

AQUALLIANCE

DEFENDING NORTHERN CALIFORNIA WATERS

January 15, 2017

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Attn: Rob Thomson
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Re: Comments on the Draft Environmental Impact Statement/Environmental Impact Report for the Sites Reservoir Project, State Clearinghouse #2001112009.

Dear Messrs. Dietle and Thompson:

AquAlliance submits the following comments and questions for the Bureau of Reclamation (“Bureau”) and Joint Powers Authority’s (“JPA”) (“Lead Agencies”) Draft Environmental Impact Statement/Environmental Impact Report (“DEIS/EIR”) for the Sites Reservoir Project (“Project”), State Clearinghouse #2001112009.

AquAlliance exists to sustain and defend northern California waters. We have participated in Central Valley Project (“CVP”) and State Water Project (“SWP”) water transfer processes, commented on and litigated past water transfer documents, commented on the Bureau of Reclamation and Department of Water Resources (“DWR”) (“Agencies”) Temporary Urgency Change Petitions, commented on the DEIS/EIR for the Bay Delta Conservation Plan (“BDCP”) and the SDEIS/RDEIR for the WaterFix. In doing so we seek to protect the Sacramento River’s watershed in order to sustain family farms and communities, enhance Delta water quality, protect creeks and rivers, native flora and fauna, vernal pools and recreational opportunities, and to participate in planning locally and regionally for the watershed’s long-term future.

The DEIS/EIR has numerous deficiencies and should be withdrawn. The absence of disclosure and analysis of significant direct, indirect, and cumulative water quality impacts alone renders the DEIS/EIR seriously deficient. For this and other reasons, the Lead Agencies must recirculate the DEIS/EIR for public review and comment before a final Project EIS/EIR could possibly be considered.

I. The EIS/EIR State Lead Agency Should be DWR, not the JPA

The JPA is not the proper Lead Agency for the Project. California Environmental Quality Act (“CEQA”) Guidelines sections 15367 and 15051 require that the California Department of Water Resources (“DWR”), as the operator of the California Aqueduct and who has responsibility to protect the public health and safety and the financial security of bondholders with respect to the aqueduct, is the more appropriate lead agency. In *PCL v DWR*, the court found that DWR’s attempt to delegate

lead agency authority impermissibly insulated the department from “public awareness and possible reaction to the individual members’ environmental and economic values.”¹ Pursuant to CEQA, ““lead agency” means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.” (Public Res. Code § 21067.) As such, the lead agency must have authority to require imposition of alternatives and mitigation measures to reduce or avoid significant project effects, and must have the authority to disapprove of the project altogether. Here, the DWR clearly fits this description. As the DEIS/EIR states, “The proposed dam would be under the jurisdiction of the California Department of Water Resources, Division of Safety of Dams (DSOD).”² It also goes on to state that, “The action alternatives would be fully integrated with the CVP and SWP systems. Consequently, the action alternatives would affect operations and resultant storage, flows, and diversions associated with the CVP and SWP systems and respective streams and waterways.”³ The stated integration is further explained on page 6-23: “Annual operations are conducted for multi-year carryover. The current methodology is to retain half of the Lake Oroville [State Water Project] storage above a specific level for subsequent years. That level has been established at 1 MAF; however, this does not limit drawdown of the reservoir below that level. If hydrology is drier than expected, or requirements greater than expected, additional water would be released from Lake Oroville. The operations plan is updated regularly to reflect changes in hydrology and downstream operations. Project operations are directly constrained by downstream operational constraints and flood management criteria.” Clearly, DWR should be the CEQA lead agency for the DEIS/EIR.

II. The DEIS/EIR Contains an Inadequate Project Description

A “finite project description is indispensable to an informative, legally adequate EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192. CEQA defines a “project” to include “the whole of an action” that may result in adverse environmental change. CEQA Guidelines § 15378. A project may not be split into component parts each subject to separate environmental review. *See, e.g., Orinda Ass’n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428. Without a complete and accurate description of the project and all of its components, an accurate environmental analysis is not possible. *See, e.g., Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 533; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450; *Blue Mountains Biodiversity Project v. United States Forest Service*, 161 F.3d 1208, 1215 (9th Cir. 2008).

The National Environmental Policy Act (“NEPA”) requires an accurate and consistent project description in order to fulfill its purpose of allowing informed decision-making. 43 u.s.c. s 4332(2)(c). Without a complete and accurate description of the project and all of its components, an accurate environmental analysis is not possible. *See, e.g., Blue Mountains Biodiversity Project v. United States Forest Service*, 161 F.3d 1208, 1215 (9th Cir. 2008).

As discussed further, below, the DEIS/EIR fails to comport with these standards in such basic areas as the description of the environmental setting, evaluation of potentially significant impacts, and

¹ *Planning and Conservation League et al. v Department of Water Resources* (2000) 83 Cal.App.4th 892, 907, citing *Kleist v. City of Glendale* (1976) 56 Cal. App. 3d 770, 779.

² JPA and Bureau, 2017. Sites Reservoir DEIS/EIR. p. 17-14.

³ (*Id.*) p. 6-38.

formulation of mitigation measures, among other issues. All are rendered unduly imprecise, deferred, and incomplete, subject to theoretical choices taking shape at some, unknown, future time.

A. The Project / Proposed Action Alternative Description Lacks Detail Necessary for Full Environmental Analysis.

1. The source water for the Project is not identified.

It is insufficient to refer to the Sacramento River as the source of the water for the proposed Project without explaining how the water will be available. The unimpaired runoff of the Sacramento River basin is 21.6 MAF, but the consumptive use claims are an extraordinary 120.6 MAF – 5.6 times more claims than there is available water.⁴

Additionally, it is completely inadequate to reference a future water right. “The Authority intends to apply for water rights consistent with the application filed on September 30, 1977 (#25517). This application is under the control of the SWRCB and is expected to be treated as a ‘State Filing’ under California Water Code 10500.”⁵ In a recirculated DEIS/EIR, the Lead Agencies must move far beyond this simplistic and vague assertion by providing at a minimum the details of the 1977 application, how it applies to the proposed Project, the exact origin of the water, what volume of water is involved, and how it would impact other surface and ground water users in the area of origin.

2. Statewide demand for water from the Sacramento River Watershed is not identified.

As noted above, there are extraordinary consumptive claims on water from the Sacramento River basin that exceed the unimpaired runoff by 5.6 times. However, the sources of these claims are not disclosed or considered in the formulation of Project alternatives. Understanding the location and type of demand would have provided significant opportunities for alternative development that could be far more cost-effective and less detrimental to the over-subscribed Sacramento River watershed.

3. Water quality impairment impacts are missing

The risks to surface water quality is minimized in the DEIS/EIR. This significant deficiency leads to the conclusions that, “Because no potentially significant direct water quality impacts were identified, no mitigation is required or recommended.”⁶ However, there are significant minerals in question such as sodium salt, mercury, chromium, boron and selenium. These substances are common in the geological setting that is the western edge of the Central Valley. The Sites DEIS/EIR certainly describes some existing concentrations of these substances in the creeks that flow out of the primary area, but fails to analyze how inundation with high winter Sacramento River flows combined with evaporative enrichment can cause elevated concentrations in terminal water bodies like the proposed reservoir, downstream ecosystems, and irrigated landscapes.

4. Groundwater conditions in the source watershed are lacking

The DEIS/EIR should disclose current groundwater conditions (see Table 1). Additionally, the DEIS/EIR assumption that the proposed Project will satiate the demand for water and therefore stem the decline of groundwater is unsupported by history or fact. The deficit in information regarding groundwater impacts should be addressed.

⁴ California Water Impact Network, AquAlliance, and California Sportfishing Protection Alliance 2012. *Testimony on Water Availability Analysis for Trinity, Sacramento, and San Joaquin River Basins Tributary to the Bay-Delta Estuary.*

⁵ JPA and Bureau 2017 Sites Reservoir Project DEIS/EIR. p. 4-15.

⁶ (*Id.*) p. 7-84.

Table 1.

