

San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan

known as the Bay-Delta Water Quality Control Plan (WQCP)
or simply the Bay Delta Plan

Bay-Delta Plan

- The Bay-Delta Water Quality Control Plan (Bay-Delta Plan) is a state policy designed to establish water quality standards and objectives that safeguard the beneficial uses of the San Francisco Bay/Sacramento-San Joaquin Delta estuary.
- It incorporates both narrative and numeric targets for parameters such as salinity, flow, and dissolved oxygen, and outlines a "program of implementation" with specific actions, including flow requirements, to meet these objectives.
- The California State Water Resources Control Board is tasked with adopting and periodically updating the plan to ensure the reasonable protection of water supplies, fish and wildlife, and other designated uses.

Key aspects of the Bay-Delta Plan

- **Beneficial Uses:** The plan identifies and seeks to safeguard a variety of beneficial uses for the Bay-Delta's water, including municipal and industrial supply, agricultural irrigation, and habitat for fish and wildlife.
- **Water Quality Objectives:** It establishes specific targets to maintain water quality at levels that support these uses, such as thresholds for salinity, dissolved oxygen, and freshwater inflow and outflow volumes within the Delta.
- **Implementation:** The plan details an implementation program that outlines the measures the State Water Board will undertake to achieve these objectives, which may involve enforcing flow requirements and other regulatory actions.
- **Updates:** The State Water Board holds responsibility for regularly reviewing and updating the plan.
- **Authority:** The plan is formulated under the jurisdiction of both the federal Clean Water Act and California's state Porter-Cologne Water Quality Control Act.

Clean Water Act

Clean Water Act, 33 U.S.C. § 1251 et seq.(enacted 1972)

- The CWA is a “comprehensive water quality statute designed ‘to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters’” through “a partnership between the States and the Federal Government.”
- The CWA requires that States establish water quality standards for each water body within their jurisdiction, consisting of beneficial uses and scientifically based criteria to protect those uses. States must review the standards every three years, holding public hearings and, as appropriate, modifying and adopting standards” to meet the Act’s objectives.

Porter-Cologne Act

Porter-Cologne Water Quality Control Act, Cal. Water Code § 13000 et seq.(enacted 1969)

The Porter-Cologne Act implements the CWA in California.

- The goal of the Porter-Cologne Act is “to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.”
- Under the Porter-Cologne Act, “the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and . . . the quality of all the waters of the state shall be protected for use and enjoyment by the people.”
- The Porter-Cologne Act designates the State Water Board as the “state water pollution control agency” for purposes of the CWA. Like the CWA, the Porter-Cologne Act requires all state water quality control plans to be “periodically reviewed.” (every 3 years)

Bay-Delta Plan

The State Water Resources Control Board first adopted the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) in 1978 and has amended it multiple times since.

Key dates in the plan's history include:

- **1978:** The State Water Board adopts the first Bay-Delta Plan and Water Rights Decision 1485.
- **1995:** The plan is updated with objectives that are later implemented through Water Rights Decision 1641.
- **2006:** A new version of the plan is adopted.
- **2018:** The board adopts amendments focused on water flow in the Lower San Joaquin River and its tributaries, as well as salinity in the southern Delta.
- **2025 (Ongoing):** The State Water Board is actively reviewing and updating the plan. In July 2025, a revised draft was released for public comment, and a public hearing was held in September 2025. The final update is expected toward the end of 2025 or possibly early 2026.

Water Rights Decision 1641 (D-1641)

(December 29, 1999 – revised March 15, 2000)

Water Rights Decision 1641 (D-1641) was a landmark ruling because it legally implemented the State Water Resources Control Board's 1995 Bay-Delta Plan by adjusting the water permits of California's two largest water suppliers, the State Water Project (SWP) and the Central Valley Project (CVP). D-1641 made the projects, operated by the California Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (USBR), responsible for meeting specific water quality standards in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

Key aspects of D-1641's significance include:

