



May 18, 2022

Via email

Stephen Brandt, Chair, and members
Delta Independent Science Board
715 P Street, 15-300
Sacramento, CA 95814

Re: Background information on conflict over Voluntary Agreement Framework

Esteemed Chair and members,

I briefly mentioned the conflicts over the Voluntary Agreement framework announced by the Newsom administration on March 29, 2022 in my comments to the Board at yesterday's meeting. I wanted to send the Board members some more in-depth information about the conflicts. At this point, I think it is essential to understand this context for the Delta Science Program's collaborative science efforts in the Delta, and for the Delta Independent Science Board's own oversight and review efforts.

In 2019 the conservation organizations participating in the Voluntary Agreement process wrote [a letter](#) to the Newsom administration, stating in part:

It is critical that you understand the current agreements will not adequately improve conditions in the Bay-Delta estuary and its Central Valley watershed. Furthermore, the ongoing VA process is flawed and not on course to produce an agreement that is legally, scientifically, and biologically adequate to survive environmental review and legal challenge.

At the beginning of this year, we agreed to work in good faith with your administration and water users in the VA process to understand better the proposed VAs, evaluate their sufficiency, and improve them as necessary to meet legal and scientific standards. Unfortunately, after several months, parties are still evaluating the adequacy of the proposals and little time remains to negotiate additional flow, habitat, and funding assets.

None of our organizations support the current proposed package of VAs because they do not contain sufficient flow and habitat assets to adequately improve conditions in the Bay-Delta estuary as required under state and federal law. The best available science makes this clear. Moreover, there are major flaws with the VA process itself that, unless addressed, will prevent parties from reaching a successful agreement.

As a result of these objections, the conservation groups were excluded from further negotiations. There is a game theory explanation. I wrote about it here:

[Game theory explains what happened in the Voluntary Agreement negotiations](#)

In 2009, Michael Hanneman and Caitlin Dyckman published a stark assessment: “The San Francisco Bay-Delta: A failure of decision-making capacity.” A decade later, their game theoretic analysis explains a lot of what happened with the Voluntary Agreement negotiations for the Bay-Delta Water Quality Control Plan Update.

Here are excerpts from two blog posts on the Voluntary Agreement framework from NRDC’s expert, Doug Obegi:

[Who \(and What\) Are Excluded from Backroom Bay-Delta "Deal" | NRDC](#)

The State’s recent announcement of a proposed voluntary agreement (“VA” for short) for the Bay-Delta watershed is the result of an illegitimate, exclusionary backroom negotiation that fails to protect the health of the estuary, its native fish and wildlife, and the jobs and communities that depend on its health... the proposal fails to ensure that minimum water quality objectives are actually implemented during droughts, and because it is built around the Trump Administration’s blatantly unlawful biological opinions for the Bay-Delta, it appears to increase water exports from the Delta and provides far less water for the environment than even the inadequate 2020 proposed voluntary agreement.

[Collaborative Junk Science Is the Core of the Delta VA | NRDC](#)

Giving the contractors more say over science is problematic because the participating water districts – and the California Department of Water Resources -- have a vested interest in trying to show that fish don’t need water

so that they can divert ever more water from this imperiled watershed. DWR and these water districts have spent decades using junk science and “[combat science](#)” to try to manufacture scientific doubt about the importance of flow, using that "science" in order to fight environmental protections for salmon and other endangered species.

To give you an idea of the degree of conflict over the Voluntary Agreements, this was the reaction of the General Manager for the State Water Contractors to the NRDC blog:

[Jenny Pierre @jenbenthehen May 10](#)

Fascinating #NRDC blog today about #voluntaryagreements 'flawed' governance structure. Of course, somehow it was left out that this gov. structure was developed with substantial input from several env. groups including Am. Rivers (co-chair), TNC, EDF, Bay Institute, Trout Un...

And also no specific details about what is so flawed about it. The science program is based on input from all of these env. groups, + state and fed scientists, and structured-decision-making experts with extensive success in multi-party collaborative restoration in N. America

examples include Platte River, Missouri River, and all of the work currently happening in the Delta with adaptive management.

The trope that our science cannot be trusted is old and tired. The env. groups most loudly opposing the #voluntaryagreements don't even do science. They do litigation.

The science program works with renown [sic] scientists who publish work to help us all understand how to better manage our system for people, fish, birds, farms, flood control, and climate adaptation. We know that there is a better way to operate the system and the #voluntaryagreements give us the resources and shared vision to DO THINGS BETTER and learn from our actions to continue improvement and adaptation. The opposition to even developing this as an alternative for consideration by the SWB is what's junk.

This was the response of San Francisco Baykeeper's senior scientist, Jon Rosenfield:

[Jon Rosenfield @jarosenfield](#)

Are you saying State Water Project Contractors don't litigate? 🤔🤔🤔

Or you just can't imagine that an organization would base its legal claims on the best available science, as @SFBaykeeper & other environmental NGOs do? #projection

Saying "this agreement is unsupported by science" while being summarily ignored (as NGOs did/were for over a year before being shut out of the VA "process") is not "input" & does not make this drug deal a "multi-party collaborative". @GavinNewsom's water VA's are a sham.

These were my own observations on the Voluntary Agreement framework:

[Voluntary Agreement framework consolidates power and inequities in California water](#)

The California Natural Resources agency released a Voluntary Agreement framework on Monday, March 29, 2022. The framework has been hailed as a "peace" agreement.

Reading the Memorandum of Understanding, I find Hisham Ziuaddeen's synthesis of how power operates across hierarchies of caste, gender, sexuality, ableness and class to be profoundly relevant. Ziuaddeen observed that power determines:

- who determines the frame of reference
- who is entitled to respect and deference
- who has epistemological and moral authority
- who is entitled to labour, bodies, and space
- who is entitled to hold and wield power

These observations also explain how power operates in the Voluntary Agreement framework. The VA framework excludes environmental, fishing, tribal, and Delta stakeholders from the collaboration space, and also from having any real input into operational decisions. This institutionalizes a power structure that has been profoundly dysfunctional in the past.

I made similar comments on the framework of power in California water at the Delta Independent Science Board meeting two months ago. I did want to express my profound gratitude to the DISB members for thinking about how to do better outreach to conservation, fishing, and Delta stakeholder groups about the Board's reviews. Being Switzerland in the California water wars is going to be extremely important, given the increased conflicts about Delta science.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Des Jardins', with a stylized flourish at the end.

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cc:

Delta Lead Scientist Laurel Larsen
Delta Stewardship Council Executive Officer for Science Louise Conrad
Delta Stewardship Council members