

Draft VA Governance Program

Contents

Preface	i
Document Purpose	i
1 Draft VA Governance Program	1
1.1 VA Governance Principles	1
1.2 Systemwide and Tributary/Delta Governance Entities.....	2
1.2.1 Implementing Entities and Responsible Parties.....	3
1.2.2 Systemwide Governance Committee	3
1.2.3 Tributary/Delta Governance Entities	4
1.2.4 Science Committee.....	6
1.2.5 Flow Operations Team	7
1.2.6 State Water Board.....	7
1.2.7 Program Office	7
1.3 Governance Procedures.....	8
1.3.1 Systemwide Governance Committee Consensus-seeking Procedures	8
1.3.2 Systemwide Governance Committee alternative decision-making procedures in the event of non-consensus	8
1.3.3 Resolution of Disputes between Systemwide Governance Committee and Responsible Parties for Systemwide Measures.....	9
1.4 Annual and Triennial Reports	9

Preface

Document Purpose

This document is a preliminary draft of the Governance Program which, in final form, will be content for Exhibit D to the Global Voluntary Agreement (VA). The VA Parties provides this draft to the State Water Resources Control Board for information, as the Board prepares its Staff Report to update the Bay-Delta Plan. The VA Parties will update this document as necessary following the public review process, including to address comments received.

Consistent with the VA Governance Principles of inclusiveness, collaboration, transparency, accountability to outcomes, consensus-seeking, and informed decision making, the VA Parties strongly welcome the involvement of California Native American tribes and non-governmental organizations (NGOs) to further refine the development of the VA Governance Description.

1 Draft VA Governance Program

A Voluntary Agreements (VA) Governance Program will be established to direct Systemwide Measures, make recommendations regarding the deployment of Tributary/Delta Measures, conduct assessments, update the strategic plan, develop annual reports, implement a systemwide science program, and hire staff and contractors, consistent with applicable provisions of the VA. The “VA” will be a series of legal agreements, including a Global Agreement, Implementing Agreements, and Enforcement Agreements. These agreements (defined further in the Strategic Plan) will establish the measures, rights, and obligations with respect to the VA Program.

1.1 VA Governance Principles

Participants agree to keep the following principles in the forefront to guide how the VA Governance Program is developed and implemented:

- Inclusiveness and Collaboration
- Transparency
- Accountability to Outcomes
- Respecting Rights, Authorities and Obligations
- Certainty and Adaptability
- Consensus-seeking
- Science-based Decision Making
- Efficiency

Inclusiveness and Collaboration

The VA Governance Program will be inclusive, involving Participants in all aspects of planning and implementation. The Participants commit to working together in good faith, with integrity and a spirit of collaboration. They recognize each others’ constraints, acknowledge the need to address capacity limitations and the inherent uncertainty of biological outcomes, and will work together in a manner that acknowledges both their shared and individual interests and the purpose of the Bay-Delta Plan to provide for the reasonable protection of all beneficial uses.

Transparency

Transparency, on multiple fronts, will be a key means of building trust among the Participants and integrity in the VA Governance Program. Transparency will be reflected in all aspects of the VA Governance Program – decision making, science, budgeting and accounting. With respect to decision making and science activities, transparency means that information is accessible to the public with respect to: (1) decision-making processes, (2) the information or evidence used to inform decisions, and (3) the rationale for decisions. California Native American tribes shall have full control regarding the use and disclosure of cultural, traditional, proprietary, ecological knowledge, or any other tribal information they deem sensitive. In the VA Governance Program’s budgeting and accounting activities, transparency means that information is accessible to the public on: (1) who contributes to VA funds, (2) who receives VA funds, and (3) the use of the funds and current balance of unused funds.

