

**Congress of the United States**  
**Washington, DC 20515**

September 10, 2018

Andrew R. Wheeler, Acting Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W., Mail Code 1101A  
Washington, DC 20460

**Re: California Bay-Delta Water Quality Control Plan: Phase I**

Dear Administrator Wheeler:

The California State Water Resources Control Board has set November 7, 2018, for the adoption of *Phase I* of the *Water Quality Control Plan* for the San Francisco Bay-Delta, Sacramento and San Joaquin Rivers ("WQCP"). This WQCP, if adopted, will have substantial negative impacts to the constituents we have the privilege to represent in Congress. The effects of the WQCP cannot be overstated - it will devastate local agriculture and the economy that relies on the water provided by these streams.

We urge you to perform a thorough review to determine whether the water quality criteria contained in the WQCP are supported by "rigorous, sound science.", as required by the *Clean Water Act (CWA)*. We are deeply concerned because the State Water Board's *Draft WQCP* asserts that beneficial uses of water, like agricultural use, will be protected, but the report fails to supply the data, the science, the analysis, or the conclusion to support this assertion.

For example, in setting the inflow criteria at Vernalis on the San Joaquin River, the State Water Board staff relied upon documentation provided by United States Fish and Wildlife Service, National Marine Fisheries Service, Natural Resources Defense Council, The Bay Institute, California Sportfishing Protection Alliance, Pacific Coast Federation of Fishermen's Alliance, *et al.* Each of these documents were variations on the same flawed idea that "More flow equals more fish." However, each of these documents stated this idea was a correlation<sup>1</sup>, not causation. They also noted that "more flow equals more fish" isn't applicable every year, doesn't always work, and omits many other factors, including predation, hatchery practices, and ocean harvest, that conflict with the premise that "more flow equals more fish." State Water Board staff proceeded to propose the WQCP to the Board using this incomplete data set rather than enter robust discussions with all stakeholders to determine what the science showed.

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<sup>1</sup> Two high flow events are the tick wagging the dog. The difference between correlation and causation is crucial. Correlation is "a relation existing between phenomena or things or between mathematical or statistical variables which tend to vary, be associated, or occur together in a way not expected on the basis of chance alone." Conversely, "causation" is "the act or process of *causing*" or "the act ... which *produces* an effect." ("Correlation" & "Causation." Merriam Webster Online. <https://www.merriam-webster.com>) As stated, the submittals asserted that higher flows are correlated with more fish. They did not say that more flows cause more fish.

Critically, EPA itself has previously notified the Board that the science supporting the WQCP is deficient. In 2016, after reviewing the WQCP, the EPA advised the Board to, “[a]dopt a flow range and starting flow value sufficient to achieve the adopted *Salmon Protection Objective* and proposed salmon “viability” objective.” (EPA Comment Letter to the SWB, December 29, 2016, “Re: Bay-Delta Water Quality Control Plan: Phase I,” at pgs. 2 -3.)<sup>2</sup> EPA commented that although the WQCP analyzed habitat improvements for fish under different flow alternatives, the WQCP did “not evaluate the ability of the flow alternatives to meet the proposed salmon viability objective or the *Salmon Protection Objective*.” The Board has not substantively revised the WQCP to show how these objectives would be met. Instead, the WQCP lists modeling results from its flawed “SalSim” model showing that the Board’s preferred flow alternative (40% UF) would increase total adult Fall-Run Chinook Salmon production by 1,103 fish.<sup>3</sup>

As the EPA pointed out, the Board’s “science” – or lack thereof – leaves everyone guessing. There are numerous other examples in the WQCP where the requirements of the CWA are not sufficiently met. The CWA requires: sound, objective, measurable, quantifiable criteria and analysis to support the proposed WQCP flow criteria. The WQCP fails to meet that standard, while ensuring significant economic harm to local communities.

We request a meeting with you to discuss this important issue. Our staff will be contacting you to schedule the meeting.

Sincerely,

  
\_\_\_\_\_  
Jim Costa  
MEMBER OF CONGRESS

  
\_\_\_\_\_  
Jeff Denham  
MEMBER OF CONGRESS

  
\_\_\_\_\_  
Tom McClintock  
MEMBER OF CONGRESS

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<sup>2</sup> EPA Comment Letter to the SWB, December 29, 2016, “Re: Bay-Delta Water Quality Control Plan: Phase I,” available at: [https://www.epa.gov/sites/production/files/2017-02/documents/us\\_epa\\_comments\\_phase\\_1\\_bay-delta\\_wqcp\\_update\\_12.29.16\\_0.pdf](https://www.epa.gov/sites/production/files/2017-02/documents/us_epa_comments_phase_1_bay-delta_wqcp_update_12.29.16_0.pdf)

<sup>3</sup> WQCP Substitute Environmental Document, *Chapter 19: Analysis of Benefits to Native Fish Populations from Increased Flow between February 1 and June 30*, Table 19-32, page 19-84. The figure 1,103 is derived from subtracting 12,476 (“SB40% UF”) from 11,373 (“SBBBase,” aka baseline.) Available at: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/bay\\_delta\\_plan/water\\_quality\\_control\\_planning/2018\\_sed/docs/ch\\_19\\_fish.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2018_sed/docs/ch_19_fish.pdf)

Andrew R. Wheeler, Administrator  
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