



Shell Game – How the Bay-Delta Voluntary Agreements Set the Stage for New Water Grabs by the Delta Tunnel and Sites Reservoir

The proposed Bay-Delta [voluntary agreements](#) (VAs) have been broadly criticized for failing to provide enough water to restore the damaged Bay-Delta ecosystem, endangered fish, water quality and California's salmon fishing industry. (For example, in critically dry years, the VAs would dedicate a total amount of new environmental water in the Sacramento River Basin that represents a miniscule 0.2 percent of average year Sacramento River Basin flows.) The process that developed the VAs has also been criticized for excluding Native Americans, communities of color, as well as environmental and fishing community stakeholders. The VAs include an additional profound flaw that is not well known. **By failing to protect existing flows, the VAs attempt to set the stage for massive additional water diversions by the Delta tunnel, Sites Reservoir and other projects.**

If approved by the State Water Resources Control Board as part of an updated [Bay-Delta Water Quality Control Plan](#) (Bay-Delta Plan), this approach could result in dramatic additional damage to an ecosystem that is already collapsing – as well as potentially disastrous impacts on salmon fishing jobs, Delta communities and tribal resources. **The VAs would allow the current Bay-Delta environmental crisis to grow worse.**

At their heart, the VAs are a shell game. VA supporters argue that a small addition to current flows would be adequate to protect the Bay-Delta ecosystem – if accompanied by habitat restoration. However, some of those same water agencies are planning to take advantage of the structure of the VAs to divert large volumes of additional water through new water projects, including the proposed Delta tunnel and Sites Reservoir. In some years, these new diversions could exceed the “new” environmental water that is included in the VAs.

How the Bay-Delta Plan is Used to Evaluate New Water Diversion Proposals

The Bay-Delta Plan is required by law to provide adequate protection for beneficial uses in the watershed, including fish and wildlife, commercial and recreational fishing, water quality and traditional tribal uses. The Board may not allow new water projects to divert water reserved for the environment by the Bay-Delta Plan. Conversely, if the updated Bay-Delta Plan does not protect existing flows, it will be easier to permit new projects that seek to divert more water at the expense of the environment.

The State Board has [clearly recognized](#) the risk to instream flows from inadequate environmental protections: “Existing regulatory minimum Delta outflows are too low to protect the ecosystem; without additional instream flow protections, existing flows may be reduced in the future as new storage and diversion facilities are constructed.”

The Importance of Protecting Existing Flows

Central Valley fall run salmon are the backbone of the salmon fishing industry in California and coastal Oregon. Those salmon spawn in the fall. After the eggs hatch, juvenile salmon are carried down Central Valley rivers and through the Bay-Delta in the winter and spring. One of the major reasons Central Valley salmon populations have crashed in recent years is the inadequate amount of water left in salmon rivers during the outmigration season. Today, only in wetter years is there enough water to help most baby salmon survive their migration to the ocean.

Unfortunately, the State Board’s current 1995 Bay-Delta Plan includes no legal requirement to ensure that adequate outmigration flows are provided for salmon. The Unimpaired Flow (UIF) approach would change that by protecting a percentage of natural flows in the late winter and spring of all years. This approach would provide broad environmental benefits beyond salmon. By contrast, the VAs could make the current disastrous situation dramatically worse for salmon and other species.

How the Unimpaired Flow Approach Would Protect a Portion of Existing Flows

The State Water Board developed the UIF approach after an [extensive review](#) of the best available science. This approach - illustrated below - to restoring the Bay-Delta would protect a specified percentage of the total unimpaired natural flow that would pass through the ecosystem without any water storage or diversions. This approach would prevent the diversion of a percentage of UIF by current or future water projects.

This approach does not prohibit the State Board from issuing new water rights and permitting new water projects when additional diversions would not impair the required UIF hydrograph. Under this approach, in wet periods, there would be some additional water that could be diverted from the Bay-Delta ecosystem when flows exceed the protected UIF percentage.

