UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

November 4, 1997

Stephan C. Volker
Earth Justice Legal Defense Fund
180 Montgomery Street, Suite 1400
San Francisco, CA 94101

RE: FOIA Request for Documents Concerning San Francisco Bay Water Quality Standards Promulgated by EPA

Dear Mr. Volker:

This letter and enclosed information responds to your FOIA request dated October 1, 1997. The enclosed documents represent what EPA has its files regarding our promulgation and proposed withdrawal of water quality standards for San Francisco Bay that is subsequent to, and was not included in, EPA's February 13, 1996 response to your previous FOIA.

The attached list identifies the documents which consist of internal memos and several comment letters received in response to our notice of proposed withdrawal of the standards.

Should you have any questions about these documents or need additional information, please contact me at (415) 744-2019 or Tom Hagler in our Regional Counsel's office at (415) 744-1375.

Sincerely,

Gail Louis

Gail Louis
Water Division

Encl.

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EJLDF FOIA 10/20/97
"FOIALIST.006"

Bay/Delta WQS - Rule Suspension/Withdrawal
FOIA LIST Number 6

DATE	ITEM
6/25/97	Memo from Metzger to Hagler (EPA) on San Francisco Bay Delta WQS. 2pp.
4/9/96	Memo from Levine to Hagler (EPA) on Public Comments on Proposed Withdrawal of EPA Water Quality Standards in the Bay/Delta; Related Bay/Delta Developments. 2 pp.
3/18/96	Letter from Volker (SCLDF) to Risler (EPA). 14 pp. plus attachments.
3/18/96	Letter from Bobker (Bay Institute) to Risler (EPA). 7 pp.
3/15/96	Letter from Koehler (NHI) and Candee (NRDC) to Risler (EPA). 4 pp.
Undated	Letter from Potter (DWR) to Risler (EPA). 2 pp.
3/19/95[1]	Letter from Nelson (SLMWA), Buck (CUWA) and Macaulay (SWC) to Risler (EPA). 3 pp. + attachment.
1/25/96	Memo from Starfield (EPA?) to Associates. 1 page + attachment.

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[1] Letter was misdated. Actual date is 3/19/96.

Philip Metzger@X400 on 06/25/97 12:18:44 PM

To: Tom Hagler@EPA
cc:
Subject: San Francisco Bay Delta WQS -Reply -Forwarded

I got the note below today from someone in OST, I believe:

"We are updating a report for OMB Re: CFR Revinvention/Elimination Progress.
Under Part 131 - Delete San Francisco Bay Delta WQS
The Administrator signed NPRM withdrawing standards in 12/95.
The final is on hold.

I need Reasons for Delay:

Thank you for your help."

I sent the attached response, which is more than I'd have preferred to say, but simply felt that something going back to OMB probably should have enough explanation to be plausible in terms they'd recognize (e.g., "remember why we've just had to finalize the CA toxics rule? Isn't it more efficient for everyone to prevent the need for repeating that, especially when our non-finalization of the withdrawal is having no practical effect on anyone now?").
Let me know ASAP if you have a serious problem with the attached going to OMB.
Thanks.

X.400 Forwarded Message

To: Sonya Abraham@X400
From: Philip Metzger@X400
Subject: San Francisco Bay Delta WQS -Reply
Importance: Normal
Sensitivity: Not sensitive

Under the timeframe set for California to implement the water quality standards in the San Francisco/Sacramento Bay-Delta Accord, there has not been a delay in EPA's finalization of withdrawal of the water quality standards, . That timeframe called for California's implementation (through proceedings in various State Boards and other agencies) to occur by December 15, 1998.

EPA initiated withdrawal of its Bay-Delta water quality standards in September 1995 in recognition of the State Water Quality Control Board's adoption of State standards for the Bay-Delta in June 1995. However, a lawsuit by several groups of water users in the Central Valley of California was filed against the State Board's Bay-Delta standards shortly after their adoption. While this lawsuit was withdrawn by the plaintiffs in 1996 in order to enter into negotiations with other water users to identify alternative means to implement the standards, that withdrawal was without prejudice to the plaintiffs' right to refile the lawsuit should the negotiations (which are continuing) be unsuccessful.

A similar lawsuit by water users a couple of years ago -- contesting California's authority to adopt a statewide water toxics rule -- was

successful, and voided the State's toxics rule. This required EPA to expend large amounts of resources developing and formally promulgating a new California toxics rule (which has just been finalized). Should the Bay-Delta standards be similarly voided by lawsuit, EPA would be legally unable simply to reinstitute its current standards but would have to propose and promulgate new standards, which would not only be resource-intensive for the federal government but would also greatly damage the progress and timetable of the CALFED Bay-Delta long-term process. Under these circumstances, the current status of the federal standards withdrawal is consistent with the Accord process and timetable, the most efficient use of federal resources, and maintaining the progress in the CALFED Bay-Delta process.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

APR 3 1996

SUBJECT: Public Comments on Proposed Withdrawal of EPA Water Quality Standards in the Bay/Delta; Related Bay/Delta Developments

TO: Mary Ellen Levine, OGC

FROM: Thomas M. Hagler, ORC-9

(1) **Comments on Proposed Withdrawal**

For your records, I'm enclosing copies of the 5 written comments received in response to our proposed withdrawal of the Bay/Delta water quality standards. Although the quantity of comments is small, it represents most of the players, with the Urban/Ag coalition filing one comment, the State of California weighing in through the Department of Water Resources, and the environmental groups filing three separate comments on behalf of a multitude of clients.

I have skimmed but not read these comments. As of right now, both R9 Water Management Division and Region IX as a whole are going through reorganization torture, so we don't really have any first or second line managers to focus on this project. I am suggesting waiting until later this month when the reorganizations become more fixed before we try to approach management to discuss the rule withdrawal process.

(2) **Lawsuits Against the State Board on the Bay/Delta Accord**

As you may recall, there were three lawsuits filed against the State Board for its water quality plan implementing the Bay/Delta Accord.

- Environmentalist lawsuit. This Sierra Club Legal Defense Fund lawsuit (actually, a revived preexisting suit) was substantially revised and refiled to remove the challenge to the Accord.

- Stockton East, et al. (Water districts) lawsuit. I recently sent you a note explaining that this suit was dismissed in state court, primarily because it failed to include an indispensable party (the USBR). I heard last week through the legal grapevine that this suit will be refiled soon in Federal Court to include the Bureau.

- San Joaquin Tributaries, et al. (more water districts) lawsuit. This is probably the more substantive suit against the State Board. The water users have been trying to come up with a negotiated settlement to this suit (given that its whole point was to find more water for the plaintiff). We understand that the parties will "roll out" their proposed settlement on April 16th. Further, we understand that part of that proposed settlement will include an agreement to <u>not meet</u> some of the standards included in the Bay/Delta Accords. Obviously, we are wary of this proposal, and are concerned that it undoes the Accord. Once we have more information about the proposal (which appears to have the backing of the San Joaquin valley interests and some of the critical urban interests), we should talk at length.

That's about it for now. Call me when you come up for air and we can catch up on all this California business (Auburn Dam, the long term planning process, the CVPIA).

cc: Tudor Davies (w/o comments)
Phil Metzger (w/o comments)

Sunrise, Mt. McKinley — Ansel Adams

Rec'd
MAR 18 1996

SIERRA CLUB LEGAL DEFENSE FUND, INC.

The Law Firm for the Environmental Movement

180 Montgomery St., Suite 1400, San Francisco, CA 94104-4209 (415) 627-6700 FAX (415) 627-6740

10.132.01
March 18, 1996

Palma Risler
Water Management Division
U.S. Environmental Protection
Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

Re: Comments on EPA's proposed withdrawal of water quality standards for the San Francisco Bay-Delta estuary (40 C.F.R. section 131.37) in response to notice published in 60 Fed.Reg. 65614 (December 20, 1995)

Dear Ms. Risler:

On behalf of the undersigned environmental organizations we are writing to urge EPA not to withdraw its Final Rule adopting Water Quality Standards for Surface Waters of the Sacramento and San Joaquin Rivers, and San Francisco Bay and Delta, California promulgated December 14, 1994 (published January 24, 1995 (60 Fed.Reg. 4663), effective February 23, 1995 and codified in part at 40 C.F.R. section 131.37) (hereinafter, "Federal Standards"). Withdrawal of these Federal Standards at this time would violate applicable law in at least six respects, as outlined in more detail below. EPA proposes to withdraw its Federal Standards on the grounds that on May 22, 1995 the State of California adopted a Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (approved by the California Office of Administrative Law on July 20, 1995, and transmitted to EPA for its review and approval under section 303(c) of the Clean Water Act on July 27, 1995)(hereinafter "1995 WQCP") that designates "beneficial uses" and adopts "water quality objectives" that are as protective as the "designated uses" and "water quality criteria" adopted by EPA in the Federal Standards.

The State's 1995 WQCP is insufficient to support withdrawal of the Federal Standards. First, the 1995 WQCP does not <u>designate water uses which are consistent</u> with the requirements of the Clean Water Act, 33 U.S.C. section 1251(a)(2), in violation of 40 C.F.R. section 131.5(a)(1) and 33 U.S.C. section 1313(c). Second, the 1995 WQCP does not adopt <u>water quality criteria that adequately protect</u> the designated water uses, contrary to 40 C.F.R. section 131.5(a)(2) and 33 U.S.C. section

1313(c). Third, the 1995 WQCP does not contain and implement an antidegradation policy consistent with 40 C.F.R. section 131.12, in violation of 40 C.F.R. sections 131.5(a)(5) and 131.6 and 33 U.S.C. section 1313(c). Fourth, EPA has not conducted adequate consultation under section 7 of the Endangered Species Act (16 U.S.C. section 1536) with the National Marine Fisheries Service and the Fish and Wildlife Service with regard to the potential adverse impacts of withdrawal of the Federal Standards. Fifth, the 1995 WQCP compromises water quality objectives based on consideration of economic factors not allowed under the Clean Water Act. Sixth, the State has not demonstrated that it followed its legal procedures for adopting this plan. Until legal challenges to the 1995 WQCP now pending in state superior court (see San Joaquin River Tributaries Association, et al. v. State Water Resources Control Board, Sacramento County Superior Court Civil No. 95-CS-01432 (filed June 16, 1995)) are conclusively resolved, EPA withdrawal of its standards would be premature, in violation of 40 C.F.R. section 131.5(a)(3).

I. Procedural Background

EPA has a statutory duty to review state water quality standards at least every three years, and to disapprove and revise any that fail to protect beneficial uses, including "the protection and propagation of fish, shellfish and wildlife." 33 U.S.C. §§ 1251(a)(2) and 1313(c)(2), (3); 40 C.F.R. §131.5. Section 303(c)(3) of the Act requires EPA to determine that new or revised standards developed in the triennial review process are either consistent or inconsistent with the Act:

> If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements.

33 U.S.C. §1313(c)(3).

In accordance with this law, on September 3, 1991 EPA formally disapproved the State Board's May 1991 Water Quality Control Plan because the State's plan failed to protect the designated fish and wildlife uses of the Bay Delta Estuary, in violation of the Clean Water Act. As required by section 303(c)(3), EPA's disapproval letter proposed specific revisions to the plan to meet the requirements of the Clean Water Act. Id. The State Board did not adopt the revisions requested by EPA in its September 3, 1991 letter. Instead, by letter dated February 10, 1992 the State Board advised EPA that it refused to correct the deficiencies in its May 1991 Water Quality Control Plan.

In the face of the State Board's refusal to comply with EPA's request, EPA had a nondiscretionary duty, under section 303(c)(4) of the Act, promptly to prepare adequate water quality standards for the Bay-Delta Estuary. Section 303(c)(4) of the Act directs that if the requested revisions are not adopted by the state within ninety days after the date of notification, EPA "shall promptly prepare and publish" proposed new regulations. 33 U.S.C. 1313(c)(4); 40 C.F.R. § 131.21. The State Board's ninety-day promulgation period expired on December 2, 1991. EPA thereupon had a duty "promptly" to prepare and publish adequate standards. Because EPA failed to promulgate the required water quality standards "promptly," in violation of section 303(c)(4), on July 30, 1992 the undersigned organizations and others filed their 60-day notice of intent to sue the EPA Administrator under section 505(b)(2) of the Clean Water Act, 33 U.S.C. § 1365(b)(2).

EPA's failure to enforce section 303(c) resulted in continuing severe harm to the fish and wildlife resources of the Bay-Delta Estuary, contrary to the requirements of the Clean Water Act. Therefore on April 16, 1993 the undersigned organizations and others filed suit in federal court to compel EPA to adopt the water quality standards required by the Act.[1] That suit resulted in entry of a Partial Settlement and Consent Decree by the court on November 5, 1993. This Consent Decree required EPA to publish proposed water quality standards by December 15, 1993. In conformance with this mandate, on December 13, 1993 the EPA Administrator signed, and on January 6, 1994 the Federal Register published, proposed water quality standards (59 Fed.Reg. 809, et seq.). The undersigned organizations and others submitted detailed comments on EPA's proposed water quality standards on March 11, 1994. Those comments are incorporated herein by this reference.

Further federal court proceedings resulted in the entry of a second Consent Decree by Federal District Judge Lawrence Karlton on May 3, 1994, requiring EPA to promulgate final Federal Standards by December 15, 1994. Promulgation of those detailed standards, which occupy, together with agency commentary on related issues, 46 pages in the Federal Register, represents an historic turning point in efforts to restore and protect the endangered Bay-Delta Estuary. Although the 1995 WQCP is consistent with and proposes achievement of many of the important water quality criteria set forth in the Federal Standards, nonetheless the 1995 WQCP falls short of satisfying <u>all</u> of the new Federal Standards.

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[1] <u>Golden Gate Audubon Society, et al. v. Browner</u>, Civ. S-93 646 LKK PAN (E.D. Calif).

Therefore, for the reasons presented below, we ask that EPA refrain from withdrawing its Federal Standards pending adoption by the State of additional improvements in its 1995 plan.

II. The 1995 WQCP Does Not Adopt "Water Uses" Consistent With the Requirements of the Clean Water Act.

EPA's January 6, 1994 Notice of Proposed Rulemaking proposed standards to restore habitat conditions that existed in the late 1960's and early 1970's on the grounds "[t]his period generally reflects conditions that occurred in the estuary before fish habitat and populations began to experience the most recent significant declines, and therefore serves as a useful definition of a healthy fishery resource." 59 Fed. Reg. 810, 819-820 (January 6, 1994). As we noted in our comments submitted on March 11, 1994, this statement missed the mark in two respects. First, the Clean Water Act mandates protection of existing and designated fish and wildlife uses of water, rather than water quality conditions, in effect when the Act was adopted. Those uses were already declining in the late 1960s, due to degraded water quality conditions. Second, even assuming that the Act mandated protection of the water quality conditions extant in the late 1960's - a period EPA's selection of the 1968 standard is intended to represent - the 1995 WQCP fails even to meet that degraded standard.

A. The Clean Water Act Requires Protection of Actual and Designated Uses, Rather Than Water Quality Conditions, in Effect When the Act was Adopted.

Section 303(c) of the Act requires the adoption of water quality standards "consist[ing] of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses." 33 U.S.C. § 1313(c)(2), emphasis added. Thus, the designated uses govern the water quality criteria, rather than the other way around. Water uses that do "not comply with the designated use of the water [do] not comply with applicable water quality standards." PUD No. 1 of Jefferson County v. Washington Department of Ecology, ___ U.S. ___, 114 S.Ct. 1900, 1910 (1994). The water quality standards "shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter." Id., emphasis added. The latter mandate to "enhance" water quality implements the Act's primary "objective . . . to restore . . . the chemical, physical and biological integrity of the Nation's waters," and underscores Congress' intent that the Act not merely forbid degradation, but rather mandate restoration and enhancement of the Nation's waters wherever necessary to protect designated uses. 33 U.S.C. § 1251(a), emphasis added.

Among the potential designated uses enumerated in the Act, Congress placed the highest priority on "protection and propagation of fish, shellfish and wildlife and . . . recreation in and on the water." 33 U.S.C. § 1251(a)(2). Commonly referred to as the "fishable/swimmable" standard, this mandate is one of the two "national goals" identified by Congress in the Act. Id.[2]

EPA's regulations explicate this statutory directive that water quality standards assure protection of fish and wildlife and other designated uses:

> [s]tates must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use.

40 C.F.R. § 131.11(a). Thus, the Clean Water Act's standards are functional and intended to protect "designated uses," rather than merely replicate water quality conditions that may have existed at the time of the Act's adoption. A contrary construction of the Act would not only contravene EPA's authoritative regulations, but frustrate Congress' manifest intent to "restore" waterways whose severe degradation had preceded, and prompted, the Act's adoption.

B. Bay-Delta Water Quality Conditions in the Late 1960's and Early 1970's Were Not Adequate to Protect Designated Uses.

The water quality conditions in the Bay-Delta Estuary during the late 1960's and early 1970's were not adequate to protect designated fish and wildlife uses. To the contrary, significant declines in the diversity and populations of fish and wildlife species in the Bay-Delta Estuary occurred during this period.

The decline of the Bay-Delta ecosystem due to freshwater diversions has been observed at all levels of the food chain since the late 1960s. For example, rotifers, a family of zooplankton, declined "to less than a tenth of their initial densities" in the Delta between 1972 and 1979. San Francisco

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[2] The other "national goal," elimination of the discharge of pollutants into navigable waters, undergirds the Act's National Pollutant Discharge Elimination System. 33 U.S.C. § 1251(a)(2).

Estuary Project Report (1992) ("SFEP 1992") at 42. Other zooplankton populations suffered similar declines. "Examination of the patterns of abundance of cladocerans through time for areas dominated by Sacramento River water, San Joaquin River water, and Suisun Bay shows the importance of outflow on cladoceran abundance and distribution." SFEP 1992 at 49. Similarly, most copepod zooplankton species "have undergone severe, long-term declines in abundance (CDF&G 1987b)." SFEP at 56. These long-term declines were well underway by the early 1970s. See SFEP 1992 at 58-60, Figures 17-19.

The Bay-Delta benthic community, too, is primarily dependent on freshwater outflow. SFEP at 68. For example, "[a]ll three *Crangon* shrimp captured by the Bay Study show obvious responses to flow patterns." SFEP 1992 at 79. Some fish, notably Starry flounder (*Platichthys stellatus*) and English sole (*Parophrys vetulis*) depend on bottom currents driven by high outflows to carry their young into the Bay from offshore spawning grounds. SFEP at 83. This benthic community had already suffered serious population losses by the early 1970s.

Chinook salmon (*Oncorhynchus tshawytscha*) and Summer steelhead trout (*Oncorhynchus mykiss*) have been decimated by water development. Commercial catches of Central Valley spring runs of Chinook salmon exceeded 600,000 in 1883. P.B. Moyle, et al., Fish Species of Special Concern of California, prepared for the State of California, Resources Agency (May, 1993) at 45. By 1969, however, spring-run escapements had dropped to only a few thousand annually. Moyle, et al. at 46. Historic winter run Chinook salmon populations ranged between 500,000 and 1 million, and still reached 120,000 in the early 1960s. Since the late 1960s, however, winter-run populations plummeted to just a few hundred returning adults. Thus, Chinook salmon population decline was already far advanced by the late '60s. Winter run Chinook salmon are now listed on the state and federal endangered species lists, with total population levels of 547, 441, 191, 1180, and 341 from 1989 to 1993, respectively. 59 Fed.Reg. 440.

While much of the decline in salmon populations is directly tied to loss of spawning grounds due to dam construction, migrating salmon adults and smolts have also suffered dramatic losses due to degraded Bay-Delta habitat. Freshwater outflow and pumping levels are two of the most important factors influencing salmon smolt survival. "Passage through the Central Delta [as a result of diversions and pumping] is detrimental to smolts because of warmer temperatures, increased predation rates, longer migration routes, areas of reverse flow in river channels, and entrainment by agricultural and export pumps (Herrgesell 1990)." SFEP 1992 at 89. Significant fish losses due to pumping commenced in 1951 when the Central Valley Project became

operational, and worsened after 1968 when the State Water Project began operation.

Striped Bass populations plummeted from a Striped Bass Index level of over 100 during the 1960's to an average of less than 20 since 1978. The Estuary Project attributes this decline, which was marked by a sudden population crash following 1977, to the higher pumping levels introduced by the State Water Project in 1968:

> Inserting a lag term of 5-8 years to allow the young bass to grow to maturity also accurately accounts for the observed drop in the adult stock and its egg production in 1977 (Herrgesell 1990). These adults were the young fish produced from 1969-1972 when the State Water Project began diverting water from the Delta and the Central Valley Project increased its diversions.

SFEP 1992 at 98. The same report concludes that "the interaction of diversion rate and outflow [is] the only adequate explanation for the decline of the population and its inability to rebound." SFEP 1992 at 99.

The decline of Delta smelt (*Hypomesus transpacificus*) is well documented in the FWS' notice of its decisions to propose and subsequently to list this species as threatened under the Endangered Species Act. 56 Fed. Reg. 50075 (October 3, 1991), 58 Fed. Reg. 12854 (March 5, 1993).

Similarly, the decline of the Longfin smelt (*Spirinchus thaleichthys*) and the Sacramento splittail are documented in the FWS' recent notice of its decision to propose "threatened" status for the latter. 59 Fed. Reg. 809, 862-871 (January 6, 1994).

The foregoing dramatic decline in the population levels of the six most abundant large Delta fish species confirms the precipitous collapse of the macroscopic ecosystem. It is undisputed that <u>total population levels were already in severe decline by the early 1970s</u>. SFEP 1992 at 194. Thus, the water quality conditions in the late 1960s were <u>already</u> harming fish populations. Hence, in order to restore fish and wildlife designated uses to ecologic health, water quality conditions from an even earlier period must be restored.

Under section 303(c) of the Clean Water Act, EPA may approve state-adopted water quality standards only if the state has adopted "water uses which are consistent with the requirements of the Clean Water Act." 40 C.F.R. section 131.5(a)(1). For the

foregoing reasons, water quality conditions prior to 1968 must be restored to achieve healthy fish populations. Neither the Federal Standards nor the 1995 WQCP satisfy this requirement.

EPA's Federal Standards are nonetheless far more protective than the 1995 WQCP. EPA has interpreted the Clean Water Act to require that water uses, particularly fish and wildlife uses, of the Bay-Delta Estuary that were in existence in 1968 must be protected. See, e.g., Federal Standards, 60 Fed.Reg. at 4672: "EPA has determined that it is appropriate to use the level of development - and corresponding salinity regime - represented by calendar year 1968 as a surrogate for the late 1960's to early 1970's reference period when the estuary attained its designated uses."

Thus, by EPA's own calculation, to satisfy the Clean Water Act, the 1995 WQCP must protect fish and wildlife uses of the Bay-Delta Estuary that were in existence as of 1968. But the 1995 WQCP does not do this. The 1995 WQCP expressly rejects the 1968 standard, and adopts instead a much more lenient "1971.5" standard. It is undisputed that the abundance of Bay-Delta aquatic species, particularly endangered salmon runs, was lower in 1971 and 1972 than it was in 1968. For that reason, indeed, EPA rejected comments on its draft Federal Standards proposing adoption of calendar years later than 1968 as the benchmark for identification of the designated uses to be protected. Thus, the record on which EPA based its promulgation of the Federal Standards does not support its approval now of the State's more lenient, less protective standard based on "1971.5" aquatic populations.