Accountability to Outcomes

Participants acknowledge that time is of the essence and they are committed to achieving ecologically relevant outcomes to help halt and reverse the decline of native fish and wildlife, and contribute towards achieving viable populations of native species. The VA Governance Program will be action-oriented with a focus on deploying the portfolio of Flow and Non-flow Measures over the 8-year term of the VA to

contribute to the Bay-Delta Plan's Narrative Salmon Objectives and the proposed Narrative Viability Objective.

Respecting Rights, Authorities, and Obligations

The VA Governance Program will be consistent with all discretionary and administrative authority. Nothing in the VA Governance Program will be interpreted as requiring the Federal Parties, California Native American tribes, the State agencies, or any other entity to implement any action that is not authorized by, or is in conflict with, applicable law, State or federal regulation, or where sufficient funds have not been appropriated or provided for that purpose. The VA Parties expressly reserve all rights not granted, recognized, or relinquished in this agreement.

Certainty and Adaptability

The VA is intended to provide assurance and certainty to the VA Parties regarding Bay-Delta Plan regulatory obligations over the 8-year VA term. This certainty is coupled with a commitment of Flow and Non-flow Measures to be adaptively managed within the scope and terms of the VA and the Bay-Delta Plan, and according to defined planning and decision-making processes. A formal process for learning and adaptation over time is expected to lead to better, innovative, long-term solutions and outcomes for native fish and wildlife.

Consensus-seeking

Building on the principle of collaboration, the VA governance processes will be consensus-seeking, recognizing that consensus among the Participants facilitates implementation of management actions to contribute to the Bay-Delta Plan's Narrative Salmon Objectives and the proposed Narrative Viability Objective.

Science-based Decision Making

All plans and decisions in the VA Governance Program will be guided by the best available science and technical information on how to deploy Flow and Non-flow Measures to contribute to the Bay-Delta Plan's Narrative Salmon Objectives and the proposed Narrative Viability Objective.

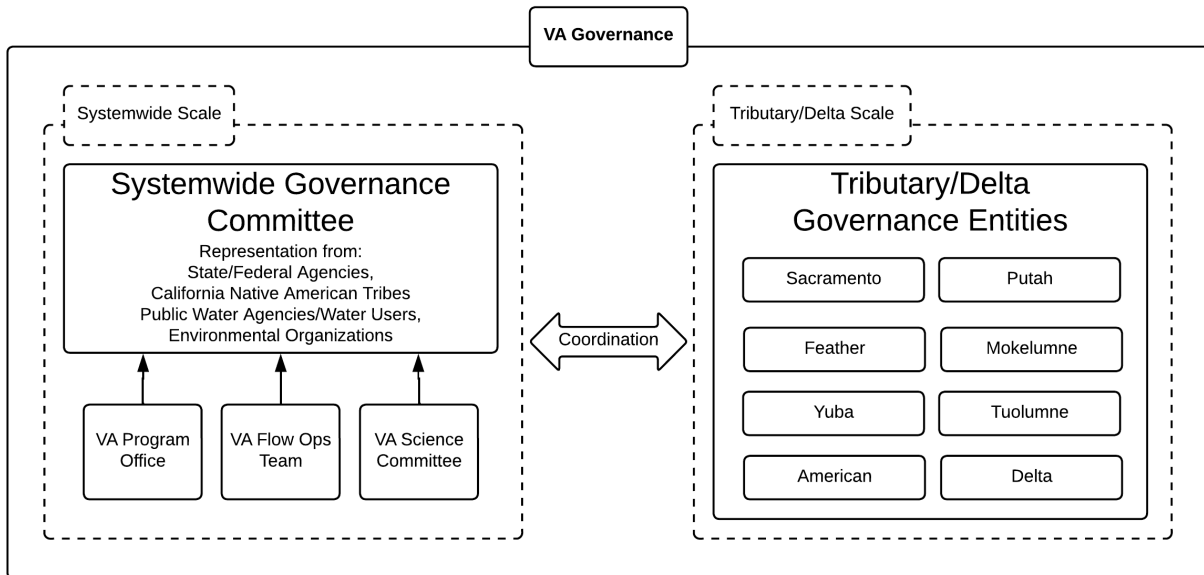
Efficiency

Broadly, being efficient means achieving the greatest benefit with the resources available, making timely decisions and avoiding duplication of effort. The Participants acknowledge that there are numerous existing entities across the Bay-Delta Watershed that have planning processes and science programs in place. To the extent possible, the VA Governance Program will coordinate with existing entities to avoid duplication and be resource efficient.