- **Implementing the Bay-Delta Plan.** The 1995 Bay-Delta Plan established water quality objectives to protect fish and wildlife, agriculture, and municipal water users in the Delta. D-1641 turned these policy goals into legally binding requirements by amending the permits and licenses of the SWP and CVP.
- **Balancing competing needs.** The decision assigned responsibility to the state and federal water projects to meet flow and salinity objectives, which require releasing water to the Delta and limiting water exports. This addressed the environmental impacts of the projects and balanced the needs of agriculture and cities with those of the Delta ecosystem.
- **Introducing operational changes.** D-1641 included operational requirements for the CVP and SWP, such as allowing the two projects to use each other's pumping facilities in the southern Delta for the first time. This provided greater operational flexibility but also required measures to avoid negative impacts on fisheries, like salmon.
- **Addressing legal and policy disputes.** The decision and its subsequent litigation dealt with complex issues, including southern Delta salinity objectives. A 2006 court decision required the State Water Board to amend D-1641 to ensure full compliance with the established salinity objectives after finding that an earlier provision of D-1641 was unauthorized.
- **Setting a precedent for future regulations.** D-1641 set the stage for later regulatory actions, including the current effort to update the Bay-Delta Plan. It serves as a benchmark for measuring the impact of subsequent regulations. For instance, a 2014 report found that additional regulations, implemented after D-1641, further reduced water deliveries from the Delta to meet updated environmental needs.

Why the need for the above rigmarole?

Because you need to know what the controlling laws are
that govern the Bay-Delta Plan and its updates

So, what's the problem?

The Board has a statutory duty under the federal Clean Water Act and California's Porter-Cologne Act to review the Bay-Delta Plan at least once every three years for the purpose of determining whether to modify adopted water quality standards. (33 U.S.C. § 1313; Wat. Code, § 13240.) California courts have repeatedly affirmed the Board's responsibility to conduct this triennial review of water quality standards.

(See e.g., City of Arcadia v. State Water Resources Control Bd. (2011) 191 Cal.App.4th 156, 175; City of Duarte v. State Water Resources Control Bd. (2021) 60 Cal.App.5th 248, 265; United States v. State Water Resources Control Bd. (1986) 182 Cal.App.3d 82, 108; City of Burbank v. State Water Resources Control Bd. (2005) 35 Cal.4th 613, 632 (Brown, J., concurring).)

The Board has itself affirmed that:

“[t]he Bay-Delta Plan will be reviewed every three years in compliance with Water Code section 13240 and federal Clean Water Act section 303(c) (33 U.S.C. § 1313(c)).”

(State Water Resources Control Bd., Resolution 2018-0059 at p. 5.)

The State Water Resources Control Board (SWRCB) recognizes that it has failed to meet the statutory deadlines. The most comprehensive review of the Bay-Delta Plan occurred in 2006, when the Board decided against making substantial changes to the 1995 water quality standards. Consequently, the Bay-Delta waters continue to be regulated by standards set *thirty years* ago, under significantly different ecological, biological, climatic, and demographic conditions.

Although the Board conducted a partial review of the salinity standards for the Lower San Joaquin River and southern Delta in 2018, it has not yet implemented these standards, despite surpassing the three-year statutory deadline to recommence the review for this section of the watershed.

The greater issue lies in the fact that the Bay-Delta Water Quality Control Plan for the Sacramento River Basin and Delta outflow has not undergone a significant revision since 1995.

That's 30 years!!!

Sacramento River Basin

The Sacramento River is the largest river in California, draining a 27,000-square mile watershed and carrying 31 percent of the state's surface water runoff.

Primary tributaries to the Sacramento River are the McCloud, Pit, Feather, Yuba, and American Rivers. Other key tributaries include Battle Creek, Stony Creek, Cache Creek, Putah Creek, and the Colusa Basin Drain.

The health of the Sacramento River and its tributaries is critical to anadromous fish species, including salmon, steelhead, and sturgeon.

(<https://www.waterboards.ca.gov>)

Consequences

Failing to revise California's Bay-Delta Plan would worsen the ecological challenges in the Sacramento-San Joaquin Delta and its watershed, intensify social and environmental inequities, and jeopardize the reliability of the state's water supply.

The current plan, which relies heavily on standards established in the mid-1990s, is insufficient to effectively respond to the substantial ecosystem changes and the escalating effects of climate change.

