Sites Reservoir Water Right Application Hearing

November 4, 2026

Presented by
San Francisco Baykeeper
Friends of the River
California Sportfishing Protection Alliance

The Board Should Reject the Proposed Sites Reservoir Water Right Permit

Summary of Concerns, Legal Deficiencies, and Problems with Project and the Permit

- The San Francisco Estuary, Delta, and Sacramento River are in crisis due to existing dams and water diversions
- Taking more water from the Sacramento River will harm native fish, fisheries, and Tribes, riverside & Delta communities who depend on vibrant and thriving ecosystems
- Environmental harms dwarf the minimal environmental benefits
- The project will destroy Tribal cultural resources and cultural activities
- Mercury and harmful algal blooms in project's releases will harm water quality, wildlife and people
- The Permit improperly relies on the Bay-Delta Plan rather than including specific diversion criteria in the permit
- The Permit allows future operational plans to avoid protective conditions

The Bay-Delta Ecosystem and Native Fish are in Crisis Due to Insufficient River Flow

Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows

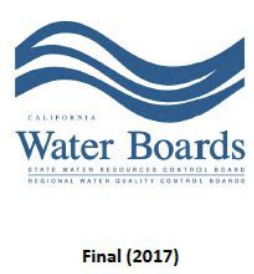


Exhibit BK-98

1.2.2 Purpose and Need for Bay-Delta Update

It is widely recognized that the Bay-Delta ecosystem is in a state of crisis. Changes in land use due to agricultural practices, urbanization, and flood control combined with substantial and widespread water development, including the construction and operation of the Projects, have been accompanied by significant declines in nearly all species of native fish, as well as other native and nonnative species dependent on the aquatic ecosystem. Fish species have continued to experience precipitous declines since the last major update and implementation of the Bay-Delta Plan in 1995 that was intended to halt and reverse the aquatic species declines occurring at that time. In the early 2000s, scientists noted a steep and lasting decline in population abundance of several native estuarine fish species that has continued and worsened during the recent drought. Simultaneously,

The Bay-Delta Ecosystem and Native Fish are in Crisis Due to Insufficient River Flow



Exhibit AHO-347

unimpaired outflows. Existing regulatory minimum Delta outflows would not be protective of the ecosystem, and without additional instream flow protections, existing flows may be reduced in the future, particularly with climate change and additional water development absent additional minimum instream flow requirements that ensure flows are preserved in stream when needed for the reasonable protection of fish and wildlife. In addition to instream flows, complementary habitat

Sites' Diversions Will Harm Native Fish; Science-Based Permit Terms Are Needed

- Term 30 – Unimpaired Flow & the Bay-Delta Plan
  - Unimpaired Delta outflow bypass term must be in the Permit
- Term 23 – Wilkins Slough Bypass Requirements
  - Permit's compromise between evidence-based fish and wildlife protections and water supply is misaligned
- Freeport and Delta Outflow Bypass Rules
  - Freeport (35,000 cfs) and Delta Outflow (42,800 cfs) bypass terms must be added
- Term 31 – Restriction on Diversion of "new" VA water
  - Sites cannot be allowed to divert VA flow contributions

The Permit Must Contain a Percent Unimpaired Flow Requirement

- Failure to include a percentage of unimpaired Delta outflow will substantially erode existing baseline flows

- At least 55% unimpaired Delta outflow is necessary to protect fish and wildlife beneficial uses
  - *See, e.g.,* 2017 Scientific Basis Report, 2018 Framework, 2023 Draft Staff Report, and 2026 Staff Report for Bay-Delta Plan update
  - *See also* Sites Water Right Draft Decisions

- Far greater environmental benefits at 65% and 75%
  - *See* 2026 Staff Report; 2010 Public Trust Analysis

The Permit Must Contain a Percent Unimpaired Flow Requirement

- The Permit should not rely on just the Bay-Delta Plan
  - Permit's incorporation of ITP requirements is the right approach
  - Draft Permit Term 30 creates uncertainty
  - Draft Permit Term 30 is insufficient to ensure reasonable protection of beneficial uses
- Reliance on Bay-Delta Plan's default provisions for new water supply projects, instead of an explicit permit term, increases the likelihood that diversions will occur when Delta outflow is less than 55% unimpaired flow