1.2 Systemwide and Tributary/Delta Governance Entities

VA Participants will establish a Systemwide Governance Committee to implement the VA Governance Program. In addition, the parties to each Tributary/Delta Specific Agreement will establish or identify a Tributary/Delta Governance Entity (Figure 1). The Systemwide Governance Committee will be supported by a Program Office, Flow Operations Team, and a Science Committee. The roles and responsibilities for the Systemwide Governance Committee, the Trib/Delta Governance Entities, and other entities are described further in the following sub-sections.

Figure 1: VA Governance Structure



1.2.1 Implementing Entities and Responsible Parties

Implementing Entities are the entities that commit to implement VA Flow or Non-flow Measures, as shown in the relevant Implementing Agreements.

The Implementing Entities will vary depending on the measure being deployed. VA Parties that will be Implementing Entities for Flow and Non-flow Measures include: the U.S. Bureau of Reclamation, the California Department of Water Resources, and other Public Water Agencies or water purveyors with legal authority to implement measures and that have signed an Implementing Agreement.

Responsible Parties are a subset of Implementing Entities that have signed Enforcement Agreements and thus have regulatory obligations to implement specified measures.

1.2.2 Systemwide Governance Committee

The primary responsibilities of the Systemwide Governance Committee will be:

- **Decision Making:**
 - Manage the VA Science Program and Systemwide Measures, consistent with the terms of applicable Voluntary Agreements.
 - Make recommendations to Responsible Parties for deployment of Tributary/Delta Measures.
 - Make administrative decisions regarding the Program Office (e.g., Executive Director hiring, Program Office budgets).
- **Reporting:** Oversee Triennial Reports every 3 years beginning in Year 3 as provided in Section 1.4.
- **Strategic Planning:** Update the Strategic Plan on the deployment of Flow and Non-flow Measures and science priorities and provide oversight for the implementation of the Strategic Plan.
- **Coordination:** Provide a venue for the overall coordination of the VA Governance Program.
- **Consistency:** Assure that implementation of the VA Governance Program is consistent with the terms of applicable Voluntary Agreements.

Systemwide Measures, Tributary/Delta Measures and Systemwide Planning

Systemwide Measures are Flow and Non-flow Measures that are not tightly constrained, and therefore can be deployed for the greatest overall benefit as assessed at the scale of the Bay-Delta Watershed by the Systemwide Governance Committee. Tributary/Delta Measures are the Flow and Non-flow Measures that can be implemented at the discretion of the VA Party that committed the measures as long as that implementation is consistent with the Enforcement Agreements.

The Systemwide Governance Committee will focus evaluation and deliberation on those measures and science activities that are appropriate for planning at the systemwide-scale (i.e., Systemwide Measures and science, and any Tributary/Delta- Measures that are being offered for planning at the systemwide-scale) and are necessary for accomplishing systemwide metrics and outcomes.

The Systemwide Governance Committee does not have the authority to direct actions inconsistent with the Enforcement Agreements, which will establish the enforceable obligations of specific VA Parties.

A Charter for the Systemwide Governance Committee will be developed. This Charter will, among other things, (a) identify the goals and objectives of the VA Governance Program, (b) describe the membership of the Committee, (c) establish procedures for adding and removing members, (d) establish meeting guidelines, a schedule, and other related content, (e) identify the Tributary/Delta Measures for which the Systemwide Governance Committee will make recommendations, and (f) define voting procedures.

