

# **So Little Water So Much Time**

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# Overview of Presentation:

## First of all, Count the Water

- Evaluations of water costs, alternative flow requirements
- Recirc. SED equates “public interest” with water supply
- VA requires virtually no water cost
- VA provides almost no benefit for public trust resources and values (presentations of others)
- ***No explanation why VA is extent of “feasible” protection***
- No analysis of options for more targeted protection than under 55% w WSAs (Water Supply Adjustments)

# It Is Helpful to View Alternatives Side by Side:

## 55% without WSA, 55% w/WSA, VA

	A	B	C	D	E	F	G	H	I	J
1	<b>Average Changes in Water Available for Water Supply by Region (All Years), Compared to Baseline</b>									
2										
3	<b>Region</b>		<b>55% w/o WSA</b>	<b>55% w/o WSA</b>	<b>55% w WSA</b>	<b>55% w WSA</b>	<b>VA</b>	<b>VA</b>	<b>2023 SED</b>	<b>Rec. SED</b>
4			<b>TAF</b>	<b>% Change</b>	<b>TAF</b>	<b>% Change</b>	<b>TAF</b>	<b>% Change</b>	<b>Page Cites</b>	<b>Page Cites</b>
5									<b>(6-xx)</b>	<b>(13-xxx)</b>
6									<b>55% w/o WSA</b>	<b>55% w WSA,VA</b>
7										
8	Statewide		-1,682	-14%	-657	-5%	-137	-1%	57	150, 151
9	Sacramento watershed		-606	-11%	-232	-4%	-110 -223	-2% -4%	59	152, 152
10	Eastside watershed		-44	-21%	-24	12%	0	0%	64	161, 164
11	Delta		-4	0	-1	0%	-1	0%	66	166, 167
12	San Joaquin Valley		-379	-13%	-73	-3%	+51 -62	+2% -2%	74	170, 173
13	SF Bay Area		-180	-28%	-48	-7%	+ 3	0%	68	179, 180
14	Central Coast		-19	-22%	-5	-6%	+ 2	+3%	71	182, 183
15	Southern California		-450	-27%	-276	-16%	+29	+2%	79	185, 187

Note: Baseline in Recirculated SED changed from 2023 SED.

# What the Previous Slide Shows

- Statewide water costs (average all years):
  - **VA = 1%    55% w WSA = 5%    55% w/o VSA = 14%**
- VA yields water supply **increases** in many regions
- Largest water costs of regulatory flows are to areas of export
  - Bay Area impacts from EBMUD as well as SWP
  - Southern California
- Eastside, Bay Area water costs from Mokelumne, Calaveras hydrology, operations addressed through trib-specific WSAs

# Side by Side: 65% and 55% w/o WSA (All Years); 55% w/o and w WSA (Critical Yrs Only)

18	Average Changes in Water Available for Water Supply by Region, Compared to Baseline: All Years 65%, 55; Critical Years 55% w/o WSA and w WSA											
19												
20			65% w/o WSA	65% w/o WSA	55% w/o WSA	55% w/o WSA	55% w/o WSA	55% w/o WSA	55% w WSA	55% w WSA	2023 SED	Rec. SED
21			TAF	% Change	TAF	% Change	TAF	% Change	TAF	% Change	Page Cites	Page Cites
22			All Years	All Years	All Years	All Years	Critical only	Critical only	Critical only	Critical only	(6-xx)	(13-xxx)
23											55% w/o WSA	55% w WSA
24												
25	Statewide		-2,981	-25%	-1,682	-14%	-2,232	-24%	-1166	-13%	57	150
26	Sacramento watershed		-1,086	-20%	-606	-11%	-1,403	-29%	-772	16%	59	152
27	Eastside watershed		-63	-31%	-44	-21%	-53	-34%	-30	-19%	64	161
28	Delta		-14	-1%	-4	0%	-6	-1%	-5	0%	66	166
29	San Joaquin Valley		-868	-31%	-379	-13%	-383	-22%	-203	-12%	74	170
30	SF Bay Area		-255	-37%	-180	-28%	-197	-33%	-56	-9%	68	179
31	Central Coast		-37	-43%	-19	-22%	-13	-33%	-5	-12%	71	182
32	Southern California		-656	-39%	-450	-27%	-177	-25%	-95	-12%	79	185

Note: Baseline in Recirculated SED changed from 2023 SED.

# What the Previous Slide Shows

- 55% w/o WSA water cost is about 56 percent of 65% water cost, averaged over all years
- Critical year water cost generally greater than all-year average
- Baseline Critical year supply is less than other year types
- 55% w WSA reduces Critical year water cost by about 45% compared to 55% w/o WSA.
- (Recall: Virtually no flow increase and thus no water cost of VA in Critical years. Also no drought management improvement. Also no flow improvement in years most critical for fish.)

# Recirculated SED's Section 13.6.1 on Public Trust (Legal Framework)

- **Audubon**: “The State Water Board ‘has an affirmative duty to take the public trust into account in planning and allocation of water resources, and to protect the public trust uses whenever feasible.’”
- Quote from **Robie** on the Board’s limiting “feasible” protection to what is “in the public interest.”
- Quote from **Racanelli** “Neither a precise quantification of potential water uses and impacts on those uses nor an explicit cost-benefit analysis is required ...”
- Need to “take into account” **F&G Code 5937**

# Recirculated SED's Section 13.6.1 on Public Trust (Statement of Implementation)

- List of topics and data the Board considered
- Statement of intent: “As described in this section, the revised proposed Plan amendments are intended to satisfy the public trust doctrine ....”
- Statement: “Through the analyses and balancing efforts described above, the State Water Board has duly considered the public trust and concluded that the revised proposed Plan amendments will protect public trust uses to the extent feasible.”



