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Years of Delay and Failure in Developing a Bay-Delta Voluntary Agreement

For a decade, California water agencies have promised a comprehensive voluntary agreement (VA) to address the deteriorating conditions in the San Francisco Bay-Delta estuary and Central Valley rivers, including declining endangered species, proliferating harmful algae blooms and damaged salmon runs. Despite this growing crisis, the VA process has failed to meet a string of deadlines set by participants. It is now no closer to a complete, enforceable and science-based package than it was years ago. Advocates of a VA have argued that it is the fastest way to address the Bay-Delta crisis. Nearly a decade of unmet deadlines demonstrates that it is not.

Since 2012, efforts to produce a Bay-Delta VA have had several names, including the San Joaquin Tributaries Settlement Group (SJTSG), the Voluntary Settlement Agreement (VSA) and the Voluntary Agreement (VA). The SJTSG addressed the San Joaquin River side of the Bay-Delta ecosystem, while the VSA/VA process has aimed for a watershed-wide agreement. (Prior to these efforts, related discussions in the failed Bay-Delta Conservation Plan process reach back to 2006.) These VA efforts are growing less promising over time. Recently, the VA process has:

- Been dominated by water agencies whose diversions are the major cause of the crisis.
- Emphasized “non-flow” actions rather than significant improvements in water flows in the estuary and its tributary rivers that the state’s analyses show are essential.
- Avoided incorporating the best peer-reviewed science regarding the Bay-Delta.
- Excluded most or all of the stakeholder groups harmed by ecosystem decline.

Unmet Deadlines for a Comprehensive VA Package for the Bay-Delta and Tributaries

- ⊗ December 2014 (The SJTSG aimed to produce a VA for the three main tributaries to the San Joaquin River)
- ⊗ December 2016
- ⊗ December 2017
- ⊗ December 2018
- ⊗ February/March 2019
- ⊗ Spring 2021
- ⊗ August 2022

Today, the VA process appears less focused on producing a credible agreement than on preventing the State Water Resources Control Board from updating and implementing the Bay-Delta Water Quality Control Plan. The State Board should no longer delay action. Nothing prevents water agencies from submitting a VA – should they ever reach one – after the Board has updated and implemented the Bay-Delta Plan. Indeed, the law requires review of water quality control plans every 3 years.

The VA Timeline in Detail – Milestones and Deadlines

This document is focused solely on the VA timeline. It does not address the many substantive problems in VA documents (which are summarized [here](#)), or the pattern of [excluding parties](#) harmed by ecosystem decline – including environmental justice, tribal, environmental and fishing interests, as well as Delta communities.

San Joaquin Tributaries Settlement Group: Beginning in 2012, this process was focused on negotiating a settlement to restore ecosystem health for the three major San Joaquin River tributaries and the lower San Joaquin River.

- A 2013 SJTSG timeline, anticipated a “complete agreement” by **December 21, 2014**.¹

Voluntary Settlement Agreement/Voluntary Agreement Process: In 2015, the BDCP effort to negotiate a Bay-Delta agreement was recast as the VSA process – later shortened to the VA process.

- In a November 2015 letter to the State Board, Resources Secretary John Laird promised a final VA package by **December 2016**.² The State Board subsequently wrote to Secretary Laird and DWR Director Karla Nemeth reiterating that deadline.³
- In a December 2016 letter to Governor Brown, the State Board extended a comment deadline on its Phase I update to the Water Quality Control Plan to allow additional time for VAs to be reached by the **end of 2017**.⁴ This is just one example in which the VA process delayed the timeline for the State Board’s legally-required review of existing, inadequate water quality standards.
- Governor Brown and Governor-Elect Newsom wrote to the State Board in November of 2018, requesting that the Board delay its scheduled action on Phase 1 of the Bay-Delta Plan until **December 2018** to allow time to complete VA negotiations.⁵
- DWR and CDFW wrote to the State Board, proposing a goal of producing “complete agreements” by the **end of 2018**.⁶
- In the “Grand Bargain” VA framework submitted to the State Board in December of 2018, VA participants predict the completion of the voluntary agreements by **February 15, 2019**.⁷ In the State Board’s December 2018 resolution adopting flow requirements for

¹ Contact Barry Nelson, Western Water Strategies for a copy of this SJTSG timeline.
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²<https://fisheries.legislature.ca.gov/sites/fisheries.legislature.ca.gov/files/5e%20Letter%20from%20Sec%20Laird%20to%20Chair%20Marcus%20on%20Voluntary%20Agreements.pdf>

