The Jerome N. Frank Legal Services Organization
YALE LAW SCHOOL

August 7, 2025

Via Electronic Email Only

Board Chair Joaquin Esquivel and Board Members
Assistant Deputy Director Diane Riddle
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
SacDeltaComments@waterboards.ca.gov

RE: Request to Extend Time and Modify Hearing Dates for Public Comment on July 2025 Draft Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed

Dear Board Members, Ms. Riddle, and Bay-Delta Plan Staff,

Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, Little Manila Rising, and Restore the Delta (collectively the "Delta Tribal Environmental Coalition" or "DTEC") write in support of the August 1, 2025 request by Defenders of Wildlife, California Sportfishing Protection Alliance, Friends of the River, Golden State Salmon Association, and San Francisco Baykeeper for an extension of time to provide public comment on the July 24, 2025 Revised Draft Sacramento/Delta Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed ("Bay-Delta Plan" or "Plan").

DTEC strongly agrees that the 48-day comment period set by the State Water Resources Control Board ("Board") is far from adequate to allow the public to review, analyze, and intelligently comment on the Board's significantly revised and technically complex Draft Bay-Delta Plan, particularly given the complete overlap with case-in-chief hearings in related proceedings on the Delta Conveyance Project. DTEC writes separately to elevate particular concerns of California Native American Tribes and Environmental Justice communities with the public comment schedule set by the Board, which effectively forecloses participation by Delta Tribes occupied with ceremony during the entire written comment period and scheduled public hearing dates and severely limits participation by disadvantaged communities stretched thin across multiple Bay-Delta hearing processes and by the need to respond to outbreaks of harmful algal blooms (HABs) currently impacting waterways subject to the Draft Bay-Delta Plan. DTEC also emphasizes its concerns that the Board is proceeding with revisions to a Plan that is the subject of a pending civil rights investigation under Title VI of the Civil Rights Act of 1964 without finalizing a settlement agreement with the U.S. Environmental Protection Agency ("EPA") that has been pending with the Board for close to a year, to ensure that it proceeds with this long-awaited

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update consistent with civil rights requirements. DTEC submits that a 90-day extension of the written comment period, through December 9, 2025, together with deferral or addition of hearing dates after October 2025 is both reasonable and necessary to ameliorate these barriers to participation. DTEC expands on these concerns below.

First, as the Board is aware, the months of August and September are a deeply important annual period of traditional ceremony for Tribes throughout the Delta and its headwaters. For instance, Shingle Springs Band's annual Big Time will take place this year between August 22 - 24, and the Tribe is wholly preoccupied with preparation for this annual ceremony and cultural event in the weeks leading up to Big Time and with post-ceremony events in the lead up to the September 8 and 9 noticed public hearing dates. For other Tribes in the Delta, annual ceremony will take place through the end of August and into September. The same is true for Tribes in the headwaters of the Delta. The Winnemem Wintu Tribe, for instance, is currently engaged in its principal annual ceremony, with prayers, dancing, doctoring, and site visits through August 11 and post-ceremony activities through the end of next week, and will be engaged with ceremony welcoming the reintroduction of salmon into the McCloud River during the last week of August. Tribal Nations throughout the Delta and its headwaters hold sacred obligations to the environment in the conduct of traditional ceremony and must prioritize exercise of their own law and custom over the State's administrative processes. They should not be disadvantaged in participating in this public process because of their exercise Tribal customs and lifeways.

Extending the written comment period beyond the close of annual ceremony is particularly important given the many modifications to the Plan addressed at protection of Tribal rights and interests, including Tribal Beneficial Uses of Bay-Delta waterways and Tribal engagement in Plan implementation. The Board has made important progress in its engagement with Tribes in water quality control planning processes and in building trust with Tribal Nations, and the revised Bay-Delta Plan provides important recognition of Tribal interests in the Delta. Tribes must have the time to properly consider and address the adequacy of the Board's proposals on Tribal Beneficial Uses and other Plan components specifically directed at their interests. Failure to adequately engage with Tribal Nations at this stage and accommodate Tribal participation in the public comment period risks undermining the Board's efforts to recast the relationship between Tribal Nations and the State in Bay-Delta water governance. It is imperative that a sufficient extension be granted to allow Tribal Nations time to properly review, assess, and provide comprehensive and fully informed comment on the revised Plan and appear at public hearings to voice their knowledge and perspectives. Without an extension, the Board risks the legitimacy of the Plan; instead, it would further add to the State's legacy of marginalizing perspectives and participation of Tribal Nations.

