



CENTRAL DELTA WATER AGENCY

235 East Weber Avenue • P.O. Box 1461 • Stockton, CA 95201
Phone 209/465-5883 • Fax 209/465-3956

DIRECTORS

*George Biagi, Jr.
Rudy Mussi
Edward Zuckerman*

COUNSEL

*Dante John Nomellini
Dante John Nomellini, Jr.*

August 13, 2013

Felicia Marcus
Chair
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812-0100

Re: 2013 SWP and CVP Violations of D-1641

Dear Madam Chair:

The Central Delta Water Agency is concerned that the current year violations of D-1641 by the SWP and CVP are indicative of a plan and practice of the United States Bureau of Reclamation and California Department of Water Resources to violate water quality standards to further exports of water from the Delta. Compliance with the standards is a condition to their right to export from the Delta.

While we appreciate the “after the fact” notification and discussion of the decision to not enforce compliance, we submit that the process was both inappropriate and contrary to law.

SWRCB staff were first contacted by the fish agencies around May 17, 2013. The Emmaton Agricultural Standard violations were first apparent on or about April 22, 2013. Our first notification was from Melinda Terry on May 28, 2013 (Exhibit A) and from Les Grober on May 29, 2013 (Exhibit B). The notification included the email from Tom Howard stating:

“The State Water Board staff will not recommend any action if the projects operate to meet the critically dry year objectives for Western and Central Delta agricultural objectives, instead of operating to meet dry year objectives through August 15, 2013. Our intent not to take any action is conditioned on submittal of a temperature management plan pursuant to State Water Board Order 90-5 within one week of May 28, operation in accordance with the plan, and any further conditions determined by the Executive Director of the State Water Board. Furthermore, the Projects will be required to include an accounting of operations under the change in water year classification.”

On May 30, 2013, we received by email from Les Grober a letter signed by Craig Wilson, Delta Watermaster (Exhibit C). The transmittal referred to the letter as dated May 29, 2013, although no date appears on the letter. The Wilson letter concurred in the Tom Howard determination that staff would not take any action if the SWP and CVP operated to Critical Year rather than Dry Year D-1641 agricultural standards for western and central Delta stations at Emmaton, Jersey Point, San Andreas Landing and Terminous.

The justification presented by the project operators and the fish agencies for the violation of the agricultural standards was the lack of rainfall in the January to May period and the desire to “conserve CWP resources in Shasta Reservoir needed to protect Chinook salmon this season.” (emphasis added.) The water year classification in D-1641 is the exact classification which the SWP, CVP and their contractors wanted to facilitate their meeting the standards. The SWRCB granted their request. The ability to meet standards is not solely dependent on the January to May rainfall but is also dependent upon the precipitation in October through December and the water in storage, both of which were ample.

OBJECTION TO PROCESS

While prosecutorial discretion could be argued as a basis for not taking action with regard to a past violation, it is certainly not appropriate for future actions. The promise of no action for future violations is in effect a change in the water quality standards and terms of the CVP and SWP permits.

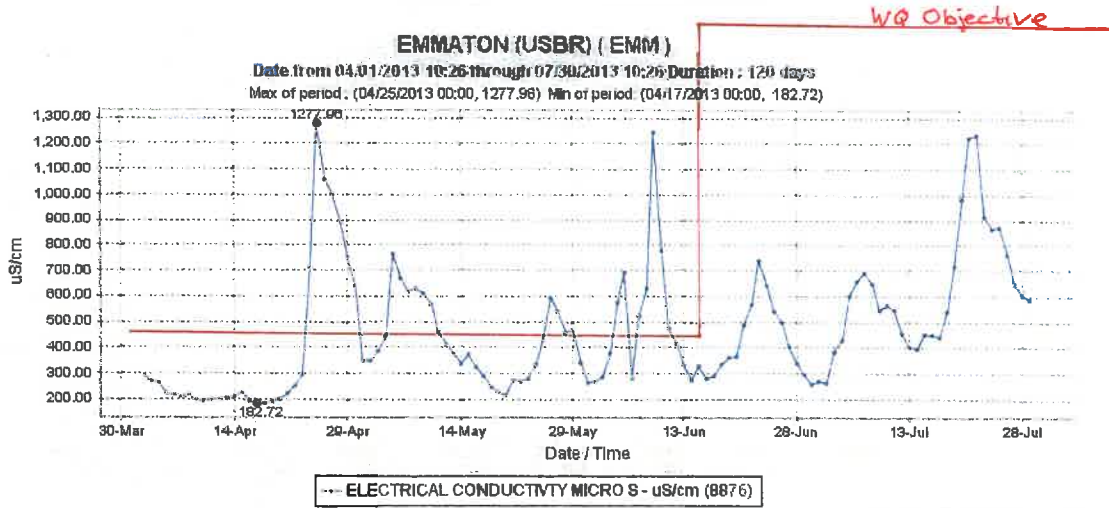
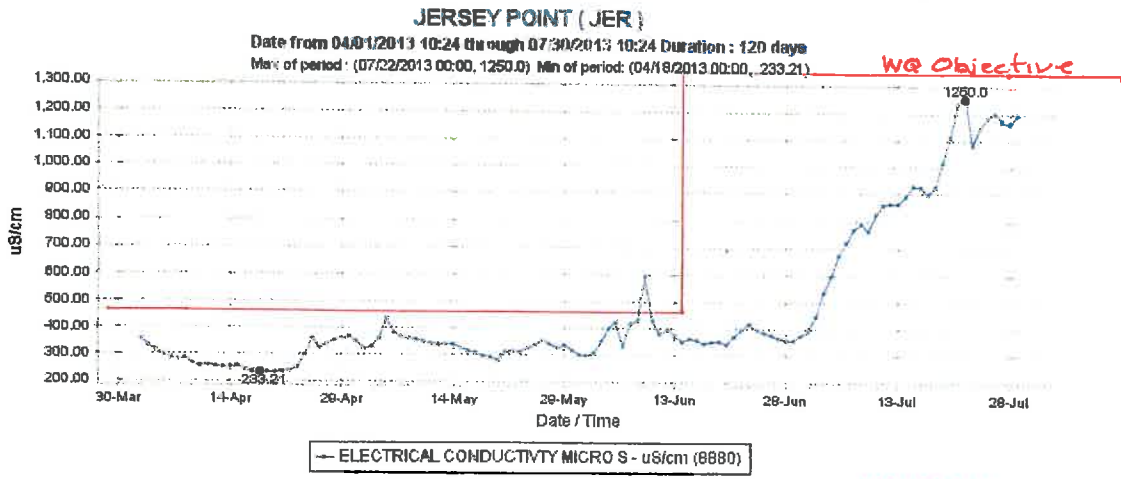
All affected interests should have been given the opportunity to participate in a public process before a decision was made.