³[https://resources.ca.gov/CNRALegacyFiles/docs/voluntary-agreements/Letter to John Laird 11-23-15.pdf](https://resources.ca.gov/CNRALegacyFiles/docs/voluntary-agreements/Letter%20to%20John%20Laird%2011-23-15.pdf)

and https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/bay_delta/howardltr_02222016.pdf

⁴https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/marcus_ltr_governo_r122216.pdf

⁵ <https://mavensnotebook.com/wp-content/uploads/2018/11/Brown-Newsom-Letter-11.6.18.pdf>

⁶https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/comments_lsjr_final_sed/Karla_Nemeth_DWR_Charlton_Bonham_DFW.pdf

⁷https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/bay_delta/cnra_va_proposal_12122018.pdf

Phase 1 of the Bay-Delta Plan update, the State Board encouraged a voluntary agreement and established a deadline for a comprehensive package of **March 1, 2019**.⁸

- In an **October 2021** letter to San Joaquin River tributary water agencies, the Secretaries of CalEPA and Resources suspended VA negotiations with those agencies.⁹
- At the May 2021 Association of California Water Agencies Conference, Resources Secretary Wade Crowfoot set a **spring 2021** deadline for the VAs, stating that “The Water Board has to move forward on the process. From my perspective it’s critically important to have the voluntary agreements as one way to implement what the Water Board has to do. And we have to get this done this spring.”¹⁰
- In an internal VA process timeline, water agencies anticipate the submission of a complete VA package to the Board by **August 2022**.¹¹

Groundhog Day – VA Frameworks to Date. Over the past four years, a series of VA frameworks has been released. All of these frameworks were very general and lacked many essential details and components. Each of these frameworks fell far short of a complete, enforceable voluntary agreement. None of these frameworks was produced with the collaboration and input of Tribes, Delta communities, fishing and environmental interests, or the scientific community.

- In testimony before the State Board in December of 2018, DWR Director Karla Nemeth and CDFW Director Chuck Bonham summarized a framework for a “Grand Bargain” – a VA for the Bay-Delta.¹² A formal version of this general framework was submitted by DWR and CDFW in **March of 2019**.¹³
- In **February of 2020**, Resources and CalEPA released another framework for VAs.¹⁴
- In **March 2022**, yet another VA framework was released. This framework, however, did not include a proposal from San Joaquin River tributary water agencies.¹⁵
- In **August of 2022**, a modestly revised framework was submitted to the State Board, including some additional water users, but not San Joaquin River tributary agencies.¹⁶ In **November of 2022**, this framework was modestly revised again, and four additional agencies signed, including three San Joaquin tributary agencies.¹⁷

⁸ https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf

⁹ <https://www.pacificriptide.com/files/final-joint-calepa-and-cnra-va-ltr-to-sj-tribs.pdf>

¹⁰ <https://mavensnotebook.com/2021/05/19/acwa-conference-the-decade-of-water-resilience-developing-solutions-for-our-water-future/>

¹¹ Contact Barry Nelson, Western Water Strategies for a copy of this internal VA timeline.

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¹² <https://water.ca.gov/News/Blog/2018/Dec-18/States-Comprehensive-Plan-to-Improve-Flows-for-Fisheries>

¹³ https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/bay_delta/cnra_va_proposal_12122018.pdf and https://resources.ca.gov/CNRALegacyFiles/docs/voluntary-agreements/2019/Complete_March_1_VA_Submission_to_SWRCB.pdf

¹⁴ <https://resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Voluntary-Watershed-Agreements/PlenaryPresentation020420Finala2520.pdf>

¹⁵ <https://resources.ca.gov/-/media/CNRA-Website/Files/NewsRoom/Voluntary-Agreement-Package-March-29-2022.pdf>

¹⁶ https://resources.ca.gov/-/media/CNRA-Website/Files/NewsRoom/email-items/VoluntaryAgreementMOUtermSheet20220329_SIGNED-20220811.pdf

¹⁷ <https://resources.ca.gov/Newsroom/Page-Content/News-List/Four-More-Local-Water-Agencies-Join-Agreement-to-Improve-the-Health-of-Rivers-and-Landscapes>

After 10 years of talks to negotiate a voluntary agreement, we are in a familiar place. Water agencies have released another general framework that falls far short of being a complete, enforceable package. Participants promise to continue working to produce a comprehensive VA. This is yet another agreement to reach an agreement. Like those that preceded it, the newest framework would provide far less water for the environment than the State Board and independent scientists have concluded is required. Those harmed by environmental deterioration continue to be excluded. Meanwhile, fish, wildlife and water quality continue to deteriorate. Today, it is clear that the VA process has failed and is now primarily an effort to delay action by the State Board.

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

December 8, 2022