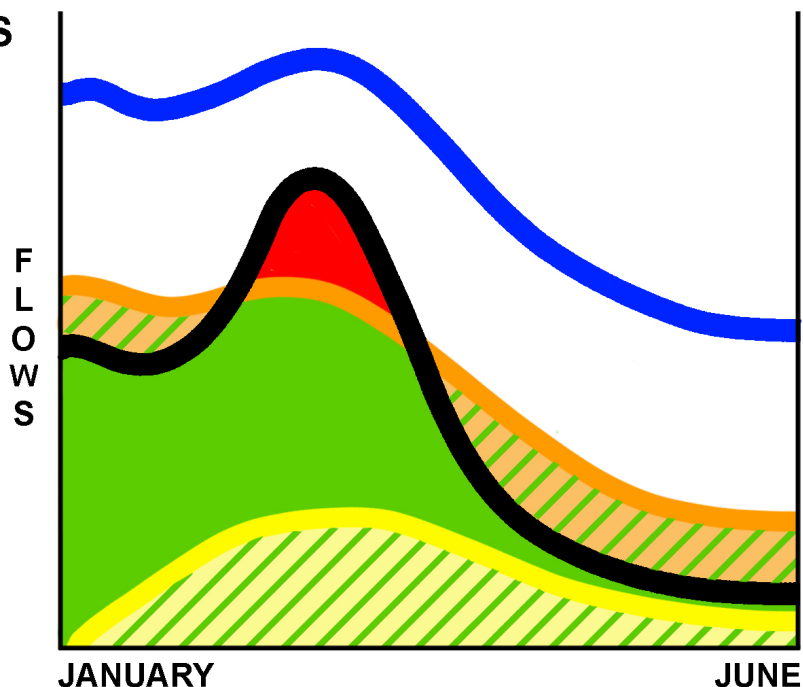
However, in most years, the UIF approach would require additional water to be released beyond current inadequate flows. In many cases, existing dry year flows are dramatically inadequate. For example, on the Tuolumne River, under the current failed State Board requirements, as little as 8% of total unimpaired flows are left in the river in critically dry years, devastating Tuolumne River salmon runs. During the last drought, the lack of strong and enforced flow standards allowed water diversions to literally [run the Merced River dry](#).

The UIF approach also allows water users to evaluate proposed projects to determine if they can safely divert enough water to be economically viable. In short, the UIF approach

provides a clear yardstick, to be used by the Board, water users and the public, for evaluating proposed new water projects.

UNIMPAIRED FLOWS APPROACH

- NATURAL UNIMPAIRED FLOWS
- CURRENT FLOWS
- EXISTING REGULATORY FLOW REQUIREMENTS (ESA/CESA/D1641)
- NEW ENVIRONMENTAL WATER UNDER PERCENT OF UIF APPROACH
- PROTECTED FLOWS
- UNPROTECTED FLOWS



The above hypothetical hydrograph indicates natural unimpaired flows, current flows, the amount of current flows protected under state and federal ESA requirements and the State Board's D 1641, and the additional environmental water that would be required to be released by a UIF requirement. (This volume of new environmental water would vary depending on the percentage of UIF selected by the State Board.) It also shows, in red, the existing flows, above the UIF requirement, that new water projects could seek to divert.

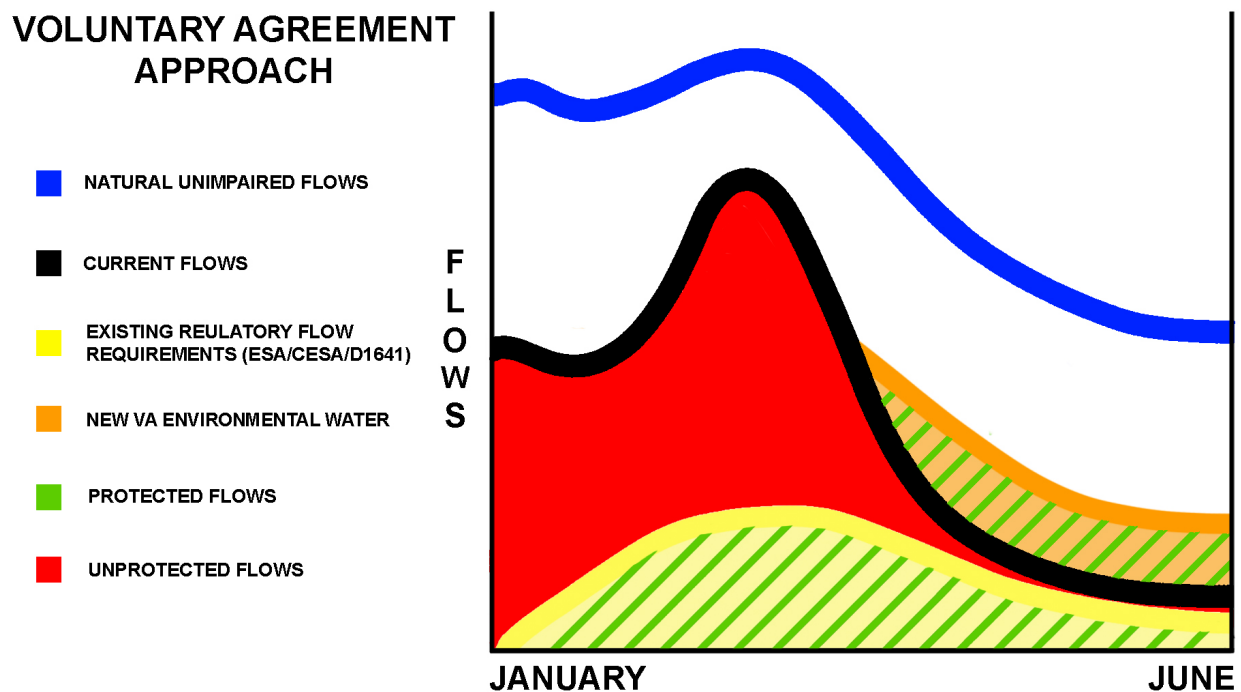
In December of 2018, the State Board adopted an UIF requirement as part of the Bay Delta Plan to increase flows in the San Joaquin River and its tributaries. Governor Newsom has blocked the implementation of that requirement since he took office. He also removed the State Board chair who led the development of the UIF approach. Over the past six years water users have fought, in court (unsuccessfully), politically and in the VA process they control, to prevent the State Board from implementing a San Joaquin River UIF requirement or adopting a UIF requirement for the Sacramento River and the Delta.