A special meeting of the Board would have been an appropriate alternative to the action by staff.

WAS THE SAVINGS IN WATER FROM VIOLATION OF THE AGRICULTURAL STANDARDS HELD IN SHASTA FOR THE COLD WATER POOL FOR SALMON THIS SEASON OR WAS IT EXPORTED?

Figure 1 shows the periods of violation of the agricultural standards at Emmaton and Jersey Point and the corresponding rates of SWP and CVP exports from the Delta at Clifton Court and the Tracy pumping plant. During the period of April 15 to June 15, it appears that export pumping rates were higher during the periods of violations of the standards.

It is disturbing that none of the correspondence from the trust agencies responsible for protection of fish and none of the SWRCB staff correspondence addressed the need for a reduction in SWP or CVP exports or other measures to save cold water for salmon. The single



Daily CVP-SWP Coordinated Operation - SWP & CVP Exports

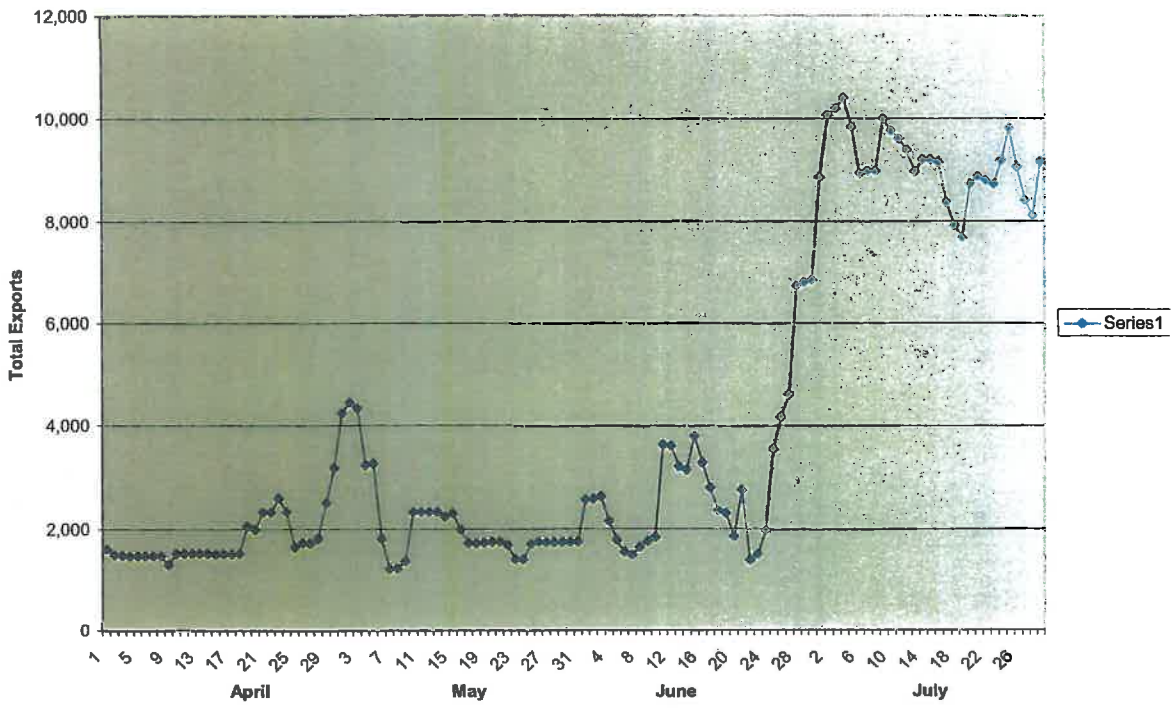
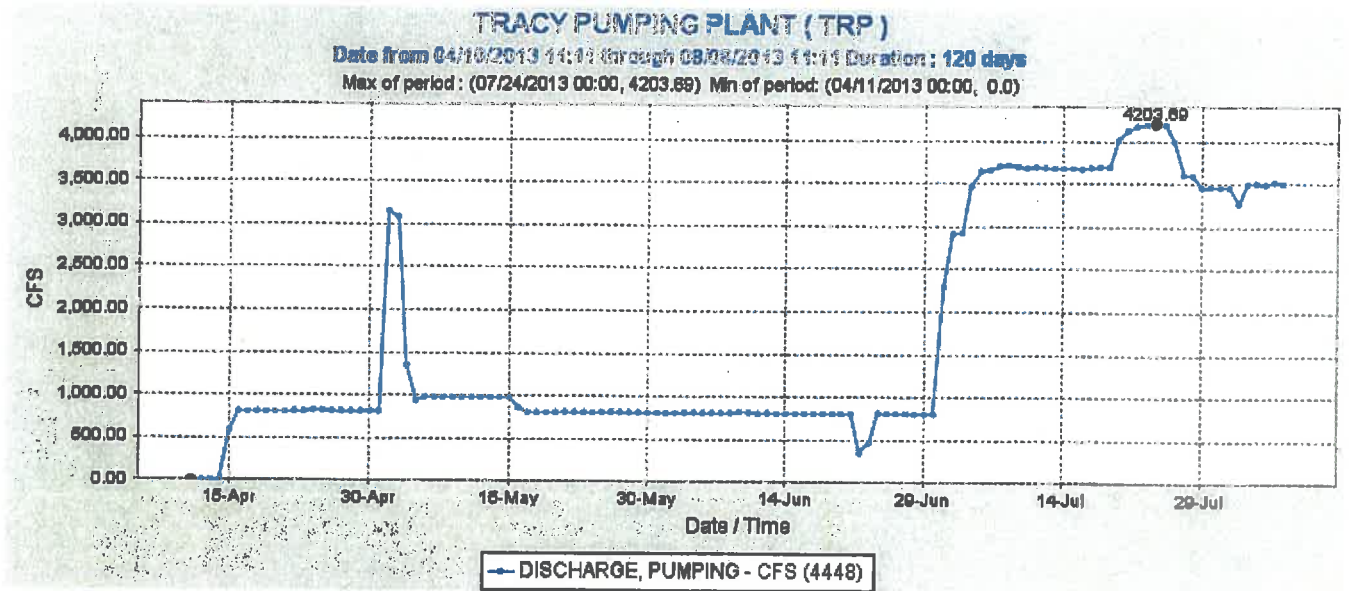


