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SENT VIA EMAIL:

California Water Commission

P.O. Box 924836 Sacramento, CA 94236

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RE: Comments on Sites Project Draft Contracts for the Administration of Public Benefits

Dear California Water Commission:

The current state administration and most recent prior state administrations have expended billions of dollars of taxpayer bond funds on water related projects which appear to provide direct or indirect benefit to contractors of the State Water Project (SWP) who contracted to pay the entire cost of the project and or to the federal Central Valley Project (CVP) for costs which are to be borne by such project.

With the State Department of Water Resources managing the SWP and the United States Bureau of Reclamation managing the CVP the State and United States are regulating themselves thus creating a real conflict of interest that is additionally corrupted by politics from the top down.

We respectfully request that prior to your further commitment of taxpayer funding to the Sites Project you request that the State Controller engage an independent third party to perform an independent investigation into the possible misuse or gift of public taxpayer funds by the current and prior State administrations relating to the Sites and other projects and to recommend protective mechanisms to assure that your approvals of funding are truly limited to just the enhancement of the public benefit and not to the mitigation of SWP and CVP harm or to enhancements which are the responsibilities of the Projects.

The State administration of the regulation of diversion and use of water is headed by the Governor and his appointed staff. The Governor appoints the Secretary of Resources, the Secretary of Environmental Protection, the Director of the Department of Fish and Wildlife, the Director of the Department of Water Resources, all the Members of the State Water Resources Control Board and all Members of the California Water Commission.

The conflict of interest is both structural and clearly reflected in the administration's actions.

The Governor has exercised emergency authority to allow DWR to divert water from the Delta without meeting water quality standards, directly interceded with the State Water Resources Control Board to allow voluntary agreements rather than protective Bay-Delta flow requirements as a limit on exports from the Delta and openly sought to secure by way of a budget trailer bill, legislation to eliminate protective regulatory requirements for construction of a Delta conveyance tunnel to bypass flow from the Sacramento River directly into the export pumps to facilitate increased export diversions by DWR. Adherence to the State policy of reduced reliance on the Delta with the suggested self-sufficiency actions set forth in Water Code Section 85021 could result in a less damaging and less costly plan of action.

Reducing actions that promote new permanent water demand which cannot be firmly supplied is necessary to avoid the widening gap between supply and demand.

THE AVAILABILITY OF WATER FOR THE SITES PROJECT IS UNCERTAIN AND QUANTIFICATION OF PUBLIC BENEFIT AND PUBLIC PURPOSE IS AT THIS TIME SPECULATIVE

The Sites application seeks the appropriation of water by way of assignment and waiver of priority of State filed applications. The water to be diverted, stored and rediverted is the same water that is subject to prior vested riparian and pre-1914 water rights, numerous post 1914 permits and licenses including permits of the federal CVP and the SWP and obligations required by State and Federal statutes including mitigation, salinity control and an adequate water supply for the Delta. Much of the water needed to meet present and future needs within the Delta watershed, the needs for development in the counties of origin, compliance with Water Code 12200 et seq. and the needs outside such areas but within the scope of Water Code 11460 is not subject to definitive quantification. There is no determination of the quantity or source required to meet such requirements. The future hydrology is variable; forecasting is difficult and water system operation compliance with regulatory requirements is uncertain. Compliance with priorities involves the integration of groundwater and surface water is complex and greatly dependent upon the good faith actions of public officials, as trustees of the public trust who operate and regulate the water system. Due to the reality of the conflicts of interest, the likelihood of water being provided for public benefit in preference to water for exporter profits cannot be assured. The huge disparity in supply verses demand will not be overcome by a questionably economically feasible and limited real yield of an off- stream storage project such as Sites.

The United States Bureau of Reclamation Water supply and Yield Study dated March 2008, **Exhibit A** at page 2-1 provides:

“Current statewide demands exceed supplies by 2.3 MAF in average years and 4.2 MAF in dry years. Future (2030 statewide demands exceed supplies by 4.9 MAF in average years and 6.1 MAF in dry years.”

State public officials are trustees of the Public Trust and as such have a fiduciary duty to protect the public interest. Article XVI section 6 of California’s Constitution provides:

“The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever;...”

The analysis accompanying the contracts raises many questions and potential issues regarding the allocation of public funds, in this case general obligation bond funds from Proposition 1, Chapter 8 (2014).

The Sites application seeks the appropriation of water by way of assignment and waiver of priority of State filed applications. The water to be diverted, stored and rediverted is the same water that is subject to prior vested riparian and pre-1914 water rights, numerous post 1914 permits and licenses including permits of the federal CVP and obligations required by State and Federal statutes. Much of the water needed to meet present and future needs within the Delta watershed, the needs for development in the counties of origin and the needs outside such areas but within the scope of Water Code 11460 is not quantified or identified as to source other than recapture from the SWP and CVP. Hydrology is variable, forecasting is difficult and water system operation compliance with regulatory requirements is uncertain. Compliance with priorities is greatly dependent upon the good faith actions of public officials, as trustees of the public trust who operate and regulate the water system.

The SWP and CVP have coordinated their operations and have been unable to provide sufficient water to meet water quality standards if there are multiple dry years. It is not in the best public interest for the State and United States to fund the Sites Project which is competing for water already appropriated to serve the SWP and CVP contractors. The Sites Project proposed uses are not limited to those within the Counties of Origin and Delta Watershed which are entitled to priority under both Water Code 10505, 11460 and 12200 but rather include exports for uses outside the Delta.

What is clear is that the coordinated water plan for California planned for the SWP and CVP development of millions of acre feet of additional surplus water from the Delta watershed and North Coast of California by the year 2000. Such has not occurred. What is also clear is that the SWP and CVP have not met the water quality standards which are conditions of their

permits and such action was sanctioned through the grant of temporary urgency changes and exercise of emergency powers. If the SWP and CVP have sufficient water to comply but were allowed to circumvent the requirements then there is an apparent violation of law and breach of the public trust that should not be repeated. If the Project water supply is insufficient, it is not in the best public interest to permit a new publicly funded Sites project competing for the same water planned for and needed by the SWP and CVP. The same water will not meet the needs of the SWP, CVP and Sites Project.

Without substantial additional SWP and CVP development projects, water must be recaptured from the SWP and CVP which is currently delivered to SWP and CVP contractors, including export contractors. Committed water, such as that needed for future development of the watersheds and counties of origin (Water Code 10505.5), including the Delta (Water Code 12200) , should not be treated as unappropriated and available for appropriation by the Sites project since such will not be available as future needs for development in the counties and watersheds of origin arise. As addressed further below the reservation of water for county and area of origin development is not secured with already developed water held in storage for future appropriation but is a paper water commitment to be fulfilled with water recaptured from junior appropriations. Such recapture will likely require future applications for appropriative rights. The SWRCB currently improperly imposes Term 91 on appropriations for uses within the counties and areas of origin to preclude diversions for such use when releases are made by the SWP or CVP to meet Bay Delta Water Quality Objectives and exports are continued. It is not responsible for Trustees of the Public Trust to facilitate urban development and permanent crops in arid and desert areas without the ability to assure that a firm supply can be provided without violating the priority rights of others, regulatory requirements and protection of the public trust.

ENHANCEMENT IS MORE THAN MITIGATION

The Sites Project points of diversion from the Sacramento River are located in some of the most critical Salmon spawning areas in the watershed. The Sites project intakes will impact water and flow in the area of the intakes including water from the Trinity River that is part of the sacred cultural concerns of Native Americans. The Sites Project claim is that the water they seek is “unappropriated” surplus storm and flood flow that does not include any Trinity River water. It is not clear from the information provided that such is the case. Storm and flood flow in all years in the period of November 1st through June 14th is questionable. There is no substantial evidence to show that the Sites water is limited to water that is surplus to the current and future senior needs within the protected watershed areas, needs within the counties and the needs for compliance with SWP and CVP regulatory, mitigation and enhancement obligations. The Sites proposed use of water is in great part intended to directly or indirectly facilitate exports of water from the Delta watershed including diversion to areas which add to the degradation of San Joaquin River water quality.

There is no substantial evidence to show that the Sites water is limited to water that is surplus to the current and future senior needs within the protected watershed areas, needs within the counties and the needs for compliance with SWP and CVP regulatory, mitigation and enhancement obligations. The Sites proposed use of water is in great part intended to directly or

indirectly facilitate exports of water from the Delta watershed including diversion to areas which add to the degradation of San Joaquin River water quality. The long-recognized need for a Valley Drain with an outlet to the ocean (See **Exhibit B**, San Luis Act of 1960) has been ignored as is the continuing impact of selenium on fish. (See **Exhibit C**, Lifetime Chronicles of Selenium Exposure linked to Deformities in Imperiled Migratory Fish 2-24-2020). Increased exports to serve land on the westside of the Valley without a solution to the drainage and selenium problems does not best serve the public interest.

The quantity and extent of senior rights and obligations remain to be determined and the availability of surplus water in the Delta Watershed is uncertain. The evidence is clear that already developed surplus water to meet water quality objectives, fish protection and desired firm supply for exports in dry years is not available. The State use of emergency powers to circumvent water quality standards, the imposition of measures to curtail senior water rights and limit diversions, the change in the statutory definition of drought emergency (Water Code 1058.5 2. Stats. 1914, c.3) and the concern for climate change all support the need for delay of consideration of the Sites application until new Bay Delta water quality objectives and standards are set, the extension of the permits for the SWP and CVP is determined and quantified or denied, and a plan is set forth to assure full compliance with improved water quality standards, regulatory measures and fulfilment of affirmative obligations of the SWP and CVP in all years including reoccurrences of drought conditions such as in 1929-1934, 1987-1992 and the more recent droughts. Meeting such requirements should be a precondition and affirmative obligation for all diversions of project and transfer water exported for use outside the Delta watershed by the CVP, the SWP, Sites or any other party.

Protection of the public trust and best public interest demands that public officials as trustees require that the Sites Project clearly show that there are surplus flood and stormwater that can be appropriated in compliance with law and without harm to others. Although perfect quantification is not possible a more cautious regulatory approach based on a reasonable level of quantification of present and future senior demands is necessary. Creation of new permanent demand for a supply which already cannot be firmly provided does not protect the public interest. Imposition of conditions are just words on paper unless enforced. Without real availability of water supply enforcement cannot be effective. Compliance with existing water quality standards will require more water than is currently provided and improved standards will add to the demand. The needs in the watersheds and counties are increasing due to increasing development. There is a need for water to restore non sustainable groundwater basins. Environmental needs especially for fish will require more water. Protection for the cultural needs of Native Americans will require more water and perhaps reduction in flow from the Trinity River into the Sacramento River. Water for flushing and dilution of contaminants to mitigate the degradation of water quality and protect the health and safety including that of the disadvantaged will require more water. The warming of the climate will require more water to sustain beneficial use. The deficiencies in the SWP and CVP will require more water or entitlements will have to be reduced to match available supply. Land fallowing, surface water transfers with ground water substitution, irrigation restrictions and creation of habitat will negatively impact development in the counties and watersheds of origin. Payments to owners does not compensate for the losses to related service businesses, local economy and local taxes. Such is a negative impact to development.

