

Working Meetings on Draft Sacramento/Delta Updates to Bay-Delta Plan

Working Meeting #7: Provisions for
Continuation, Modification, or Termination
of Voluntary Agreements (VAs)



February 13, 2025

Attendees

Welcome to Today's Meeting

- Facilitator
 - Caelan McGee, Zephyr Collaboration
- Presenter
 - Diane Riddle and Dr. Sam Bashevkin, Division of Water Rights
- Additional Board staff from the Division of Water Rights and Office of Chief Counsel providing support
- One or two Board members may attend to observe but are not otherwise planning to participate or provide input

Reminders

Format

- 2-hour staff-led virtual meeting
- Staff will present key questions (provided in advance) and slides relevant to today's topic to guide discussion
- Focus only on the major provisions relevant to today's topic
- Participants must raise hand by using hand icon in Zoom or dialing *6 on phone if calling in and wait to speak until you are called upon

Participation Guidelines

- Use appropriate and respectful dialogue
- Stay on topic
- Share speaking time considerately
- Be as concise and specific as possible
- Be open to listening to and understanding different perspectives
- Review relevant sections of draft plan in advance
- Designate point person to speak on group's behalf, if possible
- Provide constructive input
- Avoid general comments

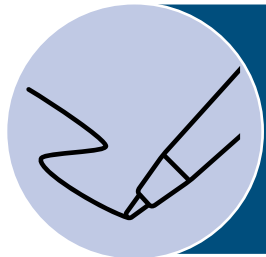
Purpose of Today's Meeting



Discuss the provisions for the continuation, modification or termination of the VAs in the October 2024 draft Bay-Delta Plan* updates



Hear constructive input on whether and what changes should be made to specific provisions and concepts, if any



Share input with Board to inform development of revised draft Bay-Delta Plan for additional public review and comment

**Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed*

Guiding Questions

- 1) What, if any, modifications should the Board consider to the default process to continue, modify, or terminate the VAs (p. 103)?
- 2) What, if any, modifications should the Board consider to the list of items the Board would consider in determining whether to continue, modify, or terminate the VAs (pp. 103-104)?
- 3) What, if any, modifications should the Board consider to the criteria for the red, yellow, green light determinations (pp. 104-105)?
- 4) What, if any, modifications should the Board consider to the process for considering whether to modify or terminate the VAs as part of annual and periodic review processes (pp. 105-106)?

Provisions to be Discussed Today

- Default processes and Board considerations to determine the continuation, modification or termination of the VAs at year 8
 - Green, yellow, and red light criteria
- Possible modification or termination of the VAs as part of the annual and periodic review processes before or after year 8
 - VA Parties' Failure to or Inability to Implement VA Commitments
 - Significant Evidence that Continuing Implementation of the VAs Will Not Provide Reasonable Protection of Beneficial Uses or Will Jeopardize the Continued Survival of Native Fishes

Continuation, Modification, or Termination of the VAs

- Prior to a decision to extend, modify, or terminate the VAs, Board staff would produce a draft recommendation with supporting rationale that will be subject to a minimum 45-day public review and comment period
- Based on public comments, the draft recommendation would be updated, provided to the Delta Independent Science Board for review and input, and then a final staff recommendation, along with any recommendations from the Delta Independent Science Board, would be brought to the Board for consideration at a public Board meeting

Default Processes for Continuation, Modification, or Termination of the VAs

- Upon receipt of a request for extension at year 6, the Board would initiate a process to evaluate the VAs for consideration of extending them beyond the initial eight-year term, including with possible modifications
- Board would solicit public comments and hold a public workshop to discuss the possible extension and modification of the VAs, including information regarding the effectiveness of the VAs at achieving the narrative ecosystem and salmon protection objectives
- Following the public workshop, the Board would act on the request for VA extension or modification to determine whether to extend the VAs after year 8
- Board would consider the green, yellow, and red light criteria to determine the continuation, modification, or termination of the VAs

Board considerations to determine whether to continue, modify, or terminate the VAs

- i. Whether the VA parties timely and fully provided VA flow and non-flow commitments consistent with the State Water Board approved accounting protocols
- ii. Whether the monitoring, science, reporting, and other requirements were met
- iii. The VA parties' synthesis of the most current science and analyses of the effects of implementation of the VAs, including evaluation of the VA hypotheses, the habitat suitability assessments, the habitat utilization and biological effectiveness assessments and the ecological outcomes analysis

Board considerations to determine whether to continue, modify, or terminate the VAs cont.

- iv. Public comments and analyses on the effectiveness of the VAs
- v. The status and trends of native fishes and other aquatic organisms
- vi. Whether the periodic reports or other sources of reliable information indicate that factors outside of the VAs are impairing the ability to achieve the narrative ecosystem protection objective and narrative salmon protection objective by 2050
- vii. Whether the VA flows have been adequately protected

Board considerations to determine whether to continue, modify, or terminate the VAs cont.