FIGURE 1
Page 1

Welcome to California Data Exchange Center

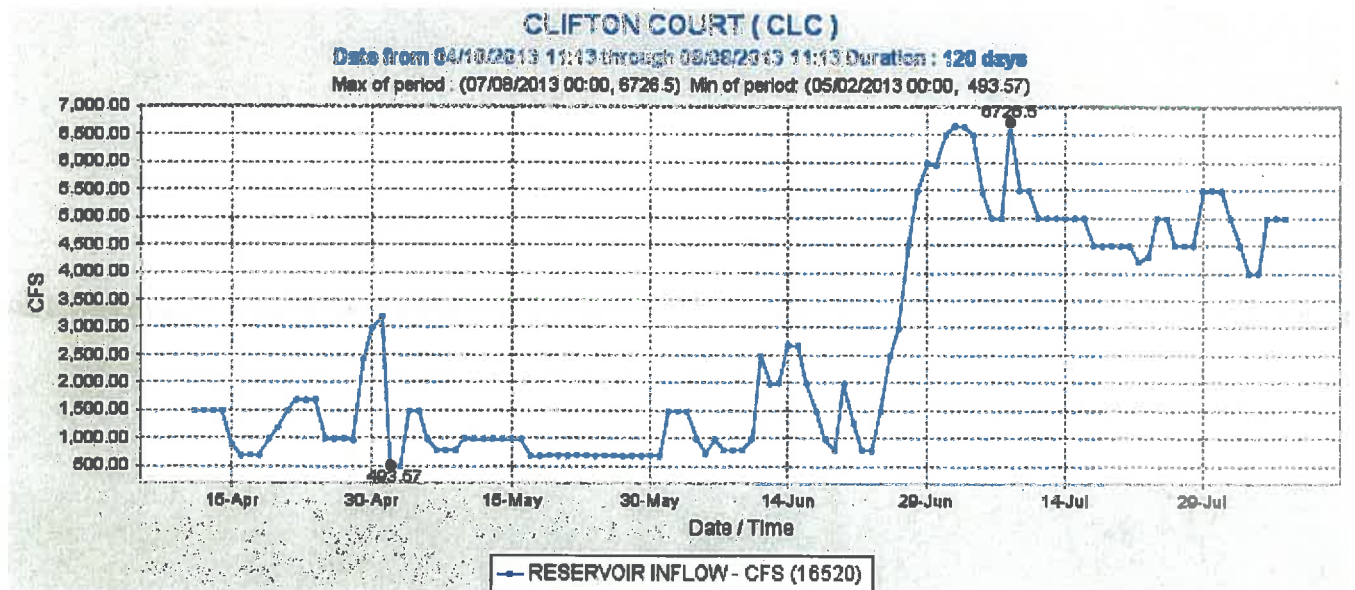


Generated on Thu Aug 08 11:11:54 PDT 2013

[Plot all TRP Sensors](#) | [Real-Time TRP Data](#) | [TRP Data](#) | [Daily TRP Data](#) | [Show TRP Map](#) | [TRP Info](#)

Plot from ending date: 08/08/2013 11:11 Span: 120 days

Welcome to California Data Exchange Center



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Plot from ending date: 08/08/2013 11:13 Span: 120 days

FIGURE 1
Page 2

focus was on reduction of the flow required to meet the agricultural standards. Compliance with the D-1641 agricultural standards is a condition of the rights for the SWP and CVP to divert.

