



Delta Stewardship Council

A CALIFORNIA STATE AGENCY

January 10, 2025

State Water Resources Control Board
Division of Water Rights
Attn: Bay-Delta & Hearings Branch
P.O. Box 100
Sacramento, CA 95812-2000

Delivered via [email]: SacDeltaComments@waterboards.ca.gov

Subject: Comment Letter – Draft Sacramento/Delta Bay-Delta Plan Updates

Dear Chair E. Joaquin Esquivel:

Thank you for the opportunity to review and comment on the State Water Resources Control Board's (Board) October 2024 draft of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed (draft Plan).

This letter provides the Delta Stewardship Council's (Council) input on key elements of the draft Plan, with particular emphasis on ensuring that the draft Plan is based on best available science, adaptively managed and complementary to the Council's mission and authority in the Delta. Regardless of the Board's ultimate approach to updating its Plan, our comments below highlight elements of the draft Plan we think should be retained, clarified, or described more completely in the final Plan. In a dynamic Delta, the precise ecological outcomes of many of the actions the Board is considering are uncertain, thus it is imperative that the final Plan include a robust monitoring and adaptive management strategy to enable learning and guide future management actions.

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The Council, including the Delta Science Program (DSP), has been closely following the Board's efforts to update this Water Quality Control Plan, and applauds the Board on the progress to date. Most recently, the Council provided comments on the draft Staff Report in a [letter](#) provided on January 19, 2024. The Council appreciates the opportunity to now review and submit comments on the draft Plan.

We want to express our appreciation to the Board for how it organized the draft Plan, and for hosting dialogue-rich public workshops to better understand the nuances of the draft Plan and hear reactions from various entities. In particular, the "Notes to Reader" and call-out boxes throughout the document improved readability and comprehension and serve as a useful model for communicating complex regulatory processes. As appropriate, we encourage the Board to carry this format forward into the final Plan.

We also want to acknowledge the challenge of commenting on the draft Plan given, in some instances, limited implementation details, like monitoring locations and techniques within the Delta and its watersheds. As such, we urge the Board to articulate sound scientific management in the final Plan, including peer review, periodic revision, and data re-evaluation to optimize limited scientific resources. The Council and Delta Science Program are prepared to assist the Board in these efforts consistent with the Delta Plan's mandate to ensure the use of best available science in managing Delta resources.

The Council recognizes the importance and urgency of updating the final Plan for the purposes of protecting beneficial uses of water in the Bay-Delta. **The Council is available to support the Board in the subsequent program of implementation, particularly with regard to pursuing high-quality, independent, and relevant scientific review of actions and programs and to further implementation of the regulations, recommendations, and performance measures outlined in the state's Delta Plan and statutory coequal goals.**

The contents of this letter highlight specific areas of shared interest that the Council can help support, including associated suggestions and questions. They are:

- The role of the Council;
- Flow and connections between the Delta Plan and the final Plan;
- Governance as it pertains to the implementation of the final Plan;
- Best Available Science;
- Science and Monitoring;
- Independent Scientific Peer Review.

About the Council

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water supply and

protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta (Delta) ecosystem. (Water Code, § 85054.) The Delta Reform Act further states that the coequal goals are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

The Council is charged with furthering California's coequal goals for the Delta through the adoption and shared implementation of the Delta Plan. (Wat. Code, § 85300.) As part of the Council, the mission of the Delta Science Program is to provide the best possible unbiased scientific information to inform water and environmental management decisions for the Delta. This mission is carried out by funding research, synthesizing and communicating scientific information to policymakers and decision-makers, promoting independent scientific peer review, and coordinating with Delta resource management agencies to promote science-based adaptive management. (Wat. Code, § 85280(b)(4).)

The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5002-5015. Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions of State or local public agencies that take place in whole or in part in the Delta. (Wat. Code, §§ 85210, 85225.30.) A state or local agency that proposes undertaking a covered action is required to prepare a written Certification of Consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and submit that Certification to the Council prior to initiation of the implementation of the covered action. (Wat. Code, § 85225.) As a regulatory action of a State agency, the final Plan update is, by definition, not considered a covered action. (Wat. Code, § 85057.5(b)(1).) Implementation of the Delta Plan's regulations and recommendations is how we further the coequal goals.

Flow and Connections between the Delta Plan and the Final Plan

It is important to note that the Delta Plan includes regulatory policies and non-regulatory recommendations that are directly linked to and support the Water Quality Control Plan. The Delta Reform Act and Delta Plan also highlight the critical importance of flows to the Delta. **The Council would like to better understand how changes to the final Plan would affect one of our regulatory policies (ER P1, "Delta Flow Objectives") and support more natural, functional flows, as called out in the Delta Plan.** The Delta Plan and the final Plan are intertwined regarding the issue of Delta flow objectives. We would appreciate the opportunity to continue working together with Board staff to achieve clarity on how the plans relate to one another regarding these matters and in light of amendments to the draft Plan.

