

MEMORANDUM

To: VA Plenary Participants
From: Secretaries Jared Blumenfeld and Wade Crowfoot
Re: Voluntary Agreements Progress Report
Date: July 1, 2019

This memo provides a status report on our agencies' development of voluntary agreements (VAs) with water users, non-governmental conservation organizations and federal agencies. The VAs intend to implement updated water quality objectives for the Sacramento and San Joaquin Rivers and their tributaries, as well as the Sacramento-San Joaquin Bay-Delta, through a broad set of tools. The memo outlines progress to date and describes work in the coming months to complete and evaluate these agreements. This memo is intended to be shared with any and all stakeholders who are interested in following the development of the VAs.

State agencies and VAs participants have yet to decide whether this effort will culminate in a single proposed voluntary agreement or multiple agreements. In this document we refer to this proposal in the plural as voluntary agreements (VAs) for consistency; this is not intended to suggest a predetermination as to the final format.

Overview

Since Governor Newsom took office in January, we have helped to lead an effort to advance and evaluate the initial VAs framework presented to the State Water Resources Control Board (State Water Board) in December 2018. The VAs are being developed as an alternative mechanism to provide reasonable protection of native fish, wildlife and other beneficial uses as required by law and identified in the State Water Board's update to the Bay-Delta Water Quality Control Plan (Bay-Delta Plan).

The VAs seek to improve conditions for native fish and wildlife through targeted river flows and a suite of habitat-enhancing projects including floodplain inundation and physical improvement of spawning and rearing areas. The VAs aim to achieve these improvements while also balancing the needs of other beneficial uses identified in the Bay-Delta Plan, including municipal, domestic and agricultural water supplies, recreation, and navigation.

The VAs reflect a collaborative approach to water resources management and native fish and wildlife protection. Over the past six months, support for this effort has been reflected in extensive collaboration over hundreds of hours among the State Team,

Bureau of Reclamation and an array of stakeholders, including dozens of public water agencies and environmental conservation groups.

Our collective effort has involved clarifying the details of complex, interconnected 15-year agreements among dozens of parties to manage flows and restore habitat in the Sacramento and San Joaquin river systems, their tributaries and the Bay-Delta. The proposed VAs are currently being evaluated by the California Natural Resources Agency (CNRA), the California Environmental Protection Agency (CalEPA), the State Water Board, the Department of Water Resources (DWR) and the Department of Fish and Wildlife (DFW) (known collectively as the “State Team”) to determine whether they can provide reasonable protection for beneficial uses of Bay-Delta waters as required by law.

It is important to note that many environmental conservation groups participating in the process have raised concerns regarding the adequacy of the VAs flow and non-flow assets to achieve required outcomes. At the same time, many water users have expressed concerns about the prospect of being asked to contribute more assets beyond what was outlined in VAs presented to the State Water Board in December 2018.

On March 1, the Directors of DWR and DFW submitted two documents to the State Water Board:

1. An updated Project Description for the VAs that provided more detailed information about the assets being offered in the agreements, including water flows, funding, accelerated implementation of habitat improvements, and a science based decision-making process to manage flows.
2. A Planning Agreement to guide further work needed to complete the VA proposals. The Planning Agreement set a target date of June 30, 2019, to resolve several outstanding legal and policy questions regarding the proposed VAs and to further refine certain elements of the project description.

Status of the Voluntary Agreements

We are pleased to report substantial progress since March 1 to further develop and evaluate the VAs. Work has advanced through three primary work groups, each composed of representatives from the State Team, the Bureau of Reclamation, water agencies and environmental groups:

1. The **Assets to Outcomes Work Group** is identifying how the water flows, habitat and funding provided through the VAs—known as “assets”—could result in measurable, achievable outcomes that will reasonably protect native fish species and other beneficial uses. The goal of this work group is to provide the State Water Board with information necessary to determine whether the VAs’ assets will result in providing reasonable protection of the beneficial uses as required by law.

2. The **Governance, Science and Adaptive Management Work Group** is structuring a decision-making process that would govern implementation of the VAs to adaptively manage the water flows and habitat provided by the VAs. This group is designing a science program to track and report outcomes of the various assets and provide scientific information to support effective adaptive management. This collaborative decision-making approach utilizing real-time scientific monitoring could significantly improve our state's environmental management of these river systems.
3. The **Policy Work Group** is addressing critical path legal and policy questions, such as enforceability of the VAs' terms and appropriate amendments or updates to the Bay-Delta Plan that remain to be resolved. This work group has received extensive support from a Legal Work Group that drafted the Planning Agreement submitted March 1.