The State Water Project Draft Delivery Capability Report 2025 dated December 2025 **Exhibit D** at page 28 shows that while SWP water entitlement contracts remain at 4.133 MAF the Long-term Average delivery was 2.234 MAF and in a single dry year like 1977 was .184 to .237 MAF. In a 6-year drought like 1929-1934 the average was .597 to .627 MAF.

PROTECTION OF THE PUBLIC TRUST AND PUBLIC INTEREST IS BEING CIRCUMVENTED, ENDANGERED SPECIES ARE NOT BEING PROTECTED AND CONFLICTS OF INTEREST ARE NOT BEING AVOIDED

State public officials are trustees of the public trust and have a primary and fiduciary obligation to protect the public trust and public interest. It is not a matter of wearing two hats which can be interchanged. It is a matter of acting reasonably and in good faith. The public official hat cannot be taken off to wear the State Water Project hat. The fact that State costs allocated to the SWP are paid with off State Budget funds from project contractors cannot be allowed to interfere with the unfettered discharge of public official duty to the public.

In *California Taxpayers Action Network v. Tabor Construction, Inc.* 12 Cal.App.5th 115 the court addressed the Statutory and Common Law Conflict of Interest at page 139:

“Plaintiff quotes *Terry v. Bender* (1956) 143 Cal.App.2d 198, 206-207, 300 P.2d 119, in which the court wrote: ‘A public office is a public trust created in the interest and for the benefit of the people. Public officers are obligated, *virtute officii*, to discharge their responsibilities with integrity and fidelity. Since the officers of a governmental body are trustees of the public weal, they may not exploit or prostitute their official position for their private benefits. When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office and vitiate the trust reposed in them, and the public is injured by being deprived of their loyal and honest services. It is therefore the general policy of this state that public officers shall not have a personal interest in any contract made in their official capacity.... A transaction in which the prohibited interest of a public officer appears is held void both as repugnant to the public policy expressed in the statutes and because the interest of the officer interferes with the unfettered discharge of his duty to the public. The public officer's interest need not be a direct one, since the purpose of the statutes is also to remove all indirect influence of an interested officer as well as to discourage deliberate dishonesty. Statutes prohibiting such ‘conflict of interest’ by a public officer are strictly enforced.”

“Government Code section 1090 provides in relevant part, “Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.” (Gov. Code, § 1090, subd. (a).) The statute “codifies the long-standing common law rule that barred public officials from being personally financially interested in the contracts they formed in their official capacities.” (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1072, 103 Cal.Rptr.3d 767, 222 P.3d 214 (*Lexin*)). “The common law rule and section 1090 recognize ‘[t]he truism that a person cannot serve two masters

simultaneously....' [Citations.] 'The evil to be thwarted by section 1090 is easily identified: If a public official is pulled in one direction by his financial interest and in another direction by his official duties, his judgment cannot and should not be trusted, even if he attempts impartiality.' " (*Id.* at p 140). 1073, 103 Cal.Rptr.3d 767, 222 P.3d 214.)

"When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage (appointment by the Governor?), they violate their oath of office and vitiate the trust reposed in them, and the public is injured by being deprived of their loyal and honest services." (*id.* at p.138) (emphasis added)

"The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public resources whenever feasible.... In so doing, however, the state must bear in mind its duty as trustee to consider the effect of the taking on the public trust (cite omitted), and to preserve, so far as consistent with the public interest, the uses protected by the trust." See *National Audubon Society v. Superior Court* 33 CAL. 3rd 419, pages 446 and 447.

"In summary, the foregoing cases amply demonstrate the continuing power of the state as administrator of the public trust, a power which extends to the revocation of previously granted rights or to the enforcement of the trust against lands long free of the trust." (*Id.* at page 440.)

"The state has the affirmative duty to take public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." (*Id.* at page 446.)

"Once the state has approved an appropriation, the public trust imposes a duty of continuing supervision over the taking and use of the appropriated water. In exercising its sovereign power to allocate water resources in the public interest, the state is not confined by past allocation decisions which may be incorrect in light of current knowledge or inconsistent with current needs." (*Id.* at page 447.)

As part of its duty to consider the public's interest in all decisions, the State should determine the amount of water needed to remain in the system for protection of beneficial uses and enhancement of fish and wildlife resources and require compliance consistent with water right and statutory priorities. Withdrawal of fresh water from the Delta creates an acute problem of salinity intrusion into the vast network of channels and sloughs of the Delta; the State Water Resources Development system has as one of its objectives the transfer of waters from water-surplus areas in the Sacramento Valley and the North Coastal Area to water-deficient areas to the south and west of the Sacramento-San Joaquin Delta via the Delta; water surplus to the needs of the areas in which it originates is gathered in the Delta and thereby provides a common source of fresh water (Emphasis added).

THE PROMISES AND LAW RESTRICTING EXPORTS FROM THE DELTA TO WATER WHICH IS TRULY SURPLUS ARE REFLECTED IN THE REPRESENTATIONS AND PROMISES MADE AT THE INCEPTION OF BOTH THE CVP AND SWP AND A CRITICAL PART OF THE CALIFORNIA WATER PLAN.

Water Code section 11460 was intended to be a key part of the protection for the areas from which water could be exported.

11460. Prior right to watershed water:

In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein. (Added by Stats. 1943, c. 370, p. 1896. Amended by Stats. 1957, c. 1932, p. 3410, section 296.)”

Confirmation of the intent is reflected in the 84th Congress, 2D Session House Document No. 416, Part One Authorizing Documents 1956 at Pages 797-799 as follows:

“My Dear Mr. Engle: In response to your request to Mr. Carr, we have assembled excerpts from various statements by Bureau and Department officials relating to the subject of diversion of water from the Sacramento Valley to the San Joaquin Valley through the operation of the Central Valley Project.

A factual review of available water supplies over a period of more than 40 years of record and the estimates of future water requirements made by State and Federal agencies makes it clear that there is no reason for concern about the problem at this time.

For your convenience, I have summarized policy statements that have been made by Bureau of Reclamation and Department of the Interior officials. These excerpts are in the following paragraphs:

On February 20, 1942, in announcing the capacity for the Delta-Mendota Canal, Commissioner John C. Page said, as a part of his Washington D.C., press release:

‘The capacity of 4,600 cubic feet per second was approved, with the understanding that the quantity in excess of basic requirements mainly for replacement at Mendota Pool, will not be used to serve new lands in the San Joaquin Valley if the water is necessary for development in the Sacramento Valley below Shasta Dam and in the counties of origin of such waters.’

On July 18, 1944, Regional Director Charles E. Carey wrote a letter to Mr. Harry Barnes, chairman of a committee of the Irrigation Districts Association of California. In that letter, speaking on the Bureau’s recognition and respect for State laws, he said:

‘They [Bureau officials] are proud of the historic fact that the reclamation program includes as one of its basic tenets that the irrigation development in the West by the Federal Government under the Federal reclamation laws is carried forward in conformity with State water laws.’

On February 17, 1945, a more direct answer was made to the question of diversion of water in a letter by Acting Regional Director R. C. Calland, of the Bureau, to the Joint Committee on Rivers and Flood Control of the California State

Legislature. The committee had asked the question, "What is your policy in connection with the amount of water that can be diverted from one watershed to another in proposed diversions?" In stating the Bureau's policy, Mr. Calland quoted section 11460 of the State water code, which is sometimes referred to as the county of origin act, and then he said:

'As viewed by the Bureau, it is the intent of the statute that no water shall be diverted from any watershed which is or will be needed for beneficial uses within that watershed. The Bureau of Reclamation, in its studies for water resources development in the Central Valley, consistently has given full recognition to the policy expressed in this statute by the legislature and the people. The Bureau has attempted to estimate in these studies, and will continue to do so in future studies, what the present and future needs of each watershed will be. The Bureau will not divert from any watershed any water which is needed to satisfy the existing or potential needs within that watershed. For example, no water will be diverted which will be needed for the full development of all of the irrigable lands within the watershed, nor would there be water needed for municipal and industrial purposes or future maintenance of fish and wildlife resources.'

On February 12, 1948, Acting Commissioner Wesley R. Nelson sent a letter to Representative Clarence F. Lea, in which he said:

'You asked whether section 10505 of the California Water Code, also sometimes referred to as the county of origin law, would be applicable to the Department of the Interior, Bureau of Reclamation. The answer to this question is: No, except insofar as the Bureau of Reclamation has taken or may take assignments of applications which have been filed for the appropriation of water under the California Statutes of 1927, chapter 286, in which assignments reservations have been made in favor of the county of origin.'

The policy of the Department of the Interior, Bureau of Reclamation, is evidenced in its proposed report on a Comprehensive Plan for Water Resources Development—Central Valley Basin, Calif., wherein the Department of the Interior takes the position that "In addition to respecting all existing water rights, the Bureau has complied with California's 'county of origin' legislation, which requires that water shall be reserved for the presently unirrigated lands of the areas in which the water originates, to the end that only surplus water will be exported elsewhere.

On March 1, 1948, Regional Director Richard L. Boke wrote to Mr. A. L. Burkholder, secretary of the Live Oak Subordinate Grange No. 494, Live Oak, Calif., on the same subject, and said:

'I can agree fully with the statement in your letter that it would be grossly unjust to 'take water from the watersheds of one region to supply another region until all present and all possible future needs of the first region have been fully determined and completely and adequately provided for.' That is established Bureau of Reclamation policy and, I believe, it is consistent with the water laws of the State of California under which we must operate.'

On May 17, 1948, Assistant Secretary of the Interior William E. Warne wrote a letter to Representative Lea on the same subject, in which he said:

‘The excess water made available by Shasta Reservoir would go first to such Sacramento Valley lands as now have no rights to water.’

Assistant Secretary Warne goes on to say, in the same letter:

‘As you know, the Sacramento Valley water rights are protected by: (1) Reclamation law which recognizes State water law and rights thereunder; (2) the State’s counties of origin act, which is recognized by the Bureau in principle; and (3) the fact that Bureau filings on water are subject to State approval. I can assure you that the Bureau will determine the amounts of water required in the Sacramento Valley drainage basin to the best of its ability so that only surplus waters would be exported to the San Joaquin. We are proceeding toward a determination and settlement of Sacramento Valley waters which will fully protect the rights of present users; we are determining the water needs of the Sacramento Valley; and it will be the Bureau’s policy to export from that valley only such waters as are in excess of its needs.’

On October 12, 1948, Secretary of the Interior Krug substantiated former statements of policy in a speech given at Oroville, Calif. Secretary Krug said, with respect to diversion of water:

‘Let me state, clearly and finally, the Interior Department is fully and completely committed to the policy that no water which is needed in the Sacramento Valley will be sent out of it.’

He added:

‘There is no intent on the part of the Bureau of Reclamation ever to divert from the Sacramento Valley a single acre-foot of water which might be used in the valley now or later.’”

The California Water Resources Development Bond Act provides in Water Code Section 12931 that the Sacramento-San Joaquin Delta shall be deemed to be within the watershed of the Sacramento River.

Exhibit E is a copy of the 1960 ballot argument in favor of the California Water Resources Development Bond Act which spawned the State Water Project (SWP). Of particular note are the following representations:

“No area will be deprived of water to meet the needs of another **nor will any area be asked to pay for water delivered to another.”**

“Under this Act the water rights of Northern California will remain securely protected.”

“A much-needed drainage system and water supply will be provided in the San Joaquin Valley.”