County	Deep Wells (Max decrease gwe) Fall '04 - '15	Deep Wells (Max decrease gwe) Fall '04 - '16	Deep Wells (Avg. decrease gwe)** Fall '04 - '15	Deep Wells (Avg. decrease gwe)** Fall '04 - '16
Butte	-20.6 (-12.7)*	-28.3	-12.8 (-10.5)*	-10.9
Colusa	-87.3 (-59.5)*	-66.4	-35.0 (-59.5)* (only 1 well monitored in 2014)	-26.3
Glenn	-89.9 (-79.7)*	-65.8	-40.1 (-44.3)*	-27.3
Tehama***	-44.0 (-34.6)*	-35.8	-11.6 (-10.9)*	-10.3

County	Intermediate Wells (Max decrease gwe) Fall '04 - '15	Intermediate Wells (Max decrease gwe) Fall '04 - '16	Intermediate Wells (Avg. decrease gwe)** Fall '04 - '15	Intermediate Wells (Avg. decrease gwe)** Fall '04 - '16
Butte	-26.0 (-23.0)*	-28.3	-12.9 (-9.4)*	-11.6
Colusa	-125.4 (-40.6)*	-78.9	-32.4 (-22.6)*	-23.2
Glenn	-58.0 (-57.2)*	-58.3	-26.7 (-25.0)*	-20.0
Tehama***	-35.9 (-30.2)*	-29.3	-13.6 (-12.4)*	-12.7

County	Shallow Wells (Max decrease gwe) Fall '04 - '15	Shallow Wells (Max decrease gwe) Fall '04 - '16	Shallow Wells (Avg. decrease gwe)** Fall '04 - '15	Shallow Wells (Avg. decrease gwe)** Fall '04 - '16
Butte	-19.2 (-17.6)*	-18.3	-8.0 (-5.9)*	-5.2
Colusa	-51.4 (-36.7)*	-51.7	-10.5 (-7.6)*	-9.2
Glenn	-58.0 (-53.5)*	-59.6	-15.8 (-15.1)*	-12.7
Tehama***	-34.1 (-30.2)*	-36.3	-11.1 (-9.5)*	-10.5

1. * 2004-2014 monitoring results are in parentheses for comparison with 2015 results.
2. ** Some average well depth numbers are not accurately comparable between 2004-2014 and 2004-2015 due to a change in the number of wells monitored.
3. *** Tehama in the Sacramento Valley groundwater basin.
4. Highlighted in yellow are negative changes of over 10 feet from 2014 to 2015.

5. Short and long term soil impacts are ignored

Reservoir creation and operation always result in denuding the acres of inundation. Chapter 33 mentions that the vegetated landscape would be converted without disclosing the obvious: total elimination of vegetation that currently serves to reduce storm runoff erosion.⁷ The analysis failed to disclose the inevitable increase in erosion of soils that are exposed during the filling and re-filling of the reservoir. The DEIs/EIR failed to disclose the toxic mineral contents of soils in the footprint of the reservoir that will be exposed to repeated and unmitigated storm runoff erosion. The most significant minerals in question are sodium salt, mercury, chromium, boron and selenium.⁸

⁷ (*Id.*) p. 33-3. "Implementation of any of the Project's action alternatives would result in a change in the existing landscape character of the areas surrounding each Project facility site. The permanent conversion of a vegetated landscape to the Project and its associated facilities would be a major change to the landscape."

⁸ Regional Water Quality Control Board 1988. *Water Quality Survey for Selenium in the Sacramento River and Its Major Tributaries*. "Historical data on selenium concentrations in surface water of the Sacramento River Basin indicated periods of elevated selenium levels, especially from areas originating in the western portion of the basin." p. 8. http://www.waterboards.ca.gov/rwqcb5/water_issues/swamp/historic_reports_and_faq_sheets/bckgrnd_selenium/wq_survey_sacrvt_tribs_88.pdf

B. The DEIS/EIR Improperly Segments Environmental Review of the Whole of this Project.

As discussed throughout these comments, the proposed Project does not exist in a vacuum, but rather is part of a number of plans and programs, such as the Sacramento Valley Water Management Agreement (aka Phase 8 of the Bay-Delta Water Rights Proceeding)⁹ and the now defunct CalFed effort.¹⁰

1. The Sacramento Valley Water Management Agreement Lurks Behind the Project.

The proposed Project is, in fact, just one project piece required to implement the Sacramento Valley Water Management Agreement (“SVWMA”)(Exhibit A). The Bureau has publically stated the need to prepare programmatic environmental review for the SVWMA for over a 14 years, and the present DEIS/EIR covers a significant portion of the program agreed to under the SVWMA. In 2003, the Bureau published an NOI/NOP for a “Short-term Sacramento Valley Water Management Program EIS/EIR.” (68 Federal Register 46218 (Aug 5, 2003).) The *Short-term Sacramento Valley Water Management Program EIS/EIR* was never published, but a summary is found on the Bureau’s current web site:

The Short-term phase of the SVWM Program resolves water quality and water rights issues arising from the need to meet the flow-related water quality objectives of the 1995 Bay-Delta Water Quality Control Plan and the State Water Resources Control Board's Phase 8 Water Rights Hearing process, and would promote better water management in the Sacramento Valley and develop additional water supplies through a cooperative water management partnership. Program participants include Reclamation, DWR, Northern California Water Association, San Luis & Delta-Mendota Water Authority, some Sacramento Valley water users, and Central Valley Project and State Water Project contractors. SVWM Program actions would be locally-proposed projects and actions that include the development of groundwater to substitute for surface supplies, conjunctive use of groundwater and surface water, refurbish existing groundwater extraction wells, install groundwater monitoring stations, install new groundwater extraction wells, reservoir re-operation, system improvements such as canal lining, tailwater recovery, and improved operations, or surface and groundwater planning studies. These short-term projects and actions would be implemented for a period of 10 years in areas of Shasta, Butte, Sutter, Glenn, Tehama, Colusa, Sacramento, Placer, and Yolo counties.¹¹

⁹ Exhibit A - 2001. *The Sacramento Valley Water Management Agreement*. “The workplans will identify a palette of voluntary water management measures that will lead to an integrated water management program. The program will include the coordinated use of storage facilities, management and recovery of tailwater through major drains, water conservation, conjunctive management of surface water and groundwater, and transfers and exchanges among Sacramento Valley water users and other water users in the state. Furthermore, the Agreement contains a commitment to implement Sites Reservoir as an integral component of the water management and water supply development program for the Sacramento Valley.” p. 8.

¹⁰ <http://calwater.ca.gov/>

¹¹ http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=788

The resounding parallels between the SVWMA NOI/NOP and the presently proposed project are not merely coincidence: they are a piece of the same program. In fact, the SVWMA specifically discloses the Sites Reservoir project.¹²

“Role of Sites Reservoir. The Parties recognize that new off-stream surface storage is an essential part of the long-term water management program, and agree that Sites Reservoir is a potentially significant off-stream surface-water storage project that could help meet the goals and objectives of this Agreement, including providing capacity to increase the reliability of water supplies for Upstream and Export Water Users, flexibility during critical fish migration periods on the Sacramento River, and storage benefits for other CALFED programs. Work being undertaken pursuant to CALFED’s Sites MOU will be integrated into this Agreement and the Parties will work with CALFED to accelerate feasibility studies and completion of appropriate environmental and permitting processes for the reservoir.”¹³

The SVWMA continues: “*Management Tools for this Agreement.* A key to accomplishing the goals of this Agreement will be the identification and implementation of a “palette” of voluntary water management measures (including cost and yield data) that could be implemented to develop increased water supply, reliability, and operational flexibility. Some of the measures that may be included in the palette are:

“...(v) Transfers and exchanges among Upstream Water Users and with the CVP and SWP water contractors, either for water from specific reservoirs, or by substituting groundwater for surface water; ¹⁴

(vi) Substitution of water from potential north of Delta reservoirs, such as Sites Reservoir, for groundwater, or river diversions, or maintaining water quality in the Delta...”¹⁵

It is abundantly clear that the Lead Agencies are proposing a project through the DEIS/EIR to implement management tools as required by the SVWMA. Nevertheless neither CEQA nor NEPA permit this approach of segmenting and piecemealing review of the whole of a project down to its component parts. The proposed Sites Reservoir will directly advance SVWMA implementation, and the Bureau and DWR must complete environmental review of the whole of the program, as first promised in 2003, but long since abandoned.

2. The DEIS/EIR fails to analyze the potential for seismic activity.

The project area has numerous existing structures that could be impacted by the proposed Project’s construction and operation. The DEIS/EIR acknowledges this in Chapter 17, yet defers proposing mitigation and monitoring to a future “project design” stage.¹⁶ Although the seismicity in the Sacramento Valley is lower than many areas of California, it is still significant.

The potential for the proposed reservoir to cause seismic activity is revealed at length in section *17.2.3.5 Reservoir-triggered Seismicity*, however analysis is lacking. This omission throughout the Primary Study Area for *Impact Seis-1: Exposure of People or Structures to Fault Rupture, Seismic Ground Shaking, Seismic-related Ground Failure, Liquefaction, or Landslides* leads to a repeated

¹² 2001. *The Sacramento Valley Water Management Agreement*. pp. 8, 12, etc.

¹³ (*Id.*) p. 12.