The work of each of these three groups is guided by a Plenary meeting of all groups participating in the VAs, which takes place every three weeks and is led by the Secretaries. Detailed below is the specific progress made in each work group, as well as outstanding work yet to be completed.

Assets to Outcomes Work Group

Since March 1, this work group has completed an enormous amount of work. First, it has clarified the complicated details regarding the water flows and habitat projects proposed by participating water agencies in each tributary; this clarification is essential for the State Team to analyze the VAs.

The work group has also discussed the methodology that will be used to analyze these assets and the outcomes they can be anticipated to produce, as well as an approach to comparing the outcomes generated by the VAs assets to the outcomes generated by the unimpaired flows proposed by the State Water Board staff.

Extensive discussion has taken place about how to analyze the water flow assets in the state's current analytical models, including CalSIM, SacWAM, and WSE.¹ The State Water Board released a preliminary baseline run for SacWAM and held a webinar to review the latest version of the model. DWR and the State Water Board have been working together to assure an understanding of potential differences between CalSIM and SacWAM representation of flow assets, and towards a comparison of baseline runs. These baseline runs are nearly completed, and substantial progress has been made on modeling the VAs and unimpaired flows.² Once completed, this work will make it possible to analyze and compare the modeled results of the flow assets in each of the

¹ CalSIM, which is a DWR model, and SacWAM and WSE, which are State Water Board models, all assess the effects of hydrologic changes in the Sacramento and San Joaquin River systems.

² These models are based on a monthly time step; other tools that can complement them by evaluating items like water temperature on a daily time step may be considered and integrated into the analysis as well.

tributaries and in the Delta, and will allow individual river systems to perform important analysis and understand parameters such as water temperature.

This work group has also clarified details of habitat enhancements proposed in the VAs so these assets can be analyzed for anticipated outcomes. Two different analytical tools will be used to evaluate the habitat assets– one in the tributaries and the other in the Delta. The first tool will assess the relationship between water flows and habitat improvement and expansion in each tributary and produce information to evaluate whether the combination of flow and non-flow measures meets specific suitability requirements and can support healthier native fish populations. The other Delta-focused tool utilizes a hydrodynamic model to evaluate the impacts of different variations of flow and habitat assets on various fisheries habitat indicators such as water depth, velocity, salinity, etc. Ultimately, the CalSIM and SacWAM hydrological analyses must be paired with these two habitat appraisal tools to produce an overall assessment of the VAs' combined flow and habitat approach and its ability to contribute to the Bay-Delta Plan's objectives.

The Assets to Outcomes workgroup is also developing biological and environmental targets (BETs) for the VAs to guide both finalization of the agreements and scientific monitoring and decision-making during the 15-year term of the agreements. Some BETs will establish compliance targets, which will define the intended contribution of the VAs towards meeting the legal and policy requirements of the Bay-Delta Plan. Other BETs will serve as benchmarks to track the success of the VAs by evaluating their effectiveness in improving the success of native fish and wildlife at different life stages and in different locations; understanding the response of native fish and wildlife; and improving scientific understanding throughout the watersheds. This work group will need to finalize BETs and integrate them into the governance, science and adaptive management program so they can inform the deployment of available assets to provide the greatest biological benefits. These activities will be completed in coordination with the Governance, Science and Adaptive Management Work Group.

In a separate but related process, the State Water Board is developing a set of biological goals as required by the current Bay-Delta Plan. These biological goals are broader and concern all implementation actions in the Bay-Delta watershed, including actions that are required for water rights holders who are not parties to a VA. The BETs developed through the VAs process will be integrated with the State Water Board's broader biological goals.

In the coming months, the work group will work closely with the State Team to explore further revisions to flow modeling and to discuss the results of analysis of flow and non-flow assets. This discussion is expected to yield a preliminary quantitative and qualitative assessment of the outcomes of the VAs and a description of how VAs outcomes compare with the outcomes expected from the State Water Board's unimpaired flow approach. This group will also need to finalize a set of biological and environmental targets, describe how these targets will be incorporated into the VAs, and inform the

drafting of a report to examine and articulate the scientific basis for the VAs approach to attaining required outcomes.