Additional protections specific to the Delta were added in 1959 in conjunction with the submittal to the voters of the California Water Resources Development Bond Act.

Water Code "12200-12205, Stats. 1959, c. 1766 are particularly specific as to the requirements to provide salinity control for the Delta and provide an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban and recreational development.

Water Code 12200. Legislative findings and declaration

“The Legislature hereby finds that the water problems of the Sacramento-San Joaquin Delta are unique within the State; the Sacramento and San Joaquin Rivers join at the Sacramento-San Joaquin Delta to discharge their fresh water flows into Suisun, San Pablo and San Francisco bays and thence into the Pacific Ocean; the merging of fresh water with saline bay waters and drainage waters and the supply for water-deficient areas. It is, therefore, hereby declared that a general law cannot be made applicable to said Delta and that the enactment of this law is necessary for the protection, conservation, development, control and use of the waters in the Delta for the public good.” (Added by Stats. 1959, c. 1766, p. 4247, '1.)

Water Code 12201. Necessity of maintenance of water supply

The Legislature finds that the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta area as set forth in Section 12220, Chapter 2, of this part, and to provide a common source of fresh water for export to areas of water deficiency is necessary to the peace, health, safety and welfare of the people of the State, except that delivery of such water shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code. (Added by Stats. 1959, c. 1766, p 4247, '1.)

Water Code 12202. Salinity control and adequate water supply; substitute water supply; delivery

Among the functions to be provided by the State Water Resources Development System, in coordination with the activities of the United States in providing salinity control for the Delta through operation of the Federal Central Valley Project, shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta. If it is determined to be in the public interest to provide a substitute water supply to the users in said Delta in lieu of that which would be provided as a result of salinity control no added financial burden shall be placed upon said Delta water users solely by virtue of such substitution. Delivery of said substitute water supply shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code. (Added by Stats. 1959, c. 1766, p 4247, '1.)

Water Code 12203. Diversion of waters from channels of delta

It is hereby declared to be the policy of the State that no person, corporation or public or private agency or the State or the United States should divert water from the channels of the Sacramento-San Joaquin Delta to which the users within said Delta are entitled. (Added by Stats. 1959, c. 1766, p 4249, '1.)

Water Code 12204. Exportation of water from delta

In determining the availability of water for export from the Sacramento-San Joaquin Delta no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203 of this chapter. (Added by Stats. 1959, c. 1766, p 4249, '1.)

Water Code 12205. Storage of water; integration of operation and management of release of water

It is the policy of the State that the operation and management of releases from storage into the Sacramento-San Joaquin Delta of water for use outside the area in which such water originates shall be integrated to the maximum extent possible in order to permit the fulfillment of the objectives of this part. (Added by Stats. 1959, c. 1766, p 4249, '1.)

The December 1960 DWR Bulletin 76 (**Exhibit F**) which includes a contemporaneous interpretation by DWR of Water code Section 12200 through 12205 provides at page 12:

“In 1959 the State Legislature directed that water shall not be diverted from the Delta for use elsewhere unless adequate supplies for the Delta are first provided.” (Emphasis added.)

Similarly, the DWR confirmed its interpretation of law in the contract between the State of California Department of Water Resources and the North Delta Water Agency for the Assurance of a Dependable Water Supply of Suitable Quality dated January 28, 1981, which provides:

“(d) The construction and operation of the FCVP and SWP at times have changed and will further change the regimen of rivers tributary to the Sacramento-San Joaquin Delta (Delta) and the regimen of the Delta channels from unregulated flow to regulated flow. This regulation at times improves the quality of water in the Delta and at times diminishes the quality from that which would exist in the absence of the FCVP and SWP. The regulation at times also alters the elevation of water in some Delta channels.”

“(f) The general welfare, as well as the rights and requirements of the water users in the Delta, require that there be maintained in the Delta an adequate supply of good quality water for agricultural, municipal and industrial uses.”

(g) The law of the State of California requires protection of the areas within which water originates and the watersheds in which water is developed. The Delta is such an area and within such a watershed. Part 4.5 of Division 6 of the California Water Code affords a first priority to provision of salinity control and maintenance of an adequate water supply in the Delta for reasonable and beneficial uses of water and relegates to lesser priority all exports of water from the Delta to other areas for any purpose.” (Emphasis added.)

In United States vs. State Water Resources Control Board 182 Ca.App.3d82 (1986) at page 139 the court concluded:

In 1959, when the DWP was authorized, the Legislature enacted the Delta Protection Act. (§§ 12200-12220.) The Legislature recognized the unique water problems in the Delta, particularly ‘salinity intrusion,’ which mandates the need for such special legislation ‘for the protection, conservation, development, control and use of the waters in the Delta for the public good.’ (§ 12200.) The act prohibits project exports from the Delta of water necessary to provide water to which Delta users are ‘entitled’ and water which is needed for salinity control and an adequate supply for Delta users. (§§ 12202, 12203, 12204.)” (Emphasis added)

The Court explained:

In 1959, when the SWP was authorized, the Legislature enacted the Delta Protection Act. (§§ 12200-12220.) The Legislature recognized the unique water problems in the Delta, particularly ‘salinity intrusion,’ which mandates the need for such special legislation ‘for the protection, conservation, development, control and use of the waters in the Delta for the public good.’ (§ 12200.) **The act prohibits project exports from the Delta of water necessary to provide water to which the Delta users are ‘entitled’ and water which is needed for salinity control and an adequate supply for Delta users.** (§§ 12202, 12203, 12204.) But the crucial question left unanswered by the protective legislation is exactly *what* level of salinity control the projects must provide. As noted, the Board concluded that the projects are responsible only for maintaining that level of salinity which would exist in the Delta had the projects never been constructed, the so-called ‘without project’ level. The board declared that if the Delta water users desire a higher level of protection (a greater amount of outflow water), they can purchase such ‘enhancement water’ from the projects. (*Id.* pp. 139-140, emphasis added.)

The court did not agree with the SWRCB’s position. The court concluded:

Whatever final conclusion is to be drawn from *Antioch* regarding the nature and extent of common law riparian rights to salinity control, existing constitutional and legislative authorities encompass the Board’s obligation to protect the quality of the Delta waters from saltwater intrusion. As mentioned above, the water quality legislation unmistakably requires the Board to formulate water quality standards to provide salinity control to ‘ensure the

reasonable protection of beneficial uses' (§ 13241), a statutory classification earlier noted as wide ranging (§ 13050, subd. (f)). Though there can be no doubt concerning the Board's authority to take action to protect the consumptive *uses* (agricultural, industrial and municipal) in the Delta, its approach to that task was seriously flawed by equating its water quality planning function with protection of existing water rights. (*Id.* pp. 117 & 118, emphasis added.)

As the Court further explains:

Thus, the Board's authority in setting water quality standards is *not* limited to the protection of water rights but extends to the protection of *all beneficial uses* from degradation of water quality, even if the resulting level of water quality exceeds that provided by water rights. (*Id.* p. 141, emphasis in original.)

The court confirmed that providing salinity control in the Delta was also a major purpose of the Projects:

Salinity control in the Delta was unquestionably contemplated by state and federal authorities as one of the purposes to be fulfilled by the statewide water projects: . . . (*Id.* p. 128.)

In furtherance of the determination that protection of the Delta has priority over Project Contractors, including exports from the Delta, the court further explains:

Thus, both substantively and conceptually, the contractors cannot justify any reasonable expectation of a certain or guaranteed water supply for delivery. (*Id.* p. 148.)

The trial court in the above case determined that there is no obligation on the part of Delta water users to pay for the incidental benefit from the Projects' provision of salinity control for other purposes including fish and wildlife, maintenance of quality at export pumps and meeting public trust needs. The payment obligation only arises from the release of Project developed truly surplus waters specifically for the enhancement of Delta water user supply.

Eight separate cases were coordinated into said case, Judicial Council Coordination Proceeding No. 548. The parties fell into nine groups: (1) the SWRCB, (2) Delta industries, (3) the Central Delta riparians, (4) the South Delta riparians, (5) the U. S. Bureau of Reclamation (the U.S.), (6) the federal contractors, (7) DWR, (8) the state contractors, and (9) the Contra Costa municipal users. The court addressed the Delta water users' "inchoate right to 'recapture' water being exported by the state and federal projects" under the Watershed of Origin Statute and Delta Protection Act of 1959. The court generally concluded that perfection of the right to recapture water being exported would require a Delta user to obtain an appropriation permit and a contract to pay for the recaptured water that was "developed by the projects and that was released specifically for his benefit." Specific to the payment issues, the court provided that "Delta users need not pay for salinity control water even if they are incidentally benefited unless the water is released specifically for their benefit," "Delta water users need not pay for the enhanced water quality that results from water released by the projects to maintain adequate water quality at the

export pumping stations,” “Delta users need not pay for the enhanced water quality resulting from the release of abandoned water,” and “Delta users need not pay for the enhanced water quality resulting from water released to preserve or enhance fish or wildlife.”

In SWRCB D-1485 at page 9 the SWRCB ruled:

The Delta Protection Act accords first priority to satisfaction of vested rights and public interest needs for water in the Delta and relegates to lesser priority all exports of water from the Delta to other areas for any purpose.

As related to exports from the Delta the requirements of WC 12205 are particularly relevant.

It is the policy of the State that the operation and management of releases from storage into the Sacramento- Joaquin Delta of water for use outside the area in which such water originates shall be integrated to the maximum extent possible to permit fulfillment of the objectives of this part.

The objectives include salinity control and an adequate water supply. The export projects must fully mitigate their respective impacts and meet the affirmative obligations to the Delta and other areas of origin including those related to flow for fish. Failure to so do results in a shift of the cost of the project to someone else and violation of the public trust. The State Water Resources Development Bond Act was intended to preclude such a shift in costs or burdens. The Sites Project does not appear to recognize or embrace the need for compliance with such obligation.

In Goodman v. Riverside (1993) 140 Cal.App.3d 900 at 906 the court confirmed the requirement that the costs of the entire project be paid by the contractors. In footnotes 3 and 4 the court included the following:

Alan Cranston, then State Controller, notes in a press release: “As additional security for the bonds, and to prevent a drain on the General Fund in case of deficiency, the local contracting agencies will have ad valorem taxing power over and above the cost of water which the user will pay. Local agencies will therefore be able to meet their commitments to the State even if revenues from local sales of water are not sufficient for this purpose. Through this procedure, the beneficiaries of the Water Plan become the financial keystone and support rather than the General Fund and the general taxpayer.”

Governor Pat Brown’s press comments at the time are also informative:

Governor, what is your answer to people who say, ‘I don’t want to pay for somebody else’s water.’ Like San Franciscans. ‘I have already paid for one water project. Why should I be compelled to buy another?’

Governor Brown: Well, they won't. *The plan itself is completely self-supporting.* The law provides that the contracts have to provide for the repayment of the cost of the entire Project, That's the real answer to it. (Italics added.)

The League of Women Voters' analysis observed:

"The state will contract with public agencies having the assessment power so they can meet the required payment to the state by the use of taxes as well as water rates if they so desire. In this way no area will be subsidizing water for another region."

Water Code Section 11912 requires that the costs necessary for the preservation of fish and wildlife be charged to the contractors. The term "preservation" appears to be broader than mitigation and appears to create an affirmative obligation beyond mitigation.