¹⁴ (*Id.*)

¹⁵ (*Id.*)

¹⁶ JPA and Bureau, 2017. Sites Reservoir Project DEIS/EIR pp. 17-27 to 17-31.

conclusion that, “[t]here would be a less-than-significant impact when compared to the Existing Conditions/No Project/No Action Condition” because “[d]esign specifications[would] be sufficient to mitigate an impact related to this slip,” “[P]roject design would account for the potential for localized slumping (i.e., landslides or trench wall failure) and liquefaction due to seismic shaking,” “Project design would address the potential for such instability.” Therefore, the DEIS/EIR proposes no mitigation or monitoring for known, and even disclosed, potential seismic activity.

Deference to a design phase of a project to some future date does not comport with what CEQA requires of a lead agency, which is to consider and adopt feasible mitigation measures that could reduce a project’s adverse impacts to less than significant levels. Pub. Resources Code §§ 21002, 21002.1(a), 21100(b)(3), 21151, 22081(a). An adequate environmental analysis in the DEIS/EIR itself is a prerequisite to evaluating proper mitigation measures: this analysis cannot be deferred to the mitigation measure itself. *See, e.g., Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412.

A mitigation measure is inadequate if it allows significant impacts to occur before the mitigation measure takes effect. *POET, LLC v. State Air Resources Board* (2013) 218 Cal.App.4th 681, 740. An agency may not propose a list of measures that are “nonexclusive, undefined, untested and of unknown efficacy.” *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95. Formulation of mitigation measure should generally not be deferred. CEQA Guidelines § 15126.4(a)(1)(B). If deferred, however, mitigation measure must offer precise measures, criteria, and performance standards for mitigation measures that have been evaluated as feasible in the EIR, and which can be compared to established thresholds of significance. *E.g., POET, LLC v. State Air Resources Board* (2013) 218 Cal.App.4th 681; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260; *Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011; CEQA Guidelines § 15126.4(a)(1)(B); *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275. Economic compensation alone does not mitigate a significant environmental impact. *See* CEQA Guidelines § 15370; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1122. Where the effectiveness of a mitigation measure is uncertain, the lead agency must conclude the impact will be significant. *Citizens for Open Govt. v. City of Lodi* (2012) 70 Cal.App.4th 296, 322; *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 242. An EIR must not only mitigate direct effects, but also must mitigate cumulative impacts. CEQA Guidelines § 15130(b)(3). The DEIS/EIR fails in this regard.

Under NEPA, “all relevant, reasonable mitigation measures that could improve the project are to be identified,” including those outside the agency’s jurisdiction,¹⁷ and including those for adverse impacts determined to be less-than-significant (40 C.F.R. § 1502.16(h)). Again, this is not done in the DEIS/EIR.

The EIS/EIR also fails to inform the public through any analysis of the potential effects excessive groundwater pumping in the study areas may have on the numerous known earthquake faults running through and about the north Delta area, and into other regions of Northern California. As recently detailed in a paper published by a well-respected British scientific journal, “[u]plift and seismicity driven by groundwater depletion in central California,” excessive pumping of groundwater from the Central Valley might be affecting the frequency of earthquakes along the San Andreas Fault, and raising the elevation of local mountain belts. The research posits that removal of groundwater lessens the weight and pressure on the Earth’s upper crust, which allows the crust to move upward, releasing pressure on faults, and rendering them closer to failure. There are significant existing groundwater

¹⁷ <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>

conditions that should be disclosed as well as the *2015-2024 Water Transfer Program's* volume of groundwater that will be extracted, as farmers are able to pump and then forego surface water in exchange for money.

6. The DEIS/EIR defers comprehensive surveys and regulatory requirements for historic and cultural resources.

Impacts to Cultural/Tribal Cultural Resources have not been fully investigated in the DEIS/EIR. Archaeological surveys are incomplete, consultation with involved tribes are not completed, and assessment of the project's potential Adverse Effects have not been analyzed. Cultural/tribal impacts have not been completed according to the requirements of NEPA and the National Historic Preservation Act ("NHPA"). After decades of proposals for the Project, the following has not been done: completed archaeological surveys with eligibility determinations, interviews of Native American Elders regarding possible Traditional Cultural Properties in the Project area, completed Section 106 consultations (NHPA) for the DEIS, and completed AB 52 consultations for the DEIR, with the results stated in the DEIR/EIS.

7. The DEIS/EIR defers comprehensive surveys and regulatory requirements for wetlands

Table 15-6, *Acre Summary of Wetlands and Other Waters in the Primary Study Area*, acknowledges in a footnote, "Total acreage does not include acreage associated with the Project Buffer, which has not been surveyed or mapped." Chapter 15 goes on to state that, "Total potential impacts, particularly with respect to feature length are conservative and would need to be delineated and evaluated as part of Project implementation." In addition, the DEIS/EIR confirms that, "It should be noted that all waters and wetlands identified as being potentially adversely affected by the construction of various Project facilities have been identified as jurisdictional wetland types in a *preliminary wetland delineation study* [emphasis added]. All potential jurisdictional features anticipated to be impacted by Project facilities shall be field-delineated, and waters and wetland delineations verified by the USACE."¹⁸

Delaying thorough studies and surveys for wetlands circumvents CEQA's requirement that the lead agency consider and adopt feasible mitigation measures that could reduce a project's adverse impacts to less than significant levels. Pub. Resources Code §§ 21002, 21002.1(a), 21100(b)(3), 21151, 22081(a). An adequate environmental analysis in the DEIS/EIR itself is a prerequisite to evaluating proper mitigation measures: this analysis cannot be deferred to the mitigation measure itself. *See, e.g., Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412.

C. The Project Description Contains an Inadequate Statement of Objectives, Purpose, and Need.

The lack of a stable project description/proposed alternative, as discussed, above, further obfuscates the need for the Project. Further, without programmatic criteria regarding the source of the water for the Project and disclosure of the potential beneficiaries, the public is not provided with even a basic understanding of the need for the Project. The glorified wish list on pages ES-4 to ES-5 appears to be an echo of the CalFed goals in the 1990s and the SVWMA, which is not disclosed anywhere in the

¹⁸ JPA and Bureau, 2017. Sites Reservoir Project DEIS/EIR. p. 15-53.

DEIS/EIR. As discussed above, the proposed Project is a component of the SVWMA that failed to produce programmatic NEPA and CEQA review.

The importance of this section in a NEPA document cannot be overstated. “It establishes why the agency is proposing to spend large amounts of taxpayers' money while at the same time causing significant environmental impacts... As importantly, the project purpose and need drives the process for alternatives consideration, in-depth analysis, and ultimate selection. The Council on Environmental Quality (CEQ) regulations require that the EIS address the "no-action" alternative and "rigorously explore and objectively evaluate all reasonable alternatives." Furthermore, a well-justified purpose and need is vital to meeting the requirements of Section 4(f) (49 U.S.C. 303) and the Executive Orders on Wetlands (E.O. 11990) and Floodplains (E.O. 11988) and the Section 404(b)(1) Guidelines. Without a well-defined, well-established and well-justified purpose and need, it will be difficult to determine which alternatives are reasonable, prudent and practicable, and it may be impossible to dismiss the no-build alternative”¹⁹

III. Hydrology

A. Water Quality

The project DDEIS/EIR downplays the evidence and the risk to surface water quality that is likely to occur upon execution of the Project. This significant deficiency leads to the conclusions that, “Because no potentially significant direct water quality impacts were identified, no mitigation is required or recommended.”²⁰ However, there are significant minerals in question such as sodium salt, mercury, chromium, boron and selenium. These substances are common in the geological setting that is the Western edge of the Central Valley. The Sites DEIS/EIR certainly describes some existing concentrations of these substances in the creeks that flow out of the primary area, but fails to analyze how inundation and evaporative enrichment can cause elevated concentrations in terminal water bodies like the proposed reservoir, downstream ecosystems, and irrigated landscapes.

1. Selenium

The Sites Reservoir planners surely must be aware of the potential for diminished water quality from naturally occurring selenium in the region they plan to inundate. A survey done by the Regional Water Quality Control Board (“RWQCB”) in 1988 demonstrated that Sacramento River water generally met water quality standards for selenium with the exception of streams that flowed into the valley draining the coast range. While the RWQCB survey did not directly measure selenium concentrations in the streams that drain the Antelope Valley, it did measure streams on both sides of the project. The survey indicated that precipitation events mobilize selenium in the watersheds of the Sites region to unsafe levels for fish, humans and agriculture.²¹

¹⁹ Federal Transportation and Highway Administration, 1990. *NEPA and Transportation Decision making: The Importance of Purpose and Need in Environmental Documents*.

