



September 20, 2019

The Honorable Gavin Newsom
Governor, State of California
State Capitol Building, First Floor
Sacramento, CA 95814

Re: Voluntary Agreements Critical Concerns

Dear Governor Newsom,

As representatives for the environmental organizations actively participating in the Voluntary Agreement (VA) process, we are writing to call your attention to our long-standing and significant concerns regarding the adequacy of the proposed agreements and the process for finalizing them.

After the passage of Senate Bill (SB) 1 by the legislature last week, you indicated your intention to veto this important environmental bill to allow the VA parties a chance to complete final agreements. We are deeply disappointed by the water agencies' threats to leave the VA process unless you veto SB 1.

It is critical that you understand the current agreements will not adequately improve conditions in the Bay-Delta estuary and its Central Valley watershed. Furthermore, the ongoing VA process is flawed and not on course to produce an agreement that is legally, scientifically, and biologically adequate to survive environmental review and legal challenge.

At the beginning of this year, we agreed to work in good faith with your administration and water users in the VA process to understand better the proposed VAs, evaluate their sufficiency, and improve them as necessary to meet legal and scientific standards. Unfortunately, after several months, parties are still evaluating the adequacy of the proposals and little time remains to negotiate additional flow, habitat, and funding assets.

None of our organizations support the current proposed package of VAs because they do not contain sufficient flow and habitat assets to adequately improve conditions in the Bay-Delta estuary as required under state and federal law. The best available science makes this clear. Moreover, there are major flaws with the VA process itself that, unless addressed, will prevent parties from reaching a successful agreement.

Unless these concerns can be addressed without delay, our organizations will be compelled to conclude that these agreements will fail and will leave the VA process. We have given great thought to how to remedy the VA flaws, and we have met with Secretaries Blumenfeld and Crowfoot to discuss them. We have attached a letter to the Secretaries that contains a more detailed list of critical issues that must be addressed for the VAs to succeed.

Our organizations see the value of a collaborative voluntary process that leads to agreements that rapidly provide significant benefits to the Bay Delta and its tributaries; however, this requires that parties are willing to take significant steps to heal this deeply damaged ecosystem. The potential benefits of the VAs are too great to risk leaving the VA shortcomings unaddressed, but time is running out. We remain willing to work to achieve a successful VA, but only if its flaws are adequately and expeditiously addressed. Finally, we urge you to clarify that you support the State Water Resources Control Board moving forward with the WQCP update under any circumstances.

Sincerely,



Steve Rothert
American Rivers



Kim Delfino
Defenders of Wildlife



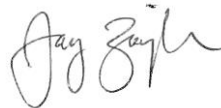
Pablo Garza
Environmental Defense Fund



Jon Rosenfeld
San Francisco Baykeeper



Gary Bobker
The Bay Institute



Jay Zeigler
The Nature Conservancy

cc: Ann O'Leary, Chief of Staff, Office of Governor Gavin Newsom
Wade Crowfoot, Secretary, California Natural Resources Agency
Jared Blumenfeld, Secretary, California Environmental Protection Agency
Chuck Bonham, Director, California Department of Fish and Wildlife
Karla Nemeth, Director, California Department of Water Resources
Joaquin Esquivel, Chair, State Water Resources Control Board
Eileen Sobeck, Executive Director, State Water Resources Control Board



September 20, 2019

Jared Blumenfeld
Secretary
California Environmental Protection Agency
1001 I Street
Sacramento, CA 95812

Wade Crowfoot
Secretary
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

RE: VOLUNTARY AGREEMENTS CRITICAL CONCERNS

Dear Secretaries Blumenfeld and Crowfoot,

Thank you for meeting with us this week to discuss our serious and urgent concerns with the Voluntary Agreements (VA) and VA process. As you know, the issues we raised are long-standing concerns for our organizations. With the VA process entering its final stage, we are writing to request immediate action on these critical issues.