Title 34 of Public Law 102-575, referred to as the Central Valley Project Improvement Act in Section 3406(b)(1) authorizes and directs the Secretary of Interior to enact and implement a program which makes all reasonable efforts to ensure by the year 2002 natural production of anadromous fish (including salmon, steelhead, striped bass, sturgeon and American shad) will be sustainable on a long term basis at levels not less than twice the average levels attained during the period of 1967-1991. This burden is an affirmative obligation of the CVP and should not be shifted onto others. (Note striped bass have been eliminated from such obligation).

The Delta Reform Act of 2009 includes provisions intended to provide additional protection for the Delta. Such provisions include Water Code §85054 which provides:

'Coequal goals' means the two goals of providing a more reliable water supply for California and protecting restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

Water Code §85021 which provides:

Reduction of reliance on Delta for future water supply needs
The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.

The Delta and other areas of origin both upstream and downstream are part of California and also need a more reliable water supply. The Sites Project references SWP and CVP compliance with D-1641 standards which have failed to protect the public interest and failed to enhance the delta values as required by the coequal goals **and yet are being degraded**. Water Quality standards must be improved and compliance must be a condition of any permit granted for the Sites Project. Restoration, protection and enhancement of Delta water quality and flows including flushing flows are part of a more reliable water supply for California. Non-degradation of water quality and the statutory obligations to provide enhancement of water quality and an adequate supply for the Delta are absent from the objectives of the Sites application.

The hydrology predating the construction of the CVP and SWP reflected that no surplus water would be available for export from the Sacramento-San Joaquin Watershed during a reoccurrence of the 1929-1934 drought and water from the North Coast would be required.

The first elements of the state Central Valley Project were constructed by the federal government in the 1940s originally referred to as the federal Central Valley Project and today as the Central Valley Project or CVP. The state followed in 1960 with the California Water Resources Development Bond Act and the so-called Feather River Project (including Oroville Dam), now the State Water Project or SWP. There was early conflict between the feds and state. The CVP projects were first constructed and repayment contracts for delivery of water (with some subsidy) were based on the yield of the constructed facilities. The SWP on the other hand signed entitlement contracts based on contractors (entitlement contractors) paying the entire costs of the projects as the need for additional facilities arose. Construction followed contracting. Early on conflicts arose as to state jurisdiction over the federal projects and the overlap of the state water right filing for Feather River water which was included in prior filings to support the CVP. The true capability of both the CVP and SWP to deliver firm water was and still is grossly uncertain.

Exhibit G is a copy of the hydrographs from page 116 of the Weber Foundation Studies titled "An Approach To A California Public Works Plan" submitted to the California Legislature on January 28, 1960. The highlights and margin notes are added.

The 1929-1934 six-year drought period reflected on **Exhibit G** shows the average yearly runoff for the Delta Watershed was 17.631 MAF with local requirements of 25.690 MAF. The shortage during the drought period within the Delta Watershed is shown as 8.049 MAF per year without any exports. It is questionable whether the groundwater basins can be successfully mined to meet the shortage within the watershed let alone the export demands. A comparable review of the hydrograph for the North Coast area reflected that surplus water could have been developed without infringing on local requirements.

The limited hydrology was clearly recognized in the planning for the SWP which was to develop projects on the rivers in the North Coast watersheds sufficient to import to the Delta by the year 2000, 5 MAF of water seasonally to meet local needs and for transfer to areas of deficiency. (See **Exhibit F excerpts** from December 1960 Bulletin 76 Report to the Legislature, pages 11 and 13). The areas of deficiency were expected to be both north and south of the Delta

pumps. The projects in the North Coast watersheds were never constructed and the CVP and SWP are woefully short of water.

As explained in DWR Bulletin 180-83 both the CVP and SWP were designed to meet requirements in the event of a reoccurrence of the 1928-1934 drought but the planned required increase in water supplies did not take place. The report provided:

Supply Dependability and Risk

The thrust in California water development over the past few decades has been to increase water supplies to match needs, and in many areas, to increase the dependability of supplies. Much attention has been given to this by the SWP and the CVP, which were designed to withstand reoccurrence of the 1928-1934 drought. Projects, facilities, and programs of other agencies have similar built-in-risks. But uncertainty regarding the capability of increasing developed supplies over the next several decades may justify and in fact may require **taking greater risks in delivering water to customers.**

Selection of the 1928-34 drought to evaluate yield was not based on the relation of drought frequency to cost of facilities. Rather it was based on the fact that both the CVP and SWP received popular support following the 1928-1934 drought, and Californians wanted the projects to provide essentially a full supply during the entire drought, regardless of its frequency of reoccurrence. Of course, during normal and above-normal years, projects can deliver much more water than is defined as yield under this criterion. Surface water projects of other agencies use different yield determining dry periods, but the concept is the same. This operational procedure works well where adequate water supplies are already developed to meet existing and future uses. "Unfortunately, the State's water uses are outpacing the rate at which increased supplies are being added." (See **Exhibit H** excerpts from DWR Bulletin 160-83) (Emphasis added)

The risk of lack of supply was to fall on the SWP contractors and not on the areas of origin as is occurring due to the conflicted and unlawful administration of water by the State.

NO ADDITIONAL TAXPAYER FUNDING SHOULD BE PROVIDED WITHOUT AN INVESTIGATION OF STATE FUNDING TO DATE AND ONLY AFTER ACCOUNTING IF THE PUBLIC BENEFITS ARE CERTAIN AND SUPPLIED WITH FIRM WATER IN EACH YEAR INCLUDING DURING MULTIPLE DRY YEARS SUCH AS OCCURRED IN 1929-1934

Although we oppose Public Funding of the project as proposed the following staff technical comments are included below.

Under Proposition 1, the CAPB for Sites Reservoir ("Sites") will be administered by the California Department of Fish and Wildlife ("CDFW"). CDWA is concerned about the lack of

rigor and specificity of the proposed CAPB, and what appears to be a failure to require the project to meet the minimum requirements of Proposition 1. (See Wat. Code, § 79755; Cal. Code Regs., tit. 23, § 6013, subd. (c)(2).)

Technical Comments on Draft Contract for Administration of Public Ecosystem Benefit

At the California Water Commission’s June 17, 2026 meeting, in response to a question from Commissioner Matsumoto, Sites General Manager Jerry Brown confirmed that CDFW worked with Sites to ensure that there would be the same level of “public benefits” even though less water would be delivered than previously planned. According to Jerry Brown, there was the “same value of benefits, and maybe not the same amounts of water, but the same value of benefits.”¹ This exchange indicates that Sites may be being treated differently in the CAPB process than other Proposition 1 projects. All projects must be held to a consistent standard for the Proposition 1 program to be lawful. Consistency also assists the public in understanding how public funds are spent

DRAFT CAPB

Section 3: Term (pdf pp. 5-6)

The term of the contract is 70 years, but may be shorter if the planned cumulative water delivery occurs.

From an ecological perspective, the planned Wetland Habitat Enhancement Benefit would provide significantly more public benefits over the longer period. It is unclear why the Sites Project should not be required to provide the full 70 years of benefit, since the project would still exist during that time period. The value of and need for water deliveries to Refuges would likely be greater in the future, assuming the climate becomes warmer. Allowing Sites to shorten the term and deliver no water if Sites determines to compress the Refuge water delivery time period would be a loss of ecological benefit.

Suggested Modification

The Contract term is 70 years, until termination of the Funding Agreement, ~~or until the cumulative volume of water delivery has been achieved, whichever occurs first~~, unless otherwise terminated or amended as provided in the Contract.

Section 4.1.3 New Wetland Habitat Criteria (pdf pp. 8-9)

This section discusses the option of providing a Habitat Enhancement Benefit by providing water to locations other than the Refuges and the Upper Butte Basin Wildlife Area.

¹ See exchange between Commissioner Masumoto and Jerry Brown at <https://www.water-ca.com/archives.html>, starting at minute 58.

The listed eligibility criteria fail to include the Proposition 1 restriction that these funds and their associated water cannot be used to meet mitigation requirements. (Water Code, § 79753, subd. (b) [“Funds shall not be expended pursuant to this chapter for the costs of environmental mitigation measures or compliance obligations except for those associated with providing the public benefits as described in this section.”].) Similarly, supplying water to private hunting locations would be an enrichment of individuals using Proposition 1 funding, and hunting activities would further conflict with those ecological values.

Suggested Modification

1. The location must have existing Wetland Habitat and be primarily managed to benefit aquatic or terrestrial species when being used for benefits under this Contract. The locations cannot be managed in part or in whole for private hunting, or used as mitigation or other compensation for impacts to wetlands.

Section 4.5 ASSURANCES (pdf pp. 10-11)

The CAPB appears to be intended to supplement the Refuge Water Supply Program (“RWSP”), but there do not appear to be sufficient limitations to ensure that Reclamation and the State are not simply shifting portions of their existing burdens using Proposition 1 funds. Incremental Level 4 (IL4) water is the additional water needed to fully support optimal wetland footprints and maximize habitat for migrating waterfowl in California's Central Valley. The CVPIA mandates the acquisition and delivery of 133,264 acre-feet of Incremental Level 4 water annually, a process supported by a 75% federal and 25% state funding split. Reclamation and its partners must meet this existing obligation first, only then should this benefit be eligible. (Wat. Code, § 79753, subd. (b).)

Suggested Modification

The CAPB lacks any substantive distinction for these categories and obligations to ensure that the water delivered to the Refuges by Sites is additional. Here, and elsewhere in the CAPB, language should be added to clarify that water provided to Refuges by Sites is “additional” and not for meeting a mitigation requirement. (See Wat. Code, § 79753, subd. (b).)

The Parties have determined that the following provide the required assurances under California Code of Regulations, title 23, section 6014 subdivision (a)(2)(A)(5):

1. The Authority has entered into a Donation Agreement with Reclamation that specifies the terms by which Reclamation will accept water from the Authority to provide IL4 water to Refuges.
2. The Donation Agreement will identify specifically that the Authority’s water is additional and does not in any way offset CVPIA shares and existing IL4 obligations.

EXHIBIT B: DRAFT ECOSYSTEM ADAPTIVE MANAGEMENT PLAN (pdf p. 20)

Section 4.1.1 Benefit Environmental Response (pdf p. 35)

This section discusses deliveries of water to the Refuge Water Supply System (“RWSP”) and also allows deliveries to new locations if approved by CDFW.

The lack of metrics applied to Benefit Environmental Response (“BER”) is too open-ended, and significant latitude is being given for outcomes. Given the very large initial public investment, funding should be withheld until the metrics are defined, and be made publicly available for comment once they are available.

Suggested Modification

“Specific metrics used to measure the Benefit Environmental Response will be selected depending on the intended goals of individual locations. The metric(s) will be mutually agreed upon by the Authority and the Department.” All proposed metrics will be publicly noticed and with a minimum 30-day comment period.

Section 4.1.2 Monitoring Metrics and Performance Thresholds (pdf pp. 36-38)

This section attempts to provide metrics for Wetland Habitat Enhancement but fails to do so. These “metrics” assume that any increase as compared to baseline is a benefit; in fact, there are no specific metrics.

For example, one of the metrics is simply having a conversation with land managers every 5 years. (4.1.2.1.)

