding the State Water Board’s failure to act on Bay-Delta Plan review and update.”

The State Water Board disagrees. Water Code section 13220 allows aggrieved persons to petition the State Water Board to review any action or failure to act by a regional water quality control board (Regional Board) under:

- (1) Water Code, § 13225, subd. (c) [Requiring as necessary any state or local agency to investigate and report on technical factors involved in water quality control or to obtain and submit analyses of water]
- (2) Water Code, § 13260 et seq. [Waste discharge requirements]
- (3) Water Code, § 13300 et seq. [Administrative enforcement]
- (4) Water Code, § 13370 et seq. [Compliance with the federal Water Pollution Control Act]
- (5) Water Code, § 13399.25 et seq. [Storm water enforcement]
- (6) Water Code, § 13500 et seq. [Water reclamation]

The Regional Boards adopt water quality control plans pursuant to Water Code sect. 13240 et seq. Water Code sect. 13170 provides that the State Water Board “may adopt water quality control plans in accordance with the provisions of Sections 13240 to 13244, inclusive...” Neither Water Code sect. 13240 et seq., nor Water Code sect. 13170 fall under the petition provisions of Water Code section 13220. Therefore, the petition was brought improperly pursuant to Water Code section 13320.

More importantly, as detailed above in Section II, the State Water Board is already undertaking multiple processes to update the Bay-Delta Plan.

IV. Public Trust Complaint

The Petition states that it is also being brought in the nature of a public trust complaint. The Petition asserts, among other claims, that the State Water Board “has abnegated its affirmative duties to safeguard public trust interests in the Delta, prevent unreasonable use of its water, and police water diversion and exports to minimize harm to public trust interests” and that to “fulfill these obligations, the Board will need to reform the way it approaches water quality and flow management in the Delta.” (Petition at p. 44.)

The State Water Board takes seriously its responsibilities for the protection of resources, such as fisheries, wildlife, aesthetics, and navigation, which are held in trust

for the public. The State Water Board considers these responsibilities when planning and allocating water resources, and protects public trust uses whenever feasible. The State Water Board considers these public trust values in the balancing of all beneficial uses of water.

Consistent with this balancing, the LSJR/SD update to the Bay-Delta Plan adopted flow objectives that protect fish and wildlife, while also considering the past, present, and future beneficial uses of water, as required under section 13241 of the Porter-Cologne Water Quality Control Act for establishing water quality objectives. (Wat. Code, § 13241.) This includes competing demands for water, such as for municipal and agricultural beneficial uses.³ Likewise, the State Water Board will continue to consider the protection of public trust resources in implementing the LSJR/SD update and developing and implementing the Sacramento/Delta update.

Because the State Water Board is already undergoing Bay-Delta Plan review and update, including to protect public trust uses, the complaint is dismissed.

V. Meaningful Engagement with Affected Tribes and Meaningful Public Participation by Other Impacted Delta Communities in the Review and Revision Process

The State Water Board is committed to meaningful engagement with affected tribes and meaningful participation by other impacted Delta communities in the Bay-Delta Plan review and revision process. In furtherance of that goal, I would like to start with a meeting next month to discuss how to improve engagement with California Native American Tribes in protecting and recognizing tribal beneficial uses. As part of this process and consistent with the Tribal Consultation Policy, the State Water board will follow its stated best practice to consult with tribes out of respect for their status as sovereign governments or based on the unique tribal interests that may be affected by a proposed action, policy, or set of activities. (Tribal Consultation Policy, p. 10.)

In addition, and consistent with State Water Board Resolution 2021-0050,⁴ the State Water Board remains interested in exploring ways to further address environmental justice and inequity, including through funding opportunities for projects in disadvantaged and severely disadvantaged communities.

³ For additional explanation regarding the public trust in the context of Bay-Delta Plan updates, please see the Final LSJR/SD SED, Master Response 1.1, *General Comments*.

⁴ State Water Resources Control Board Resolution No. 2021-0050, *Condemning Racism, Xenophobia, Bigotry, and Racial Injustice and Strengthening Commitment to Racial Equity, Diversity, Inclusion, Access, and Anti-Racism*. See: https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2021/rs2021-0050.pdf

VI. Revise Beneficial Uses in the Bay-Delta Plan to Incorporate Tribal Beneficial Uses and Non-Tribal Subsistence Fishing Beneficial Uses

The State Water Board's engagement with Tribal Beneficial Use Designations is important and ongoing. February 16, 2016, the State Water Board adopted Resolution No. 2016-0011 in response to a letter requesting new beneficial use categories and proposed language from tribes and environmental justice representatives.⁵ This resolution directed staff to develop proposed beneficial uses pertaining to tribal traditional and cultural, tribal subsistence fishing, and subsistence fishing. The Resolution sets out the process for establishing a new beneficial use category, including the need for hearing and notice. The Resolution explains that after a beneficial use category or definition is established, specific waters are not designated with that beneficial use unless a water quality standards action occurs to make the designation.