<http://www.environment.fhwa.dot.gov/projdev/tdmneed.asp>

²⁰ JPA and USBR, 2017. Sites DEIS/EIR 2017. p. 7-84.

²¹ Regional Water Quality Control Board, Central Valley Region 1988. *Water Quality Survey for Selenium in the Sacramento River and its Major Tributaries*.

“Historical data on selenium concentrations in surface water of the Sacramento River Basin indicated periods of elevated selenium levels, especially from areas originating in the western portion of the basin. Selenium concentrations as high as 390 ug/L were recorded in surface water in the Sacramento River Basin. This concentration is similar to the levels found in agricultural drainage water entering Kesterson Reservoir via the San Luis Drain (USGS, 1985). Because of the concern over the effects that these selenium levels may have on aquatic life in both the River Basin and the Delta, a program of

The Sites DEIS/EIR fails to mention the local impacts that are likely to occur if the land is flooded. The Sites DEIS/EIR chapter 7 on surface water quality dismisses the topic: **“7.3.3 Topics Eliminated from Further Analytical Consideration** The major sources of selenium in the surface water bodies in the Extended, Secondary, and Primary study areas are from natural sources, related agricultural practices on the San Joaquin River, and from industries in the San Francisco Bay Area. ... The action alternatives also would not result in changes in generation of selenium from natural sources or San Francisco Bay Area industrial operations as compared to the Existing Conditions/No Project/No Action Condition. Therefore, the impact analyses related to selenium are not analyzed further in this EIR/EIS.”

According to USGS research, “Evaporative enrichment can cause elevated selenium concentrations in terminal water bodies” (p. 24) and “...selenium can be transported from source areas in mountains to irrigated areas in adjacent valleys” (p. 27).²² Therefore, the DEIS/EIR must survey the Antelope Valley watershed to determine the amount of selenium that is likely to dissolve into the stored water. Furthermore, the analysis must determine if evaporative enrichment would exacerbate any environmental or agricultural problems associated with excessive selenium concentrations.

8. Mercury

On page 28 of Chapter 7 the DDEIS/EIR recognizes the existing problem with mercury contamination in the watershed, but fails to identify the source that is mobilized upslope: “The Colusa Basin Drain was placed on the Section 303(d) list because of mercury contamination that exceeded the USEPA fish tissue residue criterion for methylmercury in fish (SWRCB, 2011). The Colusa Basin Drain contributed 3.3 percent of total mercury inputs to the Sacramento Basin between 1984 and 2003 (CVRWQCB, 2010).” However, the Sites DEIS/EIR failed to survey the project area

water quality monitoring was initiated to help define the sources of selenium and whether further assessment of waste discharge regulation was needed.” pdf p. 12;

“Of the samples taken prior to 1984, the highest reported selenium concentration occurred principally along the western half of the basin. Samples taken in the Stony Creek Watershed and the Clear Lake area showed consistently high values. Between 1980 and 1981, DWR conducted a trace element survey in the Stony Creek area in conjunction with the Thomes-Newville water storage project study (DWR Files). Total selenium concentrations regularly exceeded the 10 ug/L standard with the highest reported selenium at 240 ug/L. Samples taken in the Clear Lake area have shown concentrations reaching 80 ug/L for total selenium. The Colusa Basin Drain which receives runoff from the westside streams, as well as a significant amount of irrigation return flow, showed the highest concentration at 390 ug/L total selenium in 1981.” pdf p. 18

“A special survey in Black Butte Reservoir which included composite sediment sampling was conducted in October 1986 to verify historical data that showed high [selenium] values in the reservoir discharge.

“In October 1986, sediment and water samples were taken from the Black Butte Reservoir area, to verify historical data reporting selenium levels up to 240 ug/L (DWR files) and in response to selenium levels ranging from 0.7 mg/Kg to 1.9 mg/Kg detected in fish livers by the California Department of Fish and Game during 1984 and 1985.” pdf p. 20
http://www.waterboards.ca.gov/rwqcb5/water_issues/swamp/historic_reports_and_faq_sheets/bckgrnd_selenium/wq_survey_sacrvt_tribs_88.pdf

²² Ralph L. Seiler, et.al. 1999. *Areas Susceptible to Irrigation-Induced Selenium Contamination of Water and Biota in the Western United States* U.S. GEOLOGICAL SURVEY CIRCULAR 1180 <https://www.fws.gov/mountain-prairie/contaminants/papers/circ1180.pdf>.

to determine the presence or absence of mercury and describe how the project might mobilize and methylate mercury deposits that occur in this region.

To demonstrate the depth of existing knowledge regarding mercury in the Project's region, AquAlliance relied on previous documents for the Project, such as the *NORTH-OF-THE-DELTA OFFSTREAM STORAGE PROJECT DEIS/EIR PRELIMINARY ADMINISTRATIVE DRAFT DECEMBER 2013*. According to Chapter 7, Surface Water Quality, "The Sacramento River watershed is the major source of total mercury to the Delta, contributing approximately 90 percent of the total mercury loads (SRWP, 2004). In particular, the Cache Creek watershed is the major source of mercury to the Delta," (p.8).²³

Additionally, documentation by the U.S. Environmental Protection Agency ("USEPA") should have led the Lead Agencies to conduct vital surveys with which to analyze the probable impacts and propose mitigation in the DEIS/EIR. According to USEPA: "**Pollutant Sources** – The Cache Creek watershed lies within a region naturally enriched in mercury. Historic mercury mining activities are a major source of current and historic total mercury loads to the creeks (all mines are now inactive). Most of the historic loading is now distributed in the creek beds and floodplains downstream of the various mines, while mine waste from historic mine sites is an ongoing source. In addition to mine sites and contaminated creek sediment downstream of the mines, other sources of mercury include natural and anthropogenic erosion of soils with naturally occurring mercury, natural and altered geothermal springs, and atmospheric deposition. Activities in the watershed and near the creek channels can cause mobilization of mercury deposits (whether they are natural sources of mercury or anthropogenic sources). These activities, which include road maintenance, grazing, and timber activities, can cause erosion, which contributes mercury loads if the soil has elevated mercury levels.

"In addition, conditions that cause the methylation of total mercury are important factors influencing methylmercury levels. Methylmercury is produced in surface sediments by bacteria. The chemicals cycle and they also flux between the water column and deposition to the sediment. The methylated mercury is bioavailable to organisms in the food chain, so the active sediment layer is also an important source of methylmercury. Wetlands and marshes have higher rates of methylation, so loads of total mercury (that are available to be converted to methylmercury) and processes affecting methylation in these waterbodies are important considerations."²⁴

The Lead Agencies must withdraw the inadequate DEIS/EIR and conduct surveys in the Project's footprint and watershed to determine the presence or absence of mercury and describe how the Project might mobilize and methylate mercury deposits that occur in this region. After completing these tasks, the proponents may propose mitigation and monitoring, if that is even appropriate, and then recirculate a revised DEIS/EIR.

9. Man Made Chemicals

The Sites DEIS/EIR Appendix 28C has added to our concerns by describing numerous man-made hazardous material dumpsites and storage facilities that exist in the project area. Page 36 of the

²³ http://water.ca.gov/storage/docs/NODOS%20Project%20Docs/NODOS_Prelim_Admin_Draft_EIR/16-GMSP_prelim_admin_draft_Dec2013_w_figures.pdf

²⁴ USEPA 2015. *Water Quality Progress Report* (updated 6/15/2015), p. 3.

<https://www.epa.gov/sites/production/files/2015-07/documents/11-cache-bear-sulphur-harley-mercury-tmdl-implementation-report-2015-06-15.pdf>

DEIS/EIR, Appendix 28C (Environmental Records Searches)²⁵, attempts to identify the locations of 10 hazardous waste sites that exist in the project area. The assessment admits that the spill sites mentioned consist *only* of those sites that have operating permits, leaving the public to assume there are probably spill sites that have not been permitted or reported. Even some of the permitted sites lack specific locations. The list of sites includes numerous underground storage tanks, dump sites containing such items as inorganic solid waste, hydrocarbon solvents, unspecified solvent mixture, waste oil and mixed oil, unspecified oil waste, latex waste, Off-spec, aged or surplus org, unspecified organic liquid mixture, paint sludge and PCB spill sites. The PG&E PCB sites are mentioned without explaining how many sites there are, where they are located, and how much toxic material was dumped. On page 49 of the Appendix 28C there is an admission that the analysis makes “...no claims as to the completeness or accuracy of the referenced government sources or the completeness of the search. Our records are frequently updated but only as current as their publishing date and may not represent the entire field of known or potential hazardous waste or contaminated sites.” At a minimum, the DEIS/EIR should describe in detail how these hazardous sites might interact with Project construction and operation, how these sites might contaminate impounded water, and what mitigation and monitoring is planned for impacted water quality.

