

Voluntary Water Settlement Agreements

Viable Process to Improve Environment, Keep Needed Water Flowing

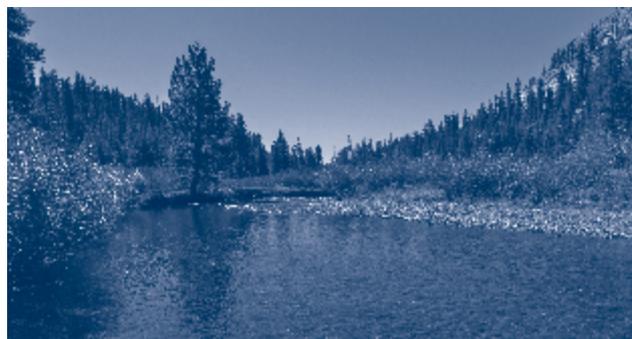
The State Water Resources Control Board (Board) periodically updates the Bay-Delta Water Quality Control Plan to carry out obligations under the Clean Water Act and Porter-Cologne Water Quality Control Act to protect beneficial uses, including fish and wildlife, in the Bay-Delta watershed. The Board relies on its water right authority and water right proceedings as the predominant mechanism to implement objectives.

In December 2018, the Board adopted a proposed resolution to update the Bay-Delta Plan to amend the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced rivers, and agricultural beneficial uses in the southern Delta.

The resolution calls for a 40% “unimpaired flows” from February through June with a permitted diversion range of 30% to 50%, depending on conditions in the river and its tributaries. The Board acknowledged the diversion could create financial and operational challenges for local economies as well as lost jobs, but insists that it is necessary to provide enough water for vulnerable fish and wildlife.

Adoption of this resolution was delayed in response to a request from the Natural Resources Agency, Department of Fish and Wildlife, and the Department of Water Resources to make a presentation on adaptive implementation and voluntary water settlement agreements and a request to defer final action. Former Governor Edmund G. Brown Jr. and Governor Gavin Newsom made it clear early in the proposal process that they preferred the voluntary agreements process before imposing mandatory flow reductions.

The Board granted the delay, but pointed out that over the last couple of years it has emphasized repeatedly that voluntary agreements would be a quicker and more durable solution to protect the beneficial uses in the Lower San Joaquin River and its tributaries. The Board pointed out that the proposal recognized



the flow and nonflow actions to enhance fisheries and allows flexibility for adaptive management. Voluntary agreements are nonflow elements, but can greatly influence flows.

The agreements are being developed as an alternative mechanism to provide reasonable protection of native fish and wildlife, and other beneficial uses as required by law and identified in the Water Board’s Bay-Delta Water Quality Control Plan. The agreements achieve improvements through targeted river flows and several habitat-enhancing projects, including floodplain inundation and physical improvements of spawning and rearing areas, while balancing the needs of other beneficial uses, including municipal, domestic and agricultural water supplies, recreation, and navigation.

VOLUNTARY AGREEMENT PROJECT

The Board resolution included the following directive:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses not later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

The Natural Resources Agency, the California Environmental

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Protection Agency, the U.S. Department of the Interior (Bureau of Reclamation) and various interested parties (water districts, environmental and conservation organizations, agriculture) agreed to a project description for a set of voluntary agreements based on the framework introduced at the December Board meeting and a set of planning principles for guidance.

Three work groups were established led by the agency secretaries:

- **Assets to Outcomes Work Group** to identify how the water flows, habitat and funding provided through the agreements could result in measurable, achievable outcomes that will protect native fish species and other beneficial uses.

- **Governance, Science and Adaptive Management Work Group** to design a science program to track and report outcomes of the various assets and provide scientific information to support effective adoptive management.

- **Policy Work Group** to address critical path legal and policy questions, such as enforceability of the agreement's terms and appropriate amendments or updates to the Bay-Delta Plan that remain to be resolved.

Work was scheduled to be completed by December 2019.

WHAT'S NEXT?

If the agency secretaries agree with the outcomes of the work groups, they will recommend that the Board consider the voluntary agreements in their current form, and the Board will complete its analyses to determine if the agreements meet objectives of the Bay-Delta Water Quality Control Plan as required by law. The science program will undergo scientific peer review that should be completed by spring 2020.

The Board will complete an environmental review of the voluntary agreements and update the Water Quality Control Plan as required under the California Environmental Quality Act. A draft document could be released in the summer of 2020 and be finalized in 2021.

If the Board does not accept the voluntary agreements, then work will continue on the agreements to make refinements to the biological and environmental targets. Governor Newsom has made it clear that he would like the process to succeed, so likely an extension of time, if needed, would be allowed to work through the issues.

LEGISLATIVE ACTIONS

The federal government under President Donald Trump's leadership has proposed changes to federal environmental regulations that have caused consternation and angst amongst environmental and conservation groups. A steady barrage of news articles, shows and tweets bashing the Trump administration's actions aired in media

markets all over California. Environmentalists were vocal about the perceived damage that would occur if the Legislature did not take steps to force state agencies to protect California's environment.

In response, SB 1 (Atkins; D-San Diego), the California Environmental, Public Health, and Workers Defense Act of 2019 was introduced and established baseline environmental, public health, and labor standards in accordance with the federal standards that were in place on January 19, 2017, President Barack Obama's last day in office. Nearly identical legislation, SB 49 (de León; D-Los Angeles), had been introduced in 2018 and held in the Assembly Rules Committee.

In the final analysis, SB 1 would have frozen decades-old biological opinions and set back or had a significant impact on the voluntary agreements proposal that is essential to achieving a comprehensive approach to flow and nonflow measures needed to provide reliable water supplies for tens of millions of California residents, farmers, and wildlife. SB 1 also would have applied California Endangered Species Act regulations to the federal Central Valley Project, which would have caused the Bureau of Reclamation to withdraw from the voluntary agreement project. Governor Newsom vetoed SB 1.

There are rumors that parts of SB 1 could be introduced as stand-alone bills in 2020. Governor Newsom said in late November 2019 that he plans to sue the Trump administration over changes to federal biological opinions that affect the amount of water allowed to be pumped from the Delta.

CALCHAMBER POSITION

The California Chamber of Commerce supports the voluntary agreements process as a viable means of meeting environmental objectives of the Bay-Delta Water Quality Control Plan. Stakeholders are working with regulators and environmentalists to improve conditions for fish and wildlife on the San Joaquin River and its tributaries. They are voluntarily reducing their water draw at certain times of the year, modifying some of their business practices to use less water, and contributing to conservation habitats in the Delta. A voluntary process to achieve environmental goals is preferable to mandatory restrictions.



Staff Contact
Valerie Nera
Policy Advocate

valerie.nera@calchamber.com

January 2020