The huge increase in exports after June 24th raises further questions as to the motivation of preserving cold water in Shasta to protect salmon this season. The exported water obviously included some stored water from Shasta.

It appears that warmer water is being released into the river for power production and/or export thereby reducing the ability to meet the cold water standard.

Exports are being elevated to a priority over protection of salmon, salinity control and adequate supplies for the Delta. Salinity control for western and central Delta agriculture is also salinity control for other uses of Delta water including those of the SWP and CVP exports. The environmental impacts of the changes to the standards needs careful analysis.

The June 3, 2013, letter from the Bureau of Reclamation to Barbara Evoy (Exhibit D) is the Temperature Management Plan pursuant to State Water Board Order 90-5 required by Tom Howard and Craig Wilson. It moves the temperature control point farther upstream but does not address the management of releases from storage to maintain the cold water for salmon.

The Temperature Management Plan (hereinafter TMP) is stated to have been developed by the Sacramento River Temperature Task Group (SRTTG) which includes representatives of the SWRCB. The TMP moves the 56 degree Fahrenheit temperature compliance point from the Red Bluff Diversion Dam upstream to the Airport Road Bridge at Anderson. The straight line distance between the two locations on the Google maps is 22.35 miles. The river spawning ground miles is much greater. The remaining spawning area in the Sacramento River which is protected has a straight line distance of about 10.0 miles. Protection for roughly 2/3 of the Sacramento River spawning area has been reduced.

Board Order WR 90-5 included a comprehensive examination of the cold water requirements on the Sacramento River which are now being significantly revised. There is an obvious need for the SWRCB to exercise its public trust responsibility to carefully review the impact of the CVP operations on the salmon spawning in the Sacramento River including in particular the exports from the Delta. The introduction of warm water from releases for power production and export should also be reviewed. The impacts on salmon are not limited to winter run but could be even more critical to other runs including the fall run. The concern is not just the current year but future years as well. The trust agencies with direct responsibility for protection of fish have in the past, such as in February of 2009, failed or were unable to assert protection of the public trust and their current failure to even mention factors other than reduction of flows for meeting the western and central Delta agricultural standards is disturbing.

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The TMP provides as a finding:

“After consultations with NMFS and review of temperature model results from March, April and May and supported by operational experience, it was determined that temperatures of 56.0°F or less cannot be met at Red Bluff Diversion Dam regardless of the water supply allocation to Central Valley Project contractors.” (emphasis added.)

Are the project operators contending that releases of stored water from Shasta for delivery to project contractors do not affect their ability to meet temperature requirements on the River?

Releases from Shasta for CVP in basin or export contractors or even power production would appear to impact cold water in Shasta similar to releases to meet D-1641 agricultural standards. Why was the focus only on the western and central Delta agricultural standards?

Is there a plan and practice on the part of the State and Federal agencies to violate water quality objectives and standards to foster greater exports from the Delta to serve south of Delta interests?

In February of 2009, the SWRCB held a hearing on the failure of the SWP and CVP to meet the D-1641 minimum monthly outflow requirement for Fish and Wildlife for February. The project operators represented that the reduction in outflow was necessary to save cold water to protect salmon later in the year. The decision to violate the standard was made in an operation meeting where representatives of the trust agencies responsible for protecting fish were present. The trust agencies looked the other way and subsequently the SWRCB took no action. As the evidence clearly demonstrated the project operators were dishonest. The water necessary to meet the standard was not stored water but was unregulated flow which was being exported from the Delta.

There are other examples of deliberate violation of Delta standards including the southern Delta agricultural standards which are reflected in the SWRCB records.

LACK OF SURPLUS WATER FOR EXPORT

The shortage of water is crystal clear and there appears to be an effort to provide a priority for exports over meeting water quality standards. The projects were out of water after 2007 and 2008 and violated the February 2009 outflow requirements for fish. Now, the lack of rain in January through May has caused a crises even though on May 29, 2013, the major reservoir storage was 85% of the historic average at Shasta, 88% of the historic average at Folsom and 93% of the historic average at Oroville (See Exhibit E).

If this year is in crises, what happens if next year is dry or what will happen in a series of dry years such as 1929-34 or 1987-92? Climate change may also reduce available water supply?

Exhibit F shows the unimpaired flows for such years and other dry years demonstrating the relative frequency of water shortage.

The Sacramento-San Joaquin Delta watershed was never intended and is clearly not capable of producing sufficient water to meet in-basin and export needs. Figure 2 is a graph of the 1917 to 1947 hydrology which reflects the basis for the planning of the SWP. The planning for the SWP recognized the limitation of water availability in the Central Valley and provided that the SWP by the year 2000 was to import 5,000,000 acre feet seasonally to the Delta from development on north coastal streams for transfer to areas of deficiency.

Figure 3 is a graph from the December 1960 DWR Bulletin 76 Report to the Legislature which shows the demands and timing of needed water supplies (a copy of the full report is attached as Exhibit G).