Consistent with the VA Governance Principles of inclusiveness, collaboration, transparency, accountability to outcomes, consensus-seeking, and informed decision making, a wide range of VA Parties, California Native American tribes, non-governmental organizations, and other interested parties will be eligible for membership in the Systemwide Governance Committee.¹ The State Water Board will designate a representative to participate in the Systemwide Governance Committee as an advisory resource but will not be a voting member.²

Membership on the Systemwide Governance Committee will not trigger or otherwise cause a delegation of authority or obligation from a member of the Systemwide Governance Committee to the Systemwide Governance Committee or any member of the Systemwide Governance Committee. The specific roles and level of involvement in implementing actions are defined either by existing statutory or regulatory authorities of each member or by provisions set out in the Voluntary Agreements. The Systemwide Governance Committee will not have legally enforceable responsibility for implementation.

1.2.3 Tributary/Delta Governance Entities

The parties to each respective Tributary/Delta Voluntary Agreement will establish its governance structure. The primary responsibilities of each respective Tributary/Delta Governance Entity with responsibility for implementing a VA will be:

- **Implementation:** Implement the Voluntary Agreement(s) or any portion thereof for which that entity is responsible.
- **Reporting:** Provide reports annually to the Systemwide Governance Committee and the State Water Board as provided in Section 1.4. Reports may also be provided directly to the State Water Board as it

¹ The specific process for determining who is eligible to become a member will be defined in the Systemwide Governance Charter.

² State Water Board oversight and enforcement of the Voluntary Agreement is as described in the Plan of Implementation and through the Government Code Agreement.

pertains to specific permits or requirements for that tributary separate from VA implementation and commitments.

- **Decision making:** Participate actively in the Systemwide Governance Committee and provide background and status of resources and projects to inform and improve overall strategic planning and systemwide decision making.

Tributary/Delta Governance Entities will coordinate with the Systemwide Governance Committee as necessary. The structures of the Tributary/Delta Governance Entities will vary as summarized in Table 1 and each Tributary/Delta Governance Entity will exercise varying degrees of influence over how each Responsible Party will deploy the Flow and Non-flow Measures it controls. Some of these entities are existing entities that will expand their current scope of activities to include implementation of the Voluntary Agreements.

Tributary/Delta governance entities will not have legally enforceable responsibility for implementation.

Table 1. Tributary/Delta Governance Entities

Tributary/Delta	Current Status of Tributary/Delta Governance Entity
Sacramento River	On the Sacramento River, there are several different organizations that are engaged and active, however, none of those currently have broad representation and decision making structure. The Sacramento River Settlement Contractors (SRSC) have been working toward formation of a governance body that would include water users, government agencies and interested parties.
Feather River	Upon issuance of the FERC license for the Oroville Facilities, DWR will be required to create a Feather River Operations Group (FROG) that will be composed of representatives from at least DWR, NMFS, USFWS, and CDFW. One objective of the FROG is to provide recommendations for coordination of Feather River flows, flows with fish releases, and flows for green sturgeon. The FROG could function as an appropriate forum to make release recommendations for the VA Flow Measures. However, a governance body would still need to be formed to include water users and interested parties and to implement VA Non-flow Measures, consistent with VA governance principles.
Yuba River	For the Tributary Specific Agreement Flow Measures, the Yuba Accord provides the background framework for planning, management, and verification of Yuba River flows. The Tributary Specific Agreement structure and process will be consistent with the Yuba Accord Water Purchase Agreement accounting and coordination provisions, with the primary parties being the Yuba Water Agency (YWA) and CDWR. YWA, CDWR and CDFW will establish a management team for Tributary Specific Agreement Non-flow Measures. A Yuba River Habitat group may be created to provide advice regarding implementation of the VA.
American River	For the American River, VA implementation will involve the existing Water Forum governance, which was established with the Water Forum Agreement (2000). The Water Forum makes decisions through a quad-cameral supermajority of their Water, Environmental, Public, and Business Caucuses.
Putah Creek	For the Tributary Specific Agreement Flow and Non-flow measures, the Solano County Water Agency (SCWA) is the Responsible Party and will serve as the Tributary Governance Entity. Flow measures will be deployed above to the Putah Creek Accord of 2000 (Accord) baseline flow regime to protect and enhance regional system functional flow needs. SCWA will recommend VA flow deployment regimes

