United States Department of the Interior
BUREAU OF RECLAMATION
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Sacramento, CA 95825-1898

IN REPLY REFER TO:

CGB-100
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VIA ELECTRONIC MAIL ONLY

State Water Resources Control Board
Division of Water Rights
Attn: Bay-Delta & Hearing Branch
P.O. Box 100
Sacramento, California 95812-0100

Subject: Additional Comments on August 2026 Draft Water Quality Control Plan

Dear Chair Esquivel:

In addition to the Bureau of Reclamation's (Reclamation) September 4, 2026 letter and comments, we wish to provide an additional comment regarding an important issue not fully addressed in that submission: the August 2026 Draft Water Quality Control Plan's (Plan) treatment of undeveloped portions of existing water rights and the implications for future water-right development. This issue has significant operational, legal, and policy consequences for Reclamation, CVP operations, water right holders throughout California, HRL participants, and requires correction prior to Plan adoption.

The August draft Plan introduces new limitations on the exercise and future development of existing water rights that depart from established statutory processes and materially expand the Board's regulatory reach. Specifically, the draft Plan restricts HRL participants to using only those water rights "as they are being exercised at the time of Plan adoption" (August Draft § 4.4.9.1), and limits water right holders and their respective agencies for existing rights to "the level of diversions occurring under that right as of December 31, 2025" (§ 4.4.2.2). It further defines "new water supply projects" to include any approved change petition that results in increased diversions or reduced outflow relative to December 31, 2025 baseline conditions (fn. 5). These provisions collectively predetermine outcomes that the Water Code requires to be resolved through individualized evidentiary proceedings, including appropriations, extensions of time, change petitions, and development under existing permits.

Reclamation's September 4th technical comments already highlight the uncertainty and expanded regulatory burden introduced in Section 4.4.9, including limitations on which water rights may be used to satisfy HRL commitments and an unworkable process tied to baseline assumptions that are inconsistent with current CVP Records of Decision and federal biological opinions.

These concerns are heightened by the August draft's Plan's approach to undeveloped water, which would effectively freeze the exercise of existing water rights at 2025 levels and prohibit lawful development under federal or state processes without imposing additional obligations on HRL participants.

Reclamation's September 4 letter underscored that the draft Plan already threatens the reliability of water supplies that support the CVP, alters negotiated HRL commitments, and imposes obligations outside the Board's legal authority. The new restrictions on future development further compound these issues by creating a regulatory presumption that any lawful increase in diversion approved through statutory proceedings must nonetheless be treated as a reduction to baseline conditions for HRL accounting. This creates a direct risk that HRL participants—including Reclamation—would be required to offset flow changes caused by non-HRL parties pursuing lawful water-right actions.

This approach is inconsistent with the Water Code's case-specific decision-making processes, which already require the Board to evaluate water availability, potential injury to other legal users, effects on fish and wildlife, and water-quality impacts before approving any change or development of a water right. It also contradicts Reclamation's expectation—reflected throughout the Term Sheet and HRL framework—that HRL flow commitments would be additive to current federal operations, not to a static historical baseline.

Reclamation therefore requests that the Board revise the Draft Plan to:

- remove or substantially modify the definition of "new water supply projects," which is already governed under existing statutory processes;
- clarify that HRL participants will not be responsible for replacing flow reductions associated with lawful future diversions by parties operating under the regulatory pathway;
- restore consistency with the Term Sheet by ensuring that HRL flows remain additive to current, lawfully established federal CVP operating requirements rather than to historical conditions frozen at December 31, 2025.

Addressing this issue is essential to preserving negotiated certainty, protecting CVP project purposes, and ensuring that the Board's Plan does not inadvertently convert HRL participants into a backstop for statewide future water-supply development. Reclamation submits this supplemental comment to support a more legally durable, practical, and equitable implementation framework as the State Board finalizes the updated Bay-Delta Plan.

Sincerely

ADAM NICKELS

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Adam Nickels
Regional Director - Acting