III. The 1995 WQCP Does Not Adopt Criteria That Protect the Designated Water Uses.

Section 303(c) of the Clean Water Act directs that EPA may approve state water quality criteria only if they "protect the designated water uses." 40 C.F.R. section 131.5(a)(2). The 1995 WQCP fails to provide a level of protection for Bay-Delta fish and wildlife that is equivalent to the protection provided under the Federal Standards. This fact is not subject to debate even by the State of California. Indeed, the Executive Director of the State Water Resources Control Board has recently stated, in a sworn affidavit filed in Sacramento County Superior Court, that

> [t]he objectives in the 1995 [State] Bay-Delta Plan...differ from the standards adopted by the U.S. EPA on December 14, 1994. The U.S. EPA standards generally are more protective of fish life and more costly in terms of water supply than the

> objectives in the 1995 Bay-Delta Plan.

Declaration of Walter G. Pettit in support of Respondent's Opposition to Motion for Attorney's Fees, dated February 21, 1996 and filed in Sacramento County Superior Court on March 13, 1996, at page 13, paragraph 24, emphasis added.

The deficiencies of the State Water Resources Control Plan are significant. In the aggregate, they provide a substantially lower level of protection for fish and wildlife uses in the Bay-Delta Estuary than do the Federal Standards. Several of the more salient deficiencies are outlined below.

A. The 1995 WQCP Fails to Protect Warm Water Fish Spawning.

The 1995 WQCP fails to assure protection of warm water fish spawning, a designated use under the Federal Standards. In the San Joaquin river system, striped bass spawn primarily in the less saline reaches of the river. According to the California Department of Fish and Game, "striped bass spawn primarily at EC [electrical conductivity] levels of less than 0.3 mmhos/cm, and seldom migrate up the San Joaquin River to spawn when EC levels exceed 0.4 mmhos." EPA disapproval letter of September 13, 1991, at page 8. The 1995 WQCP ignores this data. It assumes that an EC standard of 0.44 mmhos/cm is sufficient to protect striped bass spawning. 1995 WQCP at 18. Further, it eliminates critically dry years from any explicit salinity protections. Third, it eliminates the upstream segment of the river between Prisoner's Point and Vernalis from <u>any</u> explicit salinity protection in <u>all</u> water years. Furthermore, analysis of DWRSIM modeling of salinities expected at Vernalis demonstrates that the 1995 WQCP would violate the salinity criteria set forth in the Federal Standards in 18 percent of anticipated water years. <u>See</u> Bruce Herbold, Memorandum evaluating warm water fish spawning criteria, September 19, 1995, at 4-5.

B. The 1995 WQCP Fails to Protect Salmon Migration and Spawning.

The 1995 WQCP calls for a doubling of natural production of Chinook salmon compared to the average production in a 1967 to 1991 baseline period. 1995 WQCP at 18. While this narrative standard appears to be consistent with the Federal Standards, which likewise require at least doubling of salmon populations, the State's objective is largely illusory because the plan lacks measures sufficient to assure its achievement. With respect to Sacramento River salmon outmigration, the 1995 WQCP allows higher export rates in wet years (when total Delta inflows in June

exceed 8500 cfs) than was allowed under D-1485. More important, because the 1995 WQCP requires closure of the Delta Cross Channel on only 14 days from May 21 to June 15, significant salmon smolt mortality is anticipated. According to an analysis prepared by EPA Staff Scientist Bruce Herbold, the partial DCC closures together with all other changes in flow requirements and export restrictions contained in the 1995 WQCP will only improve salmon passage through the Delta by approximately 68 percent. Mean salmon smolt mortality would be reduced by only 12 percent compared to conditions under D-1485. Bruce Herbold, Memorandum evaluating SWRCB fish migration protections, dated September 19, 1995, at 5-7. Although these requirements will improve salmon smolt survival, there is no record evidence to suggest that they will achieve a doubling of salmon reproduction. Therefore they violate the Federal Standards.

The 1995 WQCP likewise fails to assure protection of salmon outmigration in the San Joaquin River. EPA staff has concluded that "[t]he evidence strongly suggests that a control structure at the head of Old River is necessary to restrict the diversion of migrating salmon from the main San Joaquin River channel and towards the export pumping facilities." Id. at 10. Absent this restriction, heavy salmon mortality is anticipated. Modeled salmon survival during migration in April and May demonstrates that without construction of the proposed Old River barrier, the 1995 WQCP would achieve a level of salmon smolt survival of just one-third that required under the Federal Standards. Id. The projected levels of survival (and the corresponding Federal Standards) for wet, above normal, below normal, dry and critical years, respectively, are: .201 (.49), .113 (.35), .087 (.28), .072 (.22) and .055 (.22). Despite overwhelming evidence that installation of this barrier is thus essential to meet Federal Standards, the 1995 WQCP only directs that use of such a control structure be tested for possible approval. 1995 WQCP at 36. Moreover, even were such a barrier to be installed, modeling reviewed by EPA staff confirms that the Federal Standards for salmon smolt survival would still be violated by a substantial margin in above normal and below normal years. Herbold memorandum, supra at 11.

C. The 1995 WQCP Fails to Protect Estuarine Habitat.

The 1995 WQCP fails to assure compliance with the Federal Standards because it is designed to protect beneficial uses in existence in "1971.5," rather than in 1968 as mandated by EPA. The State Plan also deviates from the Federal Standards because it relaxes salinity requirements under extremely dry conditions. Analysis of these and related differences by EPA staff reveal that in certain water years the State Plan would require compliance with the two ppt isohalene at Chipps Island only about

half as frequently as would be required under the Federal Standards (37 days rather than 60 days). Although a 30-day reduction in two ppt compliance at Chipps Island is projected to occur only in one year in twelve, significant deviations from the two ppt standard (from 4 to 10 days annually) would nonetheless occur in most years. Bruce Herbold, Memorandum evaluating estuarine habitat protection, September 20, 1995, at 4-5. Equally important, the 1995 WQCP allows substantial relaxation of its estuarine habitat criteria in exceptionally dry conditions where projected total annual Sacramento River Index flow is less than 8.1 MAF (e.g., water years 1924, 1931, 1976 and 1977). Under these conditions, the State plan allows reduction of minimum flow requirements from 7100 cfs to just 4000 cfs in May and June. Although such critically dry conditions are unusual, they do recur regularly and should not excuse compliance with Federal Standards deemed essential to protect designated fish and wildlife uses. Particularly for species such as the Delta smelt, which must reproduce successfully each year in order to survive, a lapse of protection in any year could result in extirpation.

V. The 1995 WQCP Fails to Include and Implement an Antidegradation Policy.

The Clean Water Act requires that state water quality criteria contain an antidegradation policy consistent with the standards set forth in 40 C.F.R. section 131.12. 40 C.F.R. section 131.6. The 1995 WQCP does not prohibit degradation of the Bay-Delta Estuary. To the contrary, it expressly contemplates degradation.

For example, the 1995 WQCP proposes deferral of the compliance date for several of the monitoring stations in western Suisun Marsh. The compliance deadlines for stations S-97 and S-35 are delayed from 1993 and 1994, respectively, to October 1, 1997. Relaxation of these compliance deadlines will result in further degradation of the tidal brackish marshes of Suisun Bay, contrary to the Antidegradation Policy set forth in 40 C.F.R. section 131.12.

Similarly, the 1995 WQCP omits numeric criteria for salmon smolt survival. Likewise omitted are any temperature criteria to assure achievement of the cold water regimes needed for salmon spawning. The absence of specific criteria to protect salmon, other than the modest Delta Cross Channel gate closures, may result in continued degradation of salmon spawning, rearing and migratory habitat, contrary to 40 C.F.R. section 131.12.

VI. EPA Has Failed to Conduct Adequate Consultation Under the Endangered Species Act.

Section 7 of the Endangered Species Act requires that all federal agencies consult with the Fish and Wildlife Service and the National Marine Fisheries Service to ensure that any action they authorize, fund or carry out is not likely to jeopardize the continued existence of any endangered or threatened species subject to the jurisdiction of those agencies. 16 U.S.C. section 1536(a)-(c). Although EPA has recognized its duty to conduct consultation with FWS and NMFS in accordance with ESA, the consultations it purported to undertake concerning withdrawal of the Federal Standards are devoid of any meaningful review. On September 11, 1995, EPA requested that FWS and NMFS "consult" with respect to EPA's proposed withdrawal of its Federal Standards. Just two days later, FWS responded with a brief letter concluding that its previous biological opinion respecting the Federal Standards - not the 1995 WQCP - would suffice. The NMFS likewise responded with a one page letter concluding that no further consultation beyond NMFS's previous review of the Federal Standards was necessary.

Both agencies concluded that re-initiation of section 7 consultation was not required because they assumed that the 1995 WQCP was as protective of threatened and endangered species as are the Federal Standards. Both agencies accepted unhesitatingly and uncritically EPA's representation that the 1995 WQCP "provides equivalent protection for the designated uses of the Bay/Delta estuary as compared to EPA's final water quality criteria adopted last December." September 11, 1995 letter to FWS and NMFS from Alexis Strauss, Acting Director, EPA Water Management Division, Region IX. But as we have seen above, the 1995 WQCP departs substantially from the level of protection mandated under the Federal Standards. By the State's own admission, the 1995 WQCP provides a lower level of protection of "fish life." Pettit Declaration, supra. Reduced protection for Delta smelt and winter run Chinook salmon, of course, requires re-initiation of consultation under the Endangered Species Act. Because EPA failed to conduct this required consultation, its proposed withdrawal of the Federal Standards is invalid.

VII. The 1995 WQCP Improperly Compromises Water Quality Objectives to Achieve Impermissible Economic Goals.

The 1995 WQCP expressly relaxes water quality objectives in order to promote economic goals. This violates the Clean Water Act. The Act mandates that water quality criteria "must be based on sound scientific rationale" and "scientifically defensible methods." 40 C.F.R. section 131.11(a)(1) and (b)(1)(iii).

Permissible "criteria" are chemical, physical and biological characteristics of a water body necessary to attain and protect designated uses. 33 U.S.C. section 1362(18); 40 C.F.R. section 131.3(b). States may not give weight to economic factors in setting water quality criteria. Mississippi Commission on Natural Resources v. Costle, 625 F.2d 1269, 1276 (5th Cir. 1980); James City and County v. U.S. Environmental Protection Agency, 12 F.3d 1330, 1335-36 (4th Cir. 1993). Because the 1995 WQCP considers economic factors not only in the designation of beneficial uses, but even in the establishment of water quality objectives, it violates Congress' intent that water quality criteria be based solely on the best available science.

VIII. The State Has Not Followed Required Legal Procedures in Adopting the 1995 WQCP.

EPA may not approve the 1995 WQCP unless it first determines that the State "has followed its legal procedures for revising or adopting standards" contained in that plan. 40 C.F.R. section 131.5(a)(3). It is undisputed that the State did not comply with the California Endangered Species Act before adopting the 1995 WQCP. As confirmed in the March 1, 1995 letter from Department of Fish and Game Associate Marine Biologist Dale Sweetnam, annexed as Exhibit 1 hereto, the California Department of Fish and Game staff had "been put in a very awkward position because it was instructed not to analyze the effects, either positively or negatively, of the December 15th Principles of Agreement or the Bay delta Water Quality Control Plan on the fish and wildlife of the Estuary." In particular, DF&G staff were concerned that the 1995 WQCP's "relaxation of export restrictions in part of July and higher than historical export limitations throughout the rest of the summer and fall may put Delta smelt in jeopardy once again." Id. In the face of this startling omission, EPA cannot, consistent with its regulations, approve the 1995 WQCP, much less withdraw the Federal Standards. Such standards would be essential to Bay-Delta protection in the absence of a valid State plan.

Furthermore, other non-trivial objections to the validity of the 1995 WQCP have been raised in California state court (See San Joaquin River Tributaries Association, et al. v. State Water Resources Control Board, Sacramento County Superior Court Civil No. 95-CS-01431. Until all objections to the validity of the 1995 WQCP have been resolved, withdrawal of EPA's long-overdue and critically needed Federal Standards would be both unlawful and irresponsible.

IX. Conclusion.

For the foregoing reasons we urge EPA to resist the

political pressure now exerted by the State of California to secure removal of the Federal Standards. Withdrawal of those standards would emasculate federal oversight which has proven to be absolutely essential to continued progress in restoration and protection of the Bay-Delta Estuary. Withdrawal of the Federal Standards would be unlawful and pose a grave threat of renewed "water wars" in both judicial and legislative arenas.

Very truly yours,

Stephan C. Volker

Stephan C. Volker
Attorney for GOLDEN GATE AUDUBON SOCIETY, MARIN AUDUBON SOCIETY, SANTA CLARA AUDUBON SOCIETY, OHLONE AUDUBON SOCIETY, MOUNT DIABLO AUDUBON SOCIETY, SEQUOIA AUDUBON SOCIETY, NAPA-SOLANO AUDUBON SOCIETY, MADRONE AUDUBON SOCIETY and SIERRA CLUB

Encl.: March 1, 1995 Memorandum from Dale Sweetnam, Associate Marine Biologist, to Perry Herrgesell, Chief, Bay-Delta Division, California Department of Fish and Game

cc: Clients

baydelta\risler.ltr

State of California

Memorandum

To Perry Herrgesell

Date : March 1, 1995

From Department of Fish and Game

Subject : Response to letter from John Turner regarding CESA consultation with the SWRCB on the Bay-Delta Water Quality Control Plan

In his letter John Turner stated that the Department was informally consulting with the SWRCB regarding the draft water control plan. I am not aware that this has occurred, but the Department has been consulting with the SWRCB as to how the monitoring, stated in the plan, will be accomplished by the IEP. I do not believe that the Department has done any consultation as to how the plan will be implemented under the CESA.

Either occurred although it has not been specified as (illegible)

Last year, the Department had the opportunity to adopt the federal opinion for delta smelt instead of preparing a separate CESA biological opinion. The letter of adoption was forwarded to Sacramento at the end of April of last year. The letter never was forwarded to the Bureau of Reclamation. This means that no biological opinion under the CESA which went into effect in December of 1993 was ever signed for delta smelt in 1994.

Department staff has been put in a very awkward position because it was instructed not to analyze the effects, either positively or negatively, of the December 15th Principles of Agreement or the Bay delta Water Quality Control Plan on the fish and wildlife of the Estuary. As of today, I have not reviewed the biological assessment which was prepared by the SWRCB staff (Chapter XIII appended to the draft WQCP). I also have not received any modeling studies regarding possible effects of the proposed standards on water quality or quantity. I would like to see comparisons of the proposed standards versus the past requirements under D-1485 + winter run (q-west) + delta smelt opinions under different water year types. My primary concern is that although outflow requirements will be in effect from February through June, relaxation of export restrictions in part of July and higher than historical export limititations throughout the rest of the summer and fall *may* put delta smelt in jeopardy once again. It has been the Department's position (e.g., testimony for D-1630) that high exports at any time of the year may be detrimental to fishes in the Estuary. This includes delta smelt.

Dale

Dale Sweetnam
Associate Marine Biologist

Exhibit 1

Sunrise, Mt. McKinley — Ansel Adams

SIERRA CLUB LEGAL DEFENSE FUND, INC.

The Law Firm for the Environmental Movement

180 Montgomery St., Suite 1400, San Francisco, CA 94104-4209 (415) 627-6700 FAX (415) 627-6740

Rec'd
MAR 19 1996

10.132.01
March 18, 1996

VIA MESSENGER
Palma Risler
Water Management Division
U.S. Environmental Protection
Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

Re: Comments on EPA's proposed withdrawal of water quality standards for the San Francisco Bay-Delta estuary (40 C.F.R. section 131.37) in response to notice published in 60 Fed.Reg. 65614 (December 20, 1995).

Dear Ms. Risler:

Enclosed find a new page 14 to Mr. Volker's letter to you of March 18, 1996. Please substitute this page for the previous page 14. The new page adds a represented client inadvertently left off the previous page 14.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

Jon Nelson

Jon Nelson
(Stephan C. Volker's Secretary)

baydelta\risler.lt2

political pressure now exerted by the State of California to secure removal of the Federal Standards. Withdrawal of those standards would emasculate federal oversight which has proven to be absolutely essential to continued progress in restoration and protection of the Bay-Delta Estuary. Withdrawal of the Federal Standards would be unlawful and pose a grave threat of renewed "water wars" in both judicial and legislative arenas.

Very truly yours,

Stephan C. Volker

Stephan C. Volker
Attorney for GOLDEN GATE AUDUBON SOCIETY, MARIN AUDUBON SOCIETY, SANTA CLARA AUDUBON SOCIETY, OHLONE AUDUBON SOCIETY, MOUNT DIABLO AUDUBON SOCIETY, SEQUOIA AUDUBON SOCIETY, NAPA-SOLANO AUDUBON SOCIETY, MADRONE AUDUBON SOCIETY, SIERRA CLUB and CITIZENS FOR A BETTER ENVIRONMENT

Encl.: March 1, 1995 Memorandum from Dale Sweetnam, Associate Marine Biologist, to Perry Herrgesell, Chief, Bay-Delta Division, California Department of Fish and Game

cc: Clients

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Rec'd pc
MAR 18 1996

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By fax and by mail

March 18, 1996

Palma Risler
Water Management Division
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, Ca. 94105

RE: PROPOSED REMOVAL OF FEDERAL WATER QUALITY STANDARDS FOR THE SAN FRANCISCO BAY-DELTA ESTUARY

Dear Ms. Risler,

This letter is submitted as the comments of The Bay Institute of San Francisco and the Pacific Coast Federation of Fishermen's Associations (PCFFA) regarding the proposed removal of federal water quality standards for surface waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California, noticed by the U.S. Environmental Protection Agency (EPA) in the Federal Register on December 20, 1995. The Bay Institute and PCFFA question whether the proposed removal of federal water quality standards for the Bay-Delta estuary is appropriate at this time.

EPA's September 26, 1995, approval of the State Water Resources Control Board's (SWRCB) 1995 Water Quality Control Plan (WQCP) for the Bay-Delta estuary, the necessary prerequisite to the proposed removal of federal standards, assumed equivalency between the federal standards and a variety of water quality requirements and other measures contained in the 1995 WQCP and in the December 15, 1994, Principles for Agreement on Bay-Delta Standards (Bay-Delta Accord) between the federal government and the State of California. The finding of equivalency may be valid, provided

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that certain assumptions made by EPA were and remain correct. (The Bay Institute's support for the 1995 WQCP, whose direct regulatory requirements are not fully equivalent to the EPA rule, was based in part on similar assumptions). These assumptions included (but were not limited to) the following:

(1) the 1995 WQCP's narrative objective for salmon protection would serve as the underpinning of state planning and regulatory programs to fully protect the chinook salmon resource;

(2) Central Valley Project Improvement Act (CVPIA) and Category III Program activities would improve near-term protections for chinook salmon, striped bass and other Bay-Delta species; and,

(3) the physical baseline (i.e., actual water quality conditions achieved by compliance with the regulatory requirements of the 1995 WQCP at existing federal and state water project export, conveyance and storage capacity) would remain unchanged.

Since the signing of the Bay-Delta Accord and the SWRCB's adoption of the 1995 WQCP, a number of outstanding issues have emerged which throw into question the validity of these assumptions, and therefore pose barriers to the proposed removal of the federal standards. Our comments address those outstanding issues.

Protection of migration of aquatic organisms use

In approving the 1995 WQCP, EPA found that the doubling requirement of its narrative objective for salmon protection ("water quality conditions...together with other measures in the watershed, sufficient to achieve a doubling of natural production of chinook salmon from the average production of 1967 - 1991") was roughly equivalent to the improvement in salmon smolt survival required under the federal rule. EPA also noted that the narrative objective should "serve as the underpinnings of state planning and regulatory programs that fully protect" the chinook salmon resource (EPA, Technical Support Memorandum [TSM], Review of State of California Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary Under Section 303 of the Federal Clean Water Act, page 16). Since, as EPA acknowledges, the direct requirements of the 1995 WQCP are not in themselves fully equivalent to the federal rule but are equivalent only in conjunction with other measures (including use of operational flexibility and implementation of CVPIA and Category III activities), the importance of the narrative objective in setting a performance standard for salmon protection activities cannot be understated.

Unfortunately, the 1995 WQCP fails to construct a solid foundation for state planning and regulatory programs to achieve the narrative objective.

- Interim steps toward the development of numeric objectives to replace the narrative objective are not identified. EPA Procedures For Initiating Narrative Biological Criteria call for data collection and measurement procedures as "an appropriate interim step for the eventual development of numeric biologic criteria." EPA commended the SWRCB for including in the 1995 WQCP a program to provide sufficient information for development of numeric criteria for Suisun Bay brackish tidal marshes, to be adopted during the next triennial review. However, an analogous program to provide sufficient information to develop numeric objectives that could replace the narrative objective for salmon protection was not included in the 1995 WQCP. EPA should stay withdrawal of the federal standards until the SWRCB identifies appropriate interim steps to the development of numeric objectives to replace the narrative objective for salmon protection.

- The narrative objective is not currently included among the 1995 WQCP objectives to be addressed by the SWRCB in developing a water rights decision and other implementation measures. If this remains the case, it is highly unlikely that important flow and non-flow measures (the issue of numeric water quality objectives aside) to achieve the narrative objective will be implemented as part of the state's planning and regulatory programs. Consequently, EPA's assumption that adoption of the narrative objective will drive state planning and regulatory programs to achieve salmon protection may no longer be valid, and levels of salmon protection equivalent to the federal rule are not likely to be achieved.

- The 1995 WQCP fails to assign any responsibility for achieving the narrative objective to the CALFED Coordinated Operations Group (Ops Group), although EPA emphasizes the importance of the use of operational flexibility by the Ops Group in order to improve conditions for migrating salmon and thus potentially achieve a level of protection equivalent to the federal rule. For this reason, EPA should stay withdrawal of the federal standards until the role of the Ops Group in achieving the narrative objective has been clarified by the SWRCB.

EPA has referred to the importance of implementing CVPIA and Category III activities in achieving levels of protection equivalent to the federal rule. The agency concluded that " success of these [CVPIA and Category III] efforts in the Delta could greatly increase the likelihood of achieving <u>intended</u> salmon passage rates" (TSM, page 21, emphasis added). Unfortunately, the success of these efforts is in question at this time. Legislative and administrative attempts to modify the CVPIA could eliminate or drastically weaken potential benefits of CVPIA implementation to salmon protection efforts, including activities to achieve Delta habitat objectives of

the Anadromous Fish Restoration Plan. Furthermore, only one-sixth of the funding for the Category III Program agreed to in the Bay-Delta Accord has been secured, and Category III activities are therefore unlikely to be able to provide benefits on the scale anticipated by EPA. For these reasons, assumptions concerning the likelihood of achieving a level of protection equivalent to the federal rule may be invalid, and EPA should stay withdrawal of the federal standards until issues regarding the potential of CVPIA and Category III activities to improve salmon protections are resolved.