The Permit Must Contain a Percent Unimpaired Flow Requirement

- Allowing Water Supply Adjustments to apply to Sites is arbitrary and lacks any evidentiary support
  - Water Right hearing did not consider application of WSAs
  - Sites is not an “existing” water right as of December 31, 2025
- The Bay-Delta Plan’s rationales for Water Supply Adjustments do not apply to Sites
  - Sites will not suffer a “reduction” in water supply due to operation of the Bay-Delta Plan’s 55% unimpaired flow requirement
  - Unimpaired flow bypass requirements for Sites Reservoir will not impact coldwater habitat

The Permit Must Contain a Percent Unimpaired Flow Requirement

- Board's job is not to make sure Sites is a viable or economically feasible project
- Allowing Sites' potential status as a VA Party to avoid Bay-Delta Plan unimpaired flow requirements would be arbitrary and would cause unreasonable harm
- Evidentiary process under Water Code for new water rights and change petitions is far different than the Bay-Delta Plan's process for adding VA parties

The Permit Must Contain a Percent Unimpaired Flow Requirement

- Term 30 should be revised to be consistent with the March draft:

  "Diversions are not authorized when Delta outflow is less than 55 percent of unimpaired Delta outflow or if diversion would reduce Delta outflow below 55 percent of unimpaired Delta outflow calculated as a seven-day running average."

- March Draft's instruction for calculating unimpaired flow should be included in the Permit
  - *See* March Draft Decision, Attachment 4

Permit Term 23 from March Should be Restored to the Draft Permit

- The 14,125 cfs bypass requirement [Term 23(c)] was a compromise between science-based protections and water supply:
  - "the Hassrick [2022] study supports a finding that flows above 14,125 cfs at Wilkins Slough contribute to survival of migrating salmon" but the benefits of a 24,720 cfs bypass requirement must be "weighed against the significantly reduced [~65% fewer days] opportunities for diversion." (Draft Decision at 94-95.)

Permit Term 23 from March Should be Restored to the Draft Permit

- The changes from the March to September Drafts not supported by the evidence; Term 23(c) should operate throughout the diversion season
  - del Rosario (2013) demonstrates 14,125 promotes and protects winter-run pre-smolt migration; there is no evidence less flow is necessary for spring-run and fall-run pre-smolt migration
  - Michel (2019) limited to survival of smolt; not pre-smolt life stage, and not migration
  - Future studies are appropriate but do not directly benefit fish; the Board must act based on the existing *available* scientific evidence

Permit Term 23 from March Should be Restored to the Draft Permit

- The pulse flow protection [Term 23(b)] should operate throughout the entire diversion season
  - Developed by Sites to reduce harm to native fish
  - Designed by Sites to apply throughout diversion season
- Flow Dependent Diversion rule [Term 23(a)] should operate throughout the entire diversion season
  - Near-field effects occur throughout diversion season
  - March Decision's expansion to protect non-listed native fish remains correct

The Permit Must Add Bypass Requirements for Freeport and Delta Outflow

- Water Board has identified 35,000 cfs at Freeport from January to June as protective of migratory Chinook Salmon
- Water Board has identified 42,800 cfs Delta outflow from January to June as the flow needed for year over year Longfin Smelt population growth
- Draft decision allows diversions of flows below these amounts; assuming instead Bay-Delta Plan will result in these protections
- Because the adopted Voluntary Agreements and WSAs do not improve the frequency of these flows, bypass requirements in the Permit are necessary

Freeport Flows January to June, 35,000 cfs	
Bay-Delta Regulatory Standard	% of Years Threshold is Achieved
Existing Conditions	28%
VAs	28%
55% UIF w/ WSA	28%
55% UIF	30%
75% UIF	75%

