

State Water Board Sacramento and San Joaquin River Unimpaired Flow Standards

- **Procedural Background—What Are the Unimpaired Flows Standards and Why Is the Board Proposing Them?**

The State Water Resources Control Board multi-year, phased update of the Sacramento-San Joaquin River Bay-Delta Water Quality Control Plan (“[Bay-Delta WQCP](#)”) is a review of water quality standards, including instream flow requirements, intended to ensure that all beneficial uses of water are being reasonably met. Among these beneficial uses requiring “reasonable” protection, one of the most sensitive is cold-water fisheries—i.e., salmon and steelhead.

As of midsummer 2018, Phase 1 of the current Bay-Delta update is underway and deals with instream flow standards for the Merced, Tuolumne, Stanislaus and Lower San Joaquin rivers, plus adjusted salinity standards in the South Delta.

A Phase 2 step in the process involves similar standards for the Sacramento River, its tributaries, and the remainder of the Sacramento-San Joaquin Bay-Delta Estuary.

Instream flow and water quality standards adopted into a revised Bay-Delta WQCP in Phases 1 and 2 would be implemented through a process involving potential conditioning of water rights in a final Phase 3 step, consisting of a formal water rights proceeding, subject to subsequent judicial review, to amend existing water rights to implement the board’s revised standards.

- **Percentages of ‘Unimpaired Flows’ vs. ‘Voluntary Agreements’**

Flow standards on the Lower San Joaquin River presently target between 30 and 50 percent “unimpaired flows,” starting with a “mid-point” of 40 percent, on the Merced, Tuolumne and Stanislaus rivers, respectively—specifically, out of the New Exchequer, New Don Pedro and New Melones reservoirs, in the Merced Irrigation District, Turlock and Modesto irrigation districts, and Oakdale and South San Joaquin ID service areas (all senior water rights holders), in the counties of Merced, Stanislaus and San Joaquin.

Environmental documents relating to a similar proposed standard for 45 to 65 percent of flows in the Sacramento River watershed, starting at a “mid-point” of 55 percent, are expected sometime in the fall of 2018.

On a parallel track, affected San Joaquin and Sacramento Valley water users, the state of California and others (such as the fishery agencies and various environmental groups) have been pursuing confidential negotiations to achieve so-called “voluntary agreements” to protect targeted fish species, while avoiding or reducing major water supply, agricultural and regional economic impacts under the formal Bay-Delta WQCP process. As the water board barrels toward adoption of its proposed Phase 1 and Phase 2 flow standards as soon as the fall of 2018, the status of these closed-door “voluntary agreements” talks remains uncertain.

- **CFBF Fact Sheet and Supporting Water Impacts Data**

Following the water board’s July 2018 release of its Final Draft Substitute Environmental Document for the Lower San Joaquin River (“Phase Final Draft SED”), CFBF prepared a [Fact](#)

[Sheet](#) and associated key messages. In addition, CFBF has prepared the supporting acre-foot conversions as provided [here](#) and [here](#), based on information in the SED concerning impacts to both surface water diversions and groundwater pumping.

- **Significant Human Consequences, the Sustainable Groundwater Management Act, Water Rights, and Potential Statewide Adjudication**

The potential water supply, agricultural and regional economic impacts from the board's proposed unimpaired flow standards are substantial and, if adopted and implemented, would hinder water management throughout the agriculturally rich Central Valley. Moreover, they would strike a major blow to disadvantaged rural communities and the valley's agriculturally based economy—and do so precisely at a time when local water agencies have been assigned under the Sustainable Groundwater Management Act of 2014 with balancing groundwater basins throughout state.

Another important aspect of the board's unimpaired-flows proposal is the potential precedent-setting implications for established water rights, not only in California, but throughout the American West. If the board, in the name of an unproven plan to save fish, can strip some of the most senior water rights holders in California of their long vested and perfected, historic rights to water, then the very foundations of Western water law could be called into question.

Finding out what the board's proposed standards may mean for historic water rights holders and Western water law, however, *will not* be an easy path. If the water board proceeds with its proposed standards, we may not know the end result for decades, as its action could well trigger a massive court adjudication of the entire Central Valley. Such an adjudication itself would have negative and long-lasting consequences, not only for effective and collaborative solution finding on water in California, but also for current voluntary conservation efforts to improve conditions for fish in a more balanced and comprehensive fashion.

- **There Is a Better Way: Functional Flows, Collaborative Partnerships and Local Management**

Despite the undisputed human and economic cost of the water board's proposed flow standards, experience demonstrates the board's flows-only approach *will not* succeed in substantially increasing populations of native salmon. To accomplish this, as exemplified by the Turlock and Modesto Irrigation Districts' [Tuolumne River Management Plan](#), the Merced Irrigation District's [Salmon, Agriculture, Flows, and Environment \("SAFE"\) Plan](#), and the Sacramento Valley Water Users' [Sacramento Valley Salmon Recovery Program](#), local districts in both the San Joaquin and Sacramento river watersheds are pursuing robust measures to benefit flows for fish ("functional flows" in place of "unimpaired flows"). In addition, these local plans take account of other important variables such as habitat, predation, water temperature, hatchery management, fish passage, ocean conditions and other downstream effects.

For example, in the Sacramento Valley, vibrant partnerships among farmers, local water districts and a new breed of environmentalists at conservation-minded environmental organizations has produced some dramatic successes. (See, for example, the related Ag Alert® coverage

concerning salmon in Northern California rice fields [here](#).) Unfortunately, the water board's conflict-based proposal puts such positive voluntary efforts directly at risk.