Suggested Modification

This section should be rewritten to include more specific language as to what a benefit improvement is, and the justification for accepting such as benefits, rather than a pro forma process.

Section 1.2 ADAPTIVE MANAGEMENT PLAN APPROACH (pdf pp. 20-21)

This language provides unusual and novel latitude to Sites for Project Implementation Actions.

According to Table 1. Project Implementation Action- Volume of Water Delivered “Maintain a Base Facilities Capacity of 17.3%” and “Maintain a Downstream Facilities Capacity of 17.3%.” The result of this loose language is that the core water deliveries themselves are potentially subject to modification. This is inconsistent with Proposition 1 funding requirements.

This excessive latitude should not be allowed, or this term should be modified in the prior CAPB.

Suggested Modification

The intent of the Adaptive Management Plan is to assure achieving and maintaining the desired Benefit Environmental Responses, the ecosystem response derived from Project Implementation Actions and Benefit Implementation Actions, while recognizing that the Benefit Environmental Responses are subject to various uncertainties due to unforeseeable acts or the like.

Section 4.1.6 Management Actions (pdf pp. 37-38)

Here potential Adaptive Management actions involve changing the specific locations of delivery of water, such as, “Provide water to a different location category,” and “Provide water to additional eligible Wetland Habitat.” However, the CAPB only requires that Sites provide water

to land managers, it doesn't require infrastructure for moving that water within refuges. It seems that the cost and permitting for most of the AM actions would be the responsibility of the land managers, not Sites. This should not allow delivery to areas outside the Area of origin.

Suggested Modification

This section is too open-ended and should be rewritten and the addition of more specific and defensible language as to what these adaptive management measures would achieve and how they would attempt to preserve the public benefits in changed conditions.

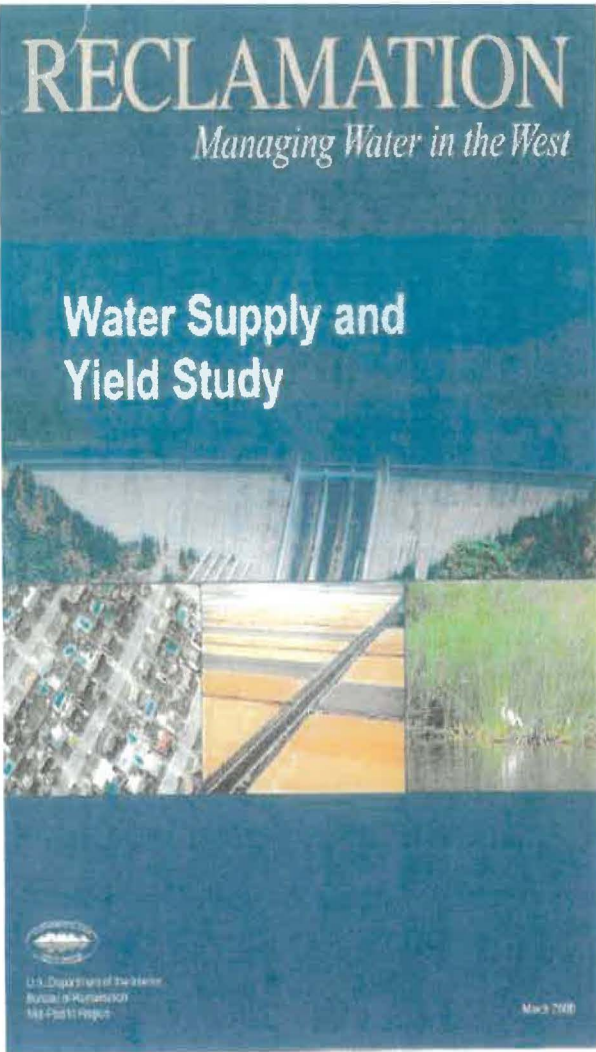
Respectfully submitted,



Dante John Nomellini.

CC:

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Section Highlights

Seasonal, geographic, and annual variability in precipitation poses significant challenges to meeting statewide water demands.

CVP and SWP deliveries vary considerably each year.

Current water use requires reservoir carryover storage use and groundwater overdraft in average and dry year types.

Current statewide demands exceed supplies by 2.3 MAF in average years and 4.2 MAF in dry years.

Future (2030) statewide demands exceed supplies by 4.9 MAF in average years and 6.1 MAF in dry years.

The needs for additional water supply are substantial, and will not be fully met without significant investment in new infrastructure and water conservation.

Multiple-year droughts may significantly impact water deliveries as existing storage facilities are depleted of supplies. Increased reliability is needed to protect water users during droughts. Page 1-1

Deliveries were not reduced until 2 to 4 years into the drought.

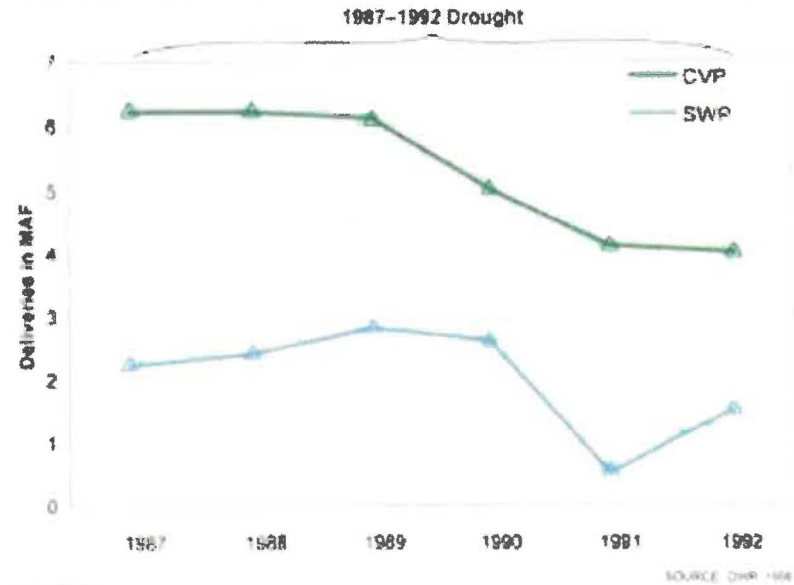


FIGURE 2-3
CVP and SWP Deliveries During the 1987-1992 Drought

Although the drought lasted several years, neither the state or federal water project improved significant delivery deficiencies during the first 3 years of the drought. When carryover storage was diminished by several consecutive dry years, without replenishment, deliveries were sharply curtailed to manage the risk for meeting basic needs the following year. Page 2-4

Public Law 86-488

AN ACT

June 3, 1960
[S. 44]

To authorize the Secretary of the Interior to construct the San Luis unit of the Central Valley project, California, to enter into an agreement with the State of California with respect to the construction and operation of such unit, and for other purposes.

Central Valley
Project, Calif.,
San Luis unit.
Construction.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) for the principal purpose of furnishing water for the irrigation of approximately five hundred thousand acres of land in Merced, Fresno, and Kings Counties, California, hereinafter referred to as the Federal San Luis unit service area, and as incidents thereof of furnishing water for municipal and domestic uses and providing recreation and fish and wildlife benefits, the Secretary of the Interior (hereinafter referred to as the Secretary) is authorized to construct, operate, and maintain the San Luis unit as an integral part of the Central Valley project. The principal engineering features of such unit shall be a dam and reservoir at or near the San Luis site, a forebay and afterbay, the San Luis Canal, the Pleasant Valley Canal, and necessary pumping plants, distribution systems, drains, channels, levees, flood works, and related facilities, but no facilities shall be constructed for electric transmission or distribution service which the Secretary determines, on the basis of an offer of a firm fifty-year contract from a local public or private agency, can through such contract be obtained at less cost to the Federal Government than by construction and operation of Government facilities. The works (hereinafter referred to as joint-use facilities) for joint use with the State of California (hereinafter referred to as the State) shall be the dam and reservoir at or near the San Luis site, forebay and afterbay, pumping plants, and the San Luis Canal. The joint-use facilities consisting of the dam and reservoir shall be constructed, and other joint-use facilities may be constructed, so as to permit future expansion; or the joint-use facilities shall be constructed initially to the capacities necessary to serve both the Federal San Luis unit service area and the State's service area, as hereinafter provided. In constructing, operating, and maintaining the San Luis unit, the Secretary shall be governed by the Federal reclamation laws (Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto). Construction of the San Luis unit shall not be commenced until the Secretary has (1) secured, or has satisfactory assurances of his ability to secure, all rights to the use of water which are necessary to carry out the purposes of the unit and the terms and conditions of this Act, and (2) received satisfactory assurance from the State of California that it will make provision for a master drainage outlet and disposal channel for the San Joaquin Valley, as generally outlined in the California water plan, Bulletin Numbered 3, of the California Department of Water Resources, which will adequately serve, by connection therewith, the drainage system for the San Luis unit or thus made provision for constructing the San Luis interceptor drain to the delta designed to meet the drainage requirements of the San Luis unit as generally outlined in the report of the Department of the Interior, entitled "San Luis Unit, Central Valley Project," dated December 17, 1958.

Conditions.

(b) No water provided by the Federal San Luis unit shall be delivered in the Federal San Luis service area to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity as estimated by the Secretary of Agriculture for the marketing year in which the bulk

48 USC 371 and
note.
7 Preliminary
manuscript.

52 Stat. 1051.
7 USC 1421 note.



Lifetime Chronicles of Selenium Exposure Linked to Deformities in an Imperiled Migratory Fish

Rachel Cathleen Johnson,* A. Robin Stewart, Karin E. Limburg, Rong Huang, Dennis Cocherell, and Frederick Feyer

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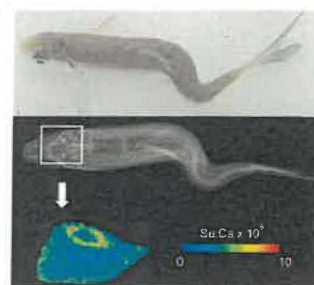
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Metrics & More

Article Recommendations

Supporting Information

ABSTRACT: Aquatic ecosystems worldwide face growing threats from elevated levels of contaminants from human activities. Toxic levels of selenium (Se) shown to cause deformities in birds, fish, and mammals can transfer from parents to progeny during embryonic development or accumulate through Se-enriched diets. For migratory species that move across landscapes, tracking exposure to elevated Se is vital to mitigating vulnerabilities. Yet, traditional toxicological investigations resolve only recent Se exposure. Here, we use a novel combination of X-ray fluorescence microscopy and depositional chronology in a biomineral to reveal for the first time provenance, life stage, and duration of toxic Se exposure over the lifetime of an organism. Spinal deformities observed in wild Sacramento Splittail (*Pogonichthys macrolepidotus*), an imperiled migratory minnow, were attributed to elevated Se acquired through maternal transfer and juvenile feeding on contaminated prey. This novel approach paves the way for diagnosing sources, pathways, and potential for a cumulative exposure of Se relevant for conservation.



