

Opposition to Proposed Bay-Delta Voluntary Agreements

The San Francisco Bay and Sacramento-San Joaquin Delta (Bay-Delta) are in crisis, which will worsen without adequate management.

A 2022 Memorandum of Understanding between water districts, state agencies and the Bureau of Reclamation proposes to update the outdated and inadequate Bay Delta Water Quality Control Plan (Bay-Delta Plan) via “voluntary agreements” (VA). The VA proposal undermines the authority and obligations of the under state and federal Clean Water Acts.

The State Board is in year 15 of a mandatory three-year review of its Bay-Delta Plan. The process of updating Bay-Delta Plan requirements has been delayed by negotiations to broker a VA. After extensive political interference by Governor Newsom, a [Berkeley Law School report](#) concluded that the state’s “*interest in encouraging VAs has taken precedence over its responsibility to timely develop and implement Bay-Delta Plan amendments that adequately protect fish and wildlife.*”*

Indeed, the VA process appears to be more focused on preventing the State Board from updating and implementing the Bay-Delta Plan than on producing an agreement that will restore the health of the Bay-Delta.

Current Ecological Risks Facing the Bay-Delta

Meanwhile, fish and wildlife populations and water quality continue to deteriorate. Science-based Bay-Delta Plan updates are essential to remediate:

- Looming extinction of native fish populations
- Declining economically and culturally valuable salmon runs
- Increased water temperatures
- Explosive growth of harmful algae blooms

The VA is Inequitable

The VA proposal was negotiated in secret, without input from tribes, Delta communities, fishing industry, or environmental organizations. Consequently, major issues are entirely excluded or not adequately addressed in the VA, such as temperature protections for salmon runs or action to reduce harmful algae blooms. The VA represents



Chinook Salmon, one of the six imperiled species that rely on a functioning Bay-Delta estuary.

Photo provided by Defenders of Wildlife.

a power grab by a small group of privileged water interests that chose to exclude the perspectives of others.

The VA is Entirely Inadequate

The VA proposal will further endanger the Bay-Delta ecosystem because it is incomplete, unenforceable and lacks a scientific foundation.

As of 2024, the VA proposes:

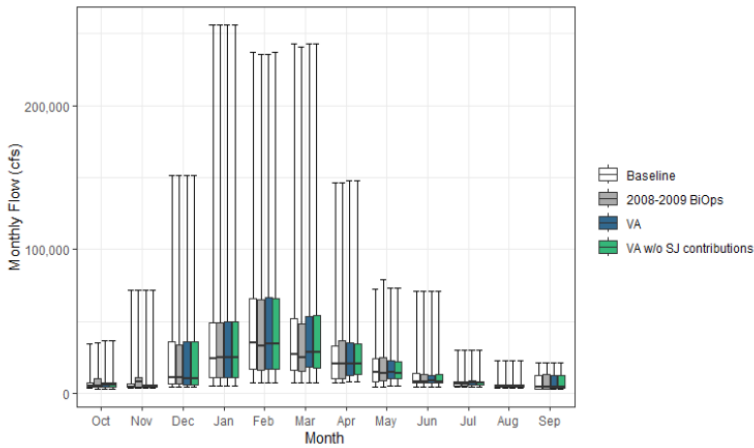
• Inadequate River Flows

The VA would provide insufficient water to protect the environment in all water year types. In the infrequent wetter years, the VA would reduce river flow to the Bay-Delta and Central Valley rivers compared to what was required in 2018, before the Trump Administration gutted Endangered Species Act protections. In these wet years – the only ones where native fish and wildlife can catch a break – the VA represents a new impact to an already beleaguered ecosystem.

• Adoption of the Trump Bay-Delta ESA Biological Opinions as the “baseline”

The VA dramatically reduces protections for the environment, as shown in the following graphic. Paradoxically, the State successfully sued to overturn Trump-era Biological Opinions which were largely science absent, and federal agencies are currently rewriting those opinions.

Opposition to Proposed Bay-Delta Voluntary Agreements



Comparison of the most recent incomplete VA proposal's contribution to Delta outflows (blue and green bars) to the baseline (white bar), and previous Biological Opinions (gray bar). The proposed VA scheme would provide a small fraction of additional water for the environment in some months, and even less than the baseline in others. The status quo represents conditions under which fish declines and harmful algal blooms are rampant. State Water Resources Control Board, Staff Report Chapter 9, Figure 9.5-22, p. 43.

- **No Biologically-Based Targets**

The framework includes no meaningful biological targets to measure success or failure. In fact, the VA would delay attainment of the State's existing salmon doubling requirement until 2050 – long after the VA self-terminates. Without biological metrics, the program could be declared a success even if ecosystem conditions deteriorate and species continue to decline.

Legal Scholars Find VA Proposal Wanting

In January 2024, Berkeley Law School released a paper called *Five Guiding Principles for Effective Voluntary Agreements**. The paper proposes five principles for a successful voluntary agreement and concludes the current VA proposal fails to meet all of them.

"In sum, leading with VAs as a solution for balancing human and environmental needs for water in the Bay-Delta watershed—rather than first, or simultaneously, pursuing a regulatory pathway to achieve key biological goals—is a perilous strategy that risks continued environmental degradation and legal noncompliance."

Berkeley Law Report, p. 7.

The VA Process Delays Improved Protections for the Bay-Delta

Efforts to produce a voluntary agreement have had several names and iterations since 2011. The promised outcomes of these negotiations have grown less ambitious – and the process more exclusionary – over time. Meanwhile, the process of negotiating a voluntary agreement has delayed the Bay-Delta Plan update process over many years.

2014 – The San Joaquin Tributaries Settlement Group missed completing an agreement by its December 2014 deadline. **Deadline extended.**

2015 – In a letter to the State Board, California Natural Resources Secretary John Laird promised a final VA package by December 2016.

2016 – Former Governor Brown requested the State Board extend a comment deadline on Phase I of the Bay-Delta Plan update to give time for his VA package. **Deadline extended.**

2017 – **Deadline extended.**

2018 – VA framework submitted to the State Board in December and VA participants predict the completion of the VA by February 15, 2019.

2019 – **Deadline extended.**

2021 – In May, Resources Secretary Wade Crowfoot set a Spring 2021 deadline for the VA. By October, VA negotiations with San Joaquin River tributary water agencies were suspended.

2022 – The 2022 Memorandum of Understanding was announced in March, with no VA package. **Deadline extended.**

2023 – December deadline for providing major components of the VA agreement missed. **Deadline extended.**

The VA process has failed. It is time for the State Board to complete updating, and to implement, the Bay-Delta Water Quality Control Plan.

* University of California Berkeley School of Law, Center for Law, Energy and the Environment. "Five Guiding Principles for Effective Voluntary Agreements: A Case Study on VAs for Water and Habitat in California's Bay-Delta Watershed." 2024, law.berkeley.edu/voluntary-agreements