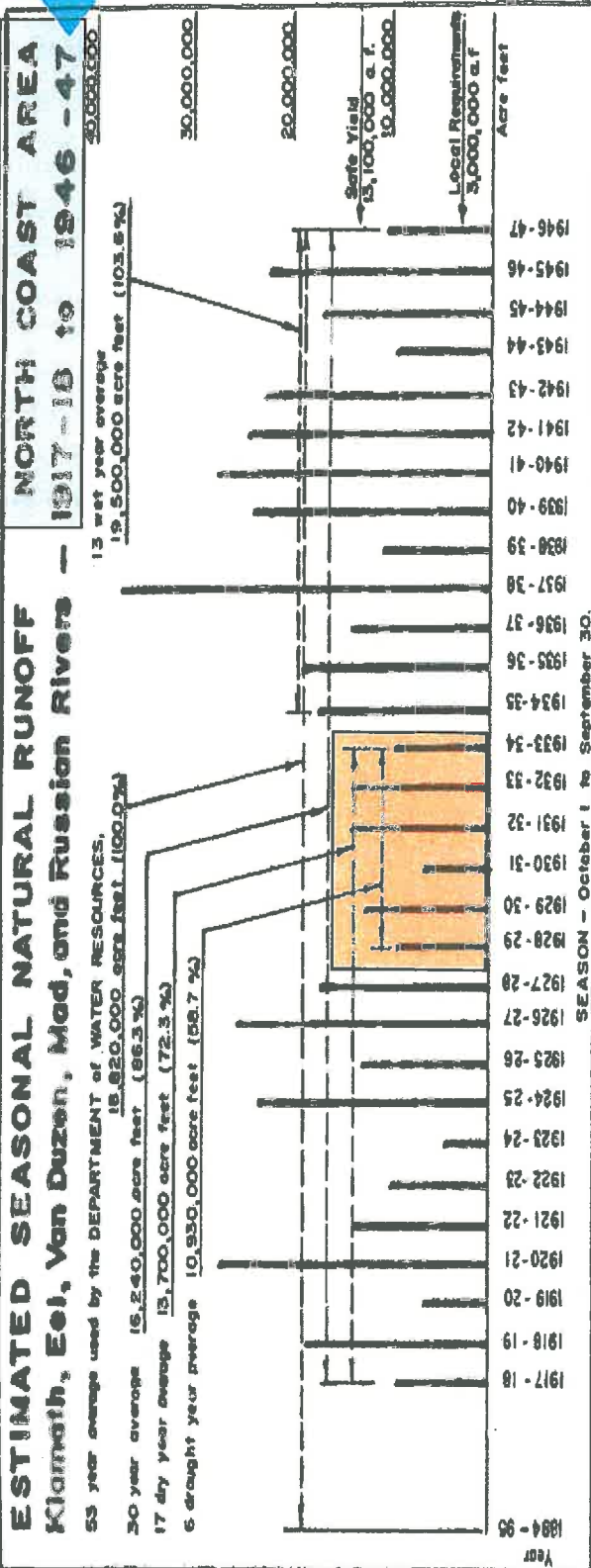
Figure 4 is a graph from the same report showing the projects and timing. Development of such water from the North Coast has not occurred. Additionally, as stated in said report at page 12, the Delta Protection Act (WC 12200 et seq.) requires that no water is to be diverted from the Delta for use elsewhere unless adequate supplies for the Delta are first provided.

In addition to the Delta Protection Act, the Watershed Protection Act (WC 11460 et seq.) requires that project exports be limited to water which is surplus to the needs in the Delta and other watersheds of origin.