INTRODUCTION

Chemical contaminants from industry, agriculture, and urban runoff seep into aquatic environments and disrupt biological systems at levels ranging from molecules to ecosystems, with sublethal levels having delayed and profound population-level impacts where examined.^{1,2} Human activities, including coal combustion, mining, and agricultural practices, may concentrate selenium (Se) resulting in bioaccumulation that can affect an organism's physiology, health, and fitness as well as the community of organisms in a food web.³ Selenium is found naturally in soils and minerals and is an essential nutrient required for oxidative and enzymatic processes.⁴ However, the differences in nutritionally optimal versus toxic levels are typically narrow. Elevated dietary exposure exceeding 3 $\mu\text{g/g}$ can disrupt protein synthesis by substituting Se for sulfur in ionic disulfide bonds, induce oxidative stress, and modulate expression of key genes involved in bone formation resulting in striking deformities in developing offspring of fish, birds, and mammals.^{5–7}

The ecological and conservation importance of revealing the sources and pathways of spine-deforming Se toxicity in nature is substantial, yet remains a significant challenge in toxicological studies.⁸ Investigations are often limited to detecting recent exposures because contaminants in muscles or soft-tissues change over time due to depuration, metabolic transformation, and tissue compartmentalization, making measurements difficult to interpret.^{9–12} Further, discovering fish with spinal deformities is rare in the wild due to their increased mortality risk. For migratory species, such as

Sacramento Splittail (*Pogonichthys macrolepidotus*), listed as a species of special concern by California,¹³ the recent observation of deformed individuals with symptoms of Se toxicity presented an opportunity to apply new analytical tools to diagnose sources and pathways of exposure in nature.

Here, we use a novel combination of microchemical tracers and deposition chronology in a biomineral (aragonitic otoliths, part of the fish's hearing/balance system) to reveal when and where during development individuals with spinal deformities were exposed to elevated Se. Specifically, we were able to map selenium concentrations using synchrotron-based two-dimensional X-ray fluorescence microscopy (SXRF) and strontium isotopes (⁸⁷Sr:⁸⁶Sr) in incrementally deposited otolith layers corresponding to different life stages and habitats. This approach allowed us to deduce whether individuals collected in the wild obtained Se through maternal transfer in the estuary (embryo and yolk portion of otolith; Figure 1A), versus direct ingestion on Se-enriched prey in the freshwater (10 days post-hatch, exogenous feeding; Figure 1B), or from both sources (estuary and freshwater) and pathways (maternal and direct feeding).

Otoliths are metabolically stable and provide a permanent chronology of Se exposure over the lifetime of fish.^{14–16}

Received: October 24, 2019

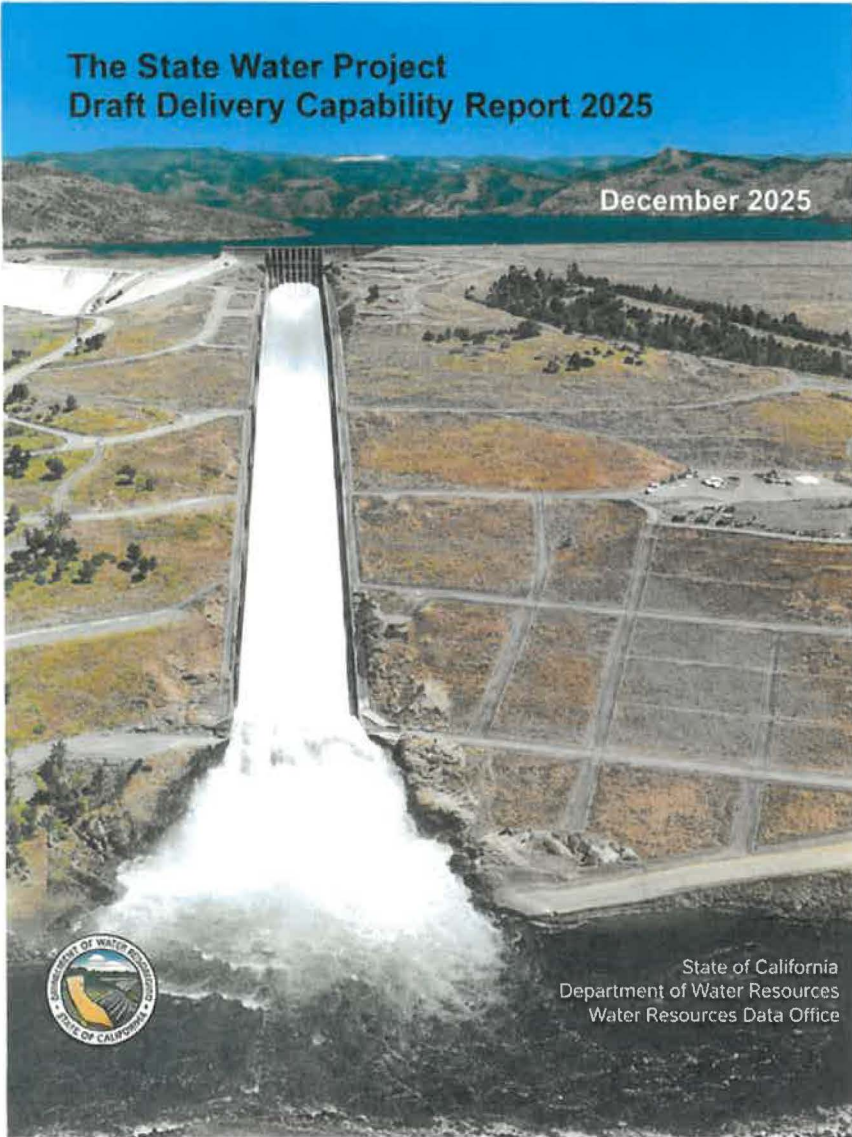
Revised: January 24, 2020

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The State Water Project Draft Delivery Capability Report 2025

December 2025

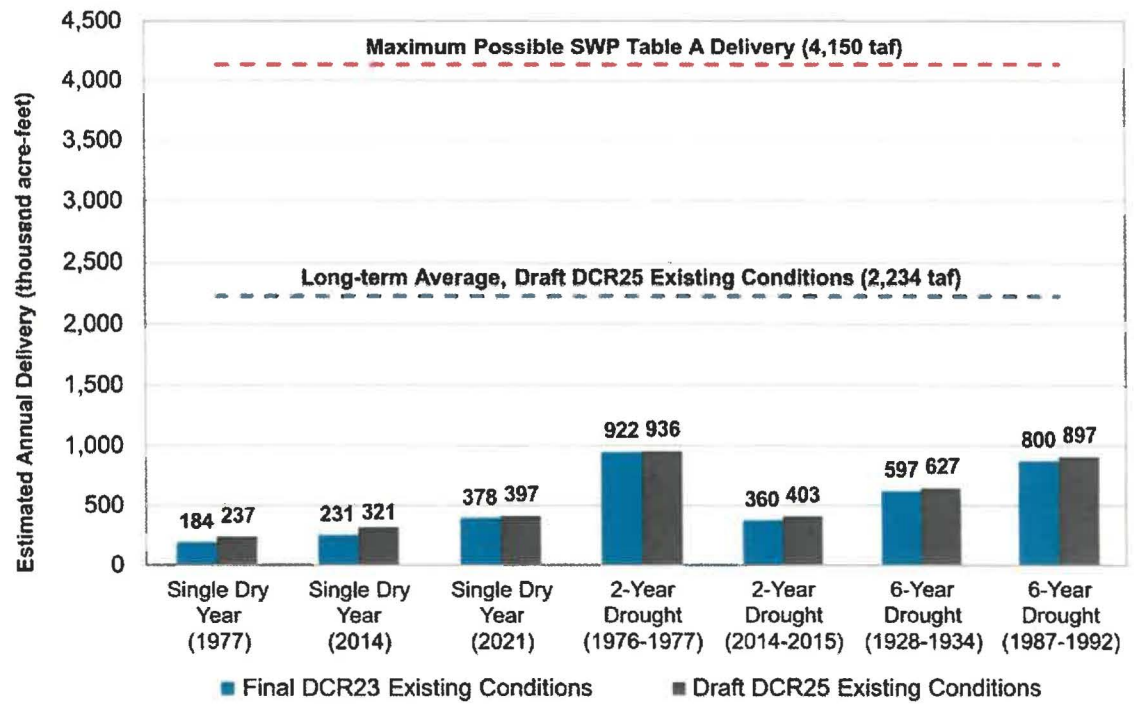


State of California
Department of Water Resources
Water Resources Data Office

Exhibit D

The State Water Project
Draft Delivery Capability Report 2025

Figure 5-3. Estimated Dry-Period SWP Table A Water Deliveries (Existing Conditions)



Title THE CALIFORNIA WATER RESOURCES DEVELOPMENT BOND ACT
Year/Election 1980 general
Proposition bond (yes)
Type
Popular vote Yes: 3,008,328 (51.5%); No: 2,834,384 (48.5%)
Pass/Fail Pass
Summary

This act provides for a bond issue of one billion, seven hundred fifty million dollars (\$1,750,000,000) to be used by the Department of Water Resources for the development of the water resources of the State.

For Argument in Favor of California Water Resources Development Bond Act

Your vote on this measure will decide whether California will continue to prosper.

This Act, if approved, will launch the statewide water development program which will meet present and future demands of all areas of California. The program will use to the maximum the money to be raised; it will require strict accountability and frugal, good project management; it will develop needed water supplies and protect our rights.

The bonds will be used over a period of many years and will involve an approximate annual expenditure averaging only \$75 million, as compared, for example with \$600 million a year we spend on highways.

Exciting facilities for furnishing water for California's needs will soon be exhausted because of our rapid population growth and industrial and agricultural expansion. We now face a further critical loss in the Colorado River supply. Without the projects made possible by this Act, we face a major water crisis. We can stand no more delay.

If we fail to act now to provide new sources of water, land development in the great San Joaquin Valley will slow to a halt by 1985 and the desert of cultivated acres to wasteland will begin. In southern California, the existing sources of water which have satisfied the tremendous expansion will reach capacity by 1990 and further development must wholly cease. In northern California densely populated flood control and water supplies for many local areas will be denied.

This Act will ensure construction funds for new water development facilities to meet California's requirements now and in the future. No area will be deprived of water to meet its needs of society. Nor will any area be asked to pay for water delivered to another.

To meet questions which concerned, southern California, the bond will finance completion of all facilities needed, as described in the Act. Contracts for delivery of water may not be altered by the Legislature. The tap will be open, and no amount of political maneuvering can shut it off.

Under this Act the water rights of northern California will remain securely protected. In addition, sufficient money is provided for construction of local projects to meet the pressing needs in flood control, recreation and water deliveries in the north.

A much needed drainage system and water supply will be provided in the San Joaquin Valley.

Construction here authorized will provide thousands of jobs. And the program will nourish tremendous industrial and farm and urban expansion which will develop an ever-growing source of employment and economic prosperity for Californians.

Our Legislature has appropriated millions of dollars for work in preparation, and construction is now underway. It would be tragic if this impressive start toward solution of our water problems were now abandoned.

If we fail to act now to insure completion of this constructive program, serious existing water shortages will only get worse. The success of our State is at stake. Vote "Yes" for water for people, for progress, for prosperity!