Second, DTEC and other representatives of Environmental Justice communities are engaged as protestants in the water rights change proceedings for the Delta Conveyance Project ("DCP") currently pending before the State Water Board's Administrative Hearings Office. DTEC itself has submitted extensive expert testimony addressed particularly at implications of the DCP for Tribal rights, resources, and interests and impacts on Environmental Justice communities. DTEC's witnesses are scheduled to testify in support of DTEC's case-in-chief in early- to mid-October, and other protestants will be putting

on their witnesses throughout August and September. DTEC reiterates the points made by Defenders of Wildlife and other signatories to the August 1, 2025 extension request that these proceedings are time-consuming and resource-intensive, as well as closely entangled with the proposed Bay-Delta Plan revisions. The Board should not force DTEC and other protestants to choose between fulfilling their legal duties as parties to the DCP proceeding and providing intelligent comment on this related water quality control plan update. These perfectly overlapping timelines place an unreasonable burden not only on protestants but on the communities and interest groups they represent, including Delta Tribes and Environmental Justice communities who have a significant vested interests in both the Bay-Delta Plan update and the DCP proceedings.

Finally, DTEC again elevates its concerns that the Board is putting forth a revised Draft Bay-Delta Plan while failing to resolve a pending civil rights investigation by the U.S. EPA into its water quality control planning processes for the Bay-Delta. DTEC filed its Title VI Complaint ("Complaint") with the EPA nearly three years ago, on December 16, 2022. It has now been fully two years since EPA accepted the Complaint for investigation and initiated an investigation into whether the Board's "administration of the water quality standard setting program with respect to the [Bay-Delta Plan], including timeliness of rulemaking and opportunities for public participation" subjects Tribes and communities of color to unlawful discrimination and into whether the Board has in place and is appropriately implementing procedural safeguards to comply with nondiscrimination regulations. *See* U.S. EPA, Notice RE Acceptance of Administrative Complaint (Aug. 8, 2023) (Attachment 1 hereto). It has also been twenty-three months since EPA tolled formal enforcement at the Board's request to pursue a negotiated resolution in settlement of the Complaint. *See* U.S. EPA, Notice RE Informal Resolution/Tolling of Preliminary Findings Timeframe (Sept. 12, 2023) (Attachment 2 hereto). And it has been almost a year since the Board received a comprehensive settlement agreement from EPA in November 2024. Yet despite noticing the Title VI proceedings for closed session consideration at every regular Board meeting since, and at around 26 Board meetings in total since June 2024, the Board has neither executed nor even provided a substantive response to EPA regarding the proposed settlement agreement.

The Board's stalling of the Title VI informal resolution process and refusal to engage in good faith with EPA and complainants on a resolution agreement is profoundly disappointing and concerning to complainants and communities whose interests are the subject of the investigation. It is imperative that the Board resolve the pending investigation prior to proceeding with the proposed updates to provide adequate assurances that its Bay-Delta planning processes will go forward in full compliance with its civil rights duties. DTEC considers a timely resolution of the civil rights investigation necessary to the legitimacy of the Bay-Delta Plan. Given how long the Board has been considering the pending settlement proposal, a 90-day extension is more than adequate for the Board to finalize an agreement resolving the Title VI Complaint before public comments are due.

For all these reasons, DTEC considers an extension of the written comment period by 90 days, together with deferred or additional public hearing dates after October 2025, necessary to enable

informed participation by Tribes, disadvantaged Delta communities, and non-profits that advocate for their interests and to ensure that Bay-Delta planning accords with civil rights protections. We urge you to carefully consider this request together with the related August 1, 2025 extension request and revise the public participation period accordingly.