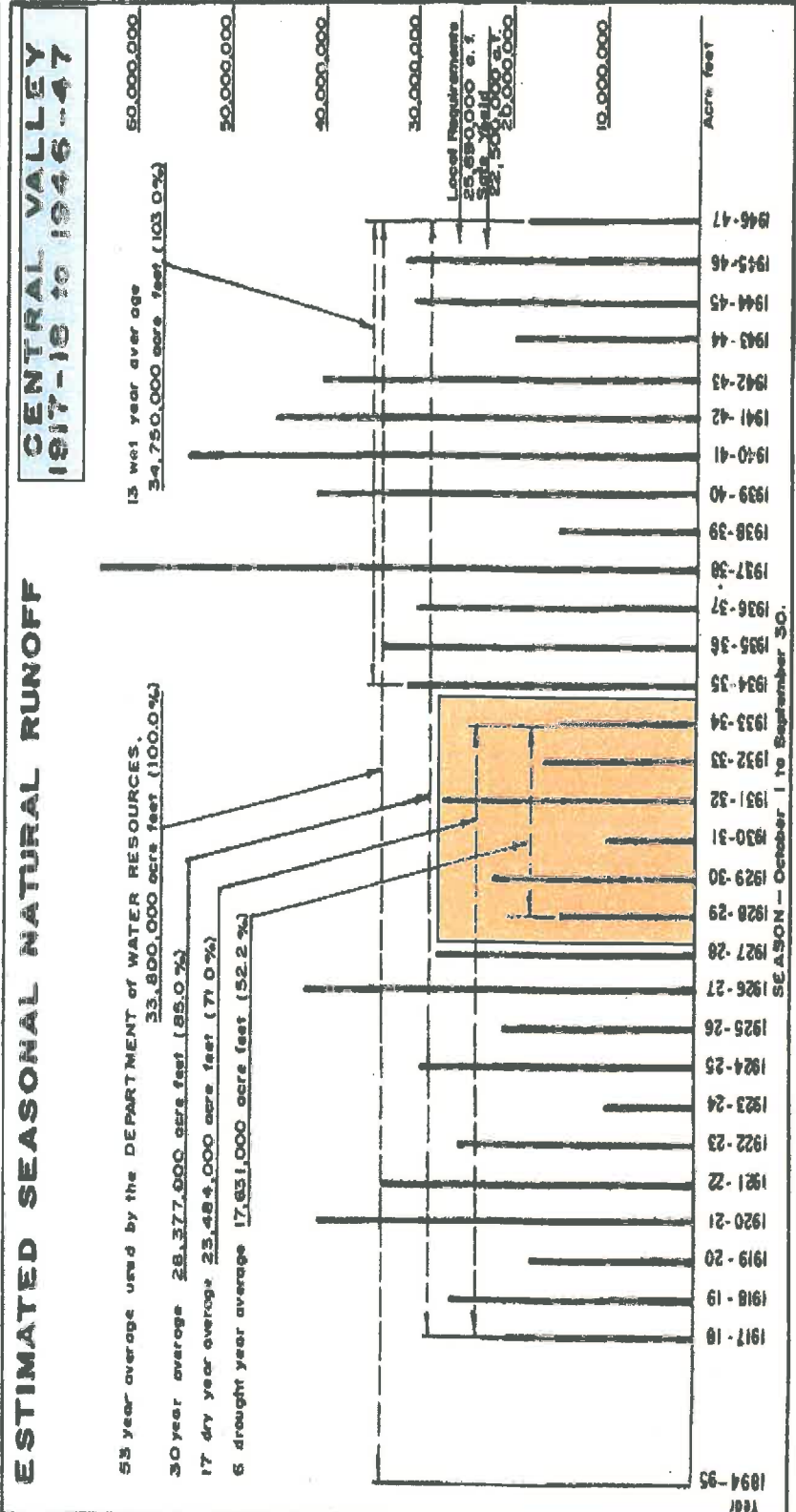
Both the Tom Howard letter and Craig Wilson letter require the projects to provide an accounting of operations under the change of water year classification. The Craig Wilson letter specifies a deadline of August 22, 2013. Such accounting should include how much water was saved by the violation of the agricultural standards and how such water was saved as cold water storage and not exported. The project operators should also be requested to present a plan for future compliance with D-1641 for the remainder of this year and in future years including the possibility of hydrology similar to 1929-34 and 1987-1992. Exports must be limited to water which is surplus to the needs within the Delta and other areas of origin including the need to comply with D-1641.

The earliest violations of the Emmaton Standards were reported to be due to unusually high depletions (presumably unexpected) in the Sacramento Valley. Aside from the need for more early season water to replace water not available from rainfall, there have been previous transfers of water from the Sacramento Valley which include water which is not limited to the actual saving in consumptive use such as those which allow for groundwater substitution. Given

WEBER FOUNDATION STUDIES



Surplus
7,930,000 AF/ YR

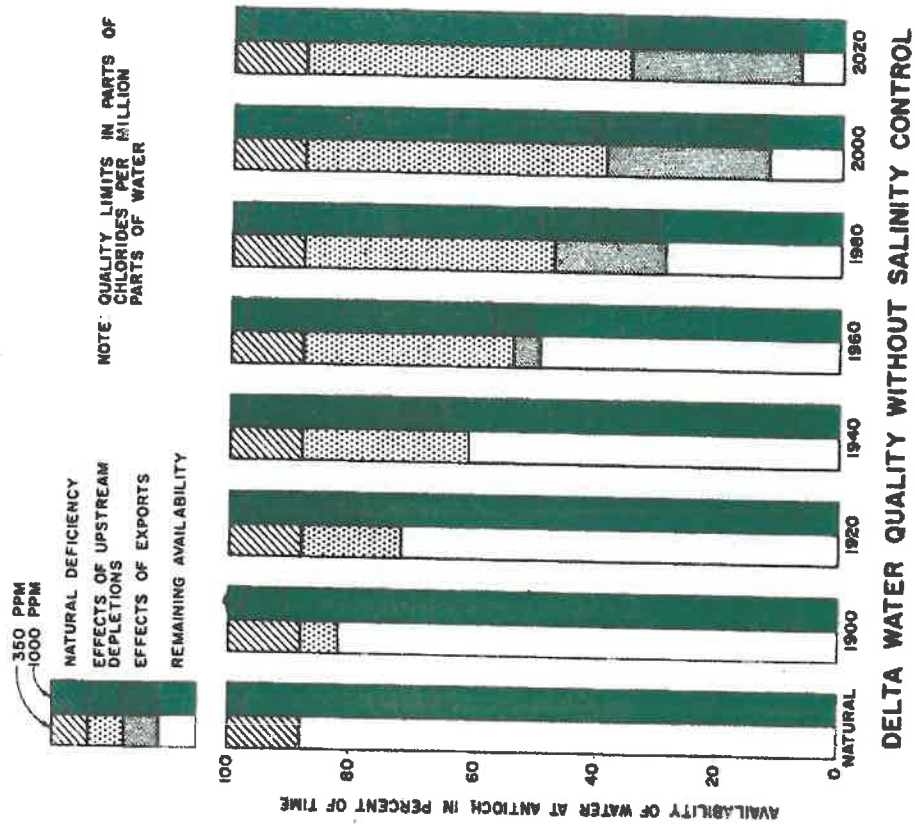
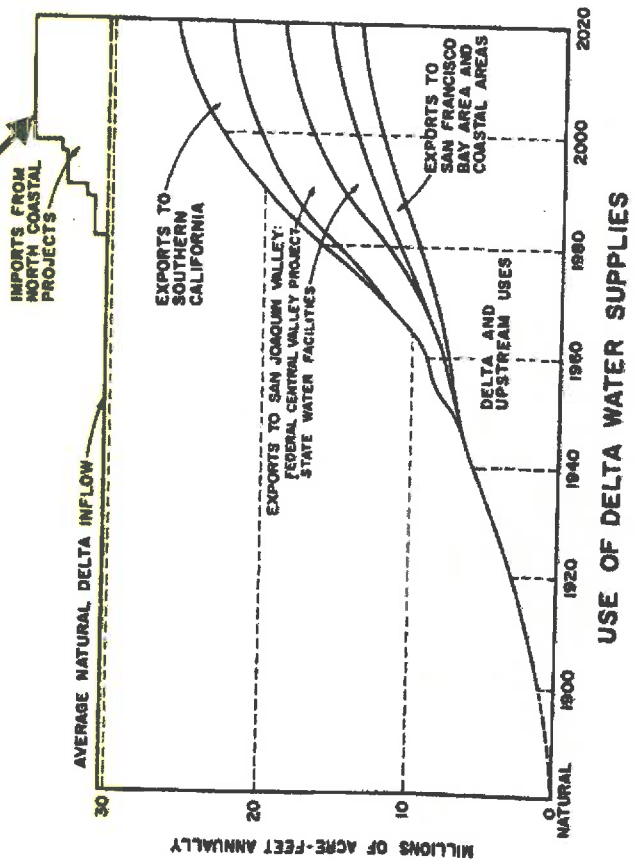


