

Comments on the August 2026 Draft Bay-Delta Plan

General Comment As with our prior comments, we note that many of the edits between December 2025 and August 2026 drafts do not resolve the legal-authority, due-process, and modeling-transparency concerns we previously raised. The edits remain materially different from the 2022 MOU and Term Sheet.

Section 3.4, Table 3, Water Quality Objectives for Fish and Wildlife Beneficial Uses The State Water Resources Control Board continues to include narrative objectives based on outdated and failed science. This includes the Sacramento River/Delta Tributary Flows that continues to state, *“Conditions and measures that reasonably contribute toward maintaining viable native fish populations include the relative magnitude, duration, timing, quality and spatial extent of flows as they would naturally occur.”*. It is well understood that the Central Valley is a highly modified system, as evidenced by the State Water Resources Control Board (Board) own Staff Report which in Chapter 2, page 2-5 states *“...regulatory requirements based on unimpaired flows acknowledge that native species now inhabit an altered landscape and that adaptive management is needed to allow for sculpting and shaping of those flows to address the realities of that modified landscape.”* The narrative objective needs to be updated consistently with science in the Board’s own Staff Report and language previously provided by the HRL Parties.

In addition, the Board needs to define how achievement across the narrative objectives will be achieved, as they will sometimes be in conflict with each other. In particular, it is known that operations for Cold Water Habitat can impact the rearing and growth of other native species (e.g. Green Sturgeon). Notwithstanding the overreach by the Board to require storage to meet these objectives, the Board has provided no supporting information or other guidance on when or how to address these relevant conflicts.

Section 4.4.2.3, Table 8, Carryover Storage Target Ranges It is beyond the Board’s authority to require project owners to commit storage capacity and direct other congressionally authorized project purposes to meet the Board’s priorities for project supplies.

Shasta and Folsom Reservoirs State regulations cannot impose gatekeeping approval by the Executive Director that directly controls use of a federal reservoir or is inconsistent with Reclamation’s ability to implement its federal temperature management obligations under the Endangered Species Act (ESA), or to manage the year-over-year supplies to meet all Congressional purposes, including contract deliveries. Therefore, Reclamation will continue to operate Shasta Reservoir under the governing Biological Opinion, Record of

Decision, federal project purposes, and applicable federal directives, including Executive Order 14181.

Whiskeytown Reservoir A new footnote 3 has been added allowing Reclamation to propose that Whiskeytown not be subject to carryover storage targets, in recognition that it is a regulating rather than storage reservoir; however, we still request removal of the carryover targets from the table as it is not applicable.

Section 4.4.9, Implementation of HRL Commitments This section added *“The [Board] may issue Government Code section 11415.60 decisions by settlement or other decisions, orders, or regulations to enforce HRL commitments...”* and that the water rights that HRL participants could use to meet HRL commitments could only be the ones *“at they are being exercised at the time of Plan adoption by the [Board].”* This is inconsistent with the Term Sheet, Covered Parties, and draft Enforcement Agreement (MOU for Reclamation) developed cooperatively with the Board. Appendix B.1 still omits water rights held by Reclamation and part of the HRL. We request the Board reverts back to the Covered Parties list as described and understood in the Terms Sheet and Draft Enforcement Agreements (MOU for Reclamation).

Section 4.4.9.1, Protection of Base Flows Applicable to New Water Supply Projects

Inserts a protracted and unworkable process anytime the Central Valley Project (CVP) and State Water Project (SWP) incorporate best available science into its operations.

Reclamation understood explicitly that HRL flows would be additive to the current Biological Opinions and ITP. The Board’s changes, especially to the 2024 ROD/ITP and not the most current 2025 ROD/ITP, are arbitrary, unreasonable, and capricious. These recent additions by the Board erode the certainty in water supply commitments the HRL parties expected when executing the Term Sheet. Restoring consistency requires the Board correcting the Draft Plan to incorporate the most current Biological Opinions, deletion of the Relevant Change, adding language clarifying that the HRL flows are additive to the current CVP Record of Decision, Biological Opinions issued by U.S. Fish and Wildlife Service and National Marine Fisheries Service, and SWP’s ITP, and add clarification of Footnote 5’s applicability to this process. Clarification of Footnote 5 should include explanation of what constitutes a “water right change petition”, especially in context of Temporary Urgency Change Petitions, consolidated places of use, San Joaquin River restoration flows, and changes in points of diversions.

Section 4.4.9.2, HRL Flow Commitments Provides for the HRL Parties to have to identify their specific water rights under the HRL each year. The Board added a new provision that: *“The [Board] will notify the public and provide a 30-day comment period for comments on whether the dedication will injure other legal users of water, unreasonably affect fish and*

wildlife or other instream uses, or increase the amount of water that would have otherwise been used under that right.” Given the initial and ongoing requirements to maintain the applicable water rights in Appendix B.1 and the existing Annual and Triannual Reporting, the purpose of this provision is unclear. By all accounts, it only appears to provide duplicative reviews and insert unnecessary bureaucratic processes.