Ecosystem Restoration Policy 1 (ER P1)

Chapter 4 of the Delta Plan: *Protect, Restore, and Enhance the Delta Ecosystem* includes a regulatory policy and a recommendation focused specifically on flows. Delta Plan Policy [ER P1](#) "Delta Flow Objectives" (Cal. Code Regs., tit. 23, § 5005) states:

- (a) *The State Water Resources Control Board's Bay Delta Water Quality Control Plan flow objectives shall be used to determine consistency with the Delta Plan. If and when the flow objectives are revised by the State Water Resources Control Board, the revised flow objectives shall be used to determine consistency with the Delta Plan.*
- (b) *For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, the policy set forth in subsection (a) covers a proposed action that could significantly affect flow in the Delta.*

ER P1 refers to and requires the use of final Plan flow objectives (currently described in the Board's [Decision 1641](#)) for relevant covered actions to demonstrate consistency with the Delta Plan, and the use of revised flow objectives if and when these are revised by the Board. The draft Plan describes both potential updates to the final Plan flow objectives and an alternative pathway to compliance through the Voluntary Agreements. The Council seeks to work collaboratively with the Board to determine what standards would apply to future covered actions under ER P1 under either or both pathways.

The Council requests that, in the final Plan, the Board specify the flow objectives that will be applicable to ER P1 (Cal. Code Regs., tit. 23, § 5005). This level of detail is important for the Council to evaluate the forthcoming final Plan, and its implications for **ER P1**. It is also important for state and local public agencies' understanding of the ER P1 requirement. Ideally, the Board would work with the Council to clearly articulate how the Board defines "flow objectives" under either or both pathways to advance the state's policy goals for the Delta.

Ecosystem Restoration Recommendation 1 (ER R1)

Delta Plan Recommendation [ER R1](#) "Update Delta Flow Objectives" states:

The State Water Resources Control Board (SWRCB) should maintain a regular schedule of reviews of the Bay-Delta Plan [final Plan] to reflect changing conditions due to climate change and other factors. The SWRCB should consult with the Delta Science Program on adaptive management and the use of best available science.

Our staff stands ready to consult with Water Board staff to adaptively manage and incorporate best available science into the final Plan.

Delta Flows

The flow of water – including characteristics such as volume, timing, temperature, and water quality – is a critical component of a healthy, functioning Delta. Achieving California's coequal goals for the Delta is contingent on what the Delta Plan describes as

“more natural, functional flows”.¹ The Delta Plan includes a focus on these functional flows, including recommendations to help achieve them. For example, ER R1 (described above) and components of recommendations WR R12e, WR R12f, and WR R12j relate to functional flows². Chapter 4 of the Delta Plan establishes more natural, functional flows as its first core strategy, critical to the function of the Delta. This importance is supported by numerous peer-reviewed studies as well as the Board’s 2017 Scientific Basis report.³

The importance of functional flows is highlighted in several of the early action items in the Delta Reform Act related to flow criteria and quantifiable biological objectives or aquatic and terrestrial species of concern that are dependent on the Delta (e.g., Wat. Code, § 85084.5 and § 85085). The Delta Plan also establishes four performance measures for quantifying flow criteria relevant to the Delta and upstream tributaries⁴. These include measures for in-Delta flow, peak flow, recession flow, and inundation of the Yolo Bypass that were developed based on peer-reviewed scientific studies and expert interviews. These measures may be aligned with flow “shaping” that has been discussed as part of the draft Plan. Our performance measures are necessarily focused on our geographic jurisdiction and measuring progress therein. However, the conceptual model of functional flows also applies to upstream areas covered by the final Plan. This focus is aligned with the Delta Reform Act, which also includes a requirement for the Delta Plan to include measures that would restore Delta flows and support a healthy estuary. (Wat. Code, § 85302(e)(4).) The Delta Plan remains the guiding, enforceable way to achieve these goals.

Best Available Science

The Council’s Delta Science Program (DSP) is charged with providing best possible scientific information to inform water and environmental decision-making. DSP does this in support of the Council and its decision-making and advancement of the Delta Plan, as well as the broader community. The Delta Plan defines best available science (BAS) as science that is:

(a) relevant to the biological, physical or social components affected by the decision;

¹ We recognize that the draft Plan uses “unimpaired flows” while the Delta Plan calls for “functional flows”. These approaches are different but can be aligned.