10. Salts

The Surface Water Quality section states, “The proposed Sites Reservoir would impound Stone Corral and Funks creeks, as well as inundate Salt Lake”²⁶ and continues with, “Saline water has been observed to seep from underground salt springs in the vicinity of the Salt Lake fault along the slopes above the valley and along the valley floor within the proposed inundation area of Sites Reservoir.

“These areas are generally located in the Funks Creek watershed. The water from the underground springs accumulates along the trough of the valley and forms Salt Lake (USGS, 1915). The size of Salt Lake and adjacent seasonal brackish wetlands varies with time. The wetted area appears to vary from 0 to 30 acres. The deeper water appears to be approximately 15 acres based on observations in 2017. The depth of the water has not been monitored.”²⁷

Chapter 7 also admits that saline water will increase the salinity of the water in storage and introduces a gross estimate on the impacts by assuming the volume of the Salt Lake and the amount of salt that is springing from the ground under current un-inundated conditions.²⁸ Not only have the proponents failed to accurately survey the depth or hydrodynamics of Salt Lake, they fail to imagine how much more active the saline springs would be if the reservoir was inundated.

Proponents are willing to admit the saline damage is worth investing money and effort into grouting the salt springs that fill the Salt Lake but they admit their efforts may be ineffective:

“Introduction of Saline Water into Sites Reservoir from Salt Lake

As described in Chapter 3 Description of the Sites Reservoir Alternatives, the springs that provide water to the Salt Lake would be grouted to reduce the amount of highly saline water from entering Sites Reservoir. However, the effectiveness of the grouting measures is not known at this time. Therefore, the water quality impact analysis for Sites Reservoir includes the following worst-case

²⁵ JPA and Bureau 2017. Sites Reservoir Project DEIS/EIR. Appendix 28C Environmental Records Searches http://cms.capitoltechsolutions.com/clientData/SitesProject/uploads/28-APP_28C_SitesDraftEIR-EIS_August2017.pdf

²⁶ Sites DEIS/EIR 2017. Chapter 7, p. 26.

²⁷ (*Id.*)

²⁸ (*Id.*) pdf p. 53.

evaluation, assuming that salt water continues to enter the reservoir in a similar manner as historical seepage.

“Based upon observations of the Salt Lake in 2017, it appears that the main body of Salt Lake is approximately 15 acres and could be 5 to 10 feet deep. These dimensions would result in a volume of 150 acre-feet. Evaporation rates for fresh water near Sites is approximately 5 feet/year, and saline water evaporates more slowly than fresh water.”²⁹

The optimistic but short sighted analysis of how much salinity would be introduced into the Sacramento River Basin if Sites Reservoir is filled is insufficient and must be reconsidered in a recirculated DEIS/EIR so as not to repeat the problems with high salinity discharges to natural waters and irrigation to agricultural land.

11. Other Toxic Minerals That Require More Detailed Analysis

- a) **7.2.4.3 Salt Lake** “The EC value on one occasion reached 194,100 micromhos per centimeter. The TDS measurement at this time was 258,000 mg/L. EC, TDS, sodium, and boron [in the salt lake] exceeded all Central Valley Basin Plan criteria. A few metals also were noted at very high concentrations (aluminum, iron, and manganese) and exceeded all criteria, and a few others exceeded some criteria (arsenic, copper, lead, and nickel). Levels of ammonia and orthophosphate also were noted at high levels and exceeded criteria.”³⁰
- b) **7.2.4.5 Stone Corral Creek** “Stone Corral Creek originates at approximately 700 feet elevation in the foothills west of Antelope Valley. As the intermittent stream flows into the grasslands of Antelope Valley, the channel is narrow and the banks eroded. The much larger Antelope Creek flows into Stone Corral Creek from the south near the town of Sites. Stone Corral Creek flows through the gap in the foothills and into the western Sacramento Valley.
 “DWR observed aluminum, arsenic, copper, iron, manganese, nickel, and phosphorus during intermittent sampling in Stone Corral Creek near Sites station during intermittent water quality sampling. The concentrations appeared to be higher during and immediately following storm events.”³¹
- c) **7.2.4.4 Funks Creek** “Funks Creek originates at approximately 850 feet elevation in the foothills west of Antelope Valley. DWR observed aluminum, arsenic, copper, iron, manganese, mercury, nickel, and phosphorus in Funks Creek at the Glenn-Colusa Irrigation District (GCID) Main Canal station during intermittent water quality sampling. The concentrations appeared to be higher during and immediately following storm events.”³²

B. Wetlands

There are significant wetlands losses from the Project: 185.3 acres. However, Table 15-6 has a footnote stating, “Total acreage does not include acreage associated with the Project Buffer, which

²⁹ (*Id.*) pdf p. 50.

³⁰ (*Id.*) pp.7- 26-28.

³¹ (*Id.*) p. 7-27.

³² (*Id.*)

has not been surveyed or mapped.”³³ Therefore, AquAlliance asserts once again that additional surveys must be completed and included in a recirculated DEIS/EIR.

In addition, although salinity is a problem with many ecosystems, there are unique, rare and precious plants and animals that take advantage of these salty environments. AquAlliance places a high value on these rare aquatic habitats. Destruction of the Alkaline Wetlands and the Salt Lake Pond will result in a potentially significant environmental impact by eliminating what was once an abundant wetland type that existed on the western edge of the Great Central Valley.³⁴ The DEIS/EIR fails to adequately analyze the value of these intentionally extirpated ecosystems.

The proposed mitigation for all wetland types identified in the DEIS/EIR is suspended to future federal and state permitting processes under the Clean Water Act.³⁵ Deferring mitigation and monitoring to some future date is not consistent with what CEQA requires of a lead agency, which is to consider and adopt feasible mitigation measures that could reduce a project’s adverse impacts to less than significant levels. Pub. Resources Code §§ 21002, 21002.1(a), 21100(b)(3), 21151, 22081(a). An adequate environmental analysis in the DEIS/EIR itself is a prerequisite to evaluating proper mitigation measures: this analysis cannot be deferred to the mitigation measure itself. *See, e.g., Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412.

C. Streamflow

Significant Past, Present, and Future Streamflow Depletion is Not Disclosed

Streamflow depletion is not mentioned in the DEIS/EIR. This deficiency strikes at the core of our critique, which views the CVP and the SWP as once operating within the law, albeit with more water on paper than could ever be available, until the limits of hydrology caused the Agencies and some of their contractors to look for tools to game the law – and the hydrology - of California. The CVP and SWP have extended water far from the areas of origin for agricultural, urban, and industrial uses. In so doing, particularly with paper water, the state and federal governments have facilitated a destructively unrealistic demand for water. Ever willing to destroy natural systems to meet demand for profit, the San Joaquin River dried up and subsidence caused by groundwater depletion in the San Joaquin Valley is even cracking water conveyance facilities.³⁶ Enter conjunctive use where the Agencies facilitate and their contractors implement river water sales and pump groundwater to continue crop production. The continual, long-term groundwater overdraft in the San Joaquin Valley, the expansion of new permanent crops in both the San Joaquin and Sacramento valleys, and groundwater substitution transfers by CVP and SWP contractors *all* cause streamflow depletion. Failing to disclose how the CVP and SWP cause streamflow depletion is a major omission as is the

³³ *(Id.)* p. 15-8.

³⁴ *(Id.)* pp. 15-22, 15-31.

³⁵ *(Id.)* p. 15-55.

³⁶ Sneed, et al., 2012. Abstract: *Renewed Rapid Subsidence in the San Joaquin Valley, California*.

“The location and magnitude of land subsidence during 2006–10 in parts of the SJV were determined by using an integration of Interferometric Synthetic Aperture Radar (InSAR), Global Positioning System (GPS), and borehole extensometer techniques. Results of the InSAR measurements indicate that a 3,200-km² area was affected by at least 20 mm of subsidence during 2008–10, with a localized maximum subsidence of at least 540 mm. Furthermore, InSAR results indicate subsidence rates doubled during 2008. Results of a comparison of GPS, extensometer, and groundwater-level data suggest that most of the compaction occurred in the deep aquifer system, that the critical head in some parts of the deep system was exceeded in 2008, and that the subsidence measured during 2008–10 was largely permanent.”
Conference presentation at *Water for Seven Generations: Will California Prepare For It?*, Chico, CA.

current state of streamflow depletion in the Sacramento River, the stated source for Project water (Exhibit B).³⁷ This must be corrected and included in a recirculated DEIS/EIR.