EPA concluded that compliance with the 1995 WQCP's export limits in May and June (in conjunction with its estuarine habitat requirements, use of operational flexibility, and other measures to achieve the narrative objective for salmon protection) would offset the 1995 WQCP's decrease in protection from periodic opening of the Delta Cross-Channel during the period from May 21 to June 15, resulting in a level of protection roughly equivalent to the federal rule. In reaching this conclusion, EPA examined the impacts on hydrological conditions affecting salmon survival in the Delta of compliance with the 35 percent export limits at the existing level of federal and state water project pumping, conveyance and storage capacity. However, the 1995 WQCP's export limits would not result in hydrological conditions affecting salmon smolt survival in the Delta that are equivalent to the EPA rule should federal and state project pumping, conveyance and/or storage capacity be enhanced (as would occur in a number of projects in development or pending before the SWRCB). Unfortunately, the 1995 WQCP does not explicitly acknowledge that such potential changes to project capacity would alter the physical baseline (i.e., water quality conditions achieved by compliance with the regulatory baseline at existing project capacity) of the 1995 WQCP and therefore would necessitate additive changes to the regulatory baseline (i.e., more restrictive export limits). For this reason, EPA should stay withdrawal of the federal standards until the baseline issue is adequately addressed by the SWRCB.

EPA also assumed that compliance with the 1995 WQCP's flow requirements for the San Joaquin River at Vernalis during the April 15 - May 15 pulse period (in conjunction with its pulse period export limits, a control structure at the head of Old River, use of operational flexibility, and other measures designed to achieve the narrative objective for salmon protection) would result in salmon smolt survival protections roughly equivalent to the federal rule in almost all water year types. EPA should be aware that a coalition of Delta exporters and San Joaquin River users has proposed in concept that the SWRCB consider an alternative in preparing environmental documentation for its water rights decision to implement the 1995 WQCP which would not fully implement the Vernalis objectives. If this alternative is ultimately adopted by the SWRCB, EPA's assumption concerning the equivalency of state protection to the federal rule will no longer be valid.

Protection of spawning, reproduction and/or early development use in the lower San Joaquin River

In approving the 1995 WQCP, EPA assumed that

> water quality upstream of Vernalis (that is, water entering the lower San Joaquin from upstream) will not be significantly higher in salinity than the model assumptions. This is a reasonable assumption given that several related regulatory plans and programs (including the actions of the Central Valley Regional Water Quality Board, Category III measures under the Bay-Delta Accords, and measures required by the Central Valley Project Improvement Act) are all expected to reduce salt loading into the San Joaquin River.

Unfortunately, no reduction in salt loading to the San Joaquin River as a result of these regulatory and non-regulatory plans and programs is occurring now or is expected to occur in the foreseeable future. Regulatory plans and programs that might be expected to reduce salt loading, such as the San Joaquin Valley Drainage Implementation Program and the CVPIA and San Joaquin Valley Drainage Relief Act land retirement initiatives, remain largely unfunded and/or unimplemented. In addition, the Central Valley Regional Board is not expected to adopt a plan or program to reduce salt loading in the near term. Finally, as discussed above, the ultimate disposition of both Category III and CVPIA measures remains uncertain at this time. For these reasons, assumptions concerning expected levels of salt loading are questionable, and EPA should stay withdrawal of the federal standards until these issues are resolved.

EPA also assumed that compliance with the 1995 WQCP's flow requirements for the San Joaquin River at Vernalis during the April 15 - May 15 pulse period would result in river salinity regimes roughly equivalent to the federal rule in almost all years. EPA should be aware that a coalition of Delta exporters and San Joaquin River users has proposed in concept that the SWRCB consider an alternative in preparing environmental documentation for its water rights decision to implement the 1995 WQCP which would not fully implement the Vernalis objectives. If this alternative is ultimately adopted by the SWRCB, EPA's assumption concerning the equivalency of state protection to the federal rule will no longer be valid.

Protection of estuarine habitat use

In evaluating the 1995 WQCP, EPA concluded that its estuarine habitat objectives "represent a small, occasionally measurable decrease in the quality of estuarine

habitat protected by the 2 ppt requirements when compared to the EPA rule" (TSM, page 7). However, when considered in conjunction with the 1995 WQCP's restriction of Delta export to 35 percent of Delta inflow during the February - June period when the estuarine habitat requirements are in effect, the 1995 WQCP's protection of estuarine habitat use was found to be equivalent to the EPA rule. In reaching this conclusion, EPA examined the impacts on estuarine habitat quality of compliance with the 35 percent export limits at the existing level of federal and state water project pumping, conveyance and storage capacity. (The SWRCB utilized the same approach in analyzing the impacts of the 1995 WQCP in its environmental documentation). The 1995 WQCP's estuarine habitat requirements and export limits would not, however, be equivalent to the EPA rule should federal and state project pumping, conveyance and/or storage capacity be enhanced, as would occur in a number of proposals in development or pending before the SWRCB . Unfortunately, the 1995 WQCP does not explicitly acknowledge that such potential changes to project capacity would alter the physical baseline of the 1995 WQCP and therefore would necessitate additive changes to the regulatory baseline (i.e., more restrictive estuarine habitat requirements and/or export limits). For this reason, EPA should stay withdrawal of the federal standards until the baseline issue is adequately addressed by the SWRCB.

Legal challenges to the 1995 WQCP

EPA notes that the 1995 WQCP is the subject of legal challenges in state court, and observes that "should [it] proceed to final withdrawal of the federal water quality standards...and the 1995 WQCP is subsequently rejected or remanded, there would be no water quality standards in effect in California carrying out the Bay-Delta Accords." Given the fate of the SWRCB's statewide water quality objectives for toxic pollutants, which were set aside in state court, necessitating federal rulemaking for toxic pollutants, it is proper and appropriate for EPA to consider the adverse impact of pending litigation on the state's ability to discharge its federal Clean Water Act responsibilities and to achieve the goals of the Bay-Delta Accord in a timely manner. The possibility of a situation in which neither state nor federal water quality requirements for the Bay-Delta estuary are in effect is simply unacceptable. For this reason, EPA should stay withdrawal of the federal standards until issues involving legal challenges to the 1995 WQCP have been resolved.

*

We look forward to working with EPA and other parties toward resolving these issues which pose barriers to the proposed removal of federal standards. Barring resolution of these issues, we would not support withdrawal of the federal standards at this time.

Please contact me at (415) 721-7680 if you have any questions concerning these comments.

Sincerely,

Gary Bobker
Policy Analyst

for:

The Bay Institute of San Francisco
Pacific Coast Federation of Fishermen's Associations

cc: John Caffrey, SWRCB

Natural Heritage Institute

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Non-Profit Law and Consulting in Conservation of Natural Resources and the Global Environment

Gregory A. Thomas
President

Rec'd PR

March 15, 1996

Palma Risler
Water Management Division
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

RE: Proposed Removal of Federal Water Quality Standards for Surface Waters of the Sacramento River, and San Francisco Bay and Delta of the State of California (60 Fed. Reg. 65614)

Dear Ms. Risler:

This letter constitutes the comments of the Natural Heritage Institute and our clients, Save the San Francisco Bay Association, Friends of the River, the Planning and Conservation League and United Anglers, with regard to the above-referenced Proposed Rule. It also constitutes the comments of the Natural Resources Defense Council.

We are active participants in the implementation of the December 15, 1994 Bay-Delta accord and the CALFED long-term planning process. While we support these processes, we believe that EPA may be acting precipitously in proposing a complete withdrawal of federal standards prior to the implementation of all aspects of the Bay-Delta accord. We recommend that the agency adopt the more moderate approach of issuing a stay of the federal regulations until the state has fully complied with its responsibilities under the accord and the federal Clean Water Act. Several important issues underscore this recommendation.

First, as EPA acknowledges in the Proposed Rule, the state Water Quality Plan is the subject of state court litigation which could leave the estuary without any water quality standards. It is not appropriate for EPA to second guess the outcome of this action as the basis for deciding that withdrawal of backup federal standards is fitting at this time. Nor is it appropriate for EPA to defer this issue to some future date by assuring the public that it will "work with the state" to deal with such an eventuality as stated in the Proposed Rule. EPA has available the obvious alternative of simply staying the force and effect of its water quality standards. This would be fully consistent with the Bay-Delta accord by deferring to

the state while providing the requisite level of protection to the estuary in the event that the standards are set aside or modified by the state court.

Second, complete withdrawal of the federal standards is inappropriate at this time because the Bay-Delta accord has not been fully implemented. The accord provides that the federal standards will be withdrawn when the state adopts a final plan consistent with the principles in the accord. These principles expressly include a commitment by all parties, including the state, to the implementation and financing of a "Category III" program addressing non-flow factors that adversely affect Delta-dependent species. This program was expected to require $180 million over a three year period.

Well into the second year of the accord, only $11.7 million has been raised despite the identification of $1 billion in potential programs and projects. We appreciate the efforts of the CALFED agencies and the stakeholders working on this issue. However, as we have stated previously, the commitment to a Category III program is a fundamental element of the Bay-Delta accord and one that has not yet been fulfilled. EPA's obligation to fully withdraw the federal standards pursuant to the accord does not accrue unless and until the state adopts a plan that implements the Category III commitment. A stay of the federal standards is a reasonable response to this problem.

Third, the state has just initiated a water right proceeding that will determine the ultimate implementation of the water quality plan. The scoping for this proceeding has encompassed a very broad range of issues including whether or not certain of the standards included in the water quality plan should be included in the water right decision. For example, the state has indicated that it will not adopt measures to implement the two narrative objectives in the water quality plan (Chinook salmon doubling and Suisun Marsh standards). Instead, it proposes to wait and determine whether compliance with the flow and water quality objectives will indirectly implement the narrative standards. (SWRCB Revised Notice of Preparation at 4.) Thus, we have concerns about the state's ultimate implementation of the water quality plan. EPA should stay the effect of the federal standards until a final plan has been adopted by the state that fully implements the water quality standards.

Fourth, although the state amended the water right permits of the federal and state water projects to ensure compliance with the flow standards in the interim, (Water Right Decision 95-6), this decision is also the subject of state court litigation.

In sum, the state has not yet fully carried out its obligations under either the Clean Water Act or the Bay-Delta accord to protect the aquatic resources of the Bay-Delta estuary. Moreover, even where the state has taken major steps in this regard, its decisions are currently subject to reversal or modification by state courts. For these reasons, we urge EPA to adopt a prudent middle ground by staying the effect of the federal water quality standards rather than completely withdrawing these regulations. The state incurs no harm from a stay, and the federal government is far better positioned to step in with Delta

protections if and when it becomes necessary to do so.

Thank you very much for your consideration of our views.

Sincerely,

Cynthia L. Koehler
Senior Attorney
NATURAL HERITAGE INSTITUTE

Hamilton Candee
Senior Project Attorney
NATURAL RESOURCES DEFENSE COUNCIL

bcc: Hal Candee
Steve Evans
Barry Nelson
Jerry Meral
John Buettler
Greg Thomas

CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

DEPARTMENT OF WATER RESOURCES
1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791

Ms. Palma Risler
Water Management Division
Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105

Dear Ms. Risler:

These comments are submitted in response to the December 20, 1995, Environmental Protection Agency proposed rule to remove its federal water quality standards for the Sacramento-San Joaquin Delta and San Francisco Bay (60 Fed. Reg. 65614). The Department of Water Resources supports the withdrawal of the federal standards.

In September 1995 the EPA approved the water quality objectives in the California Water Resources Control Board's Bay-Delta Water Quality Control Plan as protective of Bay-Delta designated uses. Because the State has satisfied requirements of section 303 of the Clean Water Act, the EPA proposes to withdraw the federal standards. In a Technical Support Memorandum supporting EPA approval of the State standards, the EPA concluded that the WQCP is protective of EPA designated uses in the Bay-Delta. In the SWRCB Environmental Report (Appendix 1 of the WQCP), the SWRCB analyzed the needs for and the effects of the new water quality objectives for the protection of fish and wildlife adopted in the WQCP. The Environmental Report analysis, including literature citations, documents the biological benefits provided by the State water quality objectives.

The EPA has a policy of withdrawing its final water quality standards upon approval of state standards.[1] In addition, in two historic agreements (the December 15, 1994, Principles for Agreement on Bay-Delta Standards (Bay-Delta Accord) and the August 1994 Framework Agreement) the EPA committed to withdrawing the

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1. The preambles to the proposed and final rules for the federal water quality control standards state that "It is EPA's longstanding policy that the federal water quality standards will be withdrawn if a state adopts and submits standards that in the Agency's judgment meet the requirements of the Act." 60 Fed. Reg. 4668 (Jan. 24, 1995);59 Fed. Reg. 813 (Jan. 6, 1994).

federal standards upon approval of State objectives that meet requirements of the CWA.

Under the Framework Agreement between the Governor's Water Policy Council and the Federal Ecosystem Directorate, the EPA is to "initiate necessary rulemaking action, consistent with the Clean Water Act, to withdraw the Federal Standards" upon approval of State submitted standards. (See Exhibit A, p. A-1.) The Principles for Agreement states:

> "Consistent with the Framework Agreement, EPA commits to withdraw Federal Standards pursuant to the Clean Water Act when the SWRCB adopts a final plan consistent with these Principles." (Principles for Agreement, p. 5.)

Because the SWRCB has submitted acceptable standards, EPA's proposal to withdraw the federal water quality standards is consistent with its policy and its commitments under these Agreements.

Thank you for consideration of our views. If you have any questions, please call me at (916) 653-6055 or have your staff call Cathy Crothers at (916) 653-5813.

Sincerely,

Robert G. Potter
Chief Deputy Director

Rec'd

March 19, 1995

Palma Risler
Water Management Division
Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105

Proposed Removal of Federal Water Quality Control Standards For the Bay/Delta Estuary; 60 Fed.Reg. 65614

Dear Ms. Risler:

These comments are submitted on behalf of a number of California public agencies interested in assuring the reliability and quality of the water supplies for consumers, businesses and farms in their respective service areas. Two-thirds of the State's population in communities throughout northern, southern, and central California--approximately 23 million people--and substantial portions of irrigated farm land in the Central Valley receive all or a portion of their water supplies from these agencies. Much of that water is obtained from the Bay/Delta watershed. The agencies and organizations participating in these comments are listed in Attachment A. (Referred to hereafter as the "Joint California Water Users" or "JCWU").

The people represented by the Joint California Water Users have a strong interest in federal and state regulatory actions affecting the availability and quality of water supplies from the Bay/Delta watershed. At the same time, we recognize the value of meeting the ecological needs of the watershed and its fish, wildlife, flora and fauna. Restoration and enhancement of the Bay/Delta watershed is critical as an end in and of itself and as a means to provide the conditions necessary to ensure water supply reliability. For these reasons, each of the agencies and organizations participating in these comments also participated extensively in the Environmental Protection Agency's (EPA) promulgation of its Bay/Delta water quality standards, which are the subject of this withdrawal proceeding, and the California State Water Resources Control Board's (SWRCB) adoption of state water quality objectives for the Bay/Delta.

The JCWU urge EPA to withdraw its federal water quality standards for the Bay/Delta, as proposed in the Federal Register notice. Withdrawal is required, under Section 303(c)(3) of the Clean Water Act (CWA), because EPA has appropriately determined that the SWRCB has adopted state water quality standards for the Bay/Delta which meet the requirements of the Act.

The SWRCB's standards[1] are based on refinements to EPA's original proposed standards, which better meet the goals of EPA's proposal while at the same time reducing the impact on other beneficial uses. These standards were developed through an unprecedented public process and are supported by an extensive technical record, which should be included in its entirety as part of EPA's record for this removal proceeding. In addition to the SWRCB sponsored workshops and hearings, JCWU members, environmental interests and representatives of state and federal regulatory agencies met in a series of open meetings to discuss the best program for protection for the Bay/Delta. A result of this process was the December 15, 1994 Principles for Agreement on Bay/Delta Standards, in which representatives of the JCWU, state and federal regulatory agencies and environmental groups agreed on a set of recommended actions for Bay/Delta protection. That package of actions included proposed flow and other water-related requirements which, in large part, formed the basis for the SWRCB's standards.[2]

EPA was correct when it determined in its September 26, 1995 letter to the SWRCB that SWRCB's standards "will protect the designated uses of the Bay and Delta and otherwise complies with the requirements of the Clean Water Act" and approved the standards. Since EPA has appropriately determined that SWRCB's state standards meet the Act's requirements, it must now withdraw its own Bay/Delta standards. (Act, § 303(c)(3) and 40 CFR § 131.5(e)) The one caveat noted in EPA's approval letter was the existence of litigation regarding one of the standards--the Vernalis flow requirement--adopted by the SWRCB. There is no authority, however, for EPA to refuse to withdraw federal standards because of the existence of litigation over state standards which EPA has already approved. In any case, the plaintiffs in that litigation have been negotiating with members of the JCWU to develop implementation measures to meet the Vernalis requirement. As reported to the SWRCB at a March 12, 1996 workshop on implementation of standards through water rights regulation, it is likely that these negotiations, if approved by the SWRCB, can resolve the pending litigation.

In summary, the Joint California Water Users urge EPA to withdraw its Bay/Delta standards in conformance with the Clean Water Act and its implementing regulations. As recognized by EPA, SWRCB's state standards, developed through an unprecedented open and

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[1] For the purposes of this letter, the JCWU will use the CWA term "standards" to mean the same as "objectives", its state equivalent. Some of the water quality standards or objectives adopted by the SWRCB are not embraced within the SWRCB's water quality authority alone and exceed the limited CWA authority granted by Congress over state-issued water rights. Nonetheless, the SWRCB has ample jurisdiction to adopt and implement these requirements through its dual water quality and water rights authority. Through the exercise of that dual authority, the SWRCB has adopted a coordinated estuarine protection plan for the Bay/Delta which meets, and indeed exceeds, the requirements of the CWA.

[2] In addition, the Principles Agreement committed the parties to pursue a program (known as "Category III") for financing and implementing habitat improvement measures which will add to the protections provided by SWRCB's standards. This program will complement the standards which are the subject of this proceeding.

cooperative process, meet the requirements of the Act and must be allowed to operate as the standards for the Bay/Delta, without inconsistent and unnecessary federal regulation.

Very truly yours,

Dan Nelson
General Manager
San Luis Delta - Mendota Water Authority

Byron M. Buck
General Manager
California Urban Water Agencies

Steve Macaulay
General Manager
State Water Contractors

JFR:ljo
s:\wpshared\jamrob\epacmnts.doc

ATTACHMENT

Organizations Participating in Comments of the JCWU Regarding Removal of Federal Water Quality Standards.

San Luis & Delta-Mendota Water Authority

Santa Carbona Irrigation District
Broadview Water District
C. C. I. D.
Centinella Water District
City of Tracy
Columbia Canal Company
Eagle Fluid Water District
Firebaugh Canal Water District
Fresno Slough Water District
Grassland Water District
James Irrigation District
Laguna Water District
Mercey Springs Water District
New Del Puerto Water District
Oro Loma Water District
Pacheco Water District
Panoche Water District
Patterson Water District
Plain View Water District
Pleasant Valley Water District
Reclamation District 1606
San Benito County Water District
San Luis Canal Co.
San Luis Water District
Santa Clara Valley Water District
Tranquillity Irrigation District
Turner Island Water District
West Side Irrigation District
West Stanislaus Irrigation District
Westlands Water District
Widren Water District

California Urban Water Agencies

Alameda County Water District
Contra Costa Water District
East Bay Municipal Utility District
Los Angeles, Department of Water And Power
Metropolitan Water District Southern California
San Diego County Water Authority
San Diego City Utilities Department
San Francisco Public Utilities Commission
Santa Clara Valley Water District

State Water Contractors

Alameda County FC & WCD, Zone 7
Alameda County Water District
Antelope Valley-East Kern Water Agency
Casitas Municipal Water District
Castaic Lake Water Agency
Central Coast Water Authority
City of Yuba City
Coachella Valley Water District
County of Kings
Crestline-Lake Arrowhead Water Agency
Desert Water Agency
Dudley Ridge Water District
Empire-West Side Irrigation District
Kern County Water Agency
Littlerock Creek Irrigation District
The Metropolitan Water of Southern California
Mojave Water Agency
Napa County FC & WCD
Oak Flat Water District
Palmdale Water District
San Bernardino Valley MWD
San Gabriel Valley MWD
San Gorgonio Pass Water Agency
San Luis Obispo County FC & WCD
Santa Clara Valley Water District
Solano County Water Agency
Tulare Lake Basin WSD

Mary Ellen

Tom - Add to your file on Admin Stays ...
- MEL

JAN 25 1996

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

# of pages ▶ 3

To Tom Hagler	From Mary Ellen Levine
Dept./Agency	Phone #
Fax # (415) 744-1041	Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

NOTE

From: Larry Starfield

To: Associates

Re: Vacatur of Administrative Stay

Attached is a copy of a recent D.C. Circuit order limiting the Agency's ability to use APA section 705 to "postpone the effective date" of rules that have already taken effect. I have also attached a note that I sent to the RC's on this, FYI.

Attachment

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 92-1629 September Term, 1995

Safety-Kleen Corp.,

Petitioner

v.

Environmental Protection Agency,

Respondent

Convenient Automotive Services Institute, et al.,

Intervenors

And consolidated case No. 92-1639

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
JAN 19 1996
CLERK

BEFORE: Silberman, Ginsburg, and Rogers, Circuit Judges

ORDER

Upon consideration of the motion of intervenors to vacate administrative stay, the responses thereto and the reply, it is

ORDERED that the motion be granted. Respondent improperly justified the stay based on 5 U.S.C. § 705 (1994). That statute permits an agency to postpone the effective date of a not yet effective rule, pending judicial review. It does not permit the agency to suspend without notice and comment a promulgated rule, as respondent has attempted to do here. If the agency determines the rule is invalid, it may be able to take advantage of the good cause exception, 5 U.S.C. § 553(b).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

By: Lisa Gaines
Deputy Clerk

D.C. Circuit Vacates EPA Administrative Stay of Used Oil Mixture Rule as Improperly Justified under APA section 705

On January 19, 1996, the D.C. Circuit vacated EPA's administrative stay of the "used oil mixture rule" (40 CFR 279.10(b)(2)), issued by EPA under APA section 705 (see 60 FR 55202, 10/30/95). The Order has the effect of reinstating the federal used oil mixture rule, thereby allowing certain mixing of hazardous wastes and used oil without triggering land disposal restriction (LDR) requirements.