Respectfully submitted,

/s/ *Wiliame Gucake*
Wiliame Gucake, Clinical Legal Fellow
Stephanie L. Safdi, Supervising Attorney
Environmental Justice Law and Advocacy Clinic
Jerome N. Frank Legal Services Organization
Yale Law School[*]

Counsel for Delta Tribal Environmental Coalition

/s/ *Gary Mulcahy*
Gary Mulcahy
Government Liason
Winnemem Wintu Tribe

/s/ *Dr James Sarmento*
Executive Director
Cultural Resources
Shingle Springs Band of Miwok Indians

/s/ *Gloria Alonso Cruz*
Gloria Alonso Cruz
Environmental Justice Advocacy Coordinator
Little Manila Rising

/s/ *Barbara Barrigan-Parrilla*
Barbara Barrigan-Parrilla
Executive Director
Restore the Delta

[*] This letter does not purport to state the views of Yale Law School, if any.

ATTACHMENT 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C. 20460

OFFICE OF ENVIRONMENTAL JUSTICE AND EXTERNAL CIVIL RIGHTS
OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

August 8, 2023

In Reply Refer to:
EPA File No. 01RNO-23-R9

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558 Nathan Abbott Way
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Re: Acceptance of Administrative Complaint

Dear Ms. Safdi and Ms. Sivas:

The U.S. Environmental Protection Agency (EPA), Office of Environmental Justice & External Civil Rights, Office of External Civil Rights Compliance (OECRC), is accepting for investigation the referenced administrative complaint which was filed against the California State Water Resources Control Board ("the Board") on December 16, 2022. The complaint alleges that the Board discriminated on the basis of race, color and national origin, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq*., and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7. Specifically, the complaint alleges that the Board's failure to update Bay-Delta water quality standards discriminates against members of Native Tribes and Black, Asian and Latino persons residing in and around the San Francisco Bay/Sacramento-San Joaquin Delta watershed ("Bay-Delta Region"), particularly the South Stockton community. Furthermore, the complaint alleges that the Board has intentionally excluded local Native Tribes and Black, Asian and Latino residents from participation in the policymaking process associated with the Bay-Delta Plan.

Pursuant to EPA's nondiscrimination regulation, OECRC conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (*i.e.,* an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

After careful consideration, OECRC has determined that the complaint meets the jurisdictional requirements stated above. First, the allegation is in writing. Second, it alleges that discrimination occurred in violation of EPA's nondiscrimination regulation. Third, the alleged

discriminatory acts occurred within 180 days of the filing this complaint. Finally, it alleges discriminatory acts by the Board which is a recipient of EPA financial assistance.

OECRC will investigate the following issues:

1. Whether the California State Water Resources Control Board's administration of the water quality standard setting program with respect to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta watershed ("Bay-Delta Region"), including timeliness of rulemaking and opportunities for public participation, subjects members of Native Tribes and Black, Asian and Latino residents of the Bay-Delta Region, particularly the South Stockton community, to discrimination based on race, color, and national origin; and

2. Whether the California State Water Resources Control Board has in place and is appropriately implementing procedural safeguards required under 40 C.F.R. Parts 5 and 7, that all recipients of EPA financial assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the Board's services, programs, and activities for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the Board has a public participation policy and process that is consistent with Title VI and other federal civil rights laws, including EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

The initiation of an investigation of the issues above is not a decision on the merits. OECRC is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with the Complainant and the Board, and determine next steps utilizing OECRC's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and OECRC's Case Resolution Manual (CRM) will be utilized for the complaint investigation process. We invite you to review OECRC's Case Resolution Manual for a more detailed explanation of OECRC's complaint resolution process.[1]

OECRC is providing the Board with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of this letter notifying the Board of the acceptance of Administrative Complaint No. 01RNO-23-R9. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that OECRC shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, OECRC will contact the Complainant and the Board within 10 days of the date of this letter to provide information about OECRC's complaint process, and to offer and discuss the alternative dispute resolution (ADR) and informal resolution agreement processes as potential options for resolution of the

[1] https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf

issues which OECRC has accepted for investigation.[2] If the Board (and the Complainant with respect to ADR) agrees to engage in either of these potential resolution processes, OECRC will suspend the 180 day timeframe for issuing Preliminary Findings[3] for the duration of the IRA process. In the event that either of these potential resolution processes fails to result in an agreement, OECRC will notify the Complainant as well as the Board that OECRC has resumed its process for issuing preliminary findings within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.[4]

Please be advised that a copy of the complaint is being provided to the recipient, consistent with 40 C.F.R. § 7.120(e). OECRC is releasing the complaint with appropriate redactions consistent with the Freedom of Information Act (FOIA) and the Privacy Act and will only release identifying information to the extent necessary to comply with 40 C.F.R. Parts 5 and 7.[5]

EPA's regulation prohibits applicants, recipients, and other persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they have either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. See 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OECRC.