On May 2, 2017, the State Water Resources Control Board adopted Resolution 2017-0027, which approved "Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California - Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions (ISWEBE Plan)."⁶ Through Resolution 2017-0027, the State Water Board established three new beneficial use classifications for use by the State and Regional Water Boards: Tribal Traditional Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing (SUB) beneficial uses. These beneficial uses may be designated by regional water quality control boards through the basin planning process for inland surface waters, enclosed bays, or estuaries in the state.

As provided on the State Water Board's website,⁷ the nine Regional Board are in different stages of their Basin Plan Amendment processes to include the Tribal Beneficial Uses and designate surface waters. Quarterly updates by all nine regional water boards are available on the State Water Board's website.⁸ For example, the North Coast Regional Board is currently in the process of prioritizing Tribal Beneficial Uses in a triennial review. In addition, the Central Valley Water Board continues to engage with California Tribes and the public, has completed prioritization of tribal beneficial uses in a triennial review, and is currently working on listing Tribal Beneficial Uses and their definitions and gathering information for designations. Most recently, on April 28, 2021, the Central Valley Water Board held a public outreach meeting to discuss the development of potential amendments to the Water Quality Control Plans for Tribal Beneficial Use Designations. Consideration of the Regional Boards' ongoing

⁵ State Water Resources Control Board Resolution No. 2016-0011, *Directing Staff to Develop Proposed Beneficial Uses Pertaining to Tribal Traditional and Cultural, Tribal Subsistence Fishing, and Subsistence Fishing*. See:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2016/rs2016_0011.pdf

⁶ See:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/rs2017_0027.pdf

⁷ https://www.waterboards.ca.gov/tribal_affairs/regional_tbu_updates.html

⁸ Id.

work would be an important component in evaluating adding Tribal Beneficial Uses to the Bay-Delta Plan.

VII. Summary and Conclusion

After careful consideration of your petition, the relevant law, and the current context of the ongoing rulemaking processes, the Petition is denied for the reasons set forth in this letter. The record upon which this decision is based includes the petition and its exhibits, this letter, and the materials referenced herein.

The State Water Board summarized this decision with regard to claims brought pursuant to Government Code section 11340.6 and submitted that decision, in accordance with Government Code section 11340.7, subdivision (d), to the Office of Administrative Law for publication in the California Regulatory Notice Register. A copy of the decision, as summarized and submitted, is included as an attachment to this letter and is entitled "Rulemaking Petition Decision Submitted for Publication in the California Regulatory Notice Register."

The agency contact person on this matter is Tina Cannon Leahy, Staff Counsel IV. She can be reached at (916) 319-8559 or Tina.Leahy@waterboards.ca.gov. Any person interested in obtaining a copy of the Petition and this response can contact Ms. Leahy. Upon request, physical copies can also be made available at the CalEPA building, 1001 I Street, Sacramento, California, 95814.

Sincerely,



Eileen Sobeck
Executive Director
State Water Resources Control Board

Enc: Rulemaking Petition Decision Submitted for Publication in the California Regulatory Notice Register

cc: (via email only)

Malissa Tayaba, Vice Chair, Shingle Springs Band of Miwok Indians
Caleen Sisk, Chief, Winnemem Wintu Tribe
Gary Mulcahy, Government Liaison, Winnemem Wintu Tribe
Regina Chichizola, Executive Director, Save California Salmon
Dillon Delvo, Executive Director, Little Manila Rising
Barbara Barrigan-Parilla, Executive Director, Restore the Delta

RULEMAKING PETITION DECISION

STATE WATER RESOURCES CONTROL BOARD

DECISION ON PETITION TO AMEND THE BAY-DELTA PLAN AND INITIATE A RULEMAKING TO REGULATE ALL RECOGNIZED RIGHTS TO BAY-DELTA WATER

On May 24, 2022, the State Water Resources Control Board (State Water Board), received a Petition to adopt, amend, or repeal a regulation, pursuant to Government Code section 11340.6, from Mills Legal Clinic at Stanford Law School on behalf of the Winnemem Wintu Tribe, Shingle Springs Band of Miwok Indians, Save California Salmon, Little Manila Rising, and Restore the Delta (collectively “Petitioners”).

Petitioners request that the State Water Board (1) immediately undertake and timely complete review of water quality standards in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan); (2) engage in meaningful government-to-government consultation with affected tribes and center opportunities for meaningful public participation by other impacted Delta communities in the review and revision process; (3) revise beneficial uses in the Bay-Delta Plan to incorporate tribal beneficial uses and non-tribal subsistence fishing beneficial uses; (4) issue new and revised water quality standards adequate to protect the full range of beneficial uses and public trust interests; and (5) initiate a rulemaking to regulate all recognized rights to Bay-Delta water—including pre-1914 appropriative rights—and limit water diversions and exports to levels consistent with the revised water quality standards.