The used oil mixture rule provides that if used oil is mixed with a characteristic hazardous waste, and the resultant mixture does not exhibit a characteristic, then the mixture would be subject only to used oil management standards rather than hazardous waste standards including LDRs. Shortly after the used oil mixture rule was issued in 1992, the D.C. Circuit issued an opinion in Chemical Waste Management v. EPA, 976 F. 2d 2 (D.C. Cir. 1992), suggesting that LDR obligations continue even after a waste no longer exhibits a hazardous characteristic, unless underlying hazardous constituents have been treated to minimize threats to human health or the environment. In light of the CWM opinion, EPA decided to reconsider the used oil mixture rule, and joined in a motion for voluntary vacatur. After the court denied that motion, the Agency issued an administrative stay of the rule under 5 U.S.C. 705 in the interest of justice, in order to maintain the status quo while the Agency reconsidered the merits of the rule.

In a brief order, the D.C. Circuit vacated the stay, finding that it was improperly justified based on APA sec. 705: "That statute permits an agency to postpone the effective date of a **not yet effective** rule, pending judicial review. It does not permit the agency to suspend without notice and comment a promulgated rule, as respondent has attempted to do here. If the agency determines the rule is invalid, it may be able to take advantage of the good cause exception, 5 U.S.C. sec. 553(b)." This holding could have broad implications: it may make it more difficult for the Agency to settle litigation via administrative stay **after** the effective date of the contested rule.

Note that the federal used oil mixture rule may not be in effect in authorized states; you may want to consult with OSW on the effect in particular states. In the four states not authorized to implement any portion of the federal RCRA hazardous waste program -- Alaska, Hawaii, Iowa, and Puerto Rico -- the vacatur of the stay, and reinstatement of the used oil mixture rule, is immediately effective.
Contact: Alex Schmandt of OGC (260-1708) for more information.

Sunrise, Mt. McKinley Ansel Adams

SIERRA CLUB LEGAL DEFENSE FUND, INC.

EARTHJUSTICE

The Law Firm for the Environmental Movement

(On August 1, 1997, we will officially become Earthjustice Legal Defense Fund!)

180 Montgomery Street, Suite 1725, San Francisco, CA 94104-4209

E-MAIL: scldfcalif@igc.apc.org
(415) 627-6725 FAX (415) 627-6749

10.132.01
10.106.01
October 1, 1997

VIA FAX (744-1041) - ORIGINAL BY MAIL
Thomas Hagler
Office of Regional Counsel
EPA Region IX
75 Hawthorne St.
San Francisco, CA 94105

Re: FOIA request for documents concerning San Francisco Bay Water Quality Standards promulgated by EPA

Dear Tom:

This is a request under the Freedom of Information Act, 5 U.S.C. section 552, for one copy of the following documents:

1. All documents prepared or received by EPA concerning its San Francisco Bay-Delta Water Quality Standards promulgated on December 14, 1994 and published January 24, 1995 (60 Fed.Reg. 4663), and subsequently codified at 40 C.F.R. section 131.37, dated on or after December 14, 1994.

2. All documents prepared or received by EPA concerning its proposal to suspend or withdraw its San Francisco Bay-Delta Water Quality Standards dated on or after December 20, 1995.

Because the foregoing documentation is undoubtedly extensive, we would prefer that you make these documents available for our review in your offices prior to their reproduction and transmittal. We would anticipate that our review would take at least one full day. The primary purpose of the review would be to winnow out insignificant documents and thus reduce the overall reproduction burden.

Please call me at your earliest opportunity to arrange a mutually convenient time for us to review these documents in your offices. Thank you for your courtesy and cooperation.

Very truly yours,

Steve

Stephan C. Volker

cc: Julia Olson
Bill Curtiss

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
GENERAL COUNSEL

JAN - 5 1994

MEMORANDUM

SUBJECT: Civil Complaint for Damages to the San Francisco Bay Delta Estuary

FROM: Susan G. Lepow
Associate General Counsel
Water Division (2355)

TO: Robert Perciasepe
Assistant Administrator for Water (4101)

We have received a copy of the attached complaint filed on December 7, 1993 by Patrick J. Porgans and the California Sportfishing Alliance against the Secretary of the Department of the Interior (and the Commissioner and Regional Director of the U.S. Bureau of Reclamation) and two officials of the State of California (Doug Wheeler, Secrtetary of the California Department of Resources and David Kennedy, Director of the Department of Water Resources). EPA is not a defendant in the suit. Plaintiffs bring this civil action for damages alleging that the diversion of water from the San Francisco Bay Delta Estuary ("Bay/Delta") has damaged the "public trust in violation of terms and conditions of defendants' permits and licenses thereby violating § 1052 of the California Water Code." Plaintiffs are seeking damages in the amount of $29,175,000 to establish a restoration fund to assist state and federal wildlife agencies in providing environmental mitigation, restoration, and enhancement in the Bay Delta.

Although EPA is not a party in this action, Mary Ellen Levine of my staff will follow this case. She can be reached at 260-7730.

Attachment

Printed on Recycled Pa

cc: Jean C. Nelson
Gerald Yamada
Felicia Marcus
Nancy Marvel
Tudor Davies
Bill Diamond
Rob Wolcott
Dana Minerva
Chantale Wong
Cyndy Dyballa
Tom Hagler
Karen Egbert, (U.S. Dept. of Justice)
John Marshall, (U.S. Dept. of Justice)

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: *(Aviso a Acusado)*

BRUCE BABBITT, Sec., Dept. of the Interior;
DAN BEARD, Commissioner, U.S. Bureau of Reclam.;
ROGER PATTERSON, Dir., Mid-Pac. Region, U.S. Bureau of Reclamation;
DOUG WHEELER, Sec., Ca. Dept. of Resources;
DAVID KENNEDY, Director, Department of Water Resources; and Does 1 through 100, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le está demandando)

PATRICK J. PORGANS and
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

You have *30 CALENDAR DAYS* after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS *para presentar una respuesta escrita a máquina en esta corte.*

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

CASE NUMBER: *(Número del Caso)*
537641

The name and address of the court is: *(El nombre y dirección de la corte es)*
Superior Court of the State of California
for Sacramento County Tel. 916-440-7590
720 Ninth St., RM 611
Sacramento, CA. 95814

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

Michael B. Jackson (916) 283-1007
446 W. Main St.
P.O. Box 207
Quincy, CA 95971

DATE: *(Fecha)* DEC -7 1993

Clerk, by *(Actuario)* A. [illegible], Deputy *(Delegado)*

(SEAL)

NOTICE TO THE PERSON SERVED: You are served
1. [ ] as an individual defendant.
2. [ ] as the person sued under the fictitious name of *(specify)*:
3. [X] on behalf of *(specify)*: governmental entity

under:
- [ ] CCP 416.10 (corporation)
- [ ] CCP 416.20 (defunct corporation)
- [ ] CCP 416.40 (association or partnership)
- [X] other: CCP 416.50 (public entity)
- [ ] CCP 416.60 (minor)
- [ ] CCP 416.70 (conservatee)
- [ ] CCP 416.90 (individual)

4. [ ] by personal delivery on *(date)*: 12-17-93

Form Adopted by Rule 982
Judicial Council of California

(See reverse for Proof of Service)

SUMMONS

7355/ [illegible]

MICHAEL B. JACKSON
State Bar No. 53808
446 West Main Street
P.O. Box 207
Quincy, CA. 95971
(916) 283-1007
FAX (916) 283-4999

Attorney for Plaintiffs Patrick J. Porgans
and California Sportfishing Protection Alliance

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

PATRICK J. PORGANS, an individual, and CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a California non-profit corporation, Plaintiffs/Petitioners vs. BRUCE BABBITT, Secretary, Department of the Interior; DAN BEARD, Commissioner, United States Bureau of Reclamation; ROGER PATTERSON, Director, Mid-Pacific Region, United States Bureau of Reclamation; DOUG WHEELER, Secretary, California Department of Resources; DAVID KENNEDY, Director, Department of Water Resources; and DOES 1 through 100, inclusive, Defendants/Respondents.	CASE NO. 537641 COMPLAINT FOR DAMAGES FOR UNJUST ENRICHMENT

Plaintiffs allege:

I. INTRODUCTION/PRELIMINARY STATEMENT OF FACTS

1. This is a civil action for damages to the Bay Delta Estuary caused by the United States Bureau of Reclamation (hereinafter Bureau) and the California Department of Water

Resources (hereinafter Department) during water years 1991 and 1992. During those water years the Bureau and the Department intentionally and willfully violated State and Federal water quality standards in the San Francisco Bay Delta in order to provide water to contractees. These illegal diversions violated the conditions of both agencies' water rights permits and licenses granted them by the State Water Resources Control Board (hereinafter Board).

2. These violations were caused by the Bureau and the Department recklessly transferring water from north of the Delta to customers south of the Delta despite the extended drought.

3. The Board was aware of the potential for the violations before they occurred and held hearings, collected evidence, and threatened administrative action during the years that the illegal diversions were taking place.

4. The Bureau and the Department were aware of the potential for violating the conditions of the permits before they reached the point where they did not have enough water in storage north of the Delta to meet Bay Delta water quality standards. Plaintiff, Patrick Porgans, personally notified the responsible authorities well in advance of the agencies' violations and yet neither agency took the reasonable and prudent options that would have resulted in the law being obeyed.

5. The Bureau and the Department were likewise aware that the Bay Delta Estuary was in critical condition during the time that they were illegally diverting water by virtue of their long

involvement in the Bay Delta water quality and water rights processes which were ongoing throughout the period.

6. The Bureau and the Department knew of the existence and decline of the endangered winter-run chinook salmon and the collapse of the Bay Delta ecosystem which has resulted in the continuing listing of species, i.e., Delta smelt. The Bureau and the Department knew that the Environmental Protection Agency (EPA) believed that the Delta water quality standards which the Bureau and the Department violated were themselves inadequate and were not protecting the Public Trust interests in the San Francisco Bay Delta.

7. In spite of this knowledge the Bureau and the Department transferred an approximate average of 317,000 acre feet of water in contravention of the conditions of their permits.

8. During this period the Governor of the State of California established a water bank to enable water transfers to cities and farms that had inadequate supplies of water. The price of water established by the Governor's water bank in 1991 was $125.00 an acre foot, and in 1992 was $50.00 an acre foot; for a conservative estimated value of $29,175,000.

PARTIES

9. Plaintiff Patrick J. Porgans is, and at all times herein mentioned was a citizen and taxpayer of the State of California and the United States of America and possesses a right to protect the public trust under the decision of the California Supreme Court in National Audubon Society v. Supreme Court, 33 Cal. 3d 419, 658 P.2d

709, 189 Cal. Rptr. 346 (1983), and is authorized to protect the public trust against illegal diversions under Water Code § 1851.

10. Plaintiff California Sportfishing Protection Alliance (hereinafter CSPA) is, and at all times herein mentioned was, a nonprofit corporation, organized and existing under the laws of California with its principal places of business in Sacramento and Plumas Counties, California. CSPA's members consist of members of the public who, in addition to being duly licensed sportfishing anglers, are interested in the preservation and enhancement of California's public trust fishery resources and the vigorous enforcement of the laws of the State of California. CSPA has participated in numerous administrative proceedings pertaining to the quality of the waters of the San Francisco Bay Delta.

11. CSPA's members reside in California in the vicinity of the San Francisco Bay Delta, or own property or recreate in, on or near the San Francisco Bay Delta. The quality of the State's waters and the waters of the San Francisco Bay Delta directly affect the health, economic, recreational, aesthetic, scientific and conservational interests of CSPA's members. Respondents' failure to enforce and apply the governing state environmental laws to the Bureau of Reclamation and California Department of Water Resources directly affects those interests and the procedural interests of CSPA's members of having state and federal agencies adhere to the requirements of all applicable state laws as they relate to permits, licensing, water diversions, water quality standards, and the public trust.

12. Defendant Bruce Babbitt, the Secretary of the United States Department of the Interior, is sued herein in his official capacity. He has the ultimate responsibility for ensuring that agencies within the Department of the Interior such as the U.S. Bureau of Reclamation comply fully with all state laws as they relate to permits and licenses to divert water from the San Francisco Bay Delta. He further has the ultimate responsibility to see that the Bureau of Reclamation complies with the California Public Trust Doctrine.

13. Defendant Dan Beard is Commissioner of the U.S. Bureau of Reclamation, an agency within the Department of the Interior, and is sued herein in his official capacity. The Bureau operates the Central Valley Project, a federal reclamation project located within the geographical boundaries of the State of California. The Bureau possesses water rights permits and licenses that allow it to divert water from the San Francisco Bay Delta for municipal, industrial, and agricultural uses within the areas served by the Central Valley Project. As Commissioner of the Bureau, Defendant Beard has the responsibility for complying with conditions of the Bureau's permits and licenses and for complying with State and federal statutory and decisional law.

14. Defendant Roger Patterson is Regional Director of the Mid-Pacific Region of the Bureau. He is sued in his official capacity. Defendant Patterson has immediate responsibility for complying with all conditions of the Bureau's permits and licenses and for ensuring compliance by the Bureau with all applicable state

and federal statutory and decisional law.

15. Defendant Douglas Wheeler is Secretary of Resources of the State of California and is sued herein in his official capacity. He has the ultimate responsibility for enforcing and implementing California Water Right law in regard to illegal diversions. He further has the ultimate responsibility for ensuring that the Department of Water Resources, an agency within the California State Resources Agency, complies with all conditions of the Department of Water Resources permits and licenses and for ensuring compliance by the Department with all applicable state and federal statutory and decisional law.

16. Defendant David Kennedy is Director of the Department of Water Resources, an agency within the California Resources Agency, which possesses water rights permits and licenses to divert water from the San Francisco Bay Delta Estuary. Those licenses and permits have conditions within them that require the Department of Water Resources to comply with federal and state water quality laws and the California Public Trust doctrine.

17. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiffs will amend their complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named defendants is claiming an interest in the water described below.

18. Plaintiffs are informed and believe and thereon allege

that at all times herein mentioned each of the defendants sued herein as DOES 51 through 100 inclusive, was the agent and employee of each of the remaining defendant's and was at all time acting within the course and scope of such agency employment.

19. Plaintiffs are citizens of the State of California and the United States and have a beneficial interest in sufficient water being at all times present in the Delta to protect the California Public Trust and its associated fish and wildlife.

20. Each of the defendants is a claimant to water and the use of water of the San Francisco Bay-Delta Estuary for uses which each defendant claims to be beneficial and in amounts which are unknown to plaintiff.

21. Plaintiffs have suffered damages in that the illegal diversion by the Bureau and the Department damage the Public Trust in violation of terms and conditions of defendants' permits and licenses thereby violating § 1052 of the California Water Code.

WHEREFORE, plaintiffs pray judgement as follows:

1. For damages of $29,175,000.

2. For the establishment of a restoration fund to receive the damages owed for the illegal diversion of water. This restoration fund should be administered by the Aquatic Habitat Institute (AHI). AHI will use these funds to assist federal and state widlife agencies in providing environmental mitigation, restoration, and enhancement in the Bay-Delta. In addition, AHI will use whatever amount of funds are required to work in unison with the State Water Resources Control Board to expand the Bay-Delta standards compliance effort and to develop a Modeling Enhancement Program fashioned after the one approved by the Department of Finance (Project No. 3640-50.)

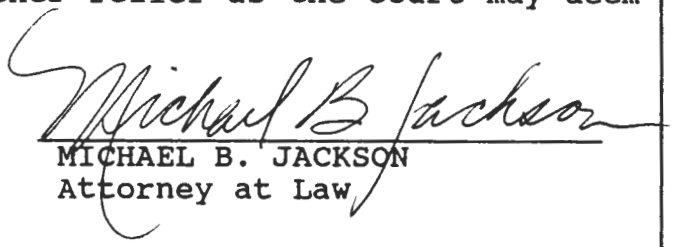
A portion of these funds should be kept in trust and used specifically to take legal action against any entity that illegally diverts water, now or in the future, from the Delta.

3. For attorney's fees under Government Code § 800 and other applicable laws.

4. For costs of suit herein incurred; and

5. For such order and further relief as the court may deem proper.

Dated: December 1, 1993



MICHAEL B. JACKSON
Attorney at Law

VERIFICATION

I, Patrick J. Porgans, am a plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Sacramento, California, on December 7, 1993.

Patrick Porgans
PATRICK J. PORGANS

VERIFICATION

I, Robert J. Baiocchi, am Executive Director for the California Sportfishing Protection Alliance which is a plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Quincy, California, on Dec. 2, 1993.

Robert J. Baiocchi

ROBERT J. BAIOCCHI

TMH File

MEMORANDUM

SUBJECT: Meeting with Urban Interests on Economic Studies on January 19, 1994

FROM: Tom Hagler, ORC-9 TMH

TO: File

DATE: January 20, 1994

Background

On January 19, 1994, we had a meeting with various urban interests to discuss the draft RIA prepared for the Bay/Delta WQS proposal. Patrick Wright (W-3), Palma Risler (W-3), and Tom Hagler (ORC) attended from EPA. An attendance sheet is attached giving the other participants. An agenda is attached. The meeting generally followed the agenda.

The following is a list of the different issues raised during the meeting. No attempt has been made to identify the person making the comments, nor to organize the comments into subject matter. No one submitted any written materials at the meeting.

Comments

1. There were several questions about the role of the RIA in the EPA rulemaking process, and about the next steps in the rulemaking.

2. There was concern about the quality of the assessment of water supply impacts. The focus was on the assessment of the cumulative impacts of the different ESA and CWA requirements, whether already imposed or proposed.

3. The Club Fed graphic using a raindrop to show impacts: Where did the relative share numbers come from?

4. It was suggested that the DWR modeling runs need a better public explanation and maybe some more technical workshops. Many attendees expressed reservations about the accuracy of the DWR model.

5. The assumptions that went into the DWR modeling should be explained in the RIA.

6. Some questions arose as to whether using D-1485 plus winter run requirements is a fair "base". Some recommended doing an incremental or stepping stone approach, adding the cumulative effects of the next regulation.

7. There was substantial concern over the use of the 80-20 "ag-urban" split. Perhaps we should have BOR and DWR give their respective impressions of the split, or use the present diversions as a proxy, or use a number of different splits to give the range. There may be some testimony on this in the D-1630 materials.

8. Just using the split alone is very rough. The frequency and severity of shortages may be important for the financial modeling. This is essentially a concern about extended shortages.

9. There was substantial discussion about whether the RIA goal was to determine "economic impacts" versus describing the most "economically efficient" scenario. These aren't the same.

10. We should incorporate the economic effects of long-term increases in groundwater pumping into the economic analysis.

11. Why is Riverside County not included in map 4-2? (Answer appears to be that it was a typo on the map and that it was included in the analysis itself.)

12. We are doing a "year in isolation" analyses, which probably understates the effects of a long term drought.

13. Some discussion as to whether the "Carson-Mitchell" (sp?) would be a better measure of consumer surplus. A model by Hoagland was also suggested.

14. Use of retail residential customer as proxy for shortage affects understates the impact of "green industry" as well as impact on businesses.

15. RIA should take into account the <u>regional</u> differences in the ability to implement the different conservation and reclamation alternatives.

16. RIA used L.A. as model for urban impacts. Other cities such as San Francisco face different alternatives and alternative costs.

17. RIA should consider extent to which user status as a contractor or noncontractor affects economic costs of the user.

18. Recreation benefits and costs (especially for S. Cal.) are not clearly included.

19. There appears to be an imbalance in the analysis where indirect benefits are described but not indirect costs.

20. There was some testimony in the D-1630 hearings that reducing Delta water exports to S. Cal. could have the following impacts:
(a) Make it harder to meet the WQS in the Basin plans, because of reduced higher quality Delta water.
(b) Higher groundwater cleanup costs for same reason.
(c) Higher ground subsidence costs
(d) Higher water reclamation costs

21. Reclamation plants have their own economic and environmental costs that should be factored into the analysis.

22. Several questions came up as to the adequacy of the analysis to support a critical habitat designation. We generally deferred this discussion because EPA doesn't know the ESA rulemaking process.

23. Questions as to whether we should be using the marginal cost of water or the average cost of water in the analysis. Or both.

24. There was a lengthy discussion as to whether the proposed standards, in conjunction with other restrictions, allowed water transfers north to south. If not, the assumptions about alternatives in the RIA may be incorrect.

- Some of this was due to perceived limitations on ability to pump - the absence of pumping "windows"

- Some is due to perceived limitations on new Colorado River because of the recent ESA actions on the Colorado.

25. Next steps. It was suggested that at least two additional meetings be held - one before and one after the close of comment period.

Attendance list
January 19, 1994
Bay/Delta RIA - feedback

Name/Affliation	full mailing address	phone and fax number
Craig Stroh, Reclamation	2800 Cottage Way Sacramento, CA 95825	916 978 5251 978-5284 Fax
Greg Wilkinson Best, Best & Krieger	P.O. Box 1028 Riverside, Cal. 92502	909/686-1450 909/686-3083
Larry Dale	2030 Addison St 500 Berkeley CA	510 6449492 5407496
John Ryan SCVWD	5750 Almaden Expwy San Jose CA 95118	408 265·2600 FAX 408 266 0271
Richard A. Denton	Contra Costa Water District P.O. Box H20 Concord CA 94524	(510) 674-8187 Fax (510) 674-8122
Ray Hoagland	CA Dept. Water Resources 1416 9th St Sacramento, CA 94236-0001	(916)653-6785 FAX 653-6077 ray@water.ca.gov
Adrian Griffin	State Water Board ~~901 K St~~ PO Box 100 Sacto 95812	916/657 1832
Wendy Illingworth	Foster Associates 120 Montgomery Suite 1776 S.F CA. 94104	415 391 3550

Attendance list
January 19, 1994
Bay/Delta RIA - feedback

Name/Affliation	full mailing address	phone and fax number
STEVE HALL ACWA	910 K ST STE 250 SACRAMENTO CA 95814	916-441-4545 916-441-7893
Lyle Hoog CA. Urban Water Agencies	455 Capitol Mall Sacto 95814	(916) 552-2929 FAX 552-2931
Roger James Santa Clara Valley Water District	5750 Almaden Expressway San Jose, CA 95118	408/265-2607 x 2328 408/266-0271
THOMAS M. BERLINER SF Pub. Util. Comm'n	City Attorney's Ofc. City Hall, Rm 206 SF, CA 94102	(415) 554-4295 FAX 554-4284
CHRISTINE MORIOKA SF WATER DEPARTMENT	425 MASON ST. SAN FRANCISCO, CA 94102	(415) 923-2467 (415) 771-4421
James Roberts ~~Box 54154~~ ~~Los Ang~~ Met. Water Dist.	Box 54154 Los Angeles 90054	(213) 217-6316 (213) 217-6890
Phillip McLeod MHB Consultants, Inc	2101 Webster St Suite 1660 Oakland, CA 94612	(510) 834-1170
John Skinner EBMUD	PO Box 24055 Oakland CA 94623	(510) 287-1125 Fax (510) 287-1275

TOM

AGENDA
WORKING MEETING #1
REGULATORY IMPACT ASSESSMENT - FEEDBACK
URBAN WATER INTERESTS

JANUARY 19, 1994
1:00 - 3:00

75 HAWTHORNE STREET
SAN FRANCISCO
18TH FLOOR - RA'S STRATEGY ROOM

Meeting Objective: To begin to identify issues and questions on the RIA analysis. To decide on a process for further dialogue on identified issues.