In the interim, if you have any questions, please contact me (Hoang.Anhthu@epa.gov; 202-809-3297), or Case Managers Al Sweeney (Sweeney.Alfred@epa.gov; 202-564-7949) and Rebecca Gillman (Gillman.Rebecca@epa.gov; 202-564-7969).

Sincerely,

Anhthu Hoang
Acting Director
Office of External Civil Rights Compliance

[2] Informal Resolution occurs between OECRC and the recipient. See Case Resolution Manual, Section 3.1; https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf. p. 22.
[3] *See* 40 C.F.R. § 7.115(c)(1).
[4] *See* 40 C.F.R. § 7.115(c).
[5] Freedom of Information Act, 5 U.S.C. § 552(b)(6) and (7)(c) and the Privacy Act of 1974, 5 U.S.C. § 552a.

S. Safdi and D. Sivas, Counsel

cc: Ariadne Goerke
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Cheree Peterson
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 9

Sylvia Quast
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ATTACHMENT 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C. 20460

OFFICE OF ENVIRONMENTAL JUSTICE AND EXTERNAL CIVIL RIGHTS
OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

September 12, 2023

In Reply Refer to:
EPA File No. 01RNO-23-R9

Stephanie L. Safdi, ssafdi@stanford.edu
Deborah A. Sivas, dsivas@stanford.edu
Supervising Attorneys
Mills Legal Clinic at Stanford Law School
558 Nathan Abbott Way
Stanford, CA 94305

Re: Informal Resolution/Tolling of Preliminary Findings Timeframe

Dear Ms. Safdi and Ms. Sivas:

This letter concerns U.S. Environmental Protection Agency ("EPA") Complaint No. 01RNO-23-R9 involving the California State Water Resources Control Board ("Board"). The Office of External Civil Rights Compliance ("OECRC") accepted this complaint for investigation on August 8, 2023. OECRC is required by regulation to attempt to resolve complaints informally whenever possible.[1] OECRC representatives described the process of developing and executing an Informal Resolution Agreement (IRA) to Executive Director Eileen Sobeck and Counsel Michael A.M. Lauffer on August 28, 2023. On September 7, 2023, Mr. Lauffer informed OECRC that the Board agrees to engage in negotiations toward the execution of an IRA. Consequently, OECRC will suspend its 180-day timeframe for issuing Preliminary Findings (40 C.F.R. § 7.115(c)(1)) for the duration of the IRA process. OECRC will ensure that this process occurs without undue delay.

The goal of the IRA negotiation process is to reach an agreement between the Board and OECRC that resolves the issues accepted for investigation. If the Board and OECRC fail to reach an informal resolution agreement, OECRC will notify the Board and the Complainant of that fact and resume the process for issuing preliminary findings.[2] To facilitate the informal resolution agreement process, OECRC will continue to engage the Board, as well as the Complainant, to gather the necessary facts and information so that we may provide you with a draft IRA as soon as possible for your consideration. Engagement during the IRA negotiation process may also include EPA facilitated meetings between the Board and the Complainants, with the consent of

[1] *See* 40 C.F.R. § 7.105 (EPA "shall seek the cooperation of applicants and recipients in securing compliance with" 40 C.F.R. Part 7); and 7.120(d)(2) (EPA "shall attempt to resolve complaints informally whenever possible.").
[2] *See* 40 C.F.R. § 7.115(c). In the event OECRC and the Boards cannot reach an Informal Resolution Agreement, OECRC will resume the process for issuing preliminary findings within 180 days of the start of the investigation – excluding the period spent in the informal resolution agreement process.

the Recipient and Complainants.

In the interim, if you have any questions, please contact me (Hoang.Anhthu@epa.gov; 202-809-3297), or Case Managers Al Sweeney (Sweeney.Alfred@epa.gov; 202-564-7949) and Rebecca Gillman (Gillman.Rebecca@epa.gov; 202-564-7969).

Sincerely,

Anhthu Hoang
Acting Director
Office of Environmental Justice &
External Civil Rights
Office of External Civil Rights Compliance

cc: Ariadne Goerke
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Cheree Peterson
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 9

Sylvia Quast
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