In accordance with Government Code Section 11340.7, subdivision (a), this document serves as the State Water Board’s response to the petition.

PROVISIONS OF CALIFORNIA CODE OF REGULATIONS REQUESTED TO BE AFFECTED

The Petition does not identify specific provisions in the California Code of Regulations that Petitioners are requesting be adopted, amended, or repealed. Petitioners are requesting changes to the Bay-Delta Plan and that the State Water Board initiate a rulemaking to regulate all recognized rights to Bay-Delta water. The State Water Board notes that when amendments to the Bay-Delta Plan were adopted in 2018 to update Lower San Joaquin River flows and southern Delta salinity requirements, those amendments were summarized in California Code of Regulations, tit. 23, section 3002.1 and conforming amendments were made to California Code of Regulations, tit. 23, section 3002, summarizing the previous amendments to the Bay-Delta Plan in 2006.

REFERENCE TO AUTHORITY TO TAKE THE REQUESTED ACTION

The federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.), the public trust doctrine (*Nat.*

Audubon Society v. Super. Ct. (1983) 33 Cal.3d 419), and state prohibitions on the waste or unreasonable use of water or unreasonable method of diversion (Cal. Const., art. X, § 2; Water Code §§ 100, 275, 1050, 1831, and 85023.)

AGENCY DETERMINATION

The petition is **denied**.

REASONS SUPPORTING THE AGENCY DETERMINATION

The State Water Board is committed to completing a review of water quality standards in the Bay-Delta. In 2018, the State Water Board updated the Bay-Delta Plan to (1) provide reasonable protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers; and (2) provide reasonable protection of agricultural beneficial uses in the southern Delta. Water quality control plans are not self-implementing. The State Water Board must assign responsibility for implementation to water right holders and claimants. This will require the State Water Board to undergo a water quality or water right proceeding including preparing the appropriate level of environmental review tiering from the State Water Board's adopted substitute environmental document for the 2018 update. In addition, the State Water Board is preparing a Staff Report to support an update to the Bay-Delta Plan for the Sacramento River and its tributaries and the Interior Delta and its tributaries. The State Report will present options for updating the Bay-Delta Plan and include the environmental analysis to support those options, among other information.

The State Water Board acknowledges one or more Voluntary Agreements (VAs) could be elements of a Bay-Delta Plan update. Voluntary Agreements would be stakeholder proposed flows and complimentary actions, such as habitat restoration, to help reasonably protect fish and wildlife beneficial uses. In the State Water Board Resolution adopting the 2018 Bay-Delta Plan update, the State Water Board recognized there were "ongoing negotiations between interested stakeholders and various other state agencies to achieve [VAs] to implement the Plan Amendments" and that "robust [VAs] 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." (State Water Board Resolution No. 2018-0059 at p. 5.) However, there is no final State Water Board decision on VAs and those efforts do not preclude further progress on amending the Bay-Delta Plan.

The State Water Board is denying your request to initiate a rulemaking to regulate all recognized rights to Bay-Delta Water. The State Water Board's ongoing rulemaking efforts and subsequent development and implementation of water quality standards will allow the State Water Board to better limit water diversions and exports to levels in compliance with those standards. As state above, the State Water Board will impose enforceable obligations to implement the water quality objectives in future proceedings involving the specific exercise of the State Water Board's water right or water quality authority. A rulemaking remains one option to implement the 2018 Bay-Delta Plan

update, but no final decision has yet been made as to whether to proceed with a regulation, a different option such as a water right proceeding, or a combination of options.

The State Water Board is committed to meaningful engagement with representatives of affected tribes in the Bay-Delta watershed, including the Winnemem Wintu Tribe and Shingle Springs Band of Miwok Indians; however, a request for government-to-government consultation is outside of the scope of a rulemaking petition. In addition, the State Water Board is interested in continued dialogue with Tribes regarding the request to revise beneficial uses in the Bay-Delta Plan to incorporate tribal beneficial uses and non-tribal subsistence fishing beneficial uses but cannot commit to undergoing a rulemaking prior to understanding the full scope and application of such a request.

DEPARTMENT CONTACT PERSON

Please direct any inquiries regarding this action to:

Tina Cannon Leahy, Staff Counsel IV
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
Tina.Leahy@waterboards.ca.gov

NOTICE TO INTERESTED PERSONS

Any interested persons have the right to obtain a copy of the petition that is the subject of this decision by sending a request to the State Water Board contact person listed in this notice.

DATE OF DECISION

June 23, 2022