1:00	**INTRODUCTIONS** **PURPOSE OF RIA ANALYSIS** **CLEAN WATER ACT AND ECONOMICS**	**PATRICK WRIGHT**
1:20	**OVERVIEW OF RIA ANALYSIS**	**PALMA RISLER**
1:45	**FEEDBACK FROM ATTENDEES** - Identification of questions - Identification of issues	**ATTENDEES**
2:45	**OPTIONS FOR FURTHER DIALOGUE** - Discussion and decision by attendees	**PALMA RISLER**

For further information, please call Palma Risler at (415) 744-2017.

Assumptions and issues: Draft RIA analysis

Water supply impacts:

pre-existing, attributing impacts to CWA

Split between ag and urban:

80/20, different scenarios
different shortage policies

Agriculture analysis:

- pre-existing water reductions
- groundwater
- financing
- govt supported crops

Urban analysis:

- consumer surplus methodology: long-run v. short run demand elasticity; assuming demand management in all CY rather than extended drought;

- translating current analysis to price increases at retail level and conservation targets

- accounting for increased urban demand

Benefits:

- monetizing non-use benefits
- overall benefits of market for water
- all recreational fisheries

Analysis of transfer of income/cost effectiveness analysis

Analysis of other impacts:

- THM's
- power impacts

Analysis of suggested policy innovations

- funds, fees, trading of water rights permits

TMH File

MEMORANDUM

SUBJECT: Meeting with Environmental Interests on Economic Studies on January 20, 1994

FROM: Tom Hagler, ORC-9

TO: File

DATE: January 20, 1994

Background

On January 20, 1994, we had a meeting with various environmental interests to discuss the draft RIA prepared for the Bay/Delta WQS proposal. Patrick Wright (W-3), Palma Risler (W-3) and Tom Hagler (ORC) attended from EPA. An attendance sheet is attached. An agenda is attached.

The following is a list of the different issues raised by the participants during the meeting. I am not summarizing EPA comments at the meeting, in that those comments do not constitute "new information" for the Agency. No one submitted written materials at this meeting.

Comments

1. There was a question as to whether the "1 maf urban reduction" in critical years is accurate. Historically, this isn't true in every year. It may depend on whether the critical year is in an isolated or an extended drought.

2. Comment that DWRSIM overstates carriage water and understates deliveries. See Contra Costa Water District testimony on the biases in the model.

3. Note that the study did not assume a switch to groundwater pumping, so that, if anything, the study would overstate the impacts of shortages. See further discussion of groundwater below.

4. More work should be done on the crop subsidies, including the potential changes in capitalized land values caused by the subsidies.

5. We may want to look more at the marginal impacts on certain communities (fisheries, agricultural) rather than just the aggregate.

6. We should look at Fisher's study for EBMUD.

7. We should look at both short-term and long-term responses to drought, varying by short to extended drought periods. Again, this may be an issue of the frequency and severity of shortages.

8. We need to explain how we derived the 1 maf number for urban impacts. Is it demand? Deliveries?

9. Questions about the reported physical limitations on water transfers "north to south", as well as questions about the existing and potential transfer regime for south of Delta transfers.

10. We should look at MET's Mono Lake testimony that the Colorado Aqueduct will be full, and consider how this cuts two ways: (a) that the MET baseline is higher than thought, or (b) that it may restrict transfers.

11. The Colorado River ESA restrictions may actually <u>increase</u> the flows available to MET.

12. Request for more information about how we did the fish population studies:
- How did we do the modeling?
- Could we use actual historical data to determine effects of "wetter" years in the Delta?
- We should try to standardize assumptions across the different studies, so that we don't have very conservative assumptions for some and liberal for others.

13. Is there a way to factor in the temporary nature of world salmon market conditions? Similarly, can't we factor in the economic effects of increased fish supply availability on the overall profitability of the California fishery?

14. We need to do more work on water transfers, both as to what has actually happened and what the more feasible future scenarios would be.

15. There may be some information coming in on the use of a fund.

16. There is a problem with using Hanneman study, in that it still seems to be comparing incomparables ("apples and oranges"). This becomes a broader problem when it appears that we are comparing qualitative benefits with quantified costs. What can we do about this?

17. Note that the Hanneman study only measured the highest 30% of households, so it may not be totally accurate on overall costs if those costs were spread over a broader population.

18. How do we explain and account for the fact that a substantial part of the drought water bank did not sell at the $175 fixed price?

19. The analyses should consider whether moving production elsewhere may be beneficial overall (either within California or within the U.S.). This was also referred to as the geographic substitution of production.

20. There is some concern about the usefulness of the KARM (?) and/or CVPM models to deal with this substitution issue. The CVPM model apparently covers only the Central Valley in its production modeling. KARM is somewhat broader.

21. Leaving out the effects of groundwater pumping is a major issue, because increased pumping ameliorates the effect of shortages, at least in the short run. The analysis should get a handle on the longer term effects.

22. Note that to the extent that a user has access to storage capacity, shortages need not carry over into any economic impacts unless and until the storage is impacted. This again is an issue of modeling the effects of short versus extended droughts. It may mean that our assumption about "x" impacts in <u>every</u> critical year is grossly inaccurate.

AGENDA
WORKING MEETING #1
REGULATORY IMPACT ASSESSMENT - FEEDBACK
ENVIRONMENTAL AND FISHERIES INTERESTS

Thursday, January 20, 1994
12:00 - 2:00

75 Hawthorne Street
San Francisco
18th Floor - RA's Strategy Room

Meeting Objective: To begin to identify issues and questions on the RIA analysis. To decide on follow-up process for further dialogue on issues.

12:00	**INTRODUCTIONS** **PURPOSE OF RIA ANALYSIS** **CLEAN WATER ACT AND ECONOMICS**	**PATRICK WRIGHT**
12:20	**ISSUES AND INFORMATION NEEDS**	**PALMA RISLER**
12:40	**FEEDBACK FROM PARTICIPANTS** - identification of questions - identification of issues	**PARTICIPANTS**
1:45	**OPTIONS FOR FURTHER DIALOGUE** - discussion and decision by participants	**PALMA RISLER**

For further information, please call Palma Risler at 415/744-2017

Issues and information needs: Draft RIA analysis

Water supply impacts:

- pre-existing/cumulative/relative share/base
- developing scenario that uses current contract shortages
- extended droughts
- DWR modeling and position on impacts

Split between ag and urban:

- 80/20, different scenarios of COA and prorata?
- different shortage policies

Agriculture analysis:

- pre-existing water reductions
- groundwater
- financing
- govt supported crops
- community impacts v. economic efficiency

Urban analysis:

- consumer surplus methodology: long-run v. short run demand elasticity; assuming demand management in all CY rather than extended drought;
- translating current analysis to price increases at retail level and conservation targets
- accounting for increased urban demand
- green industry impacts
- water transfers/water bank - not possible with ESA and standards
- regional differences in costs bwt SC and Bay area
- Substituting delta water: higher gw cleanup costs; higher water reclamation costs; difficulty in meeting basin plans
- price rationing: questions on equity

Benefits:

- monetizing non-use benefits
- overall benefits of market for water
- all recreational fisheries
- conservative compared to urban or ag

Analysis of transfer of income/cost effectiveness analysis

Recreation losses south of delta

Consistency between benefits and costs analysis - use of indirect costs

Extent of water market

Analysis of other impacts:
- THM's
- power impacts

Analysis of suggested policy innovations:
- funds, fees, trading of water rights permits

Attendance list
January 20, 1994
Bay/Delta RIA - feedback

Name/Affliation	full mailing address	phone and fax number
GARY BEDKER/USBR	2800 COTTAGE WAY SACRAMENTO, CA 95825	916-978-5251 916-978-5284 Fax
Craig Stroh, Reclamation	2800 Cottage Way Sacramento, CA 95825	916 978 5251 916 978 5284 Fax
John Krautkraemer	5655 College Ave Oakland CA 94618	510/658-8008
Gary Bobker The Bay Institute	10 Liberty Ship Way #120 Sausalito, 94965	415/331-2303 332-8799 fax
PETER VON HAAM	326 ATHOL AVE OAKLAND CA 94606	(510) 835-4840 ph/fax
Patrick Weiner	EPA	415-744-1993
Tom Hagler	EPA	415-744-1375
STEPHAN VOLKER	180 MONTGOMERY STREET #1400 SAN FRANCISCO, CA 94104	415/627-6700
Perry di Valpine	"	"
David Fullerton NMFS	1140 Sansome St. /Suite 1200 San Francisco, 94104	415-288-0550 0555f
Zeke Grader	PCFFA P.O. Box 989, Sausalito, CA 94966	(415) 332-5080

ENVIRONMENTAL DEFENSE FUND

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL # of pages ► 2

To Tom Hagler	From D. Nawi
Dept./Agency EPA	Phone # 916 978-4822
Fax # 415 744 1041	Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

5655 College Ave.
Oakland, CA 94618
(510) 658-8008
Fax: 510-658-0630

APR 21 1994 RECEIVED

April 20, 1994

Hon. Elizabeth Rieke
Assistant Secretary
U.S. Department of the Interior
18th and C Streets
Washington, D.C. 20240

Dear Ms. Rieke:

When you returned my call yesterday on the subject of the so-called Framework Agreement which you seem to be on the verge of negotiating on behalf of the United States with the State of California, I neglected to raise an additional issue of importance regarding this agreement.

It involves the State of California's cost-sharing obligations both under the Central Valley Project Improvement Act of 1992 and more generally for the completion of projects already well under way in the federal appropriations and construction process, such as the Shasta Dam temperature control device.

As you have already heard, EDF is skeptical of the agreement you are negotiating, based as it is on a premise of the State's good faith in committing itself once again to the adoption of protective water quality standards for the Bay/Delta estuary. We are skeptical as well of the United States' embarking upon still another open-ended EIS/EIR process, when it is having difficulty enough in keeping its CVPIA-mandated EIS process on track and when the Westlands Water District and other CVP contractors are demanding still more EIS's as a prerequisite to implementation of the CVPIA's environmental water allocations. Please inform us both as to where you believe any Congressional authorization for this new EIS appears and how much in federal expenditures you estimate it will take to complete the document.

The cost-sharing issue, however, may be the most crucial obstacle of all to the State's full participation in a serious effort to resolve Bay/Delta problems. It is EDF's understanding that the State is unwilling to commit even to attempting to resolve this issue until after it learns the results of June's bond issue elections. It seems to us that the least you can do in response is to suggest to the State that you will not sign the Framework Agreement until the State agrees to meet its cost-sharing obligations for projects currently under construction and mandated by existing law, and commits itself contractually to a reliable plan for cost-sharing the rest of its CVPIA's obligations. As you know, Governor Wilson several times has publicly committed the State to join in the implementation of the CVPIA, but so far no State financial contributions have been forthcoming.

National Headquarters

257 Park Avenue South
New York, NY 10010
(212) 505-2100

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(202) 387-3500

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1800 Guadalupe
Austin, TX 78701
(512) 478-5161

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In EDF's judgment, and we hope in yours, the United States' top priority must be the full implementation of the CVPIA. Conversely, there is no reason to rush into a potentially very expensive commitment to an open-ended joint planning process with the State.

We have always suspected that for many involved in the Bay/Delta Oversight Council process at the State level, the Council is basically an effort to obtain political "cover" for another attempt at authorizing a Peripheral Canal. Why the United States should be so anxious to involve itself in this kind of an exercise, given all the other problems we have enumerated, is unclear to EDF.

Sincerely yours,

Tom Graff

Thomas J. Graff
Senior Attorney

TJG:mr

cc: Hon. Douglas Wheeler

3. 1968 LOD with Roe Island but without salmon protective measures
4. 1975 LOD with Roe Island triggered and salmon protective measures
5. 1975 LOD without Roe Island but with salmon protective measures
6. salmon protective measures alone

The daily requirements for three levels of development are included in three LOTUS files on the enclosed diskette: 55loddays.txt, 68loddays.txt, and 75loddays.txt. The contents of these files are included as an attachment to this letter.

In all but the cases noted, please include the following salmon smolt protective measures, as we still believe that they represent a set of implementation measures which would approximate the level of protection appropriate:

Delta Cross Channel closed April through June
Total exports not above 1500 cfs for 4 weeks, April 15 May 15
Total exports for the rest of April through June not above 4000 cfs
Minimum Flows at Vernalis for four weeks (April 15 - May 15) as follows:
W 10,000 cfs; AN 8,000 cfs; BN 6,000 cfs; D 4,000 cfs; C 2,000 cfs

for alternative salmon protective measures in study 2' please use the same conditions except with 4,000 cfs minimum flows at Vernalis in both critical and dry years. For all San Joaquin requirements please use the San Joaquin River Index to establish year types.

We intend for these 9 runs to encompass the range of water costs addressed by EPA water quality standards although it may be that none of them exactly reflect the final determination. The highest priority is for the suite of conditions at 1968 LOD as these give the most information about the effect of structural differences in the standards.

In all cases please use a 6 MAF level of export demand in all years and a base condition of D-1485.

Trigger the Roe Island standard by reference to the best estimate of a 14 day moving average, as we have discussed for previous runs. Once triggered the requirement should remain in effect until less than .95 if a subsequent month is required. Thus, the standard might be triggered in February followed by requirements for all of March and some of April and May, in which case the requirement would be for X2 to be downstream of km 64 for all of February and March, at a location between km 64 and km 74 in April, but would not influence the requirement for May.

For the Chipps and Roe Island standards limit flow requirements to 11,400 and 29,200 cfs, respectively. For compliance with the confluence please rely on the modeled salinity, which may require increases in delta outflow in January of some years.

By presenting the requirements as monthly proportions we hope that we have facilitated the weighting that was used earlier to represent the required number of days in

DWRSIM's monthly time steps. In most cases the requirements are either very close to 1 or to zero; in these cases the standard would either require compliance at the site or at the next site upstream. At intermediate values the standard should be satisfied for the month at the proportionate distance downstream from the upstream site. Thus, if Roe Island is required .50 of the month of April in a given year, then the criteria to be met in DWRSIM should be at river km 79 (midway between the station and the next station upstream). Because the logarithmic relationship between flow and X2 location is contained in the model you are using to estimate flow needs this procedure should provide a good approximation.

We realize that these studies represent a substantial effort on DWR's part and we are grateful for this contribution to the development of standards that will protect the estuary with the smallest impact on other uses.

Regards,

For Bruce Herbold

1955 LOD		CHIPPS Island				Roe Island				
YEAR	feb	mar	apr	may	jun	feb	mar	apr	may	jun
1907	1.00	1.00	1.00	1.00	1.00	0.87	0.97	1.00	1.00	0.00
1908	1.00	1.00	0.96	0.93	0.30	0.81	0.69	0.40	0.18	0.00
1909	1.00	1.00	1.00	1.00	0.99	0.99	0.98	0.83	0.86	0.00
1910	1.00	1.00	1.00	1.00	0.83	0.88	0.79	0.93	0.86	0.00
1911	1.00	1.00	1.00	1.00	1.00	0.94	0.91	0.97	0.99	0.00
1912	1.00	1.00	0.75	0.02	0.84	0.54	0.20	0.17	0.01	0.00
1913	1.00	1.00	0.46	0.98	0.83	0.68	0.23	0.09	0.30	0.00
1914	1.00	1.00	1.00	1.00	1.00	0.99	0.93	0.88	0.95	0.00
1915	1.00	1.00	1.00	1.00	1.00	0.74	0.97	0.80	0.89	0.00
1916	1.00	1.00	1.00	1.00	0.99	0.93	0.96	0.96	0.95	0.00
1917	1.00	1.00	0.95	1.00	0.99	0.45	0.87	0.38	0.87	0.00
1918	1.00	1.00	0.99	1.00	0.25	0.20	0.33	0.68	0.44	0.00
1919	1.00	1.00	0.99	1.00	0.97	0.54	0.87	0.61	0.78	0.00
1920	1.00	1.00	0.82	0.95	0.78	0.20	0.06	0.21	0.19	0.00
1921	1.00	1.00	1.00	1.00	0.97	0.94	0.87	0.89	0.55	0.00
1922	1.00	1.00	0.98	1.00	1.00	0.48	0.80	0.49	0.71	0.00
1923	1.00	1.00	0.67	1.00	0.93	0.72	0.32	0.14	0.59	0.00
1924	1.00	1.00	0.01	0.00	0.00	0.19	0.30	0.01	0.00	0.00
1925	1.00	1.00	0.95	1.00	0.94	0.41	0.96	0.39	0.76	0.00
1926	1.00	1.00	0.83	1.00	0.07	0.31	0.87	0.21	0.75	0.00
1927	1.00	1.00	1.00	1.00	0.98	0.81	0.98	0.80	0.94	0.00
1928	1.00	1.00	1.00	1.00	0.67	0.61	0.64	0.96	0.73	0.00
1929	1.00	1.00	0.42	0.03	0.23	0.23	0.28	0.08	0.01	0.00
1930	1.00	1.00	0.99	0.96	0.11	0.62	0.60	0.62	0.22	0.00
1931	1.00	1.00	0.31	0.00	0.00	0.34	0.12	0.06	0.00	0.00
1932	1.00	1.00	0.98	0.98	0.98	0.59	0.60	0.52	0.26	0.00
1933	1.00	1.00	0.89	0.31	0.15	0.28	0.06	0.28	0.04	0.00
1934	1.00	1.00	0.90	0.03	0.00	0.64	0.50	0.28	0.01	0.00
1935	1.00	1.00	0.95	1.00	0.99	0.75	0.49	0.37	0.99	0.00
1936	1.00	1.00	0.99	1.00	0.94	0.90	0.96	0.62	0.76	0.00
1937	1.00	1.00	1.00	1.00	1.00	0.18	0.75	0.75	0.75	0.00
1938	1.00	1.00	1.00	1.00	1.00	0.74	0.96	0.99	0.98	0.00
1939	1.00	1.00	0.90	0.75	0.00	0.33	0.14	0.28	0.09	0.00
1940	1.00	1.00	1.00	1.00	0.95	0.93	0.97	0.97	0.92	0.00
1941	1.00	1.00	1.00	1.00	1.00	0.94	0.96	0.92	0.92	0.00
1942	1.00	1.00	0.96	1.00	0.99	0.94	0.96	0.41	0.92	0.00
1943	1.00	1.00	1.00	1.00	0.92	0.95	0.83	0.95	0.86	0.00
1944	1.00	1.00	0.91	0.20	0.84	0.33	0.44	0.29	0.03	0.00
1945	1.00	1.00	0.95	0.98	0.95	0.48	0.93	0.39	0.30	0.00
1946	1.00	1.00	0.97	1.00	0.93	0.86	0.37	0.44	0.62	0.00
1947	1.00	1.00	0.98	0.68	0.04	0.24	0.49	0.53	0.08	0.00
1948	1.00	1.00	0.71	1.00	0.99	0.75	0.10	0.15	0.88	0.00
1949	1.00	1.00	1.00	1.00	0.86	0.18	0.18	0.76	0.53	0.00
1950	1.00	1.00	0.98	1.00	0.94	0.74	0.79	0.51	0.73	0.00
1951	1.00	1.00	0.99	0.98	0.75	0.91	0.90	0.58	0.30	0.00
1952	1.00	1.00	1.00	1.00	1.00	0.91	0.93	0.82	0.99	0.00
1953	1.00	1.00	0.94	1.00	0.86	0.96	0.47	0.35	0.52	0.00
1954	1.00	1.00	1.00	1.00	0.81	0.80	0.83	0.82	0.91	0.00
1955	1.00	1.00	0.40	0.32	0.79	0.52	0.20	0.08	0.04	0.00
1956	1.00	1.00	0.99	1.00	1.00	0.98	0.91	0.70	0.65	0.00
1957	1.00	1.00	1.00	0.85	0.96	0.33	0.80	0.78	0.12	0.00
1958	1.00	1.00	1.00	1.00	1.00	0.83	0.99	0.92	0.98	0.00
1959	1.00	1.00	0.92	0.77	0.01	0.81	0.78	0.31	0.10	0.00
1960	1.00	1.00	1.00	0.92	0.16	0.39	0.87	0.74	0.16	0.00
1961	1.00	1.00	0.91	0.39	0.07	0.37	0.69	0.29	0.05	0.00
1962	1.00	1.00	0.97	1.00	0.75	0.33	0.93	0.48	0.78	0.00
1963	1.00	1.00	0.94	1.00	1.00	0.71	0.95	0.36	0.98	0.00
1964	1.00	1.00	0.25	0.25	0.19	0.66	0.23	0.05	0.03	0.00
1965	1.00	1.00	0.92	1.00	0.95	0.97	0.73	0.31	0.93	0.00
1966	1.00	1.00	0.98	1.00	0.24	0.74	0.49	0.53	0.56	0.00
1967	1.00	1.00	1.00	1.00	1.00	0.91	0.78	0.88	0.76	0.00
1968	1.00	1.00	0.98	0.63	0.06	0.65	0.91	0.54	0.07	0.00
1969	1.00	1.00	1.00	1.00	1.00	0.98	0.95	0.77	0.97	0.00
1970	1.00	1.00	1.00	0.14	0.45	0.99	0.85	0.72	0.02	0.00
1971	1.00	1.00	1.00	1.00	0.98	0.89	0.60	0.83	0.60	0.00
1972	1.00	1.00	1.00	0.93	0.32	0.62	0.56	0.76	0.17	0.00
1973	1.00	1.00	1.00	1.00	0.99	0.94	0.91	0.75	0.44	0.00
1974	1.00	1.00	1.00	1.00	0.99	0.98	0.68	0.97	0.95	0.00
1975	1.00	1.00	1.00	0.99	1.00	0.45	0.84	0.92	0.34	0.00
1976	1.00	1.00	0.47	0.00	0.00	0.24	0.16	0.09	0.00	0.00
1977	1.00	1.00	0.00	0.00	0.00	0.15	0.04	0.00	0.00	0.00
1978	1.00	1.00	1.00	1.00	0.99	0.97	0.90	0.95	0.89	0.00
1979	1.00	1.00	0.99	0.97	0.99	0.63	0.69	0.66	0.23	0.00
1980	1.00	1.00	1.00	1.00	0.93	0.98	0.97	0.82	0.45	0.00
1981	1.00	1.00	0.98	0.82	0.05	0.67	0.57	0.51	0.11	0.00
1982	1.00	1.00	1.00	1.00	1.00	0.91	0.97	0.92	1.00	0.00
1983	1.00	1.00	1.00	1.00	1.00	0.94	0.98	1.00	0.94	0.00
1984	1.00	1.00	0.99	0.92	0.92	0.88	0.73	0.71	0.17	0.00
1985	1.00	1.00	0.74	0.98	0.06	0.36	0.32	0.17	0.29	0.00
1986	1.00	1.00	1.00	1.00	0.91	0.85	1.00	0.98	0.49	0.00
1987	1.00	1.00	0.98	0.07	0.00	0.32	0.47	0.54	0.02	0.00
1988	1.00	1.00	0.38	0.01	0.00	0.74	0.22	0.08	0.01	0.00

