

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 called for 40% “unimpaired flows” from February through June 2019 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 insisted that it was 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 (DWR) 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 also 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 were 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 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.

As discussed below, work on these agreements has stopped due to a disagreement between California and the federal government about newly released biological opinions.

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,

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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 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 2019 Board meeting and a set of planning principles for guidance. The framework was updated early in 2020.

Voluntary Agreements to Improve Flow and Habitat (Updated February 2020)

- Provides up to 9,000 acre-feet of new flows for the environment above existing conditions in dry, below-normal and above-normal water year types, and several hundred thousand acre-feet in critical and wet years to help recover fish populations.
- Provides for 60,000 acre-feet of new habitat, from targeted improvements in tributaries to large landscape-level restoration in the Sacramento Valley.
- Outlines \$5.2 billion in investments funded by water users, the state and the federal government to improve environmental conditions and science and adaptive management. Also establishes a governance program to strategically deploy flows and habitat, implement a science program and develop strategic plans and annual reports.
- Enables a collaborative science hub for monitoring and experimentation.
- Expands tools to recover fish populations; more adaptiveness to respond to changing conditions.
- Expedites implementation; gets water and habitat added quickly.

The voluntary agreements under this resolution would remain in place for 15 years. The State Water Board would use its legal authority to protect voluntary agreement flows against diversions for other purposes. Those not a party to the agreements will be subject to the State Water Board's regulatory requirements to achieve unimpaired flows.

A STUMBLING BLOCK

Early in 2020, the federal government released new biological opinions (BiOps) for fish superseding the Obama-era BiOps that provide the underpinnings for incidental take permits (ITP) necessary for operating the federal water project and which the

state normally relies on for coordinating water flows from the State Water Project (SWP).

A little history to help understand the significance. Most of California's northern water supply is captured and stored in Lake Shasta and Trinity, federal reservoirs, and Lake Oroville, a state reservoir. The water flows through rivers and canals down through the Delta where it moves through canals to the San Francisco Bay Area or down through the valley to Southern California. The SWP supplies 70% of the water supplies for urban and industrial users in Southern California and 30% of the water for Central Valley farms. The federal Central Valley Project (CVP) supplies 5 million acre-feet of water to Central Valley farms and 600,000 acre-feet for municipal and industrial users. The CVP and SWP share many facilities and canals. Water interchanges between the projects' canals as needed to meet peak requirements for project constituents.

In 1986, DWR and the Bureau of Reclamation signed the Coordinated Operation Agreement that defined how the state and federal water projects would meet water quality and environmental flow obligations. The agreement called for periodic reviews to determine whether updates were necessary in response to changing conditions. In December 2018, the two agencies agreed to an addendum to the agreement to reflect water quality regulations, BiOps with tightened environmental restrictions, updated hydrology and formalized a cost sharing formula for the projects. The agreement called for costs to be shared equitably between the state and federal projects for work to meet joint responsibilities under the federal Endangered Species Act, including monitoring and habitat restoration. The BiOps in force at the time were from the Obama administration.

After the federal government released new BiOps in 2020, the state sued and proceeded to develop its own incidental take permit (ITP) based on the earlier federal BiOps. The basic difference between the ITPs is the federal permit increased water exports while the state restricted flows based on four protected endangered species. The federal and state governments struggled through most of 2020 with significant administrative and operational challenges related to the intertwined operations of the federally operated CVP and the SWP through the Delta and San Luis Reservoir, with the lawsuit creating uncertainty of water supplies to people, farms and ecosystems.

The lawsuit by Attorney General Xavier Becerra and by the Golden State Salmon Association is still in the initial stages. Once Becerra announced the lawsuit against the federal administration, water districts stopped working on the voluntary agreements. Those agreements are integral to how and when

water will move through the canals and how much water landowners and water districts will forgo for the environment.

WHAT'S NEXT?

Given the change in administration in Washington D.C., it is likely that work will begin to reinstate the 2008/2009 environmental regulations governing the federal Endangered Species Act. How long it will take to unwind the regulatory morass is unknown; however, Secretary Wade Crowfoot, California Natural Resources Agency, has indicated that his agency is anxious to resume discussions on voluntary agreements.

The Natural Resources Agency has put in a budget change request to appropriate \$125 million from Proposition 68 to act as a catalyst to fund projects to restore habitat, protect or promote restoration of endangered species, enhance reliability

of water supplies, and provide significant regional or statewide economic benefits. The business community should support this proposal.

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.



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