IV. Significant Historical Deficiencies

The DEIS/EIR and Draft Feasibility Report (“DFS”) (“Project Documents”) do their best to spin a positive from a negative. Just one example opens the door to serious deficiencies in the documents and the historic operations and management of the Central Valley Project (“CVP”) and the State Water Project (“SWP”) (“Projects”).

In addition to a need for better temperature management, there is also a need to improve flows for anadromous fish migration. In 2009, NMFS released a proposed Central Valley Salmon and Steelhead Recovery Plan (NMFS 2014). The proposed recovery strategy has many components, including the need to restore ecological flows throughout the Sacramento River Basin. There is a particular need to stabilize fall flows in the reach of the Sacramento River between Keswick Dam and RBPP to minimize dewatering of fall-run Chinook salmon redds, particularly during fall months. By exchanging water in NODOS for water in Lake Shasta, fall flows could be augmented in the portion of the Sacramento River downstream from Keswick Dam.³⁸

How is it that the Bureau, DWR, and member water districts in the JPA finds themselves in a position to need more water to protect an ever-dwindling number of fish? AquAlliance will try to jog the memories of the Lead Agencies to assist in correcting the major omissions in the Project Documents.

- **Gaming the Legal System.** The Projects’ joint operations in 2014 and 2015 operated outside state and federal laws as presented in the Temporary Urgency Change Petitions sought by the Agencies. Fish were decimated while the Bureau and the Department of Water Resources (DWR) (“Agencies”) operated outside water quality and flow requirements with the approval of the State Water Resources Control Board (“SWRCB”).³⁹
- **Ignoring Fish Agencies.** Reasonable and Prudent Alternatives (“RPAs”) from the Biological Opinions (“BOs”) were intended to protect species, but instead they are tipping into extinction due to the mismanagement of the Projects and the consistent waiver of requirements that have been sought by the Agencies and approved by the SWRCB.^{40 41}
- **Denying Over-Appropriation of Limited Water.** The avoidance in the DEIS/EIR of existing water right claims in the Central Valley including the junior claims of the Bureau and DWR must be corrected. Without this foundational background, the reviewer is unable to understand the Project and the claimed benefits that will theoretically accrue to the public and struggling species that have yet to see past permits and projects do anything of the kind.

Essential information needed would include the response to inquiries from the Governor’s Delta Vision Task Force where the SWRCB acknowledged that while average runoff in the Delta watershed between 1921 and 2003 was 29 million acre-feet annually, the 6,300 active

³⁷ Exhibit B. Custis, 2014. Graph for AquAlliance, *Comparison of Ground Water Pumping and Accretion, Sacramento Valley 1920-2009*.

³⁸ USBR 2017. *North-of-the-Delta Offstream Storage Investigation Draft Feasibility Report*, p. 2-14.

³⁹ California Sportfishing Protection Alliance et al., 2015. Protest Objection Petition for Reconsideration Petition for a Hearing, (p. 3).

⁴⁰ C-WIN et al. 2011. Complaint, California Water Impact Network, AquAlliance, and California Sportfishing Protection Alliance v. SWRCB, DWR and Respondent Bureau of Reclamation.

⁴¹ The Bay Institute, 2015. Appendix to Temporary Urgency Change Protest, February 2015.

water right permits issued by the SWRCB is approximately 245 million acre-feet⁴² By this analysis, **water rights on paper are 8.4 times greater than the real water in California's Central Valley rivers and streams diverted to supply those rights on an average annual basis.** And the SWRCB acknowledges that this 'water bubble' does not even take account of the higher priority rights to divert held by pre-1914 appropriators and riparian water right holders.⁴³ [emphasis added]

A recirculated DEIS/EIR would also include more current research that reveals that the average annual unimpaired flow in the Sacramento River basin is 21.6 MAF, but the consumptive use claims are an extraordinary 120.6 MAF – 5.6 times more claims than there is available water.⁴⁴ The public and the California Water Commission are owed full disclosure of these disparate water rights claims and their priority since close to half of the Project's costs are sought from public bonds,. Without it, the public and decision makers have insufficient information on which to support and make informed choices.

The Lead Agencies positive assertions for environmental benefit ring very hollow. History and past behavior are greater indicators of future behavior. No number of promises or lofty goals may polish such a tarnished legacy that required the weak-kneed admission above that there is, “[a] need to improve flows for anadromous fish migration.”

V. **Cultural Resources**

Impacts to Cultural/Tribal Cultural Resources have not been fully investigated in the EIS/EIR. Archaeological surveys are incomplete, consultation with involved tribes have not been completed, and assessment of the project's potential Adverse Effects have not been analyzed. Cultural/tribal impacts have not been completed according to the requirements of NEPA and NHPA. After decades of proposals for the Project, the following has not been done: completed archaeological surveys with eligibility determinations, interviews of Native American Elders regarding possible Traditional Cultural Properties in the Project area, completed Section 106 consultations (NHPA) for the DEIS, and completed AB 52 consultations for the DEIR, with the results stated in the DEIS/EIR.

The DEIS/EIR states that there are many archaeological sites in the Project areas, with the Primary Study Area containing “*habitation or village sites, temporary campsites, bedrock milling features, lithic scatters, and isolated artifacts, such as projectile points, ground stone implements, cores or core tools, and flakes (White et al., 2009)... Prehistoric archaeological resources may exist in portions of the Sites Reservoir Inundation Area and at some of the appurtenant facility locations that remain to be surveyed. These may include resources that are visible, as well as those that are completely buried and, therefore, invisible on the ground surface. Unmarked burials or cemeteries may be similarly present. As a result, areas that have not yet been studied would be surveyed prior to Project implementation. Furthermore, all prehistoric archaeological resources that are identified would be evaluated for NRHP/CRHR eligibility, and mitigation measures would be applied, as appropriate.*”⁴⁵

Eligibility determinations, and mitigation measures, need to be completed before project approval. Cultural resources may be forever destroyed if the Project is approved. The NO PROJECT

⁴² SWRCB, 2008. Water Rights Within the Bay Delta Watershed. pp. 2-3.

⁴³ (*Id.*) p. 1.

⁴⁴ California Water Impact Network, AquAlliance, and California Sportfishing Protection Alliance 2012. *Testimony on Water Availability Analysis for Trinity, Sacramento, and San Joaquin River Basins Tributary to the Bay-Delta Estuary.*

⁴⁵ JPA and Bureau 2017. Sites Reservoir Project DEIS/EIR. p. 18-25.

Alternative must remain a viable alternative if it is the only choice that protects priceless cultural resources from destruction.

Apparently, all the required studies are to be completed *after* Project approval! Because of this, no one knows the true environmental and cultural impacts of the Project. Yet a decision is supposed to be made by the lead agencies with an *incomplete*, and thus *inadequate* DEIS/EIR. This negates the whole purpose of Environmental Impact Statements and Environmental Impact Reports:

- NEPA regulations, 40 CFR 1500.1(b): “NEPA procedures must insure that environmental information is available to public officials and ***citizens before decisions are made and before actions are taken***. The information must be of high quality... [emphasis added]
- California Environmental Quality Act (CEQA) Guidelines, 21061: The purpose of an environmental impact report ***is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment***, to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” [emphasis added]

Instead of writing EIRs and EISs as originally intended, the Sites Project Lead Agencies are making EIRs and EISs absolutely worthless as informational documents. On p. 18-23 it is stated, “Once an action alternative is selected, additional cultural resources investigations, studies, and consultations would be required to comply fully with federal and State requirements.”

If this is allowed, then what is the point of these informational documents? What if the impacts to an actual Traditional Cultural Property (TCP) in the Project Area (documented from interviews with Native American Elders) is so great that the potential “significant and unavoidable” determination of this DEIS/EIR for traditional cultural properties *logically and humanely requires* a “No Project” decision?

A hypothetical “significant and unavoidable” impact on a hypothetical TCP, while implicitly implying Project approval, means nothing compared to the *real*, published findings of “significant and unavoidable” impacts *before* Project approval, so all can see the *actual* Project impacts.

A. SIGNIFICANT AND UNAVOIDABLE IMPACTS TO CULTURAL RESOURCES

1. Cumulative Impacts—potentially significant and unavoidable

The DEIS/EIR does not clearly and fully state even the *potential* “significant and unavoidable” impacts to cultural resources. In the Cumulative Impacts Chapter, it states: “35.3.13 Cultural/Tribal Cultural Resources Impact Cul-CI-1: The project alternatives would not result in a cumulatively considerable contribution to significant adverse cumulative effects on cultural resources” (p. 35-27). Yet this is contradicted on p. 35-28 when it is stated: “Impact Significance after Mitigation: The level of significance would be reduced due to the mitigation measures; however, *some impacts could be potentially significant and unavoidable*.” [Significance added]. Impacts could be the destruction of significant cultural resources eligible for listing on the National Register, and the destruction of sacred sites. These potential impacts need to be fully analyzed after an ethnographic study for the Project area, as well as eligibility determinations for the *completed* archaeological surveys for the project area.