1989	1.00	1.00	1.00	1.00	0.08	0.37	0.22	0.97	0.68	0.00
1990	1.00	1.00	0.87	0.10	0.01	0.57	0.17	0.25	0.02	0.00
1991	1.00	1.00	0.99	0.28	0.16	0.09	0.03	0.57	0.04	0.00
1992	1.00	1.00	0.93	0.66	0.00	0.21	0.76	0.32	0.08	0.00

1968 LOD		CHIPPS Island				Roe Island				
YEAR	feb	mar	apr	may	jun	feb	mar	apr	may	jun
1907	1.00	1.00	1.00	1.00	1.00	0.89	0.96	0.99	0.99	0.00
1908	1.00	1.00	0.91	0.55	0.06	0.83	0.55	0.21	0.06	0.00
1909	1.00	1.00	1.00	1.00	0.97	0.99	0.97	0.66	0.65	0.00
1910	1.00	1.00	1.00	1.00	0.43	0.89	0.67	0.84	0.65	0.00
1911	1.00	1.00	1.00	1.00	0.99	0.95	0.84	0.92	0.97	0.00
1912	1.00	0.98	0.59	0.00	0.45	0.57	0.12	0.08	0.00	0.00
1913	1.00	0.99	0.29	0.84	0.43	0.71	0.14	0.04	0.12	0.00
1914	1.00	1.00	1.00	1.00	0.99	0.99	0.87	0.75	0.86	0.00
1915	1.00	1.00	1.00	1.00	1.00	0.77	0.94	0.62	0.72	0.00
1916	1.00	1.00	1.00	1.00	0.93	0.93	0.92	0.91	0.86	0.00
1917	1.00	1.00	0.90	1.00	0.92	0.48	0.78	0.20	0.68	0.00
1918	1.00	1.00	0.99	0.95	0.05	0.22	0.21	0.46	0.20	0.00
1919	1.00	1.00	0.98	1.00	0.85	0.58	0.78	0.38	0.52	0.00
1920	1.00	0.03	0.68	0.61	0.35	0.22	0.03	0.09	0.07	0.00
1921	1.00	1.00	1.00	0.98	0.84	0.95	0.78	0.76	0.27	0.00
1922	1.00	1.00	0.95	0.99	1.00	0.52	0.69	0.27	0.43	0.00
1923	1.00	1.00	0.49	0.98	0.67	0.75	0.20	0.06	0.31	0.00
1924	1.00	1.00	0.00	0.00	0.00	0.22	0.19	0.00	0.00	0.00
1925	1.00	1.00	0.91	1.00	0.70	0.45	0.93	0.20	0.50	0.00
1926	1.00	1.00	0.70	1.00	0.01	0.35	0.79	0.10	0.48	0.00
1927	1.00	1.00	1.00	1.00	0.91	0.83	0.96	0.61	0.82	0.00
1928	1.00	1.00	1.00	1.00	0.23	0.64	0.49	0.91	0.46	0.00
1929	1.00	1.00	0.26	0.00	0.04	0.25	0.18	0.03	0.00	0.00
1930	1.00	1.00	0.98	0.68	0.02	0.65	0.45	0.39	0.08	0.00
1931	1.00	0.71	0.18	0.00	0.00	0.37	0.07	0.03	0.00	0.00
1932	1.00	1.00	0.96	0.77	0.88	0.62	0.45	0.30	0.10	0.00
1933	1.00	0.02	0.81	0.04	0.03	0.31	0.03	0.13	0.01	0.00
1934	1.00	1.00	0.81	0.00	0.00	0.67	0.36	0.13	0.00	0.00
1935	1.00	1.00	0.90	1.00	0.96	0.77	0.35	0.19	0.96	0.00
1936	1.00	1.00	0.98	1.00	0.71	0.91	0.93	0.39	0.50	0.00
1937	1.00	1.00	0.99	1.00	0.98	0.21	0.62	0.55	0.47	0.00
1938	1.00	1.00	1.00	1.00	1.00	0.77	0.94	0.97	0.95	0.00
1939	1.00	0.84	0.81	0.20	0.00	0.36	0.08	0.13	0.03	0.00
1940	1.00	1.00	1.00	1.00	0.74	0.94	0.95	0.93	0.77	0.00
1941	1.00	1.00	1.00	1.00	0.99	0.95	0.93	0.83	0.77	0.00
1942	1.00	1.00	0.92	1.00	0.97	0.95	0.93	0.22	0.78	0.00
1943	1.00	1.00	1.00	1.00	0.63	0.96	0.73	0.88	0.66	0.00
1944	1.00	1.00	0.83	0.02	0.45	0.36	0.30	0.14	0.01	0.00
1945	1.00	1.00	0.91	0.84	0.76	0.52	0.88	0.20	0.12	0.00
1946	1.00	1.00	0.93	0.99	0.69	0.87	0.25	0.24	0.33	0.00
1947	1.00	1.00	0.96	0.16	0.01	0.27	0.35	0.31	0.03	0.00
1948	1.00	0.33	0.54	1.00	0.94	0.78	0.06	0.07	0.69	0.00
1949	1.00	0.97	0.99	0.97	0.49	0.20	0.11	0.56	0.26	0.00
1950	1.00	1.00	0.96	1.00	0.71	0.76	0.67	0.29	0.46	0.00
1951	1.00	1.00	0.97	0.83	0.32	0.92	0.83	0.35	0.11	0.00
1952	1.00	1.00	1.00	1.00	1.00	0.92	0.88	0.65	0.97	0.00
1953	1.00	1.00	0.88	0.97	0.48	0.97	0.33	0.17	0.25	0.00
1954	1.00	1.00	1.00	1.00	0.40	0.83	0.73	0.65	0.76	0.00
1955	1.00	0.99	0.25	0.04	0.37	0.56	0.12	0.03	0.01	0.00
1956	1.00	1.00	0.99	0.99	0.99	0.98	0.85	0.48	0.36	0.00
1957	1.00	1.00	0.99	0.32	0.78	0.37	0.69	0.58	0.04	0.00
1958	1.00	1.00	1.00	1.00	1.00	0.85	0.98	0.83	0.95	0.00
1959	1.00	1.00	0.85	0.22	0.00	0.83	0.66	0.15	0.03	0.00
1960	1.00	1.00	0.99	0.50	0.03	0.43	0.78	0.53	0.06	0.00
1961	1.00	1.00	0.83	0.05	0.01	0.40	0.56	0.14	0.01	0.00
1962	1.00	1.00	0.95	1.00	0.31	0.36	0.88	0.27	0.52	0.00
1963	1.00	1.00	0.89	1.00	0.98	0.74	0.91	0.18	0.92	0.00
1964	1.00	0.99	0.14	0.03	0.03	0.70	0.14	0.02	0.01	0.00
1965	1.00	1.00	0.84	1.00	0.76	0.97	0.59	0.15	0.80	0.00
1966	1.00	1.00	0.96	0.98	0.05	0.77	0.35	0.31	0.28	0.00
1967	1.00	1.00	1.00	1.00	1.00	0.92	0.66	0.74	0.49	0.00
1968	1.00	1.00	0.97	0.13	0.01	0.68	0.85	0.32	0.02	0.00
1969	1.00	1.00	0.99	1.00	1.00	0.99	0.92	0.57	0.91	0.00
1970	1.00	1.00	0.99	0.01	0.11	0.99	0.76	0.50	0.01	0.00
1971	1.00	1.00	1.00	0.99	0.89	0.90	0.45	0.66	0.31	0.00
1972	1.00	1.00	0.99	0.53	0.07	0.65	0.41	0.55	0.06	0.00
1973	1.00	1.00	0.99	0.95	0.97	0.94	0.85	0.55	0.19	0.00
1974	1.00	1.00	1.00	1.00	0.96	0.98	0.54	0.93	0.86	0.00
1975	1.00	1.00	1.00	0.88	0.99	0.49	0.75	0.82	0.14	0.00
1976	1.00	0.94	0.30	0.00	0.00	0.27	0.10	0.04	0.00	0.00
1977	1.00	0.00	0.00	0.00	0.00	0.17	0.02	0.00	0.00	0.00
1978	1.00	1.00	1.00	1.00	0.96	0.97	0.83	0.89	0.71	0.00
1979	1.00	1.00	0.98	0.72	0.94	0.66	0.54	0.43	0.09	0.00
1980	1.00	1.00	1.00	0.95	0.68	0.98	0.95	0.64	0.20	0.00
1981	1.00	1.00	0.96	0.27	0.01	0.70	0.42	0.29	0.04	0.00
1982	1.00	1.00	1.00	1.00	0.99	0.93	0.95	0.83	0.99	0.00
1983	1.00	1.00	1.00	1.00	1.00	0.95	0.96	0.99	0.83	0.00
1984	1.00	1.00	0.99	0.51	0.64	0.89	0.60	0.49	0.06	0.00
1985	1.00	1.00	0.58	0.82	0.01	0.39	0.21	0.07	0.11	0.00
1986	1.00	1.00	1.00	0.97	0.61	0.87	0.99	0.96	0.23	0.00
1987	1.00	1.00	0.97	0.01	0.00	0.36	0.33	0.32	0.01	0.00

1988	1.00	0.99	0.23	0.00	0.00	0.76	0.14	0.03	0.00	0.00
1989	1.00	0.99	1.00	0.99	0.01	0.40	0.13	0.93	0.39	0.00
1990	1.00	0.95	0.77	0.01	0.00	0.60	0.10	0.12	0.01	0.00
1991	1.00	0.00	0.97	0.03	0.03	0.10	0.02	0.35	0.01	0.00
1992	1.00	1.00	0.86	0.14	0.00	0.24	0.64	0.16	0.02	0.00

1975 LOD		CHIPPS Island				Roe Island				
YEAR	feb	mar	apr	may	jun	feb	mar	apr	may	jun
1907	1.00	1.00	1.00	1.00	0.99	0.90	0.94	0.98	0.97	0.00
1908	1.00	1.00	0.88	0.24	0.02	0.84	0.47	0.14	0.03	0.00
1909	1.00	1.00	1.00	1.00	0.92	0.99	0.96	0.54	0.50	0.00
1910	1.00	1.00	1.00	1.00	0.21	0.90	0.59	0.76	0.49	0.00
1911	1.00	1.00	1.00	1.00	0.98	0.95	0.79	0.87	0.94	0.00
1912	1.00	0.00	0.50	0.00	0.23	0.59	0.09	0.05	0.00	0.00
1913	1.00	0.00	0.22	0.57	0.22	0.73	0.10	0.02	0.06	0.00
1914	1.00	1.00	1.00	1.00	0.97	0.99	0.83	0.65	0.76	0.00
1915	1.00	1.00	0.99	1.00	0.99	0.78	0.92	0.50	0.58	0.00
1916	1.00	1.00	1.00	1.00	0.84	0.94	0.90	0.86	0.76	0.00
1917	1.00	1.00	0.86	1.00	0.81	0.50	0.72	0.13	0.53	0.00
1918	1.00	0.06	0.98	0.83	0.02	0.24	0.16	0.34	0.11	0.00
1919	1.00	1.00	0.97	0.99	0.68	0.59	0.72	0.27	0.37	0.00
1920	1.00	0.00	0.60	0.29	0.17	0.24	0.03	0.06	0.04	0.00
1921	1.00	1.00	1.00	0.92	0.65	0.95	0.72	0.66	0.16	0.00
1922	1.00	1.00	0.93	0.98	1.00	0.54	0.61	0.19	0.28	0.00
1923	1.00	0.05	0.40	0.94	0.43	0.76	0.16	0.04	0.19	0.00
1924	1.00	0.03	0.00	0.00	0.00	0.23	0.14	0.00	0.00	0.00
1925	1.00	1.00	0.87	0.99	0.46	0.47	0.90	0.13	0.34	0.00
1926	1.00	1.00	0.62	0.99	0.00	0.36	0.73	0.06	0.33	0.00
1927	1.00	1.00	0.99	1.00	0.78	0.84	0.94	0.49	0.71	0.00
1928	1.00	0.99	1.00	0.98	0.10	0.66	0.41	0.86	0.31	0.00
1929	1.00	0.02	0.19	0.00	0.02	0.27	0.13	0.02	0.00	0.00
1930	1.00	0.98	0.97	0.36	0.01	0.67	0.38	0.28	0.04	0.00
1931	1.00	0.00	0.13	0.00	0.00	0.39	0.05	0.02	0.00	0.00
1932	1.00	0.98	0.94	0.47	0.73	0.64	0.37	0.21	0.05	0.00
1933	1.00	0.00	0.74	0.01	0.01	0.32	0.02	0.08	0.01	0.00
1934	1.00	0.82	0.74	0.00	0.00	0.69	0.29	0.08	0.00	0.00
1935	1.00	0.76	0.86	1.00	0.91	0.79	0.28	0.13	0.92	0.00
1936	1.00	1.00	0.97	0.99	0.47	0.92	0.90	0.28	0.34	0.00
1937	1.00	1.00	0.99	0.99	0.94	0.22	0.55	0.42	0.32	0.00
1938	1.00	1.00	1.00	1.00	1.00	0.78	0.92	0.94	0.91	0.00
1939	1.00	0.00	0.75	0.06	0.00	0.38	0.06	0.09	0.02	0.00
1940	1.00	1.00	1.00	1.00	0.51	0.94	0.93	0.89	0.64	0.00
1941	1.00	1.00	1.00	1.00	0.99	0.95	0.91	0.74	0.64	0.00
1942	1.00	1.00	0.89	1.00	0.91	0.95	0.91	0.15	0.65	0.00
1943	1.00	1.00	1.00	1.00	0.39	0.96	0.66	0.82	0.50	0.00
1944	1.00	0.48	0.77	0.01	0.23	0.38	0.24	0.09	0.00	0.00
1945	1.00	1.00	0.87	0.58	0.54	0.54	0.85	0.13	0.07	0.00
1946	1.00	0.17	0.91	0.96	0.45	0.88	0.19	0.16	0.21	0.00
1947	1.00	0.78	0.95	0.05	0.00	0.28	0.28	0.21	0.01	0.00
1948	1.00	0.00	0.45	1.00	0.86	0.79	0.04	0.04	0.55	0.00
1949	1.00	0.00	0.99	0.91	0.26	0.21	0.08	0.44	0.16	0.00
1950	1.00	1.00	0.94	0.98	0.48	0.78	0.59	0.20	0.31	0.00
1951	1.00	1.00	0.96	0.57	0.14	0.93	0.78	0.25	0.06	0.00
1952	1.00	1.00	1.00	1.00	1.00	0.93	0.84	0.53	0.94	0.00
1953	1.00	0.67	0.83	0.90	0.26	0.97	0.26	0.11	0.15	0.00
1954	1.00	1.00	0.99	1.00	0.20	0.84	0.66	0.53	0.62	0.00
1955	1.00	0.00	0.18	0.01	0.17	0.58	0.09	0.02	0.01	0.00
1956	1.00	1.00	0.98	0.96	0.96	0.98	0.81	0.36	0.23	0.00
1957	1.00	1.00	0.99	0.11	0.56	0.38	0.62	0.46	0.02	0.00
1958	1.00	1.00	1.00	1.00	1.00	0.86	0.97	0.74	0.91	0.00
1959	1.00	1.00	0.79	0.07	0.00	0.84	0.58	0.10	0.02	0.00
1960	1.00	1.00	0.99	0.21	0.01	0.45	0.72	0.41	0.03	0.00
1961	1.00	1.00	0.76	0.01	0.00	0.42	0.48	0.09	0.01	0.00
1962	1.00	1.00	0.93	0.99	0.14	0.38	0.84	0.18	0.37	0.00
1963	1.00	1.00	0.85	1.00	0.94	0.75	0.88	0.12	0.87	0.00
1964	1.00	0.00	0.10	0.01	0.01	0.71	0.11	0.01	0.01	0.00
1965	1.00	1.00	0.79	1.00	0.53	0.97	0.51	0.10	0.68	0.00
1966	1.00	0.76	0.95	0.93	0.02	0.78	0.28	0.21	0.17	0.00
1967	1.00	1.00	1.00	0.99	0.99	0.92	0.59	0.63	0.34	0.00
1968	1.00	1.00	0.95	0.04	0.00	0.70	0.80	0.22	0.01	0.00
1969	1.00	1.00	0.99	1.00	1.00	0.99	0.89	0.45	0.84	0.00
1970	1.00	1.00	0.99	0.00	0.04	0.99	0.70	0.38	0.00	0.00
1971	1.00	0.98	1.00	0.95	0.74	0.91	0.37	0.54	0.19	0.00
1972	1.00	0.94	0.99	0.23	0.03	0.67	0.34	0.43	0.03	0.00
1973	1.00	1.00	0.99	0.82	0.91	0.95	0.80	0.42	0.11	0.00
1974	1.00	1.00	1.00	1.00	0.90	0.98	0.46	0.89	0.77	0.00
1975	1.00	1.00	1.00	0.66	0.97	0.51	0.68	0.73	0.08	0.00
1976	1.00	0.00	0.23	0.00	0.00	0.28	0.07	0.02	0.00	0.00
1977	1.00	0.00	0.00	0.00	0.00	0.18	0.01	0.00	0.00	0.00
1978	1.00	1.00	1.00	1.00	0.90	0.98	0.78	0.82	0.57	0.00
1979	1.00	1.00	0.98	0.40	0.86	0.68	0.46	0.32	0.05	0.00
1980	1.00	1.00	0.99	0.84	0.44	0.98	0.94	0.52	0.12	0.00
1981	1.00	0.96	0.94	0.09	0.00	0.72	0.35	0.20	0.02	0.00
1982	1.00	1.00	1.00	1.00	0.98	0.93	0.93	0.75	0.99	0.00
1983	1.00	1.00	1.00	1.00	1.00	0.95	0.95	0.98	0.72	0.00
1984	1.00	1.00	0.98	0.22	0.39	0.90	0.52	0.37	0.03	0.00
1985	1.00	0.05	0.48	0.54	0.00	0.41	0.16	0.05	0.06	0.00
1986	1.00	1.00	1.00	0.88	0.36	0.88	0.99	0.93	0.14	0.00
1987	1.00	0.65	0.95	0.00	0.00	0.37	0.26	0.22	0.00	0.00

1988	1.00	0.00	0.17	0.00	0.00	0.78	0.10	0.02	0.00	0.00
1989	1.00	0.00	1.00	0.97	0.01	0.42	0.10	0.89	0.25	0.00
1990	1.00	0.00	0.69	0.00	0.00	0.62	0.07	0.07	0.00	0.00
1991	1.00	0.00	0.96	0.01	0.01	0.11	0.01	0.24	0.01	0.00
1992	1.00	1.00	0.81	0.04	0.00	0.25	0.56	0.10	0.01	0.00

SUMMARY OF POSITIONS ON KEY ISSUES

Issue	EPA Proposed Rule	Urban Position	Agricultural Position	Environmental Position
Estuarine Habitat Standard Need for Standard	Proposed rule includes estuarine habitat standard.	Support standard, with modifications.	Some support urban position. Others question need for any standard.	Support EPA position.
Regulatory Monitoring Points	Requires compliance at three points: confluence, Chipps Island, Roe Island.	To better protect estuarine habitat, urban alternative includes compliance at only two points: confluence and Chipps, NOT Roe. Roe compliance could adversely affect some estuarine species and listed species.	Some Support. SLDMA comments substantially support urban position.	Generally support EPA position.
"Sliding Scale" Mechanism	Proposed rule contains a rudimentary sliding scale mechanism. EPA staff suggests "smoothing function" to correct this.	Propose approach based on CUWA analysis. EPA approach substantially inferior to other proposed sliding scales. Additional analysis required.	Active participation in urban analysis; concerned about choice of appropriate "level of development."	Position unknown. Generally concerned that all non-EPA alternatives reduce X-2 compliance days.
Method of Compliance	Requires salinity compliance for fixed number of X-2 days based on year type, using year-round data.	Propose compliance methodology that allows projects to meet either salinity or flow-equivalent criteria on day-to-day basis.	Generally support urban position due to increased operational flexibility.	Express concern regarding possible impacts on average salinity level.
Biological Monitoring Program	Not addressed in EPA rule. EPA notes availability of triennial review process.	Emphasize need for improved monitoring of biological responses and feedback to modify standards, up or down.	Generally support urban position.	Generally support urban position.
Salmon Smolt Survival Index	Requires project operations to meet survival index criteria.	Concerned about technical basis for EPA approach; oppose standard as proposed. Recommend salmon protective measures through CVPIA and other ongoing anadromous fish planning efforts.	Oppose standard as proposed.	Generally support EPA.
Striped Bass Spawning Criteria	EPA proposes salinity criteria to expand striped bass spawning habitat in the San Joaquin River portion of the Delta.	Generally oppose standard. Biologists indicate that spawning habitat is not limiting. Recommend multispecies approach that addresses agricultural drainage issues.	Oppose standard as proposed.	Generally support EPA.
Long-Term Planning	Not addressed by EPA.	Urge development of State-Federal long-term comprehensive plan for Bay/Delta, including multispecies approaches and CEQA-NEPA process to examine wide range of management alternatives in the Delta and all causes for fishery decline.	Generally support urban position.	Generally support urban position.

