UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

October 31, 2018

OFFICE OF
THE ADMINISTRATOR

Ms. Felicia Marcus
Chair
State Water Resources Control Board
P.O. Box 100
1001 I Street
Sacramento, California 95814

Re: Final Draft Bay-Delta Plan Update for the Lower San Joaquin River and Southern Delta

Dear Ms. Marcus:

In December 2016, the U.S. Environmental Protection Agency submitted comments on the Draft Phase 1 of the Bay-Delta Water Quality Control Plan (the Bay-Delta Plan). At that time, the EPA expressed support for the State Water Resources Control Board's efforts to update the Bay-Delta Plan. We understand the U.S. Department of the Interior recently submitted public comments identifying a number of new concerns with the board's proposal, including potentially significant legal issues and operational challenges that federal stakeholders may face if the board finalizes the Bay-Delta Plan in its current form. The DOI also raised questions regarding the scientific basis for the proposal that the EPA believes warrant further consideration.

For example, the EPA is aware of recent scientific analyses suggesting that the volume of flow in the Bay-Delta most likely will not overcome other limitations within the system, such that the proposed Bay-Delta Plan may not achieve the board's fish population goals. These analyses also suggest that native fisheries in the lower San Joaquin River, its tributaries and the California Bay-Delta experience numerous stressors, including predation, temperature, interactions with hatchery fish, lack of spawning and rearing habitat, ocean conditions, pollutants and other issues related to the food web. Although the EPA has not evaluated these studies in detail, the agency believes that the studies warrant careful consideration by the board. What degree of confidence does the board have regarding the extent to which the proposed unimpaired flow objectives, if implemented fully, will improve the status of native fish species and reduce mortality mechanisms notwithstanding the other stressors identified in these recent scientific studies?

The EPA noted in its December 2016 comment letter that the proposed Bay-Delta Plan defers significant resource management decisions until implementation. The EPA remains concerned that this deferral creates substantial uncertainty for water users in the Bay-Delta. The EPA encourages the state to continue pursuing voluntary agreements with stakeholders and water

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users, as these agreements are more likely to provide certainty for water users than the Bay-Delta Plan in its current form.

The EPA supports the appropriate exercise of state discretion in matters relating to the protection of state water resources. However, the breadth and complexity of the Bay-Delta Plan and the potential of the plan to conflict with federal law calls for a careful federal review of any Bay-Delta Plan that California finalizes. It is a top priority of this Administration that we coordinate with our federal partners. As the EPA reviews any Bay-Delta Plan finalized by California pursuant to its statutory authorities, the EPA will coordinate with the DOI and other federal partners.

The EPA recognizes the public comment period for the proposed Bay-Delta Plan has closed, but given the significant federal interests that are potentially affected by the proposal, we request the State Water Resources Control Board consider these comments and those submitted by the DOI prior to taking final action on the Bay-Delta Plan.

Sincerely,

Andrew R. Wheeler
Acting Administrator