Delta Outflow, Jan to June, 42,800 cfs	
Bay-Delta Regulatory Standard	% of Years Threshold is Achieved
Existing Conditions	30%
VAs	29%
55% UIF w/ WSA	32%
55% UIF	32%
75% UIF	37%

Data from Ex. AHO-279, Table 7.6.2-5 and Ex. AHO-338, Tables 13.5-5 and 13.5-8

Permit Term 31 from the March Draft Should be Restored to the Permit

The March Draft Permit

- Sites operations shall not interfere with VA's flow and non-flow benefits to fish and wildlife
- No diversions on the same day when VA flows are (a) in mainstem of Sacramento River, or (b) contributing to Delta outflow AND outflow is less than 55% unimpaired flow plus VA contribution

The September Draft Permit

- No diversions the same day flows are provided by Sacramento River HRL are contributing to Delta outflow
- Presumptive Exceptions:
  - If Sites becomes VA party, diversions that reduce Delta outflow are allowed

Permit Term 31 From the March Draft Should be Restored to the Permit

- The “same day as” structure obfuscates Sites’ impact on the watershed
- Benefits of additional flow do not take place in a single day
- Allowing Sites to divert water “added” by the Voluntary Agreements reduces the flow additions called for under that approach
- The Board should revert to the March Draft

Water Year Type	Sites Diversions from Sacramento River*	VA Additions to Sacramento River**	Net Change
Wet	-743		-743
Above Normal	-481	100	-381
Below Normal	-226	100	-126
Dry	-68	100	32
Critical	-49		-49

Values in Thousand Acre Feet

* - SItes May 22 Letter, Attachment B, p. 3 (Table 1) (ITP Conditions)

** - Aug. 2026 Draft Bay-Delta Plan, p. 70 (Table 9) (Sacramento River VA only)

Impacts on Local Tribes Are Irreparable and Remain Unaddressed

- Numerous Tribes have testified to the irreparable harm and impacts this Project will have on their ancestral lands, cultural resources, and cultural practices
- Approval of Sites' water right will perpetuate California's legacy of cultural genocide against Native Peoples
  - *See, e.g.,* Ex. FOR-4, pp. 3-4, p. 10; *see also* Ex. FOR-36
- Mere acknowledgement of the permanent impacts Sites will have on Tribes' cultural resources is not enough
- Permit should be amended in accordance with the Tribal Interest Parties' June 2026 Comments, including but not limited to, Parties request for appropriate mitigation and/or reparation for Tribes that will have cultural resources and/or cultural sites disturbed or destroyed by the Project

The Water Quality Portfolio Should Not Undermine the Permit's Protective Terms

Permittee shall submit updates to the Water Quality Portfolio at least every five years following initial approval by the State Water Board. Updates to the Water Quality Portfolio shall identify actions implemented during the prior five years, the impact of those actions on water quality in waterbodies affected by project operations, and any proposed changes or additions to actions in the Water Quality Portfolio. ~~Proposed updates to the Water Quality Portfolio may include revised criteria for prohibitions of releases to the Colusa Basin Drain, Yolo Bypass, or the Sacramento River based on changes to applicable water quality control plans, including changes to water quality objectives or programs of implementation provisions, or other new information relevant to the protection of beneficial uses or public health.~~ Approval of the Water Quality Portfolio and subsequent updates shall expire six years after their respective approval dates. Updates to the Water Quality Portfolio shall become effective upon approval by the Executive Director and may include unchanged components of prior Water Quality Portfolios. If the Water Quality Portfolio or its updates proposes to revise criteria for prohibitions on releases of water from Sites Reservoir, such changes may only be implemented upon a formal change petition.