- viii. Whether funding has been available for the VAs and additional funds are available to continue the VAs
- ix. The past, present and probable future beneficial uses of water
- x. The environmental quality characteristics of the Bay-Delta watershed, including the quality of water available thereto
- xi. Water quality conditions that could reasonably be achieved through the coordinated control of all factors that affect water quality in the Bay-Delta watershed
- xii. Economic considerations

Green Light Criteria

- Board may approve continuation of the VAs without any substantial modification if the below criteria are met:
 - VAs provided flow and non-flow commitments substantially consistent with Board-approved accounting protocols, and the monitoring, science, reporting, and other Bay-Delta Plan requirements have been fulfilled
 - VAs are substantially achieving the VA metrics and targets, including biological effectiveness, habitat suitability, and habitat utilization criteria; and the ecological outcomes analysis and other relevant information support the conclusion that continuing the VAs will contribute the VA parties' responsibility toward attainment of the narrative ecosystem protection and salmon protection objectives by 2050

Yellow Light Criteria

- Board may approve continuation of the VAs with modification if the below criteria are met:
 - VAs provided flow and non-flow commitments substantially consistent with Board-approved accounting protocols, and the monitoring, science, reporting, and other requirements of the Bay-Delta Plan have been fulfilled
 - VAs are meeting a significant number of VA metrics and targets, including biological effectiveness, habitat suitability, and habitat utilization criteria; and the ecological outcomes analysis and other relevant information support the conclusion that continuing the VAs, with modifications, will contribute the VA parties' responsibility toward attainment of the narrative ecosystem protection and salmon protection objectives by 2050

Red Light Criteria

- If the Board concludes that the VAs are not achieving the conditions for the green or yellow light determinations it would do one of the following:
 - Determine that the VA water rights are subject to the regulatory provisions, including the new Sacramento/Delta inflow and cold water habitat and inflow-based Delta outflow provisions
 - Determine that modifications to the regulatory provisions are needed and pursue appropriate processes to update the Bay-Delta Plan

Annual and Periodic Review

- Draft plan identifies processes for regular periodic and annual reviews
- Board required to periodically/triennially review Water Quality Control Plans pursuant to Porter Cologne/Clean Water Act to determine any needed changes to plans to provide for reasonable protection of beneficial uses of water
- Draft plan includes annual reviews to assess progress and address annual planning and review needs

Possible Modification or Termination of VAs as Part of Periodic/Annual Review Processes

The Board will use the default process unless, consistent with the Board's periodic review obligations, there is a need to consider modification or termination of the VAs and associated components of the Bay-Delta Plan and its implementation before year eight due to:

- 1) the VA parties' failure or inability to implement VA commitments as described in the VAs and associated Bay-Delta Plan provisions; or
- 2) significant evidence that continuing implementation of the VAs will not provide reasonable protection of beneficial uses or will jeopardize the continued survival of native fishes

VA Parties' Failure to or Inability to Implement VA Commitments

- Board may consider modification or termination of the VAs, including components of the VAs or the VAs as a whole, before year eight due to a lack of compliance
- Board would first conduct a public workshop and solicit public comments, including as part of annual or periodic review processes, to assess whether the VA parties have fulfilled the commitments described in the VAs
- Board may allow additional time for the VAs to come into compliance before considering the need for modifications to or termination of the VAs

VA Parties' Failure to or Inability to Implement VA Commitments

- Modification or termination of the VAs for compliance issues include any of the following reasons:
 - I. Failure to implement the VA flow, habitat, funding, monitoring, science, or other provisions consistent with this program of implementation; or
 - II. Withdrawal of a party or parties from the VAs
- In considering whether to modify or terminate under this section, the Board would endeavor to preserve the VA pathway for those VA parties who have met their commitments

Significant Evidence that Continuing Implementation of VAs Would Not Reasonably Protect Beneficial Uses

- As part of periodic review processes, the Board may consider modifying or terminating the VAs before year 8 based on significant evidence that continuing the VAs will not provide reasonable protection of beneficial uses or jeopardize the survival of native fishes
- Assessment subject to a minimum 45-day public review and comment period
- Draft assessment updated based on public comments and provided to Delta Independent Science Board (DISB) for review and input, final staff recommendation, and any DISB recommendations brought to Board for consideration at a public meeting
- If Board determines that significant evidence supports conclusion that continuing the VAs will not provide reasonable protection of beneficial uses or will jeopardize continued survival of native fishes, Board may modify or terminate the Bay-Delta Plan's VA pathway through a Bay-Delta Plan amendment

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Next Meeting

Jan. 28	<i>Inflow Objective and Program of Implementation</i>	Feb. 13	<i>Provisions for Continuation, Modification, or Termination of VAs*</i>
Jan. 29	<i>Cold Water Habitat Objective and Program of Implementation</i>	Feb. 19	VA* Habitat Commitments and Accounting Provisions
Jan. 30	<i>Inflow-Based Delta Outflow Objective and Program of Implementation</i>	Feb. 20	<i>Monitoring and Evaluation for VA* Provisions</i>
Feb. 4	<i>Methodology to Determine Water Unavailability and Implement Bay-Delta Plan</i>	Feb. 27	<i>VA* Flow Commitments and Accounting</i>
Feb. 5	<i>Monitoring and Evaluation for Regulatory Provisions</i>	Mar. 4	<i>Tribal Provisions</i>




Register via links provided in January 3 letter:

www.waterboards.ca.gov/bay_delta/docs/2025/ltr-baydeltaplan-workmtgs.pdf

**Voluntary Agreements, also referred to as the Healthy Rivers and Landscapes Proposal*

Resources and Contact Information

- Sacramento/Delta Update to Bay-Delta Plan: waterboards.ca.gov/bay_delta/comp_review.html
- Proposed VAs: waterboards.ca.gov/bay_delta/proposed_voluntary_agreements.html
- Bay-Delta Watershed: waterboards.ca.gov/bay_delta/
- Email: SacDeltaComments@waterboards.ca.gov

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*Email Address