Governance, Science and Adaptive Management Work Group

This work group has made significant progress since March 1 developing recommendations for the governance and science program of the VAs. The description of the proposed VAs governance now includes:

1. Principles to guide how parties to the VAs will work together to implement the agreements;
2. A collaborative governance structure intended to balance regional capabilities and constraints in the tributaries and the Delta with a systemwide approach;
3. A consensus-oriented strategic planning and decision-making approach for the deployment of VAs assets that is intended to be science-based and transparent; and
4. A process for reviewing progress toward desired environmental and biological outcomes and recommending adjustments to the deployment of assets to achieve improved outcomes.

These recommendations have been informed by successful collaborative governance structures for shared water management in other areas of the country, which have been highlighted by consultants from Compass—a nationally recognized expert on water governance retained by this work group.

The updated VAs science program description includes functions and products that are intended to: track and report on the deployment of VAs assets and associated progress toward VAs targets; help reduce management-relevant uncertainties; and recommend adaptive management adjustments to the deployment of VAs assets (to the extent that the deployment of VAs assets is flexible).

Several important aspects of the VAs governance system are unresolved and require additional detail on the VAs assets and resolution of several key policy questions. These policy questions include, but are not limited to: 1) the State Water Board's role in VAs implementation; 2) how funding for habitat projects and science activities will be collected and allocated, and how state funding will be used; 3) whether there should be a single, master agreement for all parties or individual agreements, and who the signatories should be; and 4) what will happen if desired or required environmental outcomes (as defined by BETs) fail to materialize, despite compliance with deployment requirements for VAs assets. The Policy Work Group is the designated forum for discussion of issues and will be addressing them in coming weeks. While these questions are being discussed and resolved, this work group will further develop proposed governance structures and processes for specific tributaries and the Delta.

Policy Work Group

In February, a Legal Work Group was organized to draft the Planning Agreement submitted to the State Water Board on March 1. This Planning Agreement identified several critical path legal and policy issues that must be resolved to complete the proposed VAs. Accordingly, consensus on these issues is critical to successful VAs. In April, a Policy Work Group was formed that includes representatives of each tributary participating in the VAs and environmental conservation organizations to discuss and recommend to the Plenary aligned approaches on these important critical path issues.

The Policy Work Group has focused on five principal issues:

1. Whether the Bay-Delta Plan should be amended to include a new or modified water quality objective related to the viability of native fishes;
2. What assurances the State Water Board should provide that it will not require additional contributions of flows or funds from the parties during the term of the VAs;
3. How should the State Water Board enforce the commitments contained in the VAs;
4. How the VAs relate to non-settling parties; and
5. What happens at the end of the VAs' 15-year term.

Working closely with the State Team, the Policy Work Group met regularly in May and June to develop a document that identifies key options for resolving critical path issues and provides a brief policy rationale for each option. The Policy Group continues to meet weekly to discuss these options with the intent of coalescing around agreed-upon approaches.

Looking ahead, the stakeholders, through a regular plenary group meeting, will consider the Policy Work Group's options for resolving these issues. After resolution, the Legal Work Group will undertake drafting legally operative text for incorporation of these policy and legal issues into the VAs.

Schedule Moving Forward

Over the next three months, the three work groups will continue to discuss, develop and ultimately finalize needed components of the proposed VAs. The State Team will need to review the VAs in a comprehensive form, with each of these components inserted, to come to a collective conclusion as to whether the VAs can provide the reasonable protection of beneficial uses required by law.

By October of this year, the State Team expects to have the modeling and scientific analysis nearing completion and the governance and adaptive management structure in close to final form. Assuming the critical path policy and legal questions are also either resolved or close to resolution, the State Team should have enough information

on each of the component parts to determine the adequacy of the VAs by October 15.

If the State Team decides to recommend that the State Water Board consider the VAs in their current form, the State Water Board will proceed to complete the remaining analyses required by law. First, the scientific basis report being developed by the State Team with input from the Assets to Outcomes working group will be submitted for independent scientific peer review. On the current timeline, that process will be complete by the spring of 2020. During this time, the VAs parties will continue to make refinements to the biological and environmental targets.

Second, as contemplated by the Planning Agreement, the State Water Board will also need to complete environmental review of the VAs and the updated Water Quality Control Plan pursuant to the California Environmental Quality Act (CEQA). While this process will be time consuming, it will be a priority of the State Water Board to complete. On the current timeline, a draft CEQA document would be released for public comment in the summer of 2020, with a finalized document complete by the following year. With successful VAs in place, implementation of the updated Bay-Delta Plan could begin immediately thereafter.