Draft Permit Term 34 Proposed Revisions

The Permit Must Adopt Conditions to Avoid Releases of Mercury-Polluted Waters

- Draft Decision acknowledges Sites operations will increase Mercury concentrations in numerous water bodies, including the Colusa Basin Drain, Stone Corral Creek, Funks Creek and the Sacramento River (*Revised Draft Decision*, p. 145)

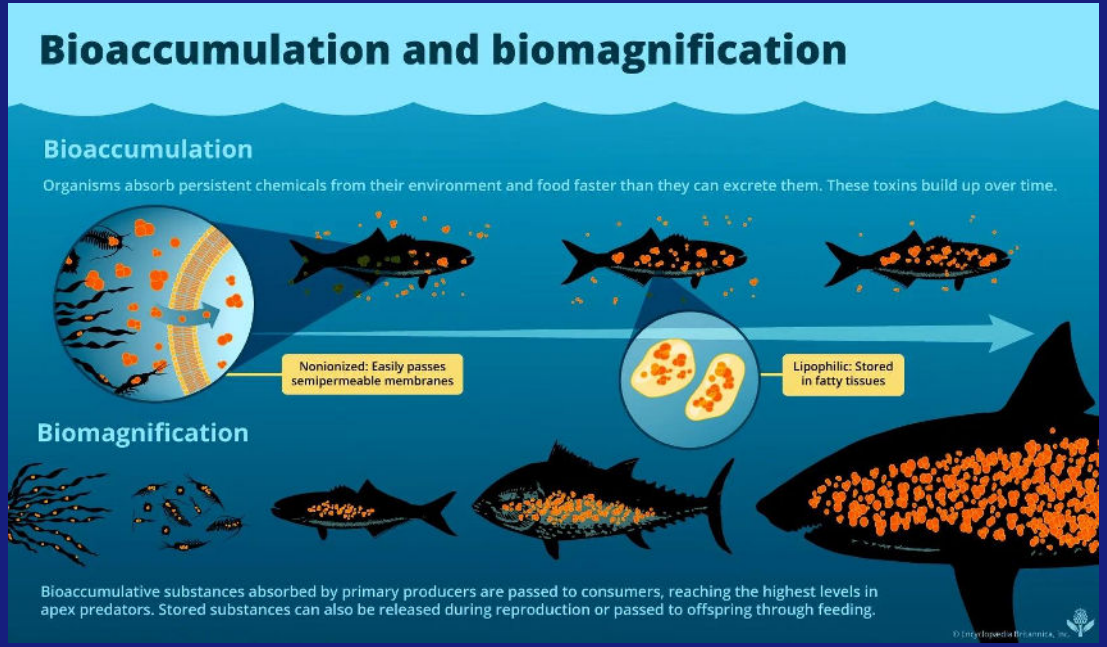


Photo Credit: Britannica

The Permit Must Adopt Conditions to Avoid Releases of Mercury-Polluted Waters

Prior to construction of Sites Reservoir, Permittee shall prepare and submit to the Executive Director, in consultation with the State Water Board, ~~and~~ the Central Valley Regional Water Quality Control Board, the California Office of Environmental Health and Hazard Assessment, the California Department of Public Health, any California Native American Tribe, and any non-governmental organizations requesting to participate, a feasibility assessment of actions that may be taken prior to construction and technologies that may be installed during and after construction to control, prevent, or mitigate production of cyanobacteria, cyanotoxins, and methylmercury in Sites Reservoir and in water released from Sites Reservoir that will be conveyed in the Colusa Basin Drain, Yolo Bypass, or Sacramento River. The feasibility assessment should include consideration of pilot programs to evaluate the feasibility of innovative techniques or technologies, as well as the referenced doses established by environmental or public health agencies for human health and safety. Once the feasibility assessment is approved by the Executive Director, the actions identified in the assessment must be timely implemented by Permittee. The Permittee shall submit regular reports to the Executive Director, public health agencies, and any participating Tribe or NGO about the implementation and effect of the actions identified.

Draft Permit Term 32 Proposed Revisions

The Permit Must Adopt Conditions to Avoid Releases of Mercury-Polluted Waters

Prior to construction of Sites Reservoir, Permittee shall conduct pre-construction total mercury soil screening, soil coring, and other actions to identify areas that may have ~~higher~~ concentrations of mercury within the inundation area and a combined total of estimated mercury. These concentrations and areas shall be reported to the Executive Director, public health agencies, and the public for review and comment. Permittee shall ~~identify to the Executive Director any~~ take actions that ~~will be taken~~ prior to construction and inundation to identify and remove mercury loading from ~~address~~ any areas that ~~may~~ have ~~increased~~ concentrations of mercury.