² Please see Delta Plan Chapter 3: *A More Reliable Water Supply for California*. Available online: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-04-26-amended-chapter-3.pdf>

³ Please see Delta Plan Chapter 4: *Protect, Restore, and Enhance the Delta Ecosystem, Core Strategy 1: Create More Natural Functional Flows*, and *References* at the end of the chapter. Available online: <https://deltacouncil.ca.gov/pdf/delta-plan/2022-06-29-chapter-4-protect-restore-and-enhance-the-delta-ecosystem.pdf>

⁴ Delta Plan Chapter 4: *Protect, Restore, and Enhance the Delta Ecosystem*, Appendix E. Performance Measures 4.2A, 4.2B, 4.2C, 4.2D, available online: <https://deltacouncil.ca.gov/pdf/delta-plan/2022-06-23-amended-appendix-e-performance-measures.pdf>

- (b) inclusive of information and analyses across disciplines;*
- (c) objective and void of nonscientific influences;*
- (d) transparent and open to the public;*
- (e) timely and applicable to current situations, with uncertainties clearly documented;*
- (f) independently reviewed to ensure its integrity.*

The Council acknowledges references to best available science throughout the Board’s draft Plan and encourages the Board to consider all elements in the BAS criteria listed above in the finalization, implementation and adaptive management of regulatory, general and potential Voluntary Agreement provisions. The DSP has led the Delta science and management community over the last 15 years by advancing these principles wherever possible, and is eager to support the Board, and its program of implementation using collaborative investigations, thoughtful monitoring, independent peer review, and adaptive management as precepts of good science.

Governance

Several proposed updates in the draft Plan, including the Voluntary Agreement and general provisions, could significantly reshape the governance and organization of science and monitoring in the estuary. Key details remain unclear, such as how the VA Science Committee will collaborate with science entities like the DSP and how the Bay-Delta Monitoring and Evaluation Program (BDMEP) will involve other agencies and stakeholders. **In the final Plan, we urge the Board to provide additional details on these governance issues and to ensure the proposed structures effectively build on existing institutions and efforts to maintain scientific collaboration and integrity.**

Science and Monitoring

There is a long legacy of science and monitoring in the Delta. Continuing – and expanding - that legacy, given changes in climate, water supply reliability, and species distribution, is more important than ever. Notwithstanding the governance comments above, the Council appreciates the Board’s commitment to this legacy and its efforts to propose a comprehensive monitoring program like the BDMEP.

That said, we feel the Board’s draft Plan would benefit from more specifics on monitoring (section 4.5.1), including:

- When, how, and why monitoring elements will be reviewed for relevance to the Board’s needs;

- Details about what data are being collected, how these data are being analyzed to inform management needs, and to whom and with what frequency analytical and summary content reporting will be expected to fulfill Board requirements;
- Identifying potential or required entities to conduct reviews (e.g. Delta Independent Science Board, Delta Science Program, National Academy of Science, subject matter experts), on what timetable, and sources of funding for underwriting such reviews.

We recognize the inclusion of a Science Charter and Science Plan in the Voluntary Agreement (VA) MOU to guide technical inputs and reviews. However, we urge the Board to provide more details on the governance and application of monitoring programs associated with the Voluntary Agreement, including the scope, frequency, and responsibility for peer reviews to ensure scientific credibility.

We also support increased involvement of the Delta Independent Science Board (Delta ISB) and recommend that the Board articulate its intended use of the Delta ISB and Delta Science Program (DSP) for regular, credible review processes. We are available to consult on these details as needed. We also suggest leveraging DSP peer review services for key components, including the comprehensive report. The DSP's extensive experience in conducting rigorous, independent peer reviews makes it a valuable resource for this effort.

Independent Peer Review and Advice

In the final Plan we recommend that the Board adopt a multi-step peer review process, similar to that used for Central Valley Project/State Water Project Long-term Operations, including public, independent review workshops every one to two years to evaluate operations and suggest adjustments. A public and predictable review schedule, supported by Board staff and other ad-hoc reviews, would address scientific and technical questions transparently and support adaptive management. Higher-level reviews, conducted every four and/or eight years, would further enhance this process.

Appendix A of the draft Plan outlines potential reviews of monitoring and evaluation activities under the initial *Bay-Delta Monitoring and Evaluation Program (BDMEP)*. However greater detail is needed on how these reviews will be conducted, and their appropriate scope.

We are prepared to assist in refining the BDMEP review terms and to work with the Board, agencies, and the public to develop an effective approach for reviewing the science and monitoring activities in the BDMEP and updated final Plan.

Closing Comments

To review, we stand ready to assist with:

- Incorporating Best Available Science into the final Plan, including strong monitoring and adaptive management strategies, as well as independent peer review and assessment of implementation actions by the Delta Independent Science Board, Delta Science Program, and National Academy of Sciences;
- Intentionally defining how the updated final Plan will align with the Delta Plan to ensure functional and adequate Delta flows, under whatever regulatory, Voluntary Agreement, or hybrid pathways the Board ultimately pursues;
- Establishing a credible governance structure for oversight and conflict resolution related to monitoring programs and evaluations, as outlined in the VA and BDMEP descriptions in the draft Plan.

Council staff are available to discuss the comments and resources offered in this letter as the Board prepares the final Plan. Please contact me or have your staff contact Steven Culberson at steve.culberson@deltacouncil.ca.gov with any questions.

Sincerely,

Jessica R. Pearson
Executive Officer