SHORTAGE
8,049,000 AF/Y

FIGURE 2

The natural availability of good quality water in the Delta is directly related to the amount of surplus water which flows to the ocean. The graph to the right indicates the historic and projected availability of water in the San Joaquin River at Antioch containing less than 350 and 1,000 parts chlorides per million parts water, under long-term average runoff and *without* specific releases for salinity control. It may be noted that even under natural conditions, before any significant upstream water developments, there was a deficiency of water supplies within the specified quality limits. It is anticipated that, without salinity control releases, upstream depletions by the year 2020 will have reduced the availability of water containing less than 1,000 ppm chlorides by about 60 percent, and that exports will have caused an additional 30 percent reduction.

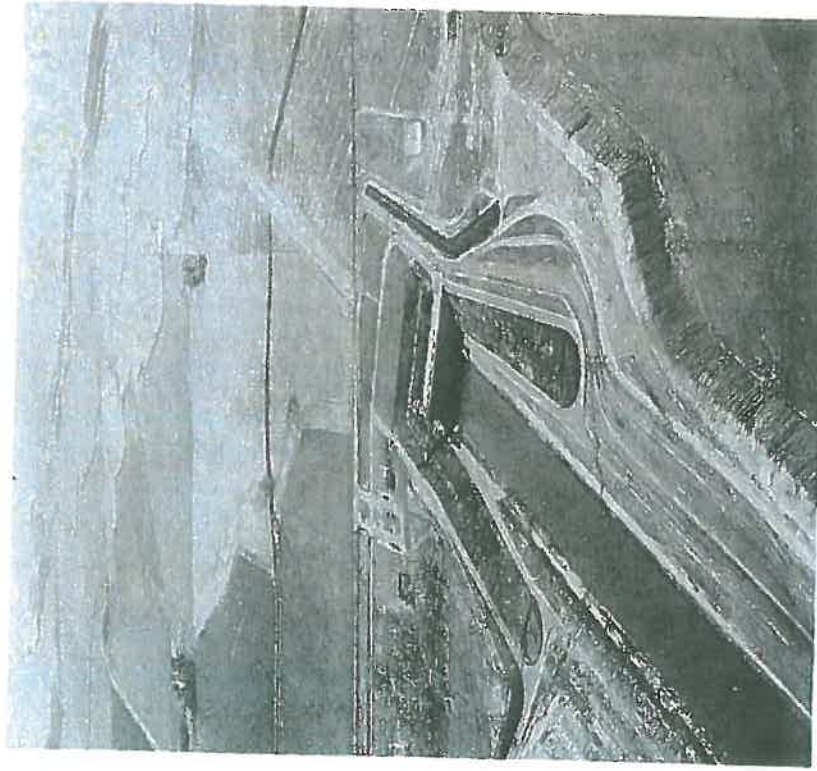
**5 million acre ft per year
Not Developed**



The magnitude of the past and anticipated future uses of water in areas tributary to the Delta, except the Tulare Lake Basin, is indicated in the diagram to the left. It may be noted that, while the present upstream use accounts for reduction of natural inflow to the Delta by almost 25 percent, upstream development during the next 60 years will deplete the inflow by an additional 20 percent. By that date about 22 percent of the natural water supply reaching the Delta will be exported to areas of deficiency by local, state, and federal projects. In addition, economical development of water supplies will necessitate importation of about 5,000,000 acre-feet of water seasonally to the Delta from north coastal streams for transfer to areas of deficiency.

FIGURE 3

The coordinated use of surplus water in and tributary to the Delta and of regulated or imported supplements to this supply, as required, is referred to as the Delta Pooling Concept. Under this concept of operation the State will ensure a continued supply of water adequate in quantity and quality to meet the needs of export water users. Advantage will be taken of surplus water available in the Delta, and as the demand for water increases and the available surplus supply is reduced by further upstream uses, the State will assume the responsibility of guaranteeing a firm supply of water, which will be accomplished by construction of additional storage facilities and import works. At the same time, the water needs of the Delta will be fully met.