Civil Rights Complaint

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.
("Title VI")

- In December 2022, the Winnemem Wintu Tribe along with Shingle Springs Band of Miwok Indians, Restore the Delta, Little Manila Rising and Save California Salmon filed a Civil Rights Complaint with the Federal Environmental Protection Agency (EPA) against the State Water Resources Control Board (SWRCB) under "Title VI", and the nondiscrimination regulations of the U.S. Environmental Protection Agency ("EPA"), (40 C.F.R. Part 7)

Additionally included in the filing was a Petition for Rulemaking under the Administrative Procedure Act, (5 U.S.C. § 551 et seq.) ("APA"), and the Clean Water Act, (33 U.S.C. § 1251 et seq.) ("CWA").

Title VI of the Civil Rights Act

- Title VI of the Civil Rights Act of 1964 states that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” (42 U.S.C. § 2000d.)

Title VI itself prohibits policies and practices that are intentionally discriminatory, while the EPA’s implementing regulations additionally prohibit facially neutral policies and practices that produce disparate impacts. (42 U.S.C. § 2000d; 40 C.F.R. § 7.35(b))

Title VI of the Civil Rights Act

cont....

- This prohibition includes both affirmative acts and failures to take action or adopt policy since “inaction can exert a disproportionate adverse effect.” (U.S. Dep’t of Just., *Title VI Legal Manual* § 7-12 (2021))
- Specific prohibitions set forth in the EPA’s implementing regulations include, among others, denying a person any service, aid, or other benefit of a program or activity; restricting a person in any way from enjoyment of a privilege enjoyed by others; subjecting a person to separate treatment in any way; and denying a person or any group the opportunity to participate as a member of any integral planning or advisory body. (40 C.F.R. 7.35(a))

Pleading

- The CWA requires the Board to review water quality standards every three years through a public process. It requires that water quality criteria protect beneficial uses of water bodies. And it requires standards grounded in sound scientific rationale. The Board has failed on all fronts.
- The Board last initiated comprehensive review of Bay-Delta water quality standards over a decade ago. It has delayed review while the State engages in private negotiations over export allowances with powerful water rights claimants, excluding tribes and communities of color that would be impacted by resulting standards from the decision-making process. Meanwhile, it has maintained outdated standards – last updated in 1995 – that fail to protect beneficial uses in Bay-Delta waterways or account for tribes' reserved rights and interests.
- The impacts of these failures have fallen disproportionately on Native tribes and communities of color.

Harms

- Complainant-Petitioner Shingle Springs Band of Miwok Indians cannot perform cultural, religious, and subsistence practices in the Bay-Delta's HAB - contaminated waters, nor can it access riparian resources essential to tribal identity.
- Collapse of the Bay-Delta's native fisheries impairs Complainant-Petitioner Winnemem Wintu Tribe's ability to exercise its religion and way of life, which depends on the once bountiful Chinook salmon in Bay-Delta headwaters.
- Communities of color in South Stockton, where Complainant Petitioner Little Manila Rising is based, cannot use and enjoy adjacent waterways because of HABs and chronically low flows. Instead, the health risks of HABs layer on top of outsized environmental burdens already borne by these communities.

Relief

For the foregoing reasons, Complainant-Petitioners respectfully request that the EPA:

- Immediately and thoroughly investigate the State Water Board's noncompliance with Title VI of the Civil Rights Act related to its actions and inactions on Bay-Delta water quality standards.
- Engage with affected parties, including Complainant-Petitioners during Title VI investigations and in crafting remedies.
- Withhold federal permits and approvals for major water export infrastructure, such as the Delta Conveyance Project, in the Bay-Delta and its headwaters until the State Water Board achieves compliance with Title VI and the CWA.
- Withhold approval of water quality standards that have been crafted through exclusionary policymaking processes.

Relief

- Terminate or withhold State Water Board funding if the Board fails to come into compliance with Title VI.
- Designate Tribal Beneficial Uses for Bay-Delta waterways or direct the State Water Board to do so.
- Promulgate flow-based and temperature water quality criteria for waterways covered by Phase II of the Bay-Delta Plan update that protect beneficial uses and are based on the best available science.
- Promulgate surface water quality criteria for cyanotoxins in Bay-Delta waterways that protect, at minimum, recreational, fish and wildlife, municipal, and tribal beneficial uses. These criteria should provide a basis to trigger public health notifications when dangerous levels of cyanotoxins are present.

Conclusion

- Disparate
- Discriminatory
 - Derelict
 - Damaging
 - Destructive
 - Devastating

Thank You