How the VA Approach to Environmental Water Sets the Stage for Water Grabs

The proposed VAs would take a very different approach. The VAs would provide small amounts of additional water above current flows in some years. However, in other cases, the VAs would provide no additional flows. For example, the VAs would provide no guaranteed additional water for the Feather, Yuba and Mokelumne Rivers in critically dry

years – and virtually none on the Sacramento River (Table 1a in the [VA Term Sheet](#).) Critical years, of course, are when the ecosystem is suffering the greatest damage.

The VA approach would prohibit the diversion of these modest “new VA flows.” It would also prohibit the diversion of water required for the protection of endangered species under the federal Endangered Species Act and the California Endangered Species Act and required under the State Board’s D 1641. However, the VA approach would not protect existing water flows that are above ESA/CESA/D1641 minimums. (It is worth noting that [the amount of water protected by ESA requirements](#) is remarkably limited – less than 3 percent of unimpaired Delta outflow.)



As illustrated in the hypothetical hydrograph above, the VAs would allow a massive amount of additional water – indicated in red - to be diverted from the Bay-Delta ecosystem by the proposed Sites Reservoir and Delta tunnel, as well as by other new water projects. In some years, these projects could divert more existing environmental water than the VAs would “add” to the ecosystem. Thus, the VAs could result in environmental conditions that are worse than the disastrous conditions the ecosystem faces today. There is no scientific support for this approach to managing Delta flows.

Water Agencies Admit that Protecting Existing Bay-Delta Flows Would Affect the Feasibility of the Delta Tunnel and Sites Reservoir

The advocates of the Delta tunnel and Sites reservoir have admitted that if the Board adopts protections for existing flows, it would affect the feasibility of new projects like the Delta tunnel and Sites Reservoir. In a January 22, 2024 letter to the State Board, DWR stated that

alternative 6a, which would protect existing environmental flows, would “reduce the yield of the DCP (Delta Conveyance Project) over all water year types by an average of 55%.” Also, see the testimony of Chandra Chilmakuri, State Water Contractors, during a [January 23, 2025 Board workshop](#) (at 1:44.)

DWR and the State Water Contractors admit that they plan to use new water projects to divert the existing environmental flows that they also count as the baseline for “new” VA environmental water – thus exposing the VA shell game.

The VAs are a Billion Dollar Taxpayer Rip Off

The VA funding proposal (Table 4 in the [VA Term Sheet](#)) includes \$2.246 billion in state and federal public funds out of a VA funding total of \$2.914 billion. Of that total, \$1.6 billion would go directly to water agencies to pay for the “new” environmental water claimed by the VAs through water purchases from water agencies, land fallowing, new water development and other expenses (Appendix 3 – Costs to Implement VAs in the VA Term Sheet.) However, as discussed above, the VAs would allow dramatic additional diversions that could more than offset the small “new” environmental water in the VAs, particularly in drier years. **Thus, the VAs would enrich water agencies and worsen Bay-Delta environmental conditions, at a high cost to state and federal taxpayers. The VAs represent a billion dollar taxpayer rip off.** This scam is worsened by efforts to secure state and federal funds for damaging projects including Sites Reservoir. **Through the VAs and new water projects, water users are seeking taxpayer funds to put water into the Bay-Delta ecosystem, while also seeking taxpayer funds to take far more water out of the ecosystem.**

Conclusion

The Bay-Delta Voluntary Agreement proposal is an elaborate shell game. The proposal claims to add new environmental water to inadequate existing Bay-Delta flows – but then sets the stage for those existing flows to be diverted by new projects supported by many of the same water agencies that control the VAs. This fatal flaw reveals that the VAs, Sites Reservoir and the Delta tunnel are a coordinated strategy to pump far more water from a collapsing ecosystem, further harming the fishing industry, Delta communities of color and tribes. This scheme would cost state and federal taxpayers billions of dollars.

The State Board must reject the flawed, inequitable, deceptive and damaging VA proposal and adopt an updated, science-based Bay-Delta Plan that protects an adequate percentage of the Bay-Delta’s unimpaired flows.

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