Preliminary Edition

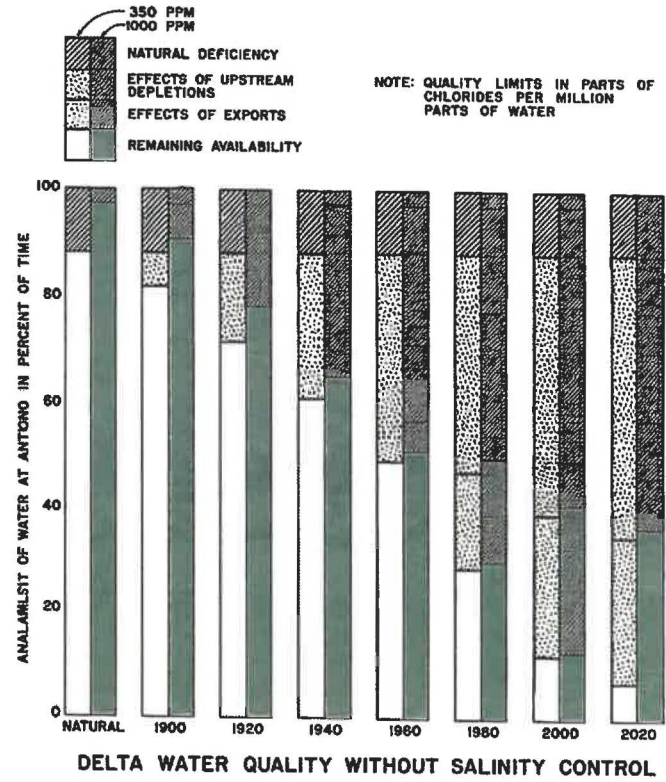
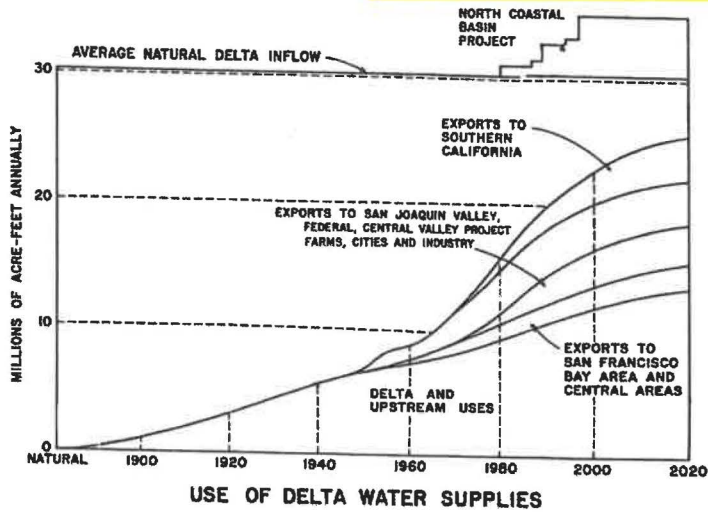
Bulletin No. 76
DELTA WATER FACILITIES



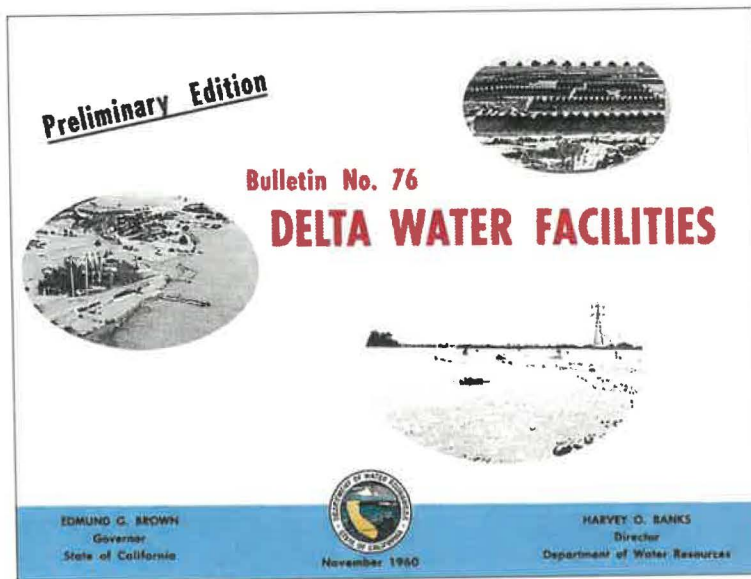
EDMUND G. BROWN
 Governor
 State of California

HARVEY O. BAKER
 Director
 Department of Water Resources

5 million acre ft per year Not developed

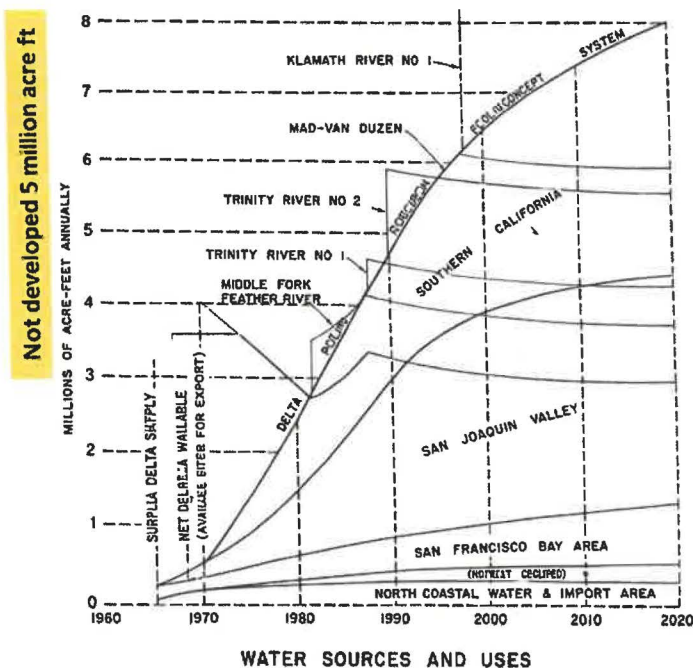


The magnitude of the past and anticipated future uses of water in areas tributary to the Delta, except the Tulare Lake Basin, is indicated in the diagram to the left. It may be noted that, while the present upstream use accounts for reduction of natural inflow to the Delta by almost 25 percent, upstream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



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

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

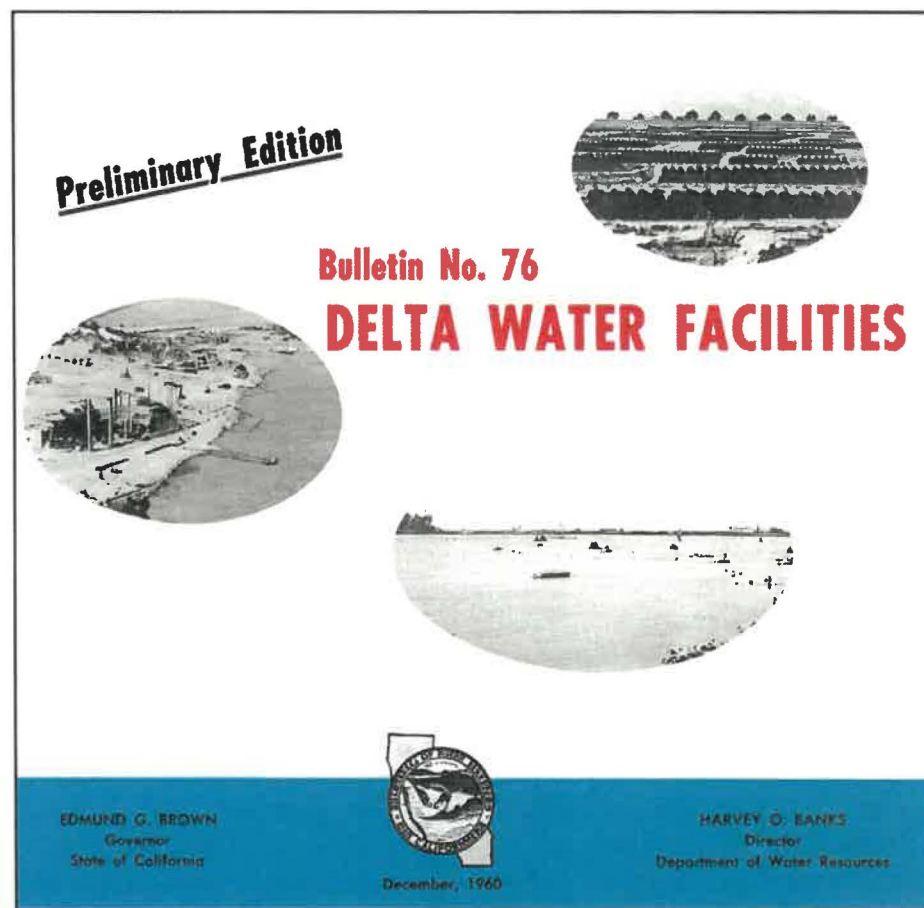


Project Accomplishments—Delta water supply

Over 90 percent of the Delta lowlands now has adequate water supplies during summer months due in part to operation of the Central Valley Project. However, ten percent of the Delta in the western portion, including lands occupied by large water-using industries and municipalities, does not have adequate good quality water supplies at all times. Moreover, additional regulation and use of water in areas tributary to the Delta, exclusive of Delta exports, will lengthen the average period each year when salinity incursion from the Bay causes increased operating costs, plant shutdowns, and decreased farm production. The concentrations of dissolved minerals in water from the Contra Costa Canal now approach upper limits of acceptable quality during several months of most years, and significant sums of money are expended by industries for demineralization and water softening.

Under any of the foregoing projects, water of very good quality would continue to be supplied to about 90 percent of the Delta lowlands through existing facilities. It is estimated that the mineral quality of the supplies would generally range between about 15 to 80 parts of chlorides and between 100 and 350 parts of total dissolved solids per million parts water. The quality of water in the southern portion of the Delta would be improved.

The quality of water in the Pittsburg-Antioch area with the Chipps Island Barrier Project in operation would be uncertain. Although downstream disposal of local municipal and industrial wastes and drainage from the San Joaquin Valley would eliminate the majority of the mineral pollutants, the effects of cooling water and mineral and organic wastes of the Delta might result in water supplies of questionable quality, particularly during critical dry



CHAPTER 1765

An act providing for the investigation of water supplies and flood control levees for the Sacramento-San Joaquin Delta and making an appropriation therefor.

[Approved by Governor July 18, 1955. Filed with Secretary of State July 18, 1955.]

The people of the State of California do enact as follows:

SECTION 1. The Department of Water Resources shall investigate the water supplies for the Sacramento-San Joaquin Delta. The investigation shall include, among other things: (1) the type and extent of the future water requirements of lands which can be served from present channels in the western Delta; (2) the extent and nature of effects of upstream water developments on water supply available to such lands; (3) the development of plans for water service to such lands and estimates of costs thereof; and (4) economic and financial analyses of such plans. In carrying out the investigation, the department shall seek the co-operation and assistance of the counties and other local agencies and entities in the Sacramento-San Joaquin Delta and of the United States; may enter into contracts with such entities to assist it in carrying out the purposes of such investigation, and shall consult with and keep appropriate legislative committees informed of the progress of this work.

Sec. 2. There is appropriated from the California Water Fund to the Department of Water Resources the sum of two hundred thousand dollars (\$200,000) to be expended for the purposes of this act.

Sec. 3. Section 4.5 is added to the Abshire-Kelly Salinity Control Barrier Act of 1957 (Chapter 2092, Statutes of 1957), to read:

Sec. 4.5. As a part of the studies being performed hereunder and to obtain such information as may be required to implement the plan included in the report referred to in Section 4, the department may conduct studies and investigations to determine the most economical and efficient type and methods and procedures of construction to provide an adequate levee system in the Delta.