From DC Anderson for T. Dacre 06/22/94

ESTUARINE HABITAT					
	EPA 1/94 (1940-75 period; no sliding scale)	EPA + Sliding Scale @ 1955 Level of Development	EPA + Sliding Scale @ 1968 Level of Development	EPA + Sliding Scale @ 1975 Level of Development	EPA + CUWA Sliding Scale (1968-75 period)
STANDARD	2 ppt salinity at Roe I, Chipps I, Sac/SJR Confluence	2 ppt salinity at Roe I, Chipps I, Sac/SJR Confluence	2 ppt salinity at Roe I, Chipps I, Sac/SJR Confluence	2 ppt salinity at Roe I, Chipps I, Sac/SJR Confluence	2 ppt salinity at Chipps I, Sac/SJR Confluence
Probable Implementation Measures; Compliance Methods	Requested Comments	Compliance based on average daily salinity, 14-day average, or equivalent flow at compliance points	Compliance based on average daily salinity, 14-day average, or equivalent flow at compliance points	Compliance based on average daily salinity, 14-day average, or equivalent flow at compliance points	Compliance based on average daily salinity, 14-day average, or equivalent flow at compliance points
Water Supply Impacts	AVERAGE: 500k DROUGHT: 1.6m				AVERAGE: <500k DROUGHT: 1.1 maf

FISH MIGRATION

SACRAMENTO RIVER				
		EPA 1/94		D-1630 (12/92)
STANDARD		W: .48 AB: .39 BN: .37 D: .32 C: .29 mean:		W: .42 AN: .34 BN: .32 BN: .29 C: .27
PROBABLE IMPLEMENTATION MEASURES	Delta Cross Channel	Closed April 1 - June 30		Closed Feb - April; Closed May - June based on real time monitoring
	Sac River Pulse Flows	None		Pulse flow of >18,000cfs for 14 consecutive days during hatchery release of smolts Pulse flows of 13,000cfs in wetter years and 9,000in drier years for 42 continuous days for striped bass.
	Export Limits	1500 cfs for 30 days during SJR pulse flow; <4000cfs April - June rest of period		1500 cfs for 21 days during SJR pulse flow; <6000cfs (W, AN, BN), 5,000(D), 4,000(C) April - June rest of period
	Q-WEST (Reverse flow)	None		>0cfs Feb 1 - June 30; relaxed if exports < 2000cfs

FISH MIGRATION

SAN JOAQUIN RIVER					
		EPA 1/94	EPA Without Old River Barrier	Without Barrier; Increased San Joaquin River Flows	D-1630 (12/92)
STANDARD		W: .46 AB: .30 BN: .26 D: .23 C: .20			W: .40 AN: .29 BN: .25 D: .22 C: .21
PROBABLE IMPLEMENTATION MEASURES	Old River Barrier	Required April 1 - May 31	Not Required	Not Required	Not Required
	SJR Pulse Flows	2-10,000cfs by water year type for 30 consecutive days in April and May	2-10,000cfs by water year type for 30 consecutive days in April and May	4-10,000cfs by water year type for 30 consecutive days in April and May	2-10,000cfs by water year type for 21 consecutive days in April and May with 150,000af cap on supplies
	Export Limits	1500 cfs for 30 days during SJR pulse flow; <4000cfs April - June rest of period	1500 cfs for 30 days during SJR pulse flow; <4000cfs April - June rest of period	1500 cfs for 30 days during SJR pulse flow; <4000cfs April - June rest of period	1500 cfs for 21 days during SJR pulse flow; <6000cfs April - June rest of period
	Q-WEST (Reverse flow)	None	None		>0cfs Feb 1 - June 30; relaxed if exports < 2000 cfs

TEMPERATURE

	EPA 1/94	HISTORICAL	MODIFIED 1991 WQCP	1991 WQCP
STANDARD	None - deferred until better information becomes available	New standard to reflect historical conditions	65 degrees at Freeport (Sac R) and Vernalis (SJR) April - June, Sept - Nov	68 degrees at Freeport and Vernalis April - June, Sept - Nov
PROBABLE IMPLEMENTATION MEASURES	None - studies underway	To be developed	To be developed	None - reservoir releases prohibited for the purpose of reducing Delta temperatures

FISH SPAWNING

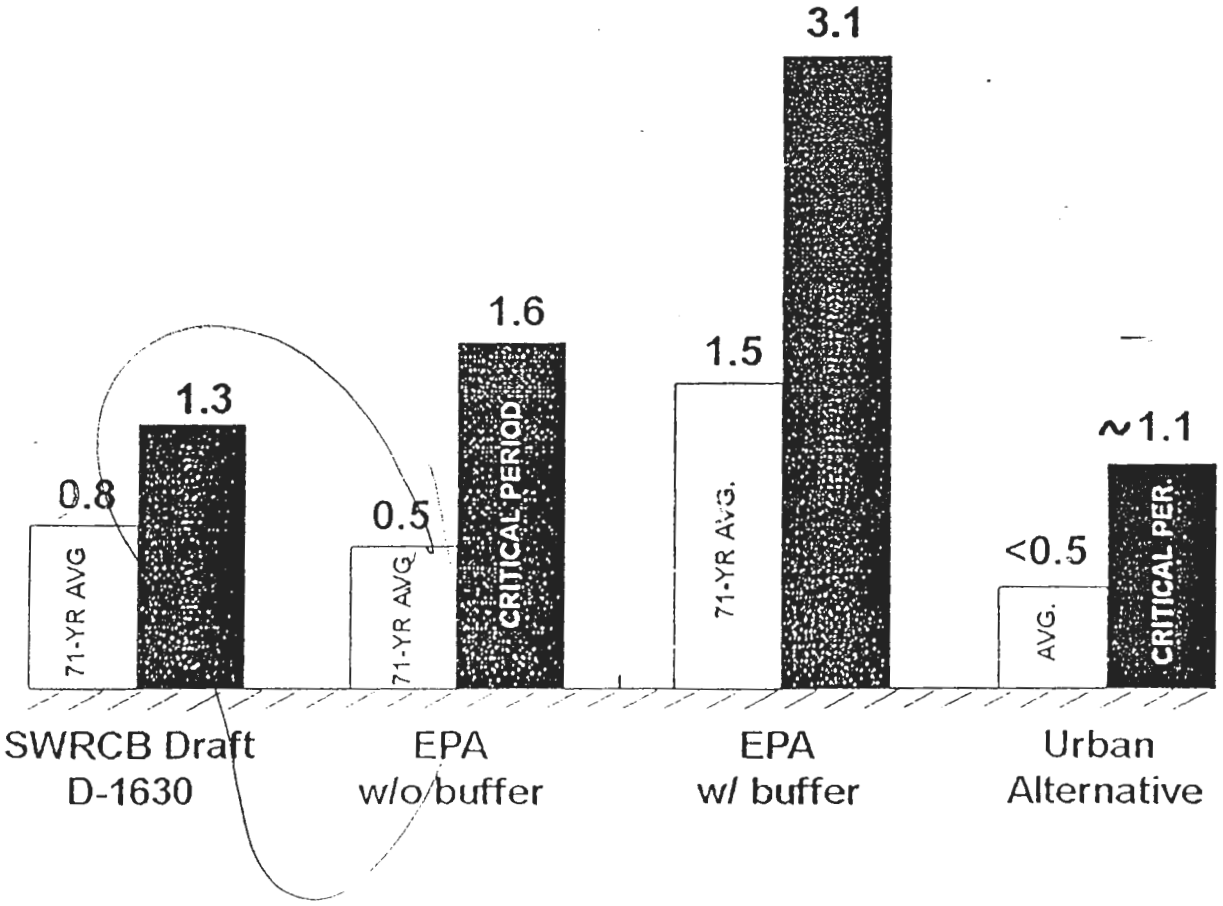
	EPA 1/94	Alternative 2	1991 WQCP
STANDARD	0.44 EC Jersey Point to Vernalis (8 stations) in Wet, Above Normal, and Below Normal years from April 1 - May 31. 0.44 EC Jersey Point to Prisoners Point (3 stations) in Dry and Critical years from April 1 - May 31.	0.44 EC at Vernalis in Wet, Above Normal, and Below Normal years from April 1 - May 31. 0.44 EC Jersey Point to Prisoners Point in all years (3 stations) from April 1 - May 31.	No standard
PROBABLE IMPLEMENTATION MEASURES	SJR pulse flows: 2-10,000cfs by water year type for 30 consecutive days in April & May. Export limits: 1500 cfs for 30 days during SJR pulse flow; <4000cfs April through June rest of period Salt Load Reduction Policy?		

Water Supply Impacts of EPA's Proposed Standards

The proposed EPA standards could cost California cities and agriculture from 510,000 to 1,500,000 acre-feet per year on average and from 1,600,000 to 3,100,000 acre-feet per year during a repeat of a severe drought. Such impacts would be between 8.5 and 52 percent of the maximum historical annual diversions of the State and Federal projects from the Delta. These figures do not include impacts resulting from winter-run salmon or Delta smelt requirements.

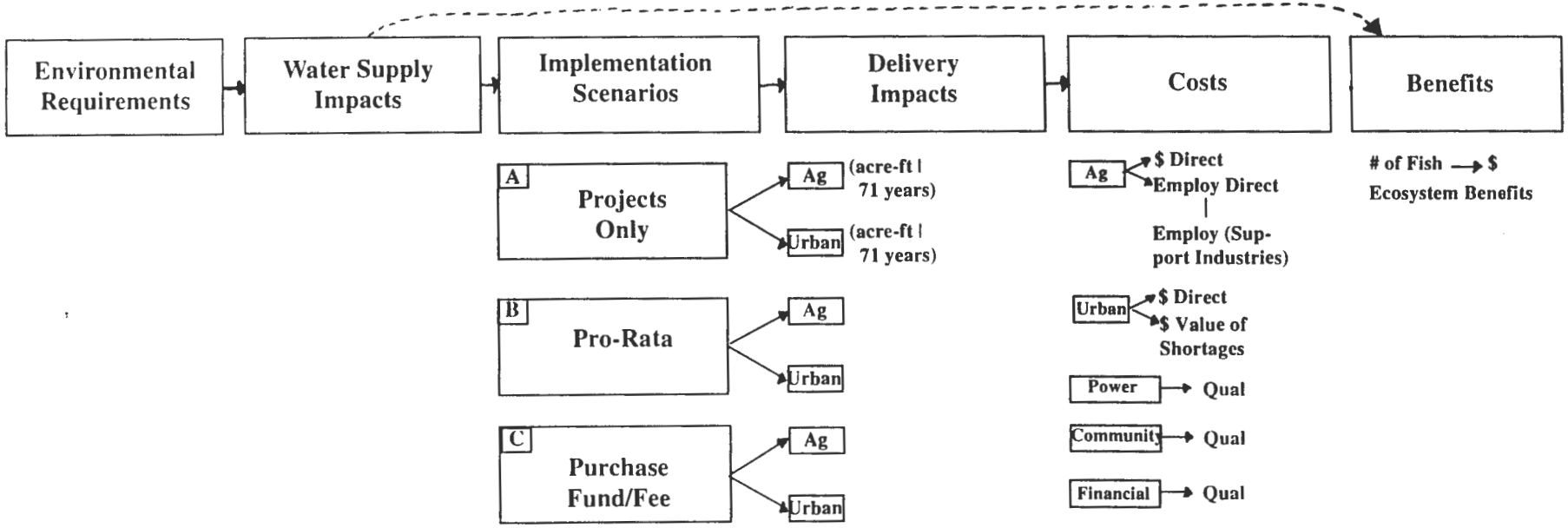
The wide range of impacts that would result from EPA's proposal is primarily due to uncertainties in knowing what flow levels are required to meet the salinity standards in the tidal zone in Suisun Bay.

According to preliminary analyses, the urban alternative would result in an average reduction of about 1.1 million acre-feet per year in critically dry years.



ANALYTIC FRAMEWORK

Revised Economic Analysis Bay/Delta Standards



Assumptions/ Models = DWRSIM
* blend demand

A from DWRSIM export availability

B Need sharing target

C Under discussion

DWRSIM
* current COA
* SWP deliveries from model
* CVP need to be developed

AG (6/20 mtg)
* 2 models
* range of transfer assumptions

URBAN (6/17 mtg)
* range of cost & availability of replacement supplies
* 6/17 mtg on methods

5/31/94

TIMELINE AND PROCESS FOR REVISIONS TO BAY/DELTA ECONOMICS ANALYSIS

June

Set up assumptions/model revisions/gain technical input from staff and interested parties

MTG: input on ag analysis
MTG: input on urban analysis
Send out outline of study to interested parties
MTG: Feedback on overall analytic framework

End of June

Receive water supply impacts from DWR (priority runs)
Receive DOI staff input on assumptions on COA/800k
Transfer capacity template: receive revisions (DWR/other)
Water delivery analysis template: receive revisions (USBR/EPA/interested parties)

July

Finalize assumptions/model revisions
Signoff from FED on analytic framework - July 8
Input from interested parties - policy level

DWR: Receive CVPM ag model outputs from DWR & PEIS
EPA & Consultants: receive other model results
EPA & Consultants: Non-quantitative issues researched
SWRCB workshop on economics

August	***Conduct analysis***
Sept 1	*Draft of RIA to FED, EPA hdgtrs*
	Receive community impacts study from RAND
Sept 23	*Comments received from FED on RIA*
Oct 20	***Second draft of RIA***
	Brief Administrator
Nov 2	*Transmit rule/RIA to OMB*
	Preparation of communications strategy
Dec 15	*Administrator signs*

4/7/94

DRAFT BAY/DELTA RULEMAKING SCHEDULE

Comment Period Ends	March 11
Review/Evaluate Comments	March, April
Develop Alternatives	April, May
Brief Federal Agencies/OMB on Alternatives/Status of RIA/RFA	June 15
Reopen Formal Consultations/ Initiate Formal Conference with FWS/NMFS	June 15
Evaluate Water Supply Impacts of Alternatives	June/July
Complete Final Runs of Economic Models	July/August
Draft RIA/RFA to Region	August 12
Region Transmits Draft Rule/RIA/RFA to HQ	September 2
Brief FED HQ Agencies/OMB Resolve Coordination Issues	September
Workgroup Review	September 6-23
Region Transmits Final Draft	October 7
Workgroup Closure	October 21
Brief Administrator/Dep Adm	Oct 24-28
Final Biological Opinion/ Conference Opinion from FWS/NMFS	November 1
Transmit Rule to OMB	November 1
OMB Comments Due	December 2
Resolve OMB Issues/ Brief FED HQ Agencies	December 5-9
Transmit to Administrator's Office	December 9
Signature (Press Conference)	December 15

October 1: First Draft of Comment Response Document

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

AUG 1 8 1994

Cay Goude
U.S. Fish and Wildlife Service
2800 Cottage Way
Sacramento, California 95825

Re: Critical Habitat - Comment Letters

Dear Cay:

While reviewing comment letters on EPA's proposed standards, I noticed that the California Farm Bureau Federation included comments on the FWS proposal for Delta smelt critical habitat. There is no indication on my copy of their letter that they were also sending it to you, so I'm enclosing a copy of the entire letter. If you already have this comment letter, you can ignore this completely.

Sincerely,

Tom

Thomas M. Hagler
Assistant Regional
Counsel

Enclosures

Printed on Recycled Paper

GARY A. CONDIT
16TH DISTRICT, CALIFORNIA

COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON GENERAL FARM COMMODITIES
SUBCOMMITTEE ON LIVESTOCK
SUBCOMMITTEE ON SPECIALTY CROPS AND NATURAL RESOURCES

COMMITTEE ON GOVERNMENT OPERATIONS
CHAIRMAN
SUBCOMMITTEE ON INFORMATION, JUSTICE, TRANSPORTATION AND AGRICULTURE

1. ~~Hamp~~
2. Patrick
3. Rodeiws

1123 LONGWORTH BUILDING
WASHINGTON, DC 20515-0518
(202) 225-6131

DISTRICT OFFICES:
FEDERAL BUILDING
415 WEST 18TH STREET
MERCED, CA 95340
(209) 383-4455

920 16TH STREET, SUITE C
MODESTO, CA 95354
(209) 527-1914

18TH DISTRICT
TOLL FREE:
1-800-356-6424

Congress of the United States
House of Representatives
Washington, DC 20515-0518

October 6, 1994

DATE	OCT 13 1994	
ACTION (✓)		COPIED (✓)
RA	✓	RA
DRA	✓	DRA
ATD	✓	ATD
HWMD		HWMD
WMD	✓	WMD
OPM		OPM
CEA	✓	
ONC		ONC
	✓	A. Zimpsor

Ms. Felicia Marcus
Regional Administrator
United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105-3901

Dear Ms. Marcus:

I would like to sincerely thank you for again coming to my district to meet with representatives from the agricultural community regarding water and farm worker protection issues.

My constituents and I very much appreciate the opportunity to demonstrate the extreme lengths to which agriculture has gone to comply with existing federal restrictions on the Central Valley Water Project as well as to comply with farm worker protection standards. We appreciate your sincere interest and commitment to finding ways to make environmental regulations more "user friendly".

With the federal and state Bay/Delta framework agreement underway, I especially appreciate your efforts in working to achieve cooperation between federal and state officials in the process. As you know, I remain concerned with the Endangered Species Act as being a "wildcard" even in the event that an agreement can be reached. As you can see from the enclosed news article, I have reason to be concerned. I have always maintained that one of our primary goals is certainty of water supply. Any assurances of certainty or "shelf-life" of this agreement cannot be guaranteed unless the agreement clearly specifies that it will meet current and future ESA requirements in the Delta.

I would also like to thank you for dedicating staff time to these very important issues. Please extend my appreciation to Amy Zimpsor, Kathy Taylor, David Howekamp, Palma Risler, Kay Rudolph, Karen Salkend and Arnaldo Avalos. I would like to especially thank your Congressional Liaison, Catherine Roberts, for her excellent preparation and follow through in this and other requests from my office.

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS

Again, I appreciate you taking the time to tour the Valley. I look forward to our continuing discussions of water and other issues which affect the Central Valley.

Sincerely,

GARY A. CONDIT
Member of Congress

GAC/jm

Jan. 1, 1995.

Delta solution hung up on Endangered Species Act

By JIM MAYER
McClatchy News Service

SACRAMENTO — Months of intense negotiations are yielding an agreement to protect the troubled Sacramento-San Joaquin Delta.

But ironically, the solution to one of California's most vexing environmental problems is running into a large obstacle: a tough national environmental law — the Endangered Species Act.

Farm and urban water officials say they accept that they will have to divert less fresh water from the delta in order to protect fish and wildlife dependent on the maze of sloughs, islands and marshes.

But in exchange, they want environmental officials to promise that water supplies will not be reduced again any time soon in the name of a new endangered animal. They have come to call that certainty "shelf life."

Joel Medlin, field supervisor for the U.S. Fish and Wildlife Service, said wildlife officials are reluctant to guarantee what they can't be sure of — that the new water quality standards will rejuvenate all declining aquatic species.

Wildlife officials say the law requires them to protect all species, and if the EPA's standards are inadequate, they may have to enact additional restrictions.

For years, while southern cities and farms pumped increasingly more fresh water, biologists lamented the expansive estuary's decline and the inadequacy of environmental laws. Not until winter-run chinook salmon was declared threatened in 1989 — and delta smelt in 1993 — were the federal and state systems of dams and canals forced to reduce pumping.

"Ignoring the needs of the delta has brought us to this crisis, and thus the listing of species," said John Amadeo, executive director of the Bay-Delta Oversight Council, charged with crafting a long-term solution to the problem.

"Now the Achilles' heel is the Endangered Species Act. You need to achieve measures that provide for the species, while providing shelf life for the standards."

The State Water Resources Control Board set out in 1987 to set tougher water quality standards for the delta, but each effort was politically undermined by water utilities that wanted to take more water.

The U.S. Environmental Protection Agency in December proposed its own delta standards, which would let more fresh water flow through the delta to San Francisco Bay and make less available for diversion.

The strategy is to push young fish away from the giant pumps and to recreate the brackish conditions near Suisun Marsh that biologists say is needed for a healthy food chain.

The EPA is scheduled to approve a revised version of that plan this December.

The revisions are intended to reduce the water costs by one-third, without reducing the environmental protections. Under the latest plan and in the driest of years, the new rules would require 1.1 million acre-feet — about one-fifth the water pumped south by the Central Valley Project and State Water Project.

This month, the California Urban Water Agencies endorsed major portions of the EPA plan.

Earlier this summer, the Bay Area Economic Forum urged Gov. Wilson to support water quality standards that would end the dispute, restore water supply predictability and allow water sales that could help meet growing urban needs.

"We are getting closer," said EPA Bay-Delta chief Patrick Wright. "It has been such a difficult and contentious issue for so long, I hate to be too confident. But the elements of an agreement are there."

MEMORANDUM

SUBJECT: Bay/Delta - Additions to Comment Letter Files

FROM: Tom Hagler

TO: Jack Herschel

DATE: November 5, 1994

I have a "no-rush" project for you from the Bay/Delta effort. Attached are the last batch of "comment letters" we received from the public on the Bay/Delta proposed rule last January. Billie Yarborough (down on 11th floor) had been handling these, but she moved off to Michigan.

Here's the request:

(a) For each of these twenty or so comment letters (numbered, in the right top corner, as #210 to #243), we need an accordian folder and a manila folder labeled like the sample I'm attaching (the sample is number 034).

(b) Once the folders are prepared, I need two copies of each comment letter to go into the appropriate folder along with the original. I will also need a third copy of each comment letter that goes directly to me for the legal files.

(c) I'm attaching a copy of my list of these comment letters. You can use the information on this list to prepare the manila folder label.

(d) No rush on this. Any time in the next week to 10 days will be fine. If you are aleady swamped with other things, let me know.....

Public Hearings Submissions

NOTE: The following comments were written submissions presented at one of the public hearings (Fresno, Sacramento, San Francisco, or Los Angeles).

210---Los Angeles Area Chamber of Commerce, 1994. Testimony of Diana Badowski dated 02/28/94. 2 pp.

211---Desert Water Agency, 1994. Testimony of F.Thomas Kieley, III dated 02/28/94. 6 pp.

212---Greater San Diego Chamber of Commerce, 1994. Comment letter of Gilbert A. Partida dated 02/26/94. 2 pp.

213---Kern County Water Agency, 1994. Comments dated 02/28/94. 14 pp.

214---Water Advisory Committee of Orange County, 1994. Testimony of James H. Blake dated 02/28/94. 4 pp.

215---Southern California Association of Governments, 1994. Testimony of Arthur Brown dated 02/28/94. 3 pp.

216---Municipal Water District of Orange County, 1994. Testimony of Dr. Robert J. Huntley dated 02/28/94. 2 pp.

217---Western Municipal Water District of Riverside County, 1994. Testimony of Wayne C. Keith dated 02/28/94. 6 pp.

218---Mesa Consolidated Water District, 1994. Resolution No. 1126 dated 02/24/94. 2 pp.

219---California State Senator Phil Wyman, 1994. Speech to "Club Fed" dated 02/23/94. 3 pp.

220---California State Senator Phil Wyman, 1994. Letter to Honorable Bill Clinton dated 01/27/94. 4 pp.

221---Lakeside Irrigation Water District, 1994. Testimony of Ken Cartwright dated 02/23/94. 1 p.

222---Private Citizen, 1994. Testimony of Greg Barber submitted on 02/23/94. 2 pp.

223---East Bay Municipal Utilities District, 1994. Statement

of Jean Mariani dated 02/25/94. 5 pp.

224---California State Assembly Rural Caucus, 1994. Letter to Honorable Bill Clinton dated 02/24/94. 3 pp.

225---Yuba County Water Agency, 1994. Letter to Patrick Wright dated 02/18/94. 3 pp.

226---California Resources Agency, 1994. Testimony of Douglas P. Wheeler dated 02/24/94. 5 pp.

227---Minasian, et al., 1994. Comments of William H. Baber, III dated 02/24/94. 5 pp.

228---Association of California Water Agencies, 1994. Comments dated 02/24/94. 7 pp.

229---Private Citizen, 1994. Comments of Clifford Koster dated 02/24/94. 4 pp.

230---Downey, Brand, Seymour & Rohwer, 1994. Letter to Patrick Wright from Kevin M. O'Brien. 5 pp.

231---California Legislature, Assembly, 1994. Letter to President Bill Clinton from Assemblymen Jim Costa and Cruz Bustamante dated 02/22/94. 2 pp.

232---Grassroots Water Network, 1994. Comments dated 02/23/94. 10 pp.

233---Greater Bakersfield Chamber of Commerce, 1994. Letter from Chris Frank to Dale Pierce, Field Supervisor, USFWS, dated 02/22/94. 2 pp. [NOTE: Appears to be same text as letter #077 to Patrick Wright].

234---Industrial League of Orange County, 1994. Testimony of Reed L. Royalty dated 02/28/94. 2 pp.

