



February 10, 2023

E. Joaquin Esquivel, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

RE: Request for State Board Action to Ensure Compliance with the Bay-Delta Water Quality Control Plan and Decision 1641 in February (Delta Outflow Objective: Port Chicago X2)

Dear Chairman Esquivel and Members of the Board:

On behalf of the Bay Institute, San Francisco Baykeeper, and the Natural Resources Defense Council, we are writing to alert the Board that the U.S. Bureau of Reclamation and the California Department of Water Resources appear likely to violate the minimum Delta outflow requirements of Water Rights Decision 1641 (“D-1641”) and the Bay-Delta Water Quality Control Plan (“Bay-Delta Plan”) for the month of February. We request that the Board take immediate action to ensure that Reclamation and DWR increase Delta outflow to comply with D-1641 and the Water Quality Control Plan.

Given hydrological conditions in January of this year, D-1641 and the Bay-Delta Plan require 27 days of X2 at Port Chicago in the month of February, and they allow the CVP and SWP to meet this objective through either: (1) minimum daily outflow (29,200 cfs); (2) daily salinity at Port Chicago less than 2.64 mmhos/cm; or (3) 14-day running average of salinity at Port Chicago less than 2.64 mmhos/cm. *See* Bay-Delta Plan at Table 4.¹ However, Delta outflow is currently less than 29,200 cfs, and according to the Bureau of Reclamation’s February 7, 2023 operations outlook, the Delta outflow index is anticipated to range from 15,000 to 22,000 cfs for the coming week. In addition, DWR’s February 10, 2023 water quality report shows that the 14-day average EC at Port Chicago is nearly at the 2.64 mmhos/cm limit and will likely be exceeded in the coming days, and that daily salinity at Port Chicago will likely exceed the 2.64 mmhos/cm limit if Delta outflow continues to decline as projected. Absent increased outflow, it appears that the CVP and SWP will be in violation of the Bay-Delta Plan and D-1641 in the next few days.

The Delta outflow objectives in the Bay-Delta Plan, including Port Chicago X2 requirements, are critical components to protect estuarine habitat. The Port Chicago X2 objective is triggered by high outflow events, with the aim of re-establishing a more natural outflow pattern of a gradual

¹ The Bay-Delta Water Quality Control Plan does not allow for carrying over days from January because there was no X2 requirement that month. *See id.* (“If salinity/flow objectives are met for a greater number of days **than the requirements for any month**, the excess days shall be applied to meeting the requirements for the following month.” (emphasis added))

decline from a peak flow. Many management actions in the Bay-Delta are intended to prevent fish populations and other biological resources from declining or going extinct when hydrological conditions are poor. The Port Chicago requirement is intended to ensure that population viability of flow-dependent estuarine aquatic resources is supported when good hydrological conditions permit. Boosting productivity of estuarine fish and wildlife when these conditions occur is a fundamental element for helping support population viability and recovery to levels that allow populations to persist during subsequent poor years. It is also critical to support imperiled fish populations this year after the devastating impacts of the last three years of drought and repeated weakening of minimum water quality standards during the drought emergency.

The magnitude, frequency, and duration of high outflow events is severely constrained by the capture and retention of Central Valley runoff by dams and diversions throughout the watershed. Most recently, analysis by the Bay Institute found that more than 50% of the unimpaired runoff was captured, stored and/or diverted from January 1 to January 17 of this year, reducing Delta outflow and increasing reservoir storage by millions of acre feet. The Board has repeatedly acknowledged that reduction in Delta inflows and outflows over the past several decades has had drastic adverse impacts on a broad range of fish and wildlife beneficial uses, including fish migration, estuarine habitat, commercial and recreational fishing, and associated benefits such as food web productivity. The adoption of the Port Chicago objective in 1995 was intended to allow fish and the estuarine habitat some measure of improvement when runoff is high.

In addition to protecting estuarine habitat, the best available science demonstrates that allowing Delta outflows to fall below the minimum requirements of D-1641 in February is likely to reduce the survival of endangered winter-run Chinook salmon migrating through the Delta as a result of reduced Delta inflows (*see, e.g.,* Perry et al. 2018), reduce post-larval survival of endangered Delta Smelt (*see* Polansky et al. 2021, MAST 2015), and reduce the abundance and survival of threatened Longfin Smelt (*see, e.g.,* Nobriga and Rosenfield 2016, Kimmerer et al 2009). Reducing survival of migrating winter-run Chinook salmon is particularly inexplicable this year, given that federal agencies have documented the lowest egg-to-fry survival and lowest number of juvenile winter-run Chinook salmon passing Red Bluff Diversion Dam since at least 2002.

DWR and the Bureau of Reclamation have committed to full compliance with D-1641 as part of their permits under the state and federal Endangered Species Acts. For instance, DWR's final EIS states that,

DWR and Reclamation will continue to operate the SWP and CVP in compliance with the provisions of D-1641, including maintaining salinity levels corresponding to the location of X2, as required. DWR, in coordination with Reclamation, is required to meet these standards even if other projects result in changes to salinity so that the cumulative water quality conditions are consistent with the salinity standards of D-1641 and protect the beneficial uses.

Final EIR at 4-315; *see id.* at 5-80 (“The Refined Alternative 2b would be operated to meet all D-1641 compliance standards.”).

The Board has repeatedly determined that the existing Delta outflow requirements in the Bay-Delta Plan fail to adequately protect the Public Trust and prevent extinction of native fish and wildlife in the Delta, including making explicit findings in 2010 and 2017. Fish and wildlife resources in the Bay-Delta estuary have been devastated by the combination of existing regulatory protections that the Board has admitted are inadequate, numerous waivers of those inadequate protections during every critically dry year since 2012, and repeated failure to enforce even the reduced standards. Waiving or violating the Bay-Delta Plan's outflow standards in 2023, a non-critically dry year, would unreasonably expand the Board's pattern and practice of allowing violations of the minimum water quality objectives in the Bay-Delta Plan.

Finally, the failure to comply with D-1641 in February would further demonstrate that the California Natural Resources Agency's proposed Voluntary Agreement is nothing more than an empty promise, since the proponents of the Voluntary Agreement have failed to meet the minimum existing water quality objectives in 2014, 2015, 2016, 2021, and 2022, and appear to be on track to violate the Bay-Delta Plan once again in 2023. The Voluntary Agreement would continue this failed approach and provides no assurance that proponents would meet the existing minimum water quality objectives, let alone provide additional flows beyond those objectives.

It would be irresponsible – and tragic – if the Board squanders this rare opportunity to stem the ecological collapse of the Bay-Delta ecosystem and the ongoing slide to extinction of its native fish species by allowing, once again, the CVP and SWP to violate their water rights obligations and minimum water quality objectives. We urge the Board to take action to ensure compliance with the Port Chicago objective in February 2023 and beyond as required.

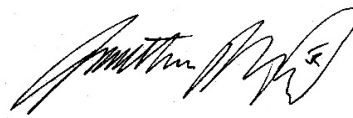
Sincerely,



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The Bay Institute



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Jon Rosenfield, Ph.D.
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