Sec. 4. There is hereby appropriated to the Department of Water Resources from the California Water Fund the sum of two hundred thirty thousand dollars (\$230,000), of which one hundred eighty thousand dollars (\$180,000), may be expended for the studies and investigations authorized by Section 3 hereof, and fifty thousand dollars (\$50,000) may be expended for such remedial work as may be necessary in connection with levee tests being performed as a part of the studies and investigations authorized by Section 3 hereof.

Intensive studies were made of the future economic growth of lands which can be served from channels in the western Delta. Particular attention was given to the future municipal and industrial water needs in the area and the future water supplies available in the Delta. Due to the expanded scope of the studies, the report was delayed.

CHAPTER 2038

An act to amend Section 4 of Chapter 2092, Statutes of 1957, relating to barriers for salinity and flood control purposes.

[Approved by Governor July 17, 1955. Filed with Secretary of State July 20, 1955.]

The people of the State of California do enact as follows:

SECTION 1. Section 4 of Chapter 2092, Statutes of 1957, is amended to read:

Sec. 4. The department shall submit a report to the Legislature stating the result of its study and investigation not later than January 2, 1961.

The unique character of the water supply problems of the Delta was recognized by the State Legislature when it amended the California Water Code in 1959 to include general policy regarding the Delta. This legislation calls for provision of salinity control and adequate water supplies in the Delta and states that water to which the users within the Delta are entitled should not be exported. The policy in this act is basic to the planning and operation of all works in the Delta or diversions therefrom.

CHAPTER 1766

An act to add Part 4.5 (commencing at Section 12200) to Division 6 of the Water Code, relating to delivery of surplus water into, and extractions thereof for exportation from, the Sacramento-San Joaquin Delta.

[Approved by Governor July 15, 1959. Filed with Secretary of State July 15, 1959.]

The people of the State of California do enact as follows:

SECTION 1. Part 4.5 (commencing at Section 12200) is added to Division 6 of the Water Code, to read:

PART 4.5. SACRAMENTO-SAN JOAQUIN DELTA

CHAPTER 1. GENERAL POLICY

12200. The Legislature hereby finds that the water problems of the Sacramento-San Joaquin Delta are unique within the State; the Sacramento and San Joaquin Rivers join at the Sacramento-San Joaquin Delta to discharge their fresh water flows into Suisun, San Pablo and San Francisco Bays and thence into the Pacific Ocean; the merging of fresh water with saline bay waters and drainage waters and the withdrawal of fresh water for beneficial uses creates an acute problem of salinity intrusion into the vast network of channels

and sloughs of the Delta; the State Water Resources Development System has as one of its objectives the transfer of waters from water-surplus areas in the Sacramento Valley and the north coastal area to water-deficient areas to the south and west of the Sacramento-San Joaquin Delta via the Delta; water surplus to the needs of the areas in which it originates is gathered in the Delta and thereby provides a common source of fresh water supply for water-deficient areas. It is, therefore, hereby declared that a general law cannot be made applicable to said Delta and that the enactment of this law is necessary for the protection, conservation, development, control and use of the waters in the Delta for the public good.

12201. The Legislature finds that the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta area as set forth in Section 12220, Chapter 2, of this part, and to provide a common source of fresh water for export to areas of water deficiency is necessary to the peace, health, safety and welfare of the people of the State, except that delivery of such water shall be subject to the provisions of Section 10606 and Sections 11460 to 11463, inclusive, of this code.

12202. Among the functions to be provided by the State Water Resources Development System, in coordination with the activities of the United States in providing salinity control for the Delta through operation of the Federal Central Valley Project, shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta. If it is determined to be in the public interest to provide a substitute water supply to the users in said Delta in lieu of that which would be provided as a result of salinity control no added financial burden shall be placed upon said Delta water users solely by virtue of such substitution. Delivery of said substitute water supply shall be subject to the provisions of Section 10606 and Sections 11460 to 11463, inclusive, of this code.

12203. It is hereby declared to be the policy of the State that no person, corporation or public or private agency of the State or the United States should divert water from the channels of the Sacramento-San Joaquin Delta to which the users within said Delta are entitled.

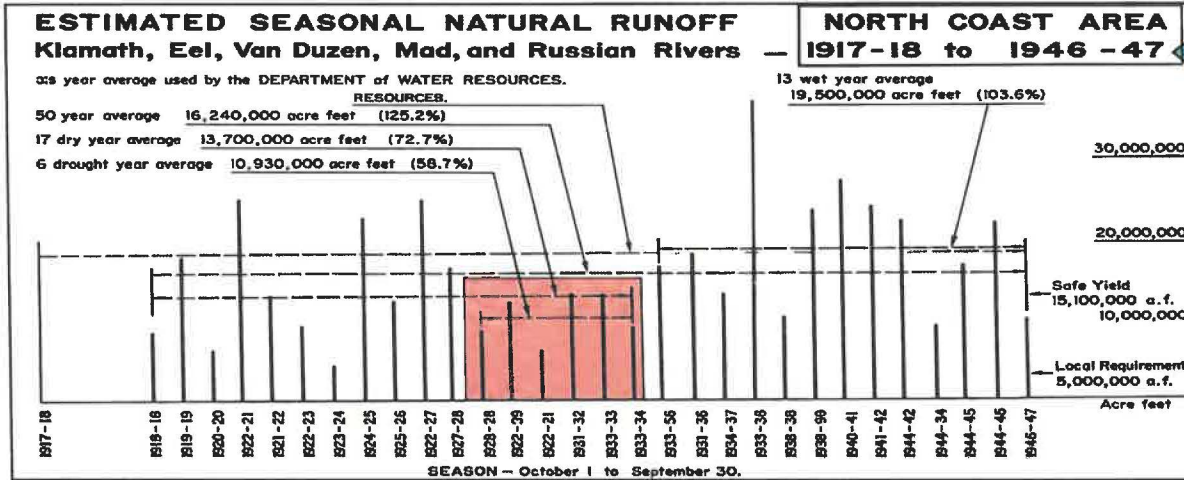
12204. In determining the availability of water for export from the Sacramento-San Joaquin Delta no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203 of this chapter.

12205. It is the policy of the State that the operation and management of releases from storage into the Sacramento-San Joaquin Delta of water for use outside the area in which such water originates shall be integrated to the maximum extent possible in order to permit the fulfillment of the objectives of this part.

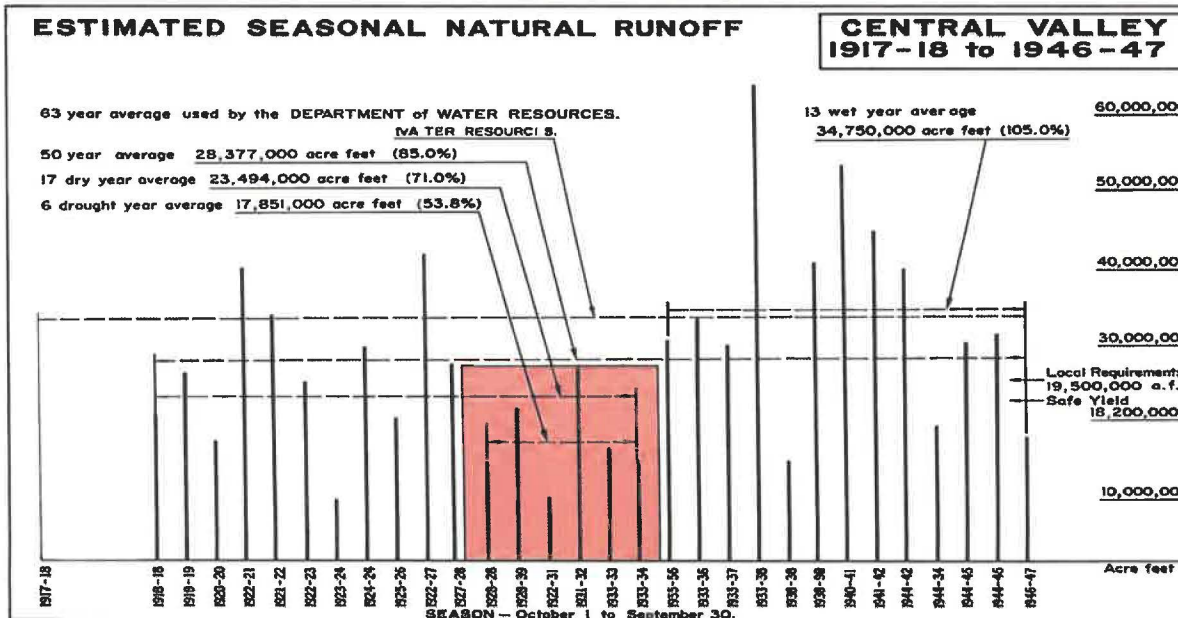
This legislation also described the area of the Delta to which the general policy applies. The boundary of the Delta, as described in Section 12220 of the Water Code, is indicated on the facing map. The area considered in the intensive studies of water requirements and supplies is described as the Western Delta Study Area.

WEBER FOUNDATION STUDIES

Exhibit G



Surplus
7,930,000 AF/YF



SHORTAGE
8,049,000 AF/Y

TC 574
.2
.J3
no. 83

3 1175 01033 2375

State of California
The Resources Agency
Department of
Water Resources

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**The California
Water Plan
Projected Use and
Available Water
Supplies to 2010**

Bulletin 160-83
December 1983

Much attention has been given to this by the SWP and the CVP, which were designed to withstand recurrence of the 1928-1934 drought

Supply Dependability and Risk

The thrust in California water development over the past few decades has been to increase water supplies to match needs, and in many areas, to increase the dependability of supplies. Much attention has been given to this by the SWP and the CVP, which were designed to withstand reoccurrence of the 1928-1934 drought. Projects, facilities, and programs of other agencies have similar built-in-risk. Some uncertainty regarding the capability of increased developed supplies over the next several decades may justify and in fact may require taking greater risks in delivering water to customers.

Selection of the 1928-1934 drought to evaluate yield was not based on the relation of drought frequency to cost of facilities. Rather, it was based on the fact that both the CVP and SWP received popular support following the 1928-1934 drought, and Californians wanted the projects to provide essentially a full supply during the entire drought, regardless of its frequency of reoccurrence. Of course, during normal and above-normal years, projects can deliver much more water than is defined as yield under this criterion. Similar water projects of other agencies use different yield-determining dry periods, but the concept is the same. This operational procedure works well where adequate water supplies are already developed to meet existing and future uses. Unfortunately, the State's water uses are outpacing the rate at which increased supplies are being added.

Some water projects would take greater risks by delivering a higher annual supply, leaving less carry-over storage in case of drought. This would allow growing needs to be met in normal years. While the final answer lies in what nature will actually provide, there is a good argument that, in the present era of uncertainty regarding future water development, given the frequency of reoccurrence of droughts, existing facilities may be operating in a more conservative manner than is necessary. The 1928-1934 dry period is estimated to have a reoccurrence of one in 200 to 400 years. However, such dry periods could occur in successive decades. Nevertheless, with such a small frequency probability, it may be that projects should take a greater risk and deliver a higher annual average supply. This is illustrated on Figure 79, which depicts a typical operation for the State Water Project to meet demands for 2000, using existing facilities.