Tributary/Delta	Current Status of Tributary/Delta Governance Entity
	based on real-time conditions and consider recommendations for VA flow deployment requested through the Systemwide Governance Committee. SCWA is the lead agency for CEQA and permitting for implementation of Putah Non-flow measures. The Lower Putah Creek Coordinating Committee (LPCCC) was formed by the settlement parties in 2000 to administer the terms of Accord. Non-flow measures will be implemented by SCWA as funding becomes available and issuance of necessary implementation permits, with logistical support of the LPCCC.
Mokelumne River	For the Tributary Specific Agreement, implementation will involve governance under the existing Mokelumne River Partnership established under the Mokelumne Joint Settlement Agreement (1998). The Partnership includes EBMUD, CDFW, and USFWS, with input from NMFS. It consists of a three tiered system for technical collaboration and consensus-based decision making and signatory authority .
Tuolumne River	Upon issuance of a FERC license for the Don Pedro and La Grange Projects, MID and TID will form the Tuolumne River Partnership Advisory Committee (TRPAC) which shall include USFWS, CDFW, SFPUC, MID and TID as initial members; other resource agencies will be invited to actively participate. The TRPAC will provide advice regarding the selection and design of individual habitat projects and the management of spill to benefit salmonids. The TRPAC could function as an appropriate forum for implementing the Tuolumne River VA, including consideration of recommendations from the Systemwide Governance Committee.
Sacramento-San Joaquin Delta	The Collaborative Science and Adaptive Management Program’s (CSAMP) Collaborative Adaptive Management Team (CAMT) is one potential Delta Governance Entity for the VA. CAMT includes water users, agencies, and interested parties, and currently supports science and structured decision-making activities.

1.2.4 Science Committee

The primary role of the Science Committee will be to guide and support the implementation of the Systemwide Governance Committee’s science and technical priorities. The Science Committee will report to the Systemwide Governance Committee. The Science Committee will be composed of technical and science representatives of all Systemwide Governance Committee members and will form subcommittees or technical task teams as needed.

The primary responsibilities of the Science Committee in connection to the Systemwide Governance Committee will be:

- **Strategic Planning:** Provide scientific and technical analysis support to the Systemwide Governance Committee’s strategic planning activities and Tributary/Delta Governance Entity planning processes as applicable.
- **Science Program:** Under the direction of the Systemwide Governance Committee, and in close coordination with the Program Office, plan and coordinate the systemwide science activities in the VA Science Program in accordance with the Strategic Plan, Tributary/Delta science plans, and in coordination with existing entities.
- **Reporting:** Coordinate and synthesize all systemwide monitoring and research under the VA Science Program, assess progress relative to implementation metrics and habitat suitability and utilization metrics, review and synthesize results to inform ongoing adaptive management and Strategic Plan updates.

1.2.5 Flow Operations Team

The Flow Operations Team will be composed of water operational staff from each of the Implementing Entities with a role in implementing or coordinating Systemwide Flow Measures. The Flow Operations Team will report to the Systemwide Governance Committee.

The Flow Operations Team's primary responsibilities will be:

- **Planning:** Provide advice to the Systemwide Governance Committee and the Tributary/Delta Governance Entities on the feasibility, options and risks of possible deployments of Systemwide Flow Measures based on water supply conditions and system operations constraints.
- **Coordination:** Support coordination of Systemwide Flow Measures in real-time operations, and provide support with accounting and documenting of Systemwide Flow Measure deployment on an annual basis.

1.2.6 State Water Board

The State Water Board will be signatory to Enforcement Agreements, which establish the enforceable obligations for implementation.