Section 4.4.9.6, Non-Flow Restoration Accounting Represents a bureaucratic process contrary to the green-tape cutting and other streamlining provisions included in the Term Sheet. In addition to increasing the bureaucratic approval requirements, the Board also instilled rigid, often inapplicable criteria, and contrary to industry/field standard. The Board’s actions will prevent habitat projects from being constructed and further impair the ecosystem. This section needs to be revised consistent with the language initially developed by the HRL parties.

Section 4.4.9.7, Supplemental Science and Monitoring As with our prior comments, modifications by Board staff to the HRL Parties’ Science Program are problematic and the continued inclusion of Appendix A. Bay-Delta Monitoring and Evaluation Program (BDMEP). The Science Program proposed by the HRL parties was based on the best available science, starting with key metrics, developing hypotheses, best methods, and open, transparent, publicly available data. The Board included multiple “approval” requirements to prevent hypotheses testing and stymie incorporation of new technologies. In addition, in the BDMWP the Board staff continue to focus on mandating funding for antiquated legacy surveys that do not meet decision making needs. As with our prior comments on the BDMEP, we remain unclear on the Board's authority to expand monitoring requirements, require specific surveys, and selectively assign monitoring responsibility to DWR and Reclamation through this Plan. This further erodes the certainty on incorporating the best available science and associated funding that the HRL Parties expected when executing the Term Sheet. Restoring consistency requires the Board correcting the Plan to rely upon the Science Program developed by the HRL parties and delete the BDMEP. Several changes expand the scope and duration of monitoring and reporting obligations without any accompanying explanation of that authority.

The Board needs to delete the BDMEP and adopt the Science Program developed by the HRL Parties.

Section 4.4.9.9 HRL Governance, Executive Director Approval, and Stability The Board continues to include language that is in direct conflict with the 2022 MOU and Term Sheet by adding Executive Director approval across all facets of the HRL Program in conflict with the support and commitments from the HRL Parties. The Term Sheet states: *“The [HRLs] will establish a Governance Program to direct flows and habitat restoration, conduct*

assessments, develop strategic plans and annual reports, implement a science program, and hire staff and contractors.” In addition, the HRL Parties identified 13 areas of “approval” needing addressed and only three were addressed. These 10 areas, along with any new provisions (e.g. 45-day delay to exiting HRL in Section 4.4.9) need to be corrected. The “approval” overreach remains inconsistent with the HRL parties understanding and agreement on HRL Governance.

The Draft Plan dismantles the HRL Governance, by inserting its bureaucratic procedures and timelines, and removing the HRL parties’ ability to adapt and respond to real-time conditions with best available science. This erodes the certainty in operations, science, and funding the HRL Parties expected when executing the Term Sheet. Board interim decisions on implementation undermine the responsibilities of the parties and the credibility and independence of that review. The Draft Plan is materially different from the HRL Parties agreement and understanding, especially from the provisions in the Term Sheet proposing to reduce and streamline unnecessary regulatory burdens. Restoring consistency requires the Board correcting the Plan to revise or delete “approval” by the Executive Director and adopt the governance structure detailed in the Term Sheet.

Section 4.4.10.1, Trinity River While there should not be any redirected impacts it is possible for changes in storage and flow levels within months of critical years. This has been explained to and ignored by the Board. This has to the potential to make 90-5 and other drought conversations more difficult. Also, in your comment response where the Board recognizes Trinity is out of scope but is included anyway.

Section 4.4.9.10, Continuation, Modification, or Termination of the VA Pathway The continued inclusion of “Possible Modification or Termination of the VA Pathway as Part of Annual and Periodic Review Processes” is problematic. The section includes provisions to terminate the HRL prior to the 8-year period if *“As part of the periodic review processes, the State Water Board may consider modifying or terminating the VA pathway, including components of the VA pathway or the VA pathway as a whole, at any time, including before year eight, based on significant evidence that continuing implementation of the VA pathway will not provide reasonable protection of beneficial uses or will jeopardize the continued survival of native fishes.”* This has the potential for the HRL Parties to invest millions in habitat and in-stream flow purchases and the Board to disband those efforts prior to year 8. This further erodes the certainty in operations and funding the HRL Parties expected when executing the Term Sheet.

Section 4.5.1.1 Similar to previous comments discussing legal authority of the Board to impose monitoring on Reclamation, the Board’s new requirement to conduct a study *“to assess the possible use of barriers at the Head of Old River...required to be completed by*

the first period review of the current Plan amendments”, is similarly not appropriate and should be removed prior to adoption. (See comment response)