Cultural Resources

Impact Cul-1: A Substantial Adverse Change in the Significance of an Archaeological Resource.

“Construction of the proposed Sites Reservoir and dams would impact 57 known archaeological sites and 197 archaeological isolates, primarily through clearing and grubbing, and filling the reservoir...None of the recorded sites have yet been evaluated for eligibility to the CRHR or the NRHP. Until these studies are completed, it is expected that the construction, operation, and maintenance of the Sites Reservoir Complex elements **would result in a potentially significant impact on archaeological sites.**” [emphasis added]. pp. 18-42 to 18-43.

12. Potentially significant and unavoidable impacts to a Traditional Cultural Property or a Tribal Cultural Resource.

“Impact Cul-3: Disturb a Traditional Cultural Property or a Tribal Cultural Resource As Defined in PRC Section 21074.

No TCPs/TCRs have been identified within the proposed Sites Reservoir Complex area, to date. Ethnographic studies and tribal consultations pursuant to PRC Section 21080.3.1 have not yet been undertaken and have the potential to identify TCPs/TCRs. **The construction, operation, and maintenance of the 1.3-MAF Sites Reservoir and dams could result in a potentially significant impact on TCPs/TCRs,** when compared to the Existing Conditions/No Project/No Action Condition.” [emphasis added] p. 18-43.

In summary, the DEIS/EIR is incomplete in its analysis of the Project’s impacts on cultural resources. A thorough DEIS/EIR would require recirculation of these documents after the completed studies. However, there is enough evidence in the DEIS/EIR to conclude that there are significant and unavoidable impacts to cultural/tribal cultural resources according to CEQA, NEPA, and the NHPA. Rather than recirculation of the EIR/EIS, choosing the No Project Alternative would be the best solution for protecting cultural/tribal resources, among many other significant environmental impacts.

VI. The EIS/EIR Fails to Adequately Analyze Numerous Cumulative Impacts.

The Ninth Circuit Court makes clear that NEPA mandates “a useful analysis of the cumulative impacts of past, present and future projects.” *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 810 (9th Cir. 1999). “Detail is required in describing the cumulative effects of a proposed action with other proposed actions.” *Id.* CEQA further states that assessment of the project’s incremental effects must be “viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (CEQA Guidelines § 15065(a)(3).) “[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts.” (CEQA Guidelines § 15065(a)(3).)

An EIR must discuss significant cumulative impacts. CEQA Guidelines §15130(a). Cumulative impacts are defined as two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. CEQA Guidelines § 15355(a). “[I]ndividual effects may be changes resulting from a single project or a number of separate projects. CEQA Guidelines § 15355(a). A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable future projects whose impacts might compound or interrelate with those of the project at hand. Cumulative impacts can result from individually minor but collectively significant

projects taking place over a period of time. CEQA Guidelines § 15355(b). The cumulative impacts concept recognizes that "[t]he full environmental impact of a proposed . . . action cannot be gauged in a vacuum." *Whitman v. Board of Supervisors* (1979) 88 Cal. App. 3d 397, 408 (internal quotation omitted).

In assessing the significance of a project's impact, the Bureau must consider "[c]umulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement." 40 C.F.R. §1508.25(a)(2). A "cumulative impact" includes "the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." Id. §1508.7. The regulations warn that "[s]ignificance cannot be avoided by terming an action temporary or by breaking it down into small component parts." Id. §1508.27(b)(7).

An environmental impact statement should also consider "[c]onnected actions." Id. §1508.25(a)(1). Actions are connected where they "[a]re interdependent parts of a larger action and depend on the larger action for their justification." Id. §1508.25(a)(1)(iii). Further, an environmental impact statement should consider "[s]imilar actions, which when viewed together with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography." Id. §1508.25(a)(3) (emphasis added).

As discussed, below, the DEIS/EIR fails to comport with these standards for cumulative impacts upon surface and groundwater supplies, vegetation, and biological resources; and, the baseline and modeling data relied upon by the DEIS/EIR that do not account for related transfer projects in the last 14 years.

A. Recent Past Transfers.

Because the groundwater modeling effort didn't include the most recent 14 years record (1961-2003)⁴⁶, it appears to have missed simulating the most recent periods of groundwater substitution transfer pumping and other groundwater impacting events, such as recent changes in groundwater elevations and groundwater storage (DWR, 2014b), and the reduced recharge due to the recent periods of drought. Without taking the hydrologic conditions during the recent 14 years into account, the results of the Central Valley Hydrologic Model ("CVHM") simulation may not accurately depict the current conditions or predict the cumulative effects from the proposed groundwater substitution transfer pumping during the *2015-2024 Water Transfer Program* and additional transfer programs such as the Yuba County Water Agency's. Below is a list of transfers from the recent past that should have been considered in the DEIS/EIR.

1. In 2009, the Bureau approved a one-year water transfer program under which a number of transfers were made. Regarding NEPA, the Bureau issued a FONSI based on an EA.
2. In 2010, the Bureau approved a two-year water transfer program (for 2010 and 2011). No actual transfers were made under this approval. Regarding NEPA, the Bureau again issued a FONSI based on an EA.

⁴⁶ JPA and Bureau 2017. Sites Reservoir Project DEIS/EIR. p. 10-28.

3. The Bureau planned 2012 water transfers of 76,000 AF of CVP water all through groundwater substitution.⁴⁷
4. In 2013, the Bureau approved a one-year water transfer program, again issuing a FONSI based on an EA. The EA incorporated by reference the environmental analysis in the 2010-2011 EA.
5. The Bureau and SLDMWA's 2014 Water Transfer Program proposed transferring up to 91,313 AF under current hydrologic conditions and up to 195,126 under improved conditions. This was straight forward, however, when attempting to determine how much water may come from fallowing or groundwater substitution during two different time periods, April-June and July-September, the reader was left to guess.⁴⁸

These closely related projects impact the same resources, are not accounted for in the environmental baseline, and must be considered as cumulative impacts. Additionally, the DEIS/EIR's treatment of transfers is to "assume" that there will not be impacts – a dangerous position without substantive support.⁴⁹ Exhibit B discussed above demonstrates the significant and long-term trend toward groundwater depletion and therefore river and stream depletion as the surface waters attempt to fill the voids underground.

The DEIS/EIR's assertion that "Therefore, it is assumed in the cumulative impact analysis that water transfers that result in significant adverse impacts would not continue," at least tacitly admits that there have been consequential impacts from water transfers, particularly groundwater substitution transfers.⁵⁰ An additional and relevant point is that the *2015-2024 Water Transfer Program's* FEIS/EIR is currently before the eastern district court in Fresno. A ruling may say a great deal about how secure future water transfers will be.

B. Yuba Accord

The relationship between the federal and state Agencies, and the very demanding San Luis Delta Mendota Water Authority that constantly seeks more NorthState water for its water districts, is not found in the DEIS/EIR, but is illuminated in a 2013 Environmental Assessment. "The Lower Yuba River Accord (Yuba Accord) provides supplemental dry year water supplies to state and Federal water contractors under a Water Purchase Agreement between the Yuba County Water Agency and the California Department of Water Resources (DWR). Subsequent to the execution of the Yuba Accord Water Purchase Agreement, DWR and The San Luis & Delta- Mendota Water Authority (Authority) entered into an agreement for the supply and conveyance of Yuba Accord water, to

⁴⁷ USBR 2012. Memo to the Deputy Assistant Supervisor, Endangered Species Division, Fish and Wildlife Office, Sacramento, California regarding Section 7 Consultation.

⁴⁸ The 2014 Water Transfer Program's EA/MND was deficient in presenting accurate transfer numbers and types of transfers. The numbers in the "totals" row of Table 2-2 presumably should add up to 91,313. Instead, they add up to 110,789. The numbers in the "totals" row of Table 2-3 presumably should add up to 195,126. Instead, they add up to 249,997. Both Tables 2-2 and 2-3 have a footnote stating: "These totals cannot be added together. Agencies could make water available through groundwater substitution, cropland idling, or a combination of the two; however, they will not make the full quantity available through both methods. Table 2-1 reflects the total upper limit for each agency."

⁴⁹ JPA and Bureau 2017. Sites Reservoir Project DEIS/EIR. p. 35-12. "[i]t is assumed in the cumulative impact analysis that water transfers that result in significant adverse impacts would not continue."