State Water Board staff will participate in the Systemwide Governance Committee but will not be a voting member. State Water Board staff will also provide technical staff to participate in the Science Committee and the Flow Operations Team. The role of State Water Board staff will be to provide advice on compliance with the Bay-Delta Water Quality Control Plan.

The State Water Board will incorporate the annual and triennial reporting and the Strategic Plan developed by the Systemwide Governance Committee into their triennial review to meet requirements of the Federal Clean Water Act (33 U.S.C., § 1313, subd. (c)(1)) and Water Code section 13240, the Central Valley Regional Water Quality Control Board (Regional Water Board).

1.2.7 Program Office

The Program Office will report directly to the Systemwide Governance Committee and will be a neutral entity responsible for the ongoing implementation and administration of the systemwide VA Governance Program. The Program Office will have an Executive Director who has the authority to hire staff as necessary, subject to budget limitations as set by the Systemwide Governance Committee. The Program Office will also have a Science Manager who will support the Science Committee to implement the VA Science Program. Other supporting staff positions could be developed as required.

The primary responsibilities of the Program Office will be:

- **Strategic Planning:** Coordinate development of the Strategic Plan and provide guidance to the Systemwide Governance Committee, with Science Committee support, on science and adaptive management. Coordination on plans, permitting for non-flow measures and activities will be needed across Tributary/Delta Governance Entities and the VA Science Program.
- **Systemwide Governance Committee Meeting support:** Provide administrative and facilitation services for all Systemwide Governance Committee meetings, including meetings of Systemwide Governance Committee's sub-committees/teams (e.g., Science Committee, Flow Ops Team) and any other meetings/workshops convened by the Systemwide Governance Committee.
- **Work planning and financial administration:** Develop Program Office annual work plans and budgets for Systemwide Governance Committee approval and administer the Program Office's budget to implement work plans, including managing staff and contracts.

- **Reporting:** Develop consolidated annual and triennial reports incorporating input from the Tributary/Delta Governance Entities for Systemwide Governance Committee approval and for submittal to the State Water Board.
- **Issue Management:** Document systemwide issues constraining schedule and effective implementation of Systemwide Measures, for use in making recommendations to the Systemwide Governance Committee.

1.3 Governance Procedures

1.3.1 Systemwide Governance Committee Consensus-seeking Procedures

The Systemwide Governance Committee will be consensus-seeking for all decisions and recommendations. Consensus-seeking means that the Systemwide Governance Committee members will strive for, but not require, unanimous agreement. The Systemwide Governance Committee members acknowledge that there are tough choices to be made and that full agreement may not always be possible. Systemwide Governance Committee members will first and foremost work in good faith to reach full agreement. If full agreement is not reached after reasonable effort, alternative decision-making processes will be used that are described in Section 1.3.2 and are consistent with existing legal rights, authorities, and obligations.

The Program Office will play a critical role in facilitating consensus through presenting proposals or options to the Systemwide Governance Committee that incorporate the viewpoints of all members and through iteratively improving proposals/options to better address competing interests.

The Systemwide Governance Committee will engage in two types of decision making: (1) recommendations on Tributary/Delta Measures (e.g., recommendations to Tributary/Delta Governance Entities and/or Responsible Parties); and (2) decisions related to Systemwide Measures. In either type of decision making, or when appropriate, the Systemwide Governance Committee will seek to build consensus on a preferred course of action among all members. Proposals to the Systemwide Governance Committee for how to deploy Flow and Non-flow Measures will originate in the VA Science Committee or through the Tributary/Delta Governance Entities.