# Some Missing Standards of Review re Public Trust (Emphases Added)

- Racanelli at 115: ““Accordingly, in reviewing the challenged conditions, courts must determine whether the conditions are supported by ‘*precise and specific reasons founded on tangible record evidence.*’”
- Delta Reform Act § 85001(a): “The Sacramento-San Joaquin Delta watershed and California’s water infrastructure *are in crisis* and... *requires fundamental reorganization of the state’s management of Delta watershed resources.*”
- *Light v SWRCB*: “when the public trust doctrine clashes with the rule of priority, the rule of priority must yield.”

# Only a Glimmer of *Light*

- Rev. Plan (regulatory) prioritizes public trust over priority by:
  - Continuing to require contributions from each tributary
  - Proposing some tributary-specific Water Supply Adjustments based on public trust and reasonable use considerations
- Otherwise, Rev. Plan follows the rule of priority without considering uses in each watershed
- Result is a global plan based on most vulnerable supplies
- Not a new management regime equal to the crisis

# What Recirculated SED Does Not Explain

- Public interest:
  - Why limiting flow increase to 1% more water for fish and wildlife is in the public interest (and the limit of public trust protection)
  - Why restoring the Bay-Delta watershed's public trust resources is not part of the public interest
- Balancing resources (a list of considerations is not a description)
  - How the Board assigned weight to (quantified the importance of) public trust and other resources
  - How the proffered VA flows balance public and consumptive uses

# 15-Year Bay-Delta Plan Scorecard

## Category 1: “The Delta Is in Crisis”

### Voluntary Agreement Outcome

- Punted. Proposal to adopt VA reverts to tiny incrementalism. Game over.

### Regulatory Path Outcome

- Unsuccessful field goal try. Lost ground repeatedly; too far from goal. 55% w WSA rarely achieves key flow thresholds for fish

# 15-Year Bay-Delta Plan Scorecard

## Category 2: Percent of Unimpaired Flow

### Voluntary Agreement Outcome

- Punted. Preempted by VA. Game over barring future VA forfeit.

### Regulatory Path Outcome

- Handoff to Voluntary Agreement. Not sufficiently fleshed out even as backstop for VA. Slight hope for future recovery.

# 15-Year Bay-Delta Plan Scorecard

## Category 3: New Rules for Droughts

### Voluntary Agreement Outcome

- Punted. Business as usual. TUCPs & TUCOs may be called up at any time.

### Regulatory Path Outcome

- Ran with WSAs. Arguably too many WSAs on field. Then punted to business as usual. TUCPs & TUCOs may still be called up at any time.

# 15-Year Bay-Delta Plan Scorecard

## Category 4: Rules for New Diversions and Water Rights

### Voluntary Agreement Outcome

- Punted. Rules for new diversions case-by-case. VA set up to enable large new projects.

### Regulatory Path Outcome

- Punted. Rules for new diversions case-by-case. Even without VA, low flow bar for new projects.

Addressed in: 2023 Draft SED, 2024 Draft POI

# 15-Year Bay-Delta Plan Scorecard

## Category 5: Carryover Storage

### Voluntary Agreement Outcome

- Punted. Evaporated. Business as usual. Reliance on TUCPs.

### Regulatory Path Outcome

- Still in the game. Lower initial levels. Weak language about compliance. Mostly viewed separately from flows.

Addressed in: 2018 Framework; Phase 1 litigation; 2023 Draft SED, 2024 POI



# 15-Year Bay-Delta Plan Scorecard

## Category 6: Incorporate 2008/9 BiOps into Plan

### Voluntary Agreement Outcome

- Punted. Long forgotten.

### Regulatory Path Outcome

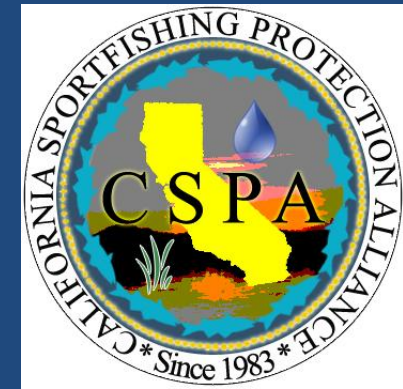
- Punted. Long forgotten.

Addressed in: 2018 Framework

# Wrap-Up

- The water user community, enabled by the State, has delayed the update of the Bay-Delta Plan for 15 years. ***Delay, deferral, and denial of crisis*** were the primary goals of the Voluntary Agreement.
- The simultaneous goal of the VA was and is to ***enable more large diversion projects***, now including for groundwater recharge
- The water user community has bludgeoned the 2010 Delta Flow Criteria Report and its underlying principles. Water users have ***never*** tried to work with substantial Delta flow increases.
- Remember: ***Voluntary Agreement. 15 more years. 1% water cost.***

# Thank you!



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