

The Bay-Delta Plan & EPA Title VI Complaint

Current Status: California's salmon fisheries are facing a third year of closures, resulting in at least a 3-billion-dollar economic loss to California. The Delta continues to be plagued with toxic algae, impaired waterways, and changes in water quality that are damaging the economic health of the region.

What is the Bay-Delta Plan? Officially known as the Bay-Delta Water Quality Control Plan, the plan establishes water quality standards and flow measures for the Bay-Delta watershed to protect beneficial uses. As described in the Clean Water Act ("CWA") and California's Porter-Cologne Act, the goal of this water quality control plan should be to "attain the highest water quality", which is reasonable, considering all demands being made and to be made on those waters."

Despite the CWA requirement to review the Bay-Delta standards every three years, the State Water Board has failed to perform a comprehensive review of the standards since 1995. While minor changes were made in 2006, inadequate water quality and flow standards were left in place. These standards have compounded in disproportionate impacts on California Tribes and environmental justice communities across the Bay-Delta watershed and allowed waterways to descend into ecological crisis. Harmful algal blooms (HABs), rising salinity, and increasing levels of dangerous contaminants such as methylmercury now plague the Bay-Delta, restricting recreation, fisheries, tribal ceremonies and many other public uses.

In recent years, the State Water Boards have promoted Voluntary Agreements ("VAs") as a path forward. These have been misnamed as the Healthy River and Landscapes Program, when science consistently shows that regular water flows are needed for the health of the estuary. The VAs are not based on the best available science, and have systematically excluded tribes, environmental justice communities, environmental organizations and fishing groups from the conversation. If these VAs are leveraged as the standard for the Bay-Delta plan, it would be detrimental to the Bay-Delta ecosystem and would lack the input of key interested parties who rely on the waterways across the region.

Seeing the gross negligence and abject discrimination from the Water Boards, Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, Little Manila Rising, Restore the Delta, and Save California Salmon (collectively, "Delta Tribal Environmental Coalition" or "DTEC"), represented by the Yale Environmental Justice Law and Advocacy Clinic, banded together in 2022 to file a Title VI complaint with the EPA. This complaint called upon the EPA to 1) investigate the discriminatory water management practices and policies in the Bay-Delta; and 2) initiate rulemaking for the adoption of CWA-compliant water quality standards for the Bay-Delta, which must include the designation of Tribal Beneficial Uses and the adoption of flow-based, temperature and HAB criteria. The EPA is currently engaging in an informal resolution process with the State Water Boards, while we await the forthcoming updates to the Bay-Delta plan. A comprehensive and timely update is crucial to protect the Bay-Delta ecosystem, and all those who depend upon its health.

We hope that the California legislature will begin providing oversight on the Bay-Delta Plan, Voluntary Agreements, and Delta Conveyance Project in 2025. Flows need to be managed for the Sacramento-San Joaquin Delta for the benefit of the public interest and the regions overall economic interests. **The State can no longer remain out of compliance with the Clean Water Act.**



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Overview: The Bay-Delta Plan establishes water quality standards and flow measures for the Bay-Delta watershed to protect beneficial uses. Due to the historic discrimination of tribes and communities of color, the Delta Tribal Environmental Coalition filed a civil rights complaint with the EPA to amend discriminatory practices. Restore the Delta supports comprehensive, science-based water quality standards to promote a healthy Bay-Delta ecosystem and all its public and tribal uses.

Governing Legislation:

- Clean Water Act
- Porter-Cologne Act

Key Concerns:

- Although there is a requirement to update the Bay-Delta Plan every 3 years, no complete updates have been made since **1995**.
- Because of inadequate water quality standards, the Bay-Delta estuary is deteriorating with increased health hazards, such as:
 - Harmful Algal Blooms
 - Rising Salinity; and
 - Dangerous contaminants
- Current standards also violate public use due to the declining health of the estuary, restricting:
 - Fishing
 - Recreation + Tourism
 - Tribal Beneficial Uses
- Rising number of threatened or endangered fish species: 7 native species qualify for protection under the federal or state Endangered Species Act
- Voluntary Agreements (VAs) have been proposed to manage flow standards; however, this approach is not based on the best available science and has excluded tribal, environmental justice, and fishing communities that would be directly impacted by the VAs.

Proposal for restoring and protecting Delta water resources:

- 65% unimpaired flow objective, meeting the best-available science standards
- Designation of Tribal Beneficial Uses and the protection of Tribal Reserved Rights
- Water quality standards that reflect ongoing issues, including an enforceable HABs standard