



July 12, 2019

Mr. Jared Blumenfeld
 Secretary for Environmental Protection
 California Environmental Protection Agency
 P.O. Box 2815
 Sacramento, CA 95812-2815

Mr. Wade Crowfoot
 Secretary, California Natural Resources
 Agency
 1416 Ninth Street, Suite 1311
 Sacramento, CA 95814

Secretaries Blumenfeld and Crowfoot,

The above water agencies, who comprise the majority of the participants in the Voluntary Agreements process to update the State Water Resources Control Board's Bay-Delta Water Quality Control Plan, are very concerned about the current Endangered Species Act (ESA) provisions in Senate Bill 1 (Atkins). In our view, these provisions, if not amended, would undermine our collective efforts to participate in and help advance the Voluntary Agreements, leading to further declines in fish and wildlife and water supply reliability throughout California.

While we understand the stated intent of the bill, the onerous provisions of the ESA section will undermine our progress on Voluntary Agreements, and most importantly, the ongoing efforts to improve conditions for fish and wildlife while providing reliable water supplies for cities, rural communities, and farms throughout California. As such, we encourage you and the Administration to work with the bill's author to amend this section.

While SB 1 proposes to maintain the status quo of regulatory protections for the environment, natural resources, and public health, it fails to recognize that in the case of the Bay-Delta watershed (which includes all of the Sacramento and San Joaquin basins), the regulatory status quo is based on decades-old science. Our agencies have worked tirelessly to voluntarily conduct research, pilot projects, numerous enhancements for fish and wildlife, and other activities to support a paradigm shift in how we manage water resources for multiple uses, including for people and the environment. As you know, our hope is that we can finally start to manage our water resources in a manner that is responsive to actual conditions, including climate change and its associated whiplash events, and to emerging information as research helps us to better understand how to adjust activities to protect fish and use water more efficiently.

Despite the existing provision that the bill “does not affect the process by which voluntary agreements are entered into,” the current ESA provisions in SB 1 run counter to our efforts on the Voluntary Agreements and they point California backwards. As an example, SB 1 seeks to treat 10-year old biological opinions as a protective standard, regardless of the current understanding or information and science that will continue to emerge. It circumvents our robust regulatory processes, which are on the verge of expanding the ability to implement true adaptive management.

If SB 1 is enacted with the currently drafted ESA provisions, it would send a signal that adaptive management, and adjustments over time to incorporate our collective learning, are unnecessary. If true, there is no sense in implementing the Voluntary Agreements which are predicated on the ability to test hypotheses, make adjustments over time, and work collaboratively to achieve the best outcomes possible with our collective resources. Additionally, it would create confusion and conflict between federal and state agencies and water agencies over state regulations that would be required to replace baseline federal standards that may be changed or eliminated. It would create a situation under which the Central Valley Project (CVP) and State Water Project (SWP) would arguably be operating under two different sets of permitting regimes, which would create unnecessary conflict in water management decision making and risk causing operational disruption in the Delta. The net result is that it would make implementation of future Voluntary Agreements virtually impossible.

We appreciated the Governor's call in the State of the State address that “our collective effort must be to cross the finish line on real agreements to save the Sacramento-San Joaquin Bay-Delta. We must get this done for the resiliency of our mighty rivers, for the stability of our agricultural sector, and for the millions of people that depend upon this water every day.” We also appreciate the Administration's continued high-level engagement on the Voluntary Agreements which are the best chance for timely, science-based adaptive management that can change the current trajectory for many threatened and endangered species.

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Now is the time for all of us to work together and move forward to implement the Voluntary Agreements in a progressive and innovative manner. To do this, we encourage you to work with the author's office to amend the ESA section by striking the provision relating to biological opinions and incidental take permits, as well as striking the provision that attempts to apply the California Endangered Species Act to the Central Valley Project. Failure to resolve these issues will force Governor Newsom into an unnecessary choice between upending the Voluntary Agreements and the best chance for species recovery in the Delta and its tributaries, or failing to uphold other environmental, public health, and worker protections for the people of California. That's a choice no Governor should have to make.

The amendments described above will allow the state to respond to changes in the status of threatened and endangered species, and will enable SB 1 to achieve its goal to protect California's environment from any future rollbacks in federal standards. The future of California water and species recovery in the Delta and its tributaries depend on the Administration, the Legislature, and water and environmental stakeholders finding a path that will allow the Voluntary Agreements to achieve the promise of a fresh approach to water management in California.

We look forward to working with you in this vitally important effort.

cc: Christine Hironaka, Deputy Cabinet Secretary, Office of Governor Newsom
Sonya Logman, Deputy Cabinet Secretary, Office of Governor Newsom
Rachel Wagoner, Deputy Legislative Secretary, Office of Governor Newsom
Bill Lyons, Agriculture Liaison, Office of Governor Newsom