

MEMORANDUM

March 5, 2019

TO: Jared Blumenfeld, Secretary, California Environmental Protection Agency
Wade Crowfoot, Secretary, California Natural Resources Agency

CC: Joaquin Esquivel, Chair, State Water Resources Control Board
Voluntary Agreement Parties

FR: Trout Unlimited, The Nature Conservancy, The Bay Institute, Environmental Defense Fund, Defenders of Wildlife, American Rivers

RE: Submission of Project Description/Planning Agreement for Voluntary Agreements

As you know, last week the directors of the Department of Fish and Wildlife and Department of Water Resources submitted to the State Water Resources Control Board (Board) the initial Project Description ("PD") and Planning Agreement ("PA") for the proposed Voluntary Agreements ("VA"), building on the framework presented to the Board at their December 12 hearing, for evaluation as an alternative in the CEQA analysis of the Water Quality Control Plan ("WQCP") update. As you will recall, our organizations expressed very serious concerns with the proposal presented in December, and despite improvements made to the proposal in the intervening months, those concerns remain relevant.

Since then, under your leadership, our organizations have engaged with state and federal agencies and water districts regarding the Voluntary Agreement documents, seeking to clarify key elements of the proposal. These actions include constructive engagement to clarify the baseline, define the function of governance and science in implementation and address the need to align assets and outcomes, as well as identify other critical issues that need to be addressed to achieve an effective agreement.

We are committed to continuing that engagement to try to reach Voluntary Agreements that meet the legal, policy and scientific requirements of the Board. Among the many issues identified as unresolved or incomplete in the PD and PA, we highlight the following priority issues for your consideration and as suggested subjects for next steps by the VA parties:

- (i) the assets identified (flow, habitat, and funding) do not appear to be sufficient to meet legal and scientific requirements of the Board to adopt the proposed VA as part of the WQCP Program of Implementation, irrespective of the uncertainty concerning the baseline, referenced below;
- (ii) the baseline to which these assets are additive must be existing conditions, i.e., the combined flows under D-1641, current endangered species requirements, and other flows that provide ecological benefits. The proposed modification of current federal endangered

species act requirements would adversely affect the baseline condition for proposed VA flows.

(iii) the mechanisms for assuring that the proposed flow and habitat assets are realized (and protected against third party impacts), other remedies and terms of enforcement, and the relationship of the VAs to the Board's WQCP responsibilities (including attainment of existing and proposed narrative objectives) and its water rights, oversight, and enforcement authorities remain unclear;

(iv) the programs for governance, adaptive management, and integration of VA actions across watersheds need to be fully developed, including the adoption and integration of targets, a better understanding of comparability and differences between individual watershed VAs and their contribution to Delta outcomes, and how decisions regarding implementation, asset allocation and coordination across watersheds will be made; and,

(v) the need for default requirements that prevent conditions from reverting to the status quo in case of termination or expiration without extension of the VAs, and the role of the Board in backstopping the agreement.

We acknowledge and appreciate the considerable time and energy the Newsom Administration has invested to open up the VA process and address critical issues. We look forward to continuing to work with you, the Directors and their staffs, and the Board to ensure a rigorous analysis of the proposed VA, including the assets, and whether it is sufficient, and to craft a final Agreement that meets the Board's legal obligations and policy and scientific requirements, and that leads to recovery of the fish and wildlife and ecosystem functions of the Bay-Delta and its tributaries.