1.3.2 Systemwide Governance Committee alternative decision-making procedures in the event of non-consensus

The expectation is that non-consensus will be rare because Systemwide Governance Committee members will participate in accordance with the governance principles that emphasize inclusiveness, collaboration, consensus-seeking and informed decision making. However, if after reasonable effort, consensus on a decision cannot be reached, the Systemwide Governance Committee will undertake the alternative decision-making processes. “Reasonable effort” means that the Systemwide Governance Committee members have made honest and earnest attempts, commensurate with the magnitude of the decision, to address the specifically identified deficiencies of a proposal relative to the underlying interests of all members. Usually this requires some degree of iteration through identification of the interests, development of solutions to better address them, and re-assessment of the proposal.

The alternative decision-making procedure will occur within 7 business days of the failure to reach consensus. The alternative decision-making procedure used depends on the nature of the proposal. If an agreement cannot be reached for:

- **Recommendations on Proposals for Tributary/Delta Measures** → proposals will go back to the Responsible Party without a recommendation. The Program Office will document the perspectives of

the Systemwide Governance Committee and provide the information to the Responsible Party to inform their decision-making process.

- **Decisions on Proposals for Non-flow Measures funded through alternative funding sources** → decision goes back to entity(ies) that is/are provider of funding. The Program Office will document the perspectives of the Systemwide Governance Committee and provide the information to the funding entity(ies) to inform their decision-making process.
- **Decisions on Proposals for Systemwide Flow and Non-flow Measures, Science and Habitat Fund and All Other Systemwide Decisions** → decisions will go to a vote by the Systemwide Governance Committee to determine whether the proposal is accepted. The specifics and requirements of the voting procedure will be defined in the Systemwide Governance Committee Charter.

1.3.3 Resolution of Disputes between Systemwide Governance Committee and Responsible Parties for Systemwide Measures

For the purposes of this section, a “dispute” shall be deemed to have arisen when a disagreement between the Systemwide Governance Committee and Responsible Party still exists related to Systemwide Measures after they have attempted to resolve the disagreement through the standard decision-making procedures. In the event of such a dispute, the following process will be employed to resolve the dispute.

The Dispute Resolution process will in no way limit any legal or equitable processes or remedies otherwise available to the parties. The Dispute Resolution process will in no way bind or limit the discretion afforded to any party by law, internal resolution, or policy.

When a Responsible Party determines it cannot implement a Systemwide Measure consistent with the recommendation of the Systemwide Governance Committee, the Responsible Party shall notify the Systemwide Governance Committee, which shall convene a meeting of appropriate representatives. At the meeting, the participants shall identify options to resolve the matter. If no resolution is found, then the respective parties may jointly consult the State Water Board or other regulatory agency for guidance.

If the regulatory agency responsible for the obligation provides guidance that the Systemwide Measure cannot be implemented as recommended by the Systemwide Governance Committee without affecting compliance by the Responsible Party, then the direction of the Systemwide Governance Committee will not be implemented.

If the regulatory agency with authority over the obligation provides guidance that the Systemwide Governance Committee’s recommendation can be implemented without affecting compliance, then the Responsible Party will implement the measures unless it disputes the guidance.

1.4 Annual and Triennial Reports

The Tributary/Delta Governance Entities will prepare Annual Reports of their implementation of the VAs in the preceding year. The Systemwide Governance Committee will compile and integrate these reports for annual submittal to the State Water Board.

The annual reports will:

- inform adaptive management.
- be technical in nature, identify actions taken, monitoring results, and milestones achieved.
- document status and trends of native fish.

- document whether commitments for VA Flow and Non-flow measures are being met. Commitments will be documented using a State approved accounting methodology and validated to be true and correct by a third party independent registered professional engineer.
- document progress toward completion of VA habitat restoration projects. Each report will document permit success in terms of applications submitted, processing timelines, and permits obtained.
- document efforts to seek new funding to support program.

In Years 3 and 6, and subsequently as applicable, the Systemwide Governance Committee will prepare a Triennial Report to analyze progress across the Delta watershed and, in coordination with the Tributary/Delta Governance Entities, will submit these reports to the State Water Board.

The State Water Board will hold a public informational workshop on the VAs following receipt of each Triennial Report.