Draft Permit Term 33 Proposed Revisions

The Permit Must Adopt Conditions to Avoid Releases of Mercury-Polluted Waters

~~g. Alternative compliance actions the Permittee shall take if reservoir releases cannot meet the identified methylmercury implementation target through mitigation measures and operational changes, as determined by the Executive Director. Alternative compliance might include mitigating or offsetting existing contributors of mercury outside of the reservoir footprint.~~

Draft Permit Term 38 Proposed Revisions

Releases from Sites Reservoir shall comply with the implementation target for methylmercury discharges from the reservoir identified in the Methylmercury Mitigation Plan, ~~except that the Executive Director may approve an alternate method of compliance by implementation of the alternative compliance actions identified by the Permittee in the Methylmercury Mitigation Plan.~~

Draft Permit Term 39 Proposed Revisions

Sites Reservoir Will Be a Harmful Algal Bloom Hotspot and Increase HABs in the Delta

Harmful Algal Bloom in Hebgen Reservoir, Montana



Photo Credit: Gallatin Local Water Quality District

Harmful Algal Bloom in San Luis Reservoir, California



Photo Credit: CA DWR

Sites Reservoir Will Be a Harmful Algal Bloom (HAB) Hotspot and Increase HABs in the Delta

Permittee ~~may~~ shall include a HABs Prevention and Mitigation Strategy (HABs Strategy) in the Water Quality Portfolio to prevent or reduce HABs in Sites Reservoir and limit the release of cyanobacteria or cyanotoxins from the reservoir. The HABs Strategy shall meet the objective of Term 37. The plan ~~should~~ shall address the results of the feasibility assessment required by Term 32 and incorporate appropriate technology or other actions identified by that assessment. ~~Upon approval of the Water Quality Portfolio, the requirements in the HABs Strategy shall supersede the requirements of Term 37.~~

Draft Permit Term 36 Proposed Revisions

Sites Reservoir Will Be a Harmful Algal Bloom (HAB) Hotspot and Increase HABs in the Delta

~~If an approved Water Quality Portfolio does not include a HABs Strategy developed pursuant to Term 36, then n~~ No water shall be released from Sites Reservoir when cyanobacteria or cyanotoxin levels in the released water are above California's Cyanobacteria and Harmful Algal Bloom Network Caution Level as demonstrated by the monitoring procedures described in the Sites RMP. Caution Level is defined as any of the following being met or exceeded: (1) total microcystins equal or exceed 0.8 µg/L, (2) cylindrospermopsin equals or exceeds 1 µg/L, (3) Anatoxin-a is detected, (4) the cell density of potential toxin producers equals or exceeds 4,000 cells/mL, or (5) there is discoloration, scrum, algal mats, soupy or paint-like appearances, or suspected illness. If an applicable water quality objective for cyanobacteria or cyanotoxin is adopted, and the objective is included in the approved Water Quality Portfolio or any update as provided for in Term 34, that objective must also be met. ~~will be substituted for the Cyanobacteria and Harmful Algal Bloom Network Caution Level in this term.~~ If the two standards differ, the Permittee must meet the requirement that is more protective of water quality, wildlife, and human health. Permittee shall describe the effectiveness of any HABs management practices used within the reservoir as part of each five-year update to the Water Quality Portfolio.

Draft Permit Term 37 Proposed Revisions

Conclusion

- The San Francisco Bay-Delta, the estuary, and the watershed need more, not less, freshwater flow from the Sacramento River
- Water Board should reject the Draft Decision and Permit – diverting more water from the Sacramento River will increase harms
- If the Board approves the water right, it must amend the Draft Permit to increase protection for native fish, the public trust, water quality, and impacted Tribes and communities
- Board must include an unimpaired flow requirement in the permit to avoid undermining the Bay-Delta Plan and the Voluntary Agreements