Last December, the previous state administration and water agencies presented a package of VAs to the State Water Resources Control Board (SWRCB). These agreements were not supported by our organizations or any other environmental groups. Instead, we urged the SWRCB to take action on the first phase of the Bay Delta Water Quality Control Plan (WCQP) because the VAs failed to provide the necessary water, habitat and funding (i.e., “assets”) to meet the basic requirements established in state and federal law. Nevertheless, at the beginning of this year, we agreed to work in good faith with the Newsom administration in a process that would further clarify the proposed VAs, evaluate their potential to meet the SWRCB’s water quality objectives, and create space to negotiate adding more assets where the proposed VA fell short.

Unfortunately, after several months, we do not find ourselves in the VA process we expected. Instead of focusing on whether the VA assets can achieve the SWRCB’s existing and proposed WQCP objectives, the state and water agencies are proposing to change the WQCP objectives. Furthermore, the state’s approach to analyzing the proposed VAs will not provide the information necessary to evaluate the potential of the VAs to achieve the existing and proposed WQCP objectives as measured by specific numeric targets, or to assess the relative contribution of VA and non-VA parties towards achieving those targets. We agree that the state needs to complete its analysis of the current proposal before we can have this discussion, but do not think allotting roughly two weeks (per current proposed schedule dated September 16, 2019) to

“negotiate ‘final’ VAs” is realistic. This is arguably the most challenging part of the VA process and should not be rushed.

As we stated in our meeting last week and at the beginning of this process earlier this year, we cannot support any VAs that:

- Are not an adequate part of a WQCP that can be expected to achieve the existing and proposed narrative objectives (i.e., salmon doubling; native fish viability; Delta inflow, outflow and in-channel flows; coldwater habitat) contained in the SWRCB’s 2018 WQCP amendments and Sacramento-Delta framework.
- Do not include numeric objectives in the WQCP that define achievement of the narrative objectives, according to the best available science.
- Do not contain environmental targets for the VAs that are not nested within a broader plan designed to achieve both the WQCP’s narrative and numeric objectives.

Furthermore, we believe the state analysis will not meet legal or scientific standards if it fails to:

- Evaluate the ability of the VAs to achieve numeric targets for protection of fish and wildlife beneficial uses (that is, either the WQCP objectives expressed as SMART biological goals and numeric criteria where possible, or VA targets defined by the state as necessary to achieve or appropriately contribute to achieving the WQCP objectives).
- Measure the effects of the VAs against actual status quo hydrological conditions as experienced by target species, i.e., D1641 + 2008/9 biological opinions + uncaptured runoff, and against anticipated changes to the 2008/2009 biological opinions or uncaptured runoff.
- Focus on the biological and environmental variables and relationships that are known to be relevant to species needs, habitat quality, or ecological process.
- Define in advance both the threshold for adequacy of VA contributions and the expected and/or necessary contribution of non-VA parties.

Finally, we can only support VAs that:

- Include significant increases in both flow and habitat sufficient to achieve, or support the appropriate contribution of the VAs (relative to non-VA contributions) to achieving, the WQCP objectives.
- Include an adequate “backstop” to ensure that the SWRCB’s new objectives are enforceable at the end of the 15-year VA term or if the VAs terminate early.

Regardless of the ongoing VA process, the SWRCB must proceed expeditiously and aggressively toward completion in 2020 of the WQCP update. If VAs can be developed consistent with the minimum requirements stated above, they can and should be incorporated by the SWRCB. If not, then the state’s effort should be wholly focused on completing the current WQCP update. The state can no longer wait to adopt and implement strong, new WQCP

objectives for the Bay-Delta estuary and fish and wildlife beneficial uses currently at risk of being lost or permanently degraded.

Sincerely,



Steve Rotherth
American Rivers



Kim Delfino
Defenders of Wildlife



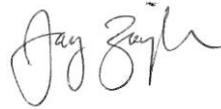
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