



Toni Atkins, President pro Tempore
California State Senate
State Capitol
Sacramento, CA 95814

Anthony Rendon, Speaker
California State Assembly
State Capitol
Sacramento, CA 95814

Senator Nancy Skinner, Chair
Senate Budget and Fiscal Review Comm.
1020 N Street, Room 502
Sacramento, CA 95814

Assemblyman Phil Ting, Chair
Committee on Budget
1021 O Street, Suite 8230
Sacramento, CA 95814

May 9, 2022

Re: **Opposition to State Funding for Bay-Delta Voluntary Agreement**

Dear President pro Tempore Atkins, Speaker Rendon, Senator Skinner and Assemblyman Ting:

We are writing on behalf of the above environmental and environmental justice organizations to urge you to oppose funding to support the recently released Bay-Delta voluntary agreement (VA) proposal, in the upcoming state budget.

The Bay-Delta ecosystem is in a state of severe crisis. This crisis can be seen in endangered fish species on the brink of extinction, declining salmon runs that are critical to commercial, recreational and tribal interests, worsening harmful algae blooms in the Delta, and more. This crisis has been worsening for more than three decades. The primary cause is the failure of the State Water Resources Control Board to adopt and implement science-based flow standards to replace inadequate existing Bay-Delta Water Quality Control Plan requirements, which were adopted in 1995. The new VA outline fails to propose adequate flow standards. In fact, if implemented, the new outline would provide *less* protection than in the recent past. In addition, this outline is likely to be used to argue – yet again – for more delay by the State Board.

The new VA outline includes many serious flaws, including the following:

Inequity in Both Process and Substance: The secret negotiations that led to this outline excluded many critical stakeholders, including tribal, environmental justice, environmental and fishing groups, Delta communities and others. The outline represents a power grab by a small group of privileged water interests that chose to exclude the perspectives of others. This inequitable process is reflected in the substance of the outline. For example, the outline entirely excludes issues, such as temperature protections for salmon runs and action to reduce harmful algae blooms, that are essential elements of an updated Bay-Delta Water Quality Control Plan. This approach is a continuation of California’s inequitable water rights system, which is based on a long history of discrimination and a disregard for environmental health.

Inadequate Proposed Water Flows: At the heart of the VA outline is an entirely inadequate proposal for freshwater flows to protect ecosystem health, disadvantaged communities, commercial and recreational fishing and tribal resources. For example, in the driest years, the state’s MOU proposes far less water for Bay-Delta flow than was required in 2018, before the Trump Administration gutted protections for the Bay-Delta. In these years, the outline represents a step backward.

Adopts the Trump ESA Biological Opinions as a Foundation: The State of California has sued to overturn the Trump ESA Biological Opinions (BOs) for the Bay-Delta, and federal agencies have begun the process of replacing these science-free operating rules. Paradoxically, the VA outline adopts the Trump BOs as its “baseline” - the foundation for this agreement. This was not the case in the previous VA outline, from February 2020. This decision dramatically reduces protections for the environment and our communities. One VA signatory is already using the VA to undermine federal efforts to write science-based BOs.

No Enforcement: The MOU lacks a credible approach to enforcement, in case promised water and habitat restoration fail to materialize, or if the proposal proves to be inadequate. In fact, serious evaluation of the program would not begin until year six of the VA’s 8-yr life span.

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No Biologically Based Targets: The framework includes no meaningful biological targets to measure success or failure. In fact, the outline would delay the State's existing salmon doubling requirement until 2050 – long after this agreement would terminate. Without such metrics, adaptive management would be impossible, leading to the risk that the program could be declared a success even if the ecosystem continues to decline.

Smoke and Mirrors: The outline inaccurately counts existing ecosystem water and funding as “new” contributions. For example, it counts existing state funds and CVPIA Restoration Fund dollars as contributions of this negotiated agreement. In fact, restoration activity from these existing funds will continue with or without a Bay-Delta voluntary agreement. Further, the outline counts as VA contributions the environmental water that could be provided by storage projects funded by the California Water Commission. Again, these projects were underway well before this outline was developed and are unrelated to it. The outline also includes water contributions from districts that do not support this proposal.

Endless Delays: The recent VA outline is not a binding agreement, contains many fatal flaws and lacks a critical mass of support – even among water districts. Similar outlines were released in February of 2020 and December of 2018. Water districts have been promising to produce a comprehensive Bay-Delta voluntary agreement for over a decade. Given the many flaws in this framework and this long history of failure, the VA process now appears to be focused primarily on persuading the State Board to delay the adoption and implementation of new Bay-Delta standards, rather than producing a complete, scientifically credible and legally adequate proposal. We fear that legislative funding for this failed effort will be used – once again – to argue for more State Board delay. Had the State Board focused on the legally mandated process, it could long ago have implemented an updated Bay-Delta Plan.

The VA outline is not a credible or equitable alternative to action by the State Board to update and implement Bay-Delta flow requirements. We urge you to oppose dedicating funding for the VA process in the state budget. We also urge you to ensure that related funds in the budget, such as funds to support habitat restoration, include constraints to prevent agencies from using them to finance the VA. Instead, we urge you to ensure that the State Board has adequate funding to complete the task of updating and implementing the Bay-Delta Water Quality Control Plan.

Thank you for considering our views.

Sincerely,



Erin Wooley
Sierra Club California



Barbara Barrigan-Parrilla
Restore the Delta



Jon Rosenfield
San Francisco Baykeeper



Gary Bobker
The Bay Institute



Matt Holmes
Little Manilla Rising



Peter Drekmeier
Tuolumne River Trust



Ashley Overhouse
Friends of the River



Michael Martin
Merced River Conservation Committee

Allison and Dave Boucher

Allison and Dave Boucher
Tuolumne River Conservancy