

Submitted via electronic mail to [SacDeltaComments@waterboards.ca.gov](mailto:SacDeltaComments@waterboards.ca.gov)

September 18, 2026

Mr. Erik Ekdahl, Chief Deputy Director  
Division of Water Rights  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

**Re: Comment Letter – Final Draft Bay-Delta Plan**

Dear Mr. Ekdahl:

The Association of California Water Agencies (ACWA) appreciates the opportunity to provide public comments to the State Water Resources Control Board (State Water Board) on the August 2026 final draft Sacramento/Delta updates (final draft updates) to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed (Bay-Delta Plan or Plan). ACWA represents approximately 470 public water agencies that collectively deliver approximately 90% of the water in California for domestic, agricultural, and industrial uses.

ACWA has strongly supported the Healthy Rivers and Landscapes (HRL) Program as the preferred pathway for updating the Bay-Delta Plan. The HRL Program—as developed and proposed by participating public water agencies—was designed to provide a holistic and integrated approach to improve the Bay-Delta ecosystem for fish and wildlife by aligning a broad spectrum of habitat, science, and adaptive management tools. Concurrently, it would help secure water supply reliability for other beneficial uses of water, including California’s communities, farms, recreation, and hydropower.

ACWA has engaged extensively throughout the Bay-Delta Plan update process, submitting written comments on previous drafts of the Sacramento/Delta updates and Staff Report. Specific to the final draft updates, ACWA offers the following input to the State Water Board.

**1. Recognize the HRL Program’s unprecedented effort to improve ecosystem outcomes and water supply reliability.**

The Memorandum of Understanding (MOU) signatories (parties) have worked together to establish a governance framework and develop a science and adaptive management program to activate habitat with flow contributions to improve biological function for species, with the intention of moving beyond rigid, historical, flow-centric paradigms

that have failed to deliver meaningful improvements for species. This comprehensive package—which includes the Tuolumne River HRL Program—represents one of the largest publicly funded investments in habitat and ecosystem recovery in California's history, voluntarily bringing together upper and lower watershed agencies.

The HRL Program, as originally proposed, advances a framework that:

- a. Modernizes Water Management: The HRL Program increases environmental water flows paired with adaptive management to enable infrastructure to be operated more flexibly, allowing agencies to respond more rapidly to changing conditions.
- b. Supports Interagency Coordination: It fosters alignment between state and local agencies, ensuring they work in tandem to support water supply reliability and environmental outcomes.
- c. Establishes Flexible Governance: The HRL Program establishes nimble, science-based governance structures at both the systemwide and tributary/Delta levels, with local expertise and clear accountability guiding long-term implementation.
- d. Improves Data and Science: It features a robust science program, structured decision-making, and hypothesis-testing, rather than relying on arbitrary flow volumes that only loosely correlate with species' biological function. It delivers clear, coordinated decisions grounded in the best available science.
- e. Enhances Ecosystem Outcomes: The HRL Program commits thousands of acres to floodplain enhancement, instream habitat restoration, and fish food production, activating habitat with water to support ecological function, while advancing regional and system-wide resilience. While ACWA appreciates that the State Water Board's regulatory authority is limited to requiring increased flows for fish and that many non-flow actions are within the jurisdiction or control of other agencies or water users, the HRL Program provides a unique opportunity to address critical stressors that the unimpaired flow pathway does not—such as limited prey abundance, predation, and spawning/rearing habitat scarcity. By integrating flow and habitat restoration, it magnifies their individual benefits in a way the Bay-Delta Plan cannot achieve in the absence of the HRL Program.

The parties have demonstrated their commitment to this pathway by investing considerable time and resources to develop and advance their proposal, including early implementation components, and are ready to engage with the State Water Board as partners during implementation. It is now incumbent on the State Water Board to finalize the Bay-Delta Plan update to enable implementation of the HRL Program that the parties developed. Finalizing the update will provide the regulatory foundation needed to sustain economic productivity, maintain affordability, and protect public health, while also delivering the ecological assets required to expand habitat and improve conditions for species that cannot afford further delay.

**2. Ensure the final draft updates are consistent with the elements of the proposal advanced by the HRL Program parties.**

The parties developed the HRL Program using the best available science—with direct engagement from the California Environmental Protection Agency (CalEPA), California Natural Resources Agency, California Department of Water Resources, California Department of Fish and Wildlife, and U.S. Bureau of Reclamation. As a result of this collaborative process, the parties carefully crafted a comprehensive and integrated HRL Program to meaningfully contribute to meeting the Bay-Delta Plan’s objectives. The final draft Plan should accurately incorporate the HRL Program as proposed by the parties.