235---United States Congress, 1994. Letter from Rep. Gary Condit to Dale Pierce dated 03/03/94. 7 pp.

236---California Urban Water Agencies, 1991. Cost of Industrial Water Shortages: Executive Summary. Submitted by Bob Reeb, El Dorado County Water Agency, 02/94. 15 pp.

237---Statement of Harriet Wieder, 1994. Submitted 02/28/94. 5 pp.

Index of Bay/Delta Comment Letters on proposed
Water Quality Standards
(alphabetized by agency and numbered)

238---Central Basin Water Association, 1994. Letter from Jim Glancy to Patrick Wright dated 02/28/94. 1 p.

239---West Basin Water Association, 1994. Letter from Terrry S. Tamble to Patrick Wright dated 02/28/94. 1 p.

240---United States Congress, 1994. Statement of Rep. Randy Cunningham dated 02/28/94. 2 pp.

241---Cucamonga County Water District, 1994. Comments submitted 02/28/94. 7 pp.

242---Kings County Farm Bureau, 1994. Letter from Ernest A. Taylor to the President dated March 4, 1994. 2 pp.

243---Private Citizen (Unknown), 1994. Comments submitted 02/94. 2 pp.

244--- Vogel comment letter on NOA

245--- Griffith and Masuda comment letter on NOA

DRAFT

INTEGRATED DELTA PROTECTION PLAN

I. OBJECTIVES

A. ECOSYSTEM PROTECTION

1. Multi-species Aquatic Ecosystem Approach

2. Protect and Recover Endangered Aquatic Species

3. Address other factors

   a. Non Flow Issues - i.e. unscreened diversions, pollutants, etc

   b. Implement San Francisco Estuary Project and Comprehensive Conservation Management Program

B. CERTAINTY - 3 YEAR SHELF LIFE

1. "Certainty" and reliability for 3 years (shelf life) - corresponds to Clean Water Act triennial review and biologically based needs of protected species

2. Adequate protection for listed aquatic species will be provided

3. Protective measures designed to prevent additional water impacts as a result of "Incidental Take" as stipulated in the Biological Opinions

4. Lessen the need to list additional aquatic species; meet habitat needs of depleted species so that any new listings should not require additional water in the Delta

5. Integrates CVPIA 800,000 af dedication to fish and wildlife

6. No additional reallocation of water from the CVP/SWP will be required to meet the Bay/Delta portion of Recovery Plans or the CVPIA Fish Doubling Plan; Additional water needs will be met through purchases from willing sellers

C. STATE LEAD

1. Allows equitable sharing approach to meet standards

2. Allows phasing of Implementation

D. CONSENSUS

1. Federal support

2. State support

3. Interest group support

II. PROCESS

A. 1994 PACKAGE

1. Long-term Winter run and Delta smelt Biological Opinions issued by NMFS and FWS and adopted by DFG - Biological Opinions will address Incidental Take, Critical Habitat requirements, Sharing of water supply impacts, and Phased Implementation of water quality standards

2. Agreement by all affected State and Federal agencies to interim actions toward meeting the water quality standards as set out in long-term Biological Opinions; may be embodied as a supplement of the Framework Agreement

3. Biological Opinions issued on EPA final CWA standards - these Biological Opinions will be consistent with OCAP Biological Opinions

4. EPA Final Standards adopted

B. THE NEXT 3 YEARS

1. State Board adopts final water quality standards which meet CWA requirements and the needs of aquatic species of concern

2. State submits standards to EPA -

a. EPA consults under ESA with NMFS and FWS on State standards

b. EPA approves State standards and initiates rulemaking to withdraw Federal standards

c. Reclamation may reinitiate consultation on OCAP Biological Opinions to assure consistency of Project operations with State standards

3. State Implements New Standards

   a. Water rights proceedings successfully concluded by State Board

   b. Full implementation of approved water quality standards should result in no additional flow requirements to meet ESA needs; 4(d) rule may be adopted

   c. Integrate Delta portion of Recovery Plans and CVPIA Fish Doubling Plan

   d. ClubFed and State continue ecosystem approach through the long-term process and CVPIA implementation

(Definitions Attached)

DEFINITION of TERMS

Framework Agreement: The Agreement that describes the Bay/Delta Ecosystem Partnership between the Governor's Water Policy Council (Council) and the Federal Ecosystem Directorate (ClubFed) intended to establish a comprehensive program for increased coordination and communication with respect to:

- Substantive and procedural aspects of water quality standard setting;
- Improved coordination of water supply operations with endangered species protection and water quality standard compliance; and
- Development of a long-term solution to fish and wildlife, water supply reliability, flood control, and water quality problems in the Bay/Delta Estuary.

Clean Water Act Triennial Reviews: At least every 3 years, water quality standards are reviewed and modified as appropriate, by the State, after consideration of their use and value for public water supplies, propagation of fish and wildlife, recreation, agriculture, industry, navigation, and other purposes.

Biological Opinions: The Biological Opinion is the document that states the opinion of the Service as to whether or not the Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

Incidental Take: ESA provides for taking of endangered and threatened species regarding actions that are incidental to, and not the purpose of, otherwise lawful activities. NMFS/FWS/DFG issues an Incidental Take Statement with a Biological Opinion. The Statement describes the allowed incidental take, the reasonable and prudent measures needed to minimize impacts, and the terms and conditions to implement these measures. The measures cannot alter the basic aspects of the CVP/SWP and involve only minor changes.

ESA 4(d) Rule: Gives FWS & NMFS flexibility in defining take for threatened species.

CVPIA Implementation: The implementation of measures identified in CVPIA targeted at improving biological resources, and CVP capabilities.

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DEFINITION of TERMS
(continued)

CVPIA 800,000 acre-feet: The annual management of up to 800,000 acre-feet of CVP yield as described in CVPIA §3406(b)(2) for the primary purpose of implementing the fish, wildlife, and habitat restoration goals including but not limited to ESA and Bay/Delta protections.

CVPIA Fish Doubling Plan : A plan for the program described in CVPIA §3406(b)(1) that requires the Secretary to develop and implement a program that makes all Reasonable efforts to ensure that by the year 2002, natural production of anadromous fish in Central Valley rivers and streams will be sustainable at levels not less than twice the average levels attained during the period of 1967-1991. CVP water allocated for this purpose is limited to a maximum of 800,000 acre-feet as described in §3406(b)(2).

Long-term Process: The joint Federal-State Process called for in Exhibit C of the Framework Agreement designed to find solutions that equitably reconcile the economic and environmental values dependent on the Bay/Delta

Recovery Plans: The Secretary develops Recovery Plans for the purpose of promoting the conservation of listed species and identifying measures that if implemented will lead to Recovery of such species. Recovery Plans in and of themselves are non-binding and may be implemented at the discretion of the action Agency.

San Francisco Estuary Project (SFEP): The SFEP was established in 1988 as part of EPA's National Estuary Program (NEP) enacted under the Clean Water Act as amended by the Water Quality Act of 1987 (P.L. 100-4 §320). Among other things the NEP includes as its purpose the development of a Comprehensive Conservation & Management Plan that recommends priority corrective actions needed to restore and maintain the biological integrity of the Bay/Delta Estuary.

Comprehensive Conservation Management & Plan (CCMP): The CCMP was completed under the auspices of the SFEP and adopted in March 1993. Since completion of the CCMP, lead responsibility for SFEP administration and oversight has been transferred to the State at the San Francisco Bay Regional Water Quality Control Board. The CCMP does not provide the Federal government with new authority to regulate activities in the Bay/Delta.

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DRAFT

INTEGRATED DELTA PROTECTION PLAN

I. OBJECTIVES

A. ECOSYSTEM PROTECTION

1. Multi-species Aquatic Ecosystem Approach

2. Protect and Recover Endangered Aquatic Species

3. Address other factors

   a. Non Flow Issues - i.e. unscreened diversions, pollutants, etc

   b. Implement San Francisco Estuary Project and Comprehensive Conservation Management Program

B. CERTAINTY - 3 YEAR SHELF LIFE

1. "Certainty" and reliability for 3 years (shelf life) - corresponds to Clean Water Act triennial review and biologically based needs of protected species

2. Adequate protection for listed aquatic species will be provided

3. Protective measures designed to prevent additional water impacts as a result of "Incidental Take" as stipulated in the Biological Opinions

4. Lessen the need to list additional aquatic species; meet habitat needs of depleted species so that any new listings should not require additional water in the Delta

5. Integrates CVPIA 800,000 af dedication to fish and wildlife

6. No additional reallocation of water from the CVP/SWP will be required to meet the Bay/Delta portion of Recovery Plans or the CVPIA Fish Doubling Plan; Additional water needs will be met through purchases from willing sellers

C. STATE LEAD

1. Allows equitable sharing approach to meet standards

2. Allows phasing of Implementation

D. CONSENSUS

1. Federal support

2. State support

3. Interest group support

II. PROCESS

A. 1994 PACKAGE

1. Long-term Winter run and Delta smelt Biological Opinions issued by NMFS and FWS and adopted by DFG - Biological Opinions will address Incidental Take, Critical Habitat requirements, Sharing of water supply impacts, and Phased Implementation of water quality standards

2. Agreement by all affected State and Federal agencies to interim actions toward meeting the water quality standards as set out in long-term Biological Opinions; may be embodied as a supplement of the Framework Agreement

3. Biological Opinions issued on EPA final CWA standards - these Biological Opinions will be consistent with OCAP Biological Opinions

4. EPA Final Standards adopted

B. THE NEXT 3 YEARS

1. State Board adopts final water quality standards which meet CWA requirements and the needs of aquatic species of concern

2. State submits standards to EPA -

a. EPA consults under ESA with NMFS and FWS on State standards

b. EPA approves State standards and initiates rulemaking to withdraw Federal standards

c. Reclamation may reinitiate consultation on OCAP Biological Opinions to assure consistency of Project operations with State standards

3. State Implements New Standards

   a. Water rights proceedings successfully concluded by State Board

   b. Full implementation of approved water quality standards should result in no additional flow requirements to meet ESA needs; 4(d) rule may be adopted

   c. Integrate Delta portion of Recovery Plans and CVPIA Fish Doubling Plan

   d. ClubFed and State continue ecosystem approach through the long-term process and CVPIA implementation

(Definitions Attached)

DEFINITION of TERMS

Framework Agreement: The Agreement that describes the Bay/Delta Ecosystem Partnership between the Governor's Water Policy Council (Council) and the Federal Ecosystem Directorate (ClubFed) intended to establish a comprehensive program for increased coordination and communication with respect to:

- Substantive and procedural aspects of water quality standard setting;
- Improved coordination of water supply operations with endangered species protection and water quality standard compliance; and
- Development of a long-term solution to fish and wildlife, water supply reliability, flood control, and water quality problems in the Bay/Delta Estuary.

Clean Water Act Triennial Reviews: At least every 3 years, water quality standards are reviewed and modified as appropriate, by the State, after consideration of their use and value for public water supplies, propagation of fish and wildlife, recreation, agriculture, industry, navigation, and other purposes.

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DEFINITION of TERMS
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Long-term Process: The joint Federal-State Process called for in Exhibit C of the Framework Agreement designed to find solutions that equitably reconcile the economic and environmental values dependent on the Bay/Delta

Recovery Plans: The Secretary develops Recovery Plans for the purpose of promoting the conservation of listed species and identifying measures that if implemented will lead to Recovery of such species. Recovery Plans in and of themselves are non-binding and may be implemented at the discretion of the action Agency.

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11/10/94

INTEGRATED DELTA PROTECTION PLAN

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL # of pages ▶ 2

To Tom Hagler	From Mike Levine
Dept./Agency	Phone #
Fax #	Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

I. OBJECTIVES

A. ECOSYSTEM PROTI

1. Multi-species A

2. Protect and Re

3. Address other factors

   - Non-Outflow
   - Implement San Francisco Estuary Project and Comprehensive Conservation Management Program

B. CERTAINTY

1. "Certainty" and reliability for 3 years (shelf life) - corresponds to Clean Water Act triennial review and ~~Biologically based needs of protected species~~ and protection of the designated uses in the Bay Delta

2. Adequate protection for listed species will be provided

3. Protective measures designed to prevent additional water impacts as a result of "Take"

4. Lessen the need to list additional aquatic species; meet habitat needs of depleted species so that any new listings will *not* require additional water in the Delta

5. Designed to Maximize Integration of Delta portion of Recovery Plans and provisions for CVPIA Fish Doubling Plan and dedication of CVPIA 800,000 AF to fish and wildlife

C. STATE LEAD

1. Allows Equitable Sharing Approach to meet standards

2. Allows Phasing of Implementation

D. CONSENSUS

1. State support

2. Federal support

3. Interest group support

II. PROCESS

A. 1994 PACKAGE

1. Long-term Winter run and Delta smelt Biological Opinions issued by FWS & NMFS - Biological Opinions will address Take, Sharing, Phasing, and Critical Habitat requirements

2. Agreement by all affected State and Federal agencies to interim actions toward meeting the water quality standards as set out in long-term Biological Opinions; May be embodied as a supplement of the Framework Agreement

3. Biological opinion issued on EPA final CWA standards - This Biological Opinion will be consistent with OCAP Biological Opinions

4. EPA Final Standards Adopted

B. The Next Three Years

1. State Board adopts final State standards and submits to EPA EPA approves
2. If protective of the designated uses EPA ~~makes an "equivalence" determination~~ and consults under ESA with NMFS and FWS on State Board standards - Reclamation may reinitiate consultation on OCAP Biological Opinions to assure consistency with State standards
3. If protective of the designated uses EPA approves State Board Standards and withdraws Federal Standards [initiates rulemaking action to]
4. State Implements New Standards

   - Water rights proceedings successfully concluded by State Board

   - Full implementation of approved new standards will result in no additional flow requirements to meet ESA needs; 4(d) rule may be adopted

   - Feds and State continue ecosystem approach through the Long-Term process and CVPIA Implementation

Copies for
- Admin Rec
- Comments (3)
- Patrick

MEMORANDUM

SUBJECT: Meeting of Club Fed and Water Users on November 22, 1994, in San Francisco

FROM: Thomas M. Hagler TMH

TO: File

DATE: November 22, 1994

This morning Club Fed (Patterson, Seraydarian, White, Lecky, Wright, and Hagler) met with several representatives of the so-called "CUWA/Ag" group (Nelson, Quinn, Berliner, King, plus one or two more) to discuss the status of the consensus process and the upcoming meetings with Rieke and Perciasepe.

The San Joaquin River issues and February flows appeared to be the major remaining issues, although some additional discussion focused on the need for the CUWA/Ag group to start being specific about the sources of funding it intends for water acquisitions and monitoring programs.

The attached two-page document was submitted as their summary of a consultant's recent modeling work on the San Joaquin.

MODELED SAN JOAQUIN CHINOOK SALMON ESCAPEMENT UNDER SELECTED PULSE FLOW ALTERNATIVES

EACH for Windows 8.5.3, runs of 11–28 October 1994

Percentage Increase over Modeled Historical Escapement

Water	With Old River Barrier				Without Old River Barrier			
Year	DFG	EPA	JP	SJT	DFG	EPA	JP	SJT
1982	812	868	688	613	201	210	153	87
1983	547	597	489	548	117	130	91	74
1984	518	576	460	594	111	127	81	86
1985	450	491	349	499	89	99	45	70
1986	392	408	238	312	86	87	23	41
1987	293	315	202	234	60	65	21	24
1988	200	222	144	204	24	30	-1	14
1989	217	230	180	210	34	37	14	17
1990	305	303	311	242	75	73	72	31
1991	375	370	372	271	106	102	100	47
1982–91	*394*	*427*	*315*	*393*	*81*	*88*	*45*	*51*

DFG: SWRCB Alternative 4.

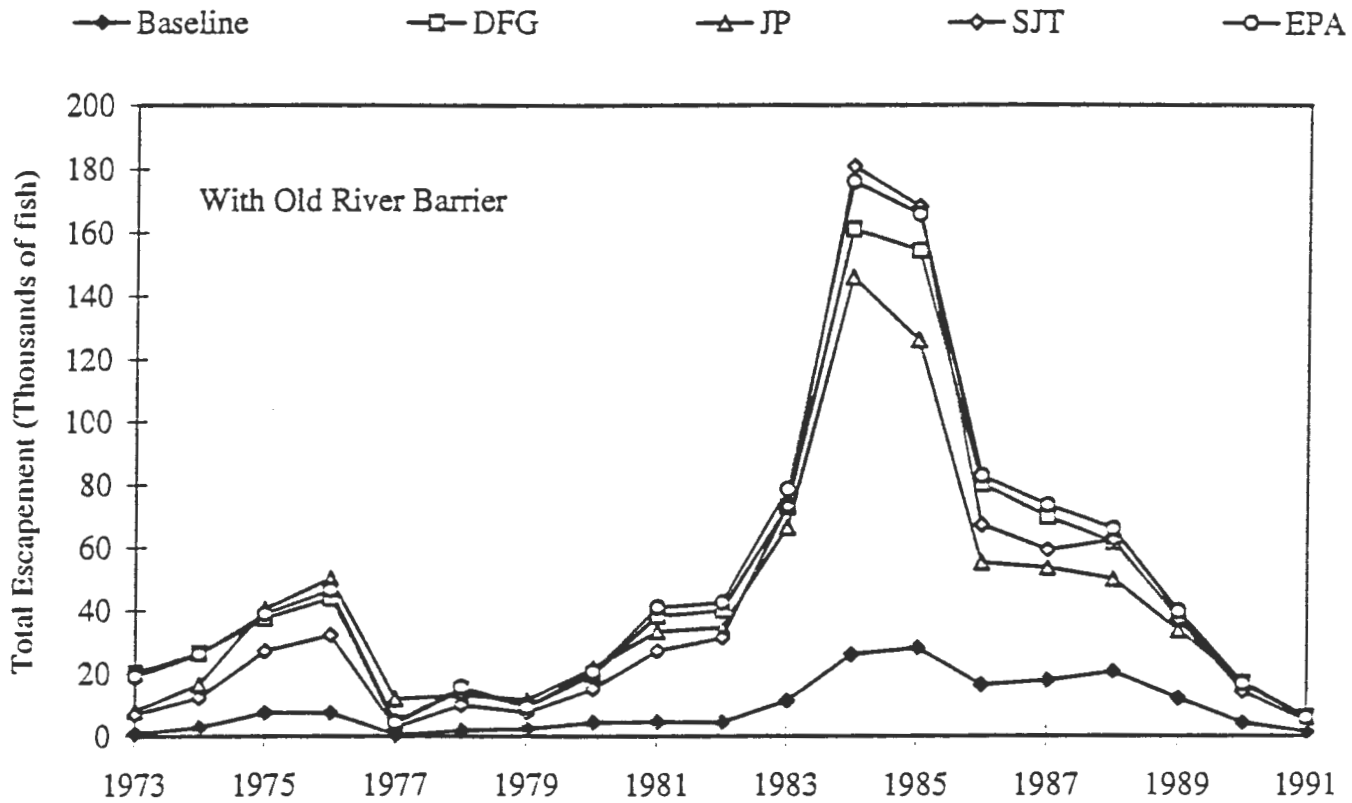
EPA: SWRCB Alternative 1.

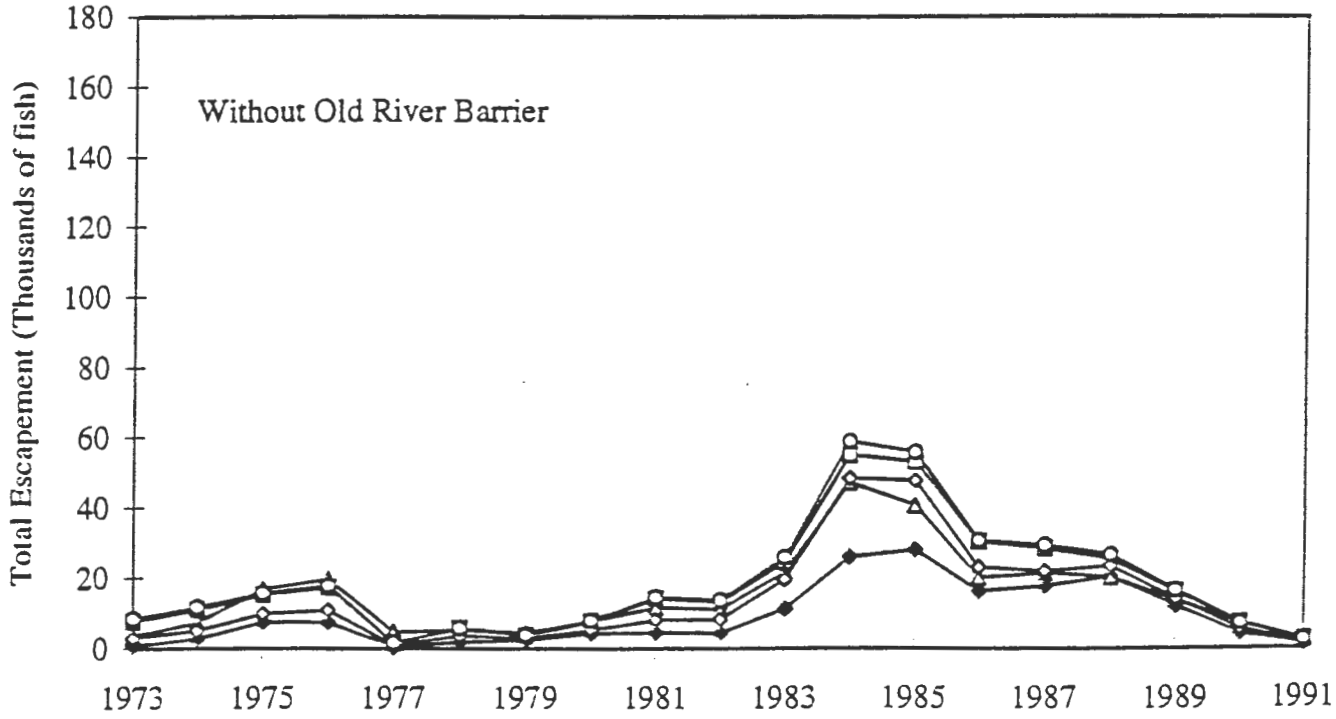
JP: Water Users Joint Proposal.

SJT: San Joaquin Tributary Agencies. (Export limited to 1,500 cfs from 15 April through 15 May. Baseline flows of at least 600 cfs in Critical years, 900 cfs in Dry and Below Normal years, 1,250 cfs in Above Normal years, and 1,500 cfs in Wet years. In addition, two seven-day pulses, one in mid-April and one in mid-May, of at least 1,000 cfs at Vernalis in Critical water-years, 2,000 cfs in Dry years, 3,000 cfs in Below Normal and Above Normal years, and 4,000 cfs in Wet years.)

MODELED SAN JOAQUIN CHINOOK SALMON ESCAPEMENT
UNDER SELECTED PULSE FLOW ALTERNATIVES

EACH for Windows 8.5.3, runs of 11–28 October 1994





Prepared by EA Engineering, Science, and Technology for San Joaquin Tributary Agencies