Tracy Pumping Plant

Full demands on the State Water Resources Development system can be met until about 1981 from surplus water in and tributary to the Delta with regulation by the proposed Oroville and San Luis Reservoirs. However, upstream depletions will reduce the available surplus supplies and water will have to be imported from north coastal sources after that year. It is anticipated that coordinated operation of the State Water Resources Development System and the Federal Central Valley Project will afford a limited increase in usable surplus Delta supplies beginning in 1981. As indicated in the chart, upstream depletions will continue to decrease the available surplus supplies.

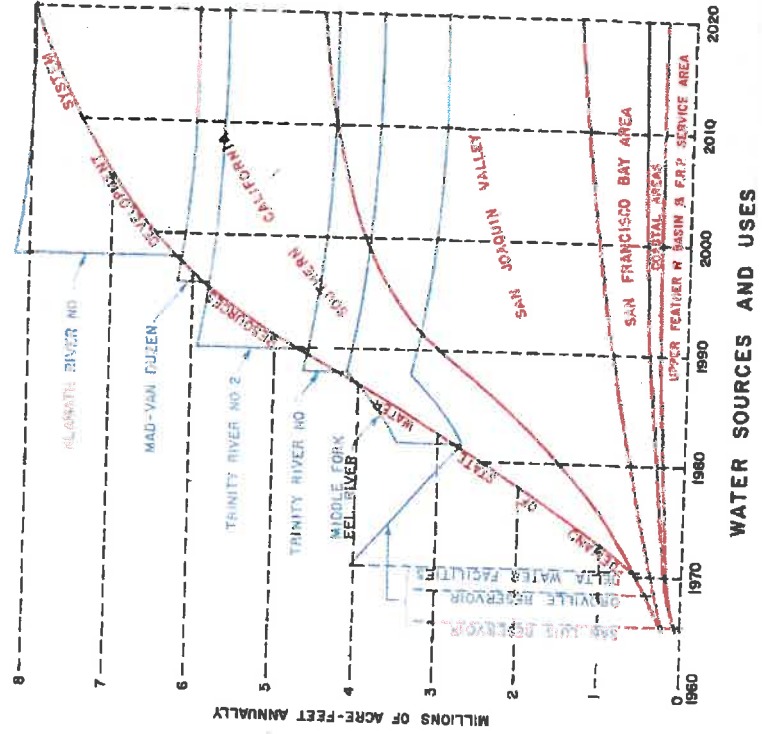


FIGURE 4

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the possibility that groundwater pumping is from an aquifer recharged by the river and gradients have steepened due to extractions, such transfers should be examined as to their impacts on depletions from the river flows.

Please include the Central Delta Water Agency, the other Delta Agencies and all other interested parties in future discussions with the project operators regarding plans to intentionally violate Delta water quality standards. Thank you for your consideration of our concerns.

Yours very truly,



DANTE JOHN NOMEILLINI
Manager and Co-Counsel

DJN:ju
Enclosures
cc:
Frances Spivy-Weber, Vice Chair SWRCB
1001 I Street
Sacramento, CA 95812

Tam M. Doduc, SWRCB
1001 I Street
Sacramento, CA 95812

Steven Moore, SWRCB
1001 I Street
Sacramento, CA 95812

Dorene D'Adamo, SWRCB
1001 I Street
Sacramento, CA 95812

Thomas Howard, Executive Director SWRCB
1001 I Street
Sacramento, CA 95812

Craig Wilson
Office of Delta Watermaster
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812

Felicia Marcus
Chair
State Water Resources Control Board

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Ronald Milligan, Operations Manager
Central Valley Operations Office
U.S. Bureau of Reclamation
3310 El Camino Avenue, Suite 300
Sacramento, CA 95821

Kim Turner
Assistant Field Supervisor
U.S. Fish & Wildlife Service
650 Capitol Mall, Suite 8-300
Sacramento, CA 95814

David H. Roose, Chief
SWP Operations Control Office
California Department of Water Resources
Division of Operations and Maintenance
3310 El Camino Avenue, Suite 300
Sacramento, Ca 95821

Mike Chotkowski
Field Supervisor
Bay-Delta Fish and Wildlife Office
650 Capitol Mall, Suite 8-300
Sacramento, CA 95814

Mark Cowin, Director
Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

South Delta Water Agency
4255 Pacific Avenue, Ste. 2
Stockton, CA 95207

David Murillo, Regional Director
Mid Pacific Regional Office
Federal Office Building
2800 Cottage Way
Sacramento CA 95825-1898

North Delta Water Agency
910 K Street, Suite 310
Sacramento, CA 95814

Charlton H. Bonham
1416 Ninth Street
Sacramento, CA 95814

Erin Foresman
USEPA Region 9
c/o NMFS
650 Capitol Mall
Sacramento, CA 95814

Maria Rea
Central Valley Office Supervisor
National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

Paul Fujitani
U.S. Bureau of Reclamation
3310 El Camino avenue, Suite 300
Sacramento, CA 95821

Carl Wilcox
California Department of Fish and Wildlife
1416 Ninth Street
Sacramento, CA 95814

John Leahigh
California Department of Water Resources
3310 El Camino Avenue, Suite 300
Sacramento, CA 95821

Bill Jennings
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204

Felicia Marcus
Chair
State Water Resources Control Board

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Michael Jackson
P. O. Box 207
Quincy, CA 95971