- a. Implementing and Enforcement Agreements: It has long been the intention of the parties—based on engagement with the State Water Board and CalEPA—to utilize several agreements, including the Global Agreement, Implementation/Tributary Agreements, and Enforcement Agreements. Currently, the structure of the agreements and enforcement mechanisms is unclear. ACWA recommends that the final draft Plan clarify how these agreements will be incorporated into the Bay-Delta Plan.
- b. Flow Accounting: The parties, in consultation with State Water Board staff, worked to collaboratively develop detailed flow accounting for each tributary that accurately reflects the MOU proposals. However, some tributaries’ flow accounting provisions in Appendix B.1 have been significantly modified from what was previously developed. Given the extensive work already completed, ACWA recommends that the State Water Board both acknowledge the sufficiency of the previously developed flow accounting documents and revise the final draft Plan to accurately capture the parties’ proposals.
- c. Non-flow Habitat Accounting: The HRL Program is built on ambitious, statewide commitments by participating parties to implement habitat enhancement and restoration projects. The final draft updates include new language that could be interpreted as requiring ongoing maintenance of restoration projects for the duration of the HRL Program that could undermine the dynamic processes essential to successful ecological projects. ACWA recommends that the final draft Plan modify this requirement to focus on assessment of the functionality of restoration projects, with provisions for maintenance as needed.

The parties carefully constructed the HRL Program to ensure consistency with the requirements for the Bay-Delta Plan update. Excluding or altering certain elements of the HRL Program has the potential to undermine the painstaking balance inherent in the program and would preemptively subvert its efficacy.

**3. Address concerns regarding the unimpaired flow pathway and State Water Board authority.**

ACWA has significant concerns that the State Water Board's reliance on only one management tool (i.e., unimpaired flows) will be ineffectual in generating the desired ecological outcomes. Science indicates that the correlation between species' response and a given amount of flow yields diminishing returns.<sup>1,2</sup> Decision-makers should not rely on flow as the sole indicator of the ability to achieve meaningful species recovery, as the evidence suggests that flow-abundance relationships do not produce measurable results to support necessary biological functions and life-cycle improvements; material and unpredictable changes to these relationships can occur from the unanticipated interaction of other stressors; and species modeling is inherently uncertain.<sup>3,4</sup>

Despite this evidence, the final draft updates include problematic provisions that compound these underlying uncertainties. ACWA remains deeply concerned by the framework for transitioning parties to the unimpaired flow pathway without sufficient review, analysis, and process. The final draft updates reflect an expansive interpretation of agency authority, relying on legal positions that lack clear statutory backing and have historically led to protracted disputes over regulatory boundaries. Furthermore, unilateral Executive Director discretion subjects elements of the HRL Program to reinterpretation and approvals far beyond what is necessary to enable successful program implementation. The transition framework and administrative discretion in the final draft updates leave the parties' substantial investments with little regulatory security, while also placing additional administrative burdens on program participants that will reduce the resources available for the meaningful work to improve ecosystem outcomes and water supply reliability for all Californians reliant on the Bay-Delta.

ACWA recommends that the final draft Plan incorporate a transition framework requiring rigorous environmental review and full public process, establish clear statutory boundaries and transparent justifications for any enforcement actions, and provide a formal mechanism to bring disputed decisions directly before the State Water Board for public review and resolution.

## Conclusion

The Bay-Delta Plan update has profound implications for water supplies in California and, consequently, established state priorities, policies, and planning documents. Given the foundational nature of the Plan, its impacts will be far-reaching, including, but not limited to the coequal goals, sustainable groundwater management, housing development, affordability, food production, and California's economy. For additional

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<sup>1</sup> Tamburello, N., et al. 2019. *Durability of environment–recruitment relationships in aquatic ecosystems: insights from long-term monitoring in a highly modified estuary and implications for management*. *Limnology and Oceanography* 64(S1):S223-S39.

<sup>2</sup> Kimmerer, W. 2002. *Effects of freshwater flow on abundance of estuarine organisms: physical effects or trophic linkages?* *Marine Ecology Progress Series* 243:39-55.

<sup>3</sup> Kimmerer, W. 2002. *Physical, biological, and management responses to variable freshwater flow into the San Francisco Estuary*. *Estuaries* 25(6B):1275-90.

<sup>4</sup> Thomson, J., et al. 2010. *Bayesian change point analysis of abundance trends for pelagic fishes in the upper San Francisco Estuary*. *Ecological Applications*. 20(5):1431-1448.

discussion and detail regarding the comments and concerns above, including region-specific issues, please refer to ACWA member agencies' comment letters.

ACWA appreciates the opportunity to provide input on the final draft updates. Please do not hesitate to contact Stephen Pang at [StephenP@acwa.com](mailto:StephenP@acwa.com) or (916) 669-2369 if you have any questions or would like to discuss these comments further.

Sincerely,



Stephen Pang  
State Relations Advocate  
Association of California Water Agencies

cc: The Honorable Wade Crowfoot, Secretary for Natural Resources, California  
Natural Resources Agency  
The Honorable Yana Garcia, Secretary for Environmental Protection, California  
Environmental Protection Agency  
The Honorable E. Joaquin Esquivel, Chair, State Water Resources Control Board  
The Honorable Dorene D'Adamo, Vice Chair, State Water Resources Control  
Board  
The Honorable Jared Blumenfeld, Member, State Water Resources Control Board  
The Honorable Sean Maguire, Member, State Water Resources Control Board  
The Honorable Nichole Morgan, Member, State Water Resources Control Board  
The Honorable Meghan Hertel, Director, California Department of Fish and  
Wildlife  
The Honorable Thomas Gibson, Director, California Department of Water  
Resources  
Mr. Eric Oppenheimer, Executive Director, State Water Resources Control Board  
Ms. Karla Nemeth, Executive Director, Association of California Water Agencies  
Ms. Chelsea Haines, Director of State Regulatory Relations, Association of  
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