⁵⁰ (*Id.*)

benefit nine of the Authority's member districts (Member Districts) that are SOD [south of Delta] CVP water service contractors.”⁵¹

In a Fact Sheet produced by the Bureau, it provides some numerical context and more of DWR's involvement by stating, “Under the Lower Yuba River Accord, up to 70,000 acre-feet can be purchased by SLDMWA members annually from DWR. This water must be conveyed through the federal and/or state pumping plants in coordination with Reclamation and DWR. Because of conveyance losses, the amount of Yuba Accord water delivered to SLDMWA members is reduced by approximately 25 percent to approximately 52,500 acre-feet. Although Reclamation is not a signatory to the Yuba Accord, water conveyed to CVP contractors is treated as if it were Project water.”⁵² However, the Yuba County Water Agency (“YCWA”) may transfer up to 200,000 under Corrected Order WR 2008-0014 for Long-Term Transfer and, “In any year, up to 120,000 af of the potential 200,000 af transfer total may consist of groundwater substitution. (YCWA-1, Appendix B, p. B-97).”⁵³

Potential cumulative impacts from the Project and the YCWA Long-Term Transfer Program from 2008 - 2025 are not disclosed or analyzed in the DEIS/EIR. The *2015-2024 Water Transfer Program* could transfer up to 600,000 AF per year through the same period that the YCWA Long-Term Transfers are potentially sending 200,000 AF into and south of the Delta. How these two projects operate simultaneously could have a very significant impact on the environment and economy of the Feather River and Yuba River's watersheds and counties as well as the Delta. The involvement of Browns Valley Irrigation District and Cordua Irrigation District in both long-term programs must also be considered. This must be analyzed and presented to the public in a revised draft EIS/EIR.

Also not available in the DEIS/EIR is disclosure of any issues associated with the YCWA transfers that have usually been touted as a model of success. The YCWA transfers have encountered troubling trends for over a decade that, according to the draft Environmental Water Account (“EWA”) EIS/EIR, are mitigated by deepening domestic wells (2003 p. 6-81). While digging deeper wells is at least a response to an impact, it hardly serves as a proactive measure to avoid impacts. Additional information finds that it may take 3-4 years to recover from groundwater substitution in the south sub-basin⁵⁴ although YCWA's own analysis fails to determine how much river water is sacrificed to achieve the multi-year recharge rate. None of this is found in the Project DEIS/EIR. What was found in the *2015-2024 Water Transfer Program's* environmental review is that even the inadequate SACFEM2013 modeling reveals that it could take more than six years in the Cordua ID area to recover from multi-year transfer events, although recovery was not defined (pp, 3.3-69 to 3.3-70). This is a very significant impact that is not addressed cumulatively in the DEIS/EIR.

C. Biggs-West Gridley

The *Biggs-West Gridley Water District Gray Lodge Wildlife Area Water Supply* Project, a Bureau project, is not mentioned anywhere in the Vegetation and Wildlife or Cumulative Impacts sections.⁵⁵

⁵¹ Bureau of Reclamation, 2013. *Storage, Conveyance, or Exchange of Yuba Accord Water in Federal Facilities for South of Delta Central Valley Project Contractors*.

⁵² Bureau of Reclamation, 2013. *Central Valley Project (CVP) Water Transfer Program Fact Sheet*.

⁵³ State Water Resources Control Board, 2008. ORDER WR 2008 - 0025

⁵⁴ 2012. *The Yuba Accord, GW Substitutions and the Yuba Basin*. Presentation to the Accord Technical Committee. (pp. 21, 22).

⁵⁵ http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=15381

This water supply project is located in southern Butte County where Western Canal WD, Richvale ID, Biggs-West Gridley WD, and Butte Water District actively sell water on a regular basis, yet impacts to GGS from this project are not disclosed. This is a serious omission that must be remedied in a recirculated draft EIS/EIR.

D. Other Projects

Court settlement discussions between the Bureau and Westlands Water District over provisions of drainage service Case # CV-F-88-634-LJO/DLB will further strain the already over allocated Central Valley Project with the following conditions:

1. A permanent CVP contract for 890,000 acre-feet of water a year exempt from acreage limitations.
2. Minimal land retirement consisting of 100,000 acres; the amount of land Westlands claims it has already retired (115,000 acres) will be credited to this final figure. Worse, the federal government stated it would be satisfied with 100,000 acres of “permanent” land retirement.
3. Forgiveness of nearly \$400 million owed by Westlands to the federal government for capital repayment of Central Valley Project debt.
4. Five-Year Warren Act Contracts for Conveyance of Groundwater in the Tehama-Colusa and Corning Canals – Contract Years 2013 through 2017 (March 1, 2013, through February 28, 2018).

Additional projects with cumulative impacts upon groundwater and surface water resources affected by the proposed project:

1. The DWR Dry Year Purchase Agreement for Yuba County Water Agency water transfers from 2015-2025 to SLDMWA.⁵⁶
2. GCID’s *Stony Creek Fan Aquifer Performance Testing Plan* to install seven production wells in 2009 to extract 26,530 AF of groundwater as an experiment that was subject to litigation due to GCID’s use of CEQAs exemption for research.
3. Installation of numerous production wells by water districts that sell water, many with the use of public funds such as Butte Water District,⁵⁷ GCID, Anderson Cottonwood Irrigation District,⁵⁸ RD108, and Yuba County Water Authority⁵⁹ among others.
4. The Western Canal Water District and Richvale Irrigation District Water Transfers from 2018 to 2022.

⁵⁶ SLDMWA Resolution # 2014 386

http://www.sldmwa.org/OHTDocs/pdf_documents/Meetings/Board/Prepacket/2014_1106_Board_PrePacket.pdf

⁵⁷ Prop 13. Ground water storage program: 2003-2004 Develop two production wells and a monitoring program to track changes in ground.

⁵⁸ “The ACID Groundwater Production Element Project includes the installation of two groundwater wells to supplement existing district surface water and groundwater supplies.”

http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=8081

⁵⁹ Prop 13. Ground water storage program 2000-2001: Install eight wells in the Yuba-South Basin to improve water supply reliability for in-basin needs and provide greater flexibility in the operation of the surface water management facilities. \$1,500,00;

VII. Additional Comments

A. **Reduced reliance on water from the Delta**

Water Code Section 85021 requires that all regions of California reduce their dependence on water imported from the Delta: “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.” How will the proposed Project adhere to this requirement?

B. **The DEIS/EIR is unfriendly to the reader.**

The Lead agencies have inhibited ease of review for the reader with the electronic files they provided.

- The online and CD versions of the DEIS/EIR and its many appendices are only found as separate files. Navigating over 2,000 pages in the DEIS/EIR, not including the appendices, is onerous for the reader.
- When opened, the separate chapter and appendix files do not display the title of the chapter or appendix in the Acrobat title bar, but instead they all read “Sites Reservoir Project Public Draft EIR/EIS.”
- The appendix files fail to provide the name of the appendix even in the unopened file, but instead they only provide the number of the appendix, such as “01-APP_1A_SitesDraftEIR-EIS_August2017.”

VIII. Conclusion

The Lead Agencies careless treatment of the the serious issues enumerated above and DWR’s specious avoidance of the CEQA lead agency role leave the proposed Project woefully adequate. In so doing, this deprives decision makers and the public of their ability to evaluate the potential environmental effects of this Project and violates the full-disclosure purposes and methods of both NEPA and CEQA. For each of the foregoing reasons, at a minimum, we urge the Lead Agencies to withdraw the environmental review document for this Project. If you choose to move forward, the Project Documents must be substantially revised and recirculated for public and agency review and comment.

AquAlliance respectfully requests notification of any meetings or actions that address this Project.

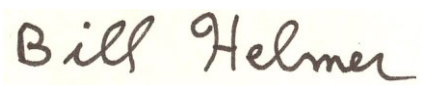
Sincerely,



Barbara Vlamis
Executive Director
AquAlliance
P.O. Box 4024
Chico, CA 95927



Jim Brobeck
Water Policy Analyst
AquAlliance
jimb@aqualliance.net



Bill Helmer
amargosa23@gmail.com

The Sacramento Valley

Water Management Agreement



September 2001

*The Sacramento Valley Water Management Agreement
is a grassroots, collaborative effort to increase water supplies
for farms, cities, and the environment*

Sacramento Valley Water Resources



Sacramento Valley at a Glance

- The Sacramento River supplies 80 percent of the water flowing into the Delta.
- The Sacramento River and its tributaries are major habitat and spawning grounds for threatened and endangered fish species.
- The Sacramento Valley has more than 20 percent of California's total irrigated acreage.
- Sacramento Valley water shortages are predicted to continue for both average and drought years.
- The Sacramento Valley is a major resting point for millions of migratory waterfowl on the Pacific Coast Flyway.
- The Sacramento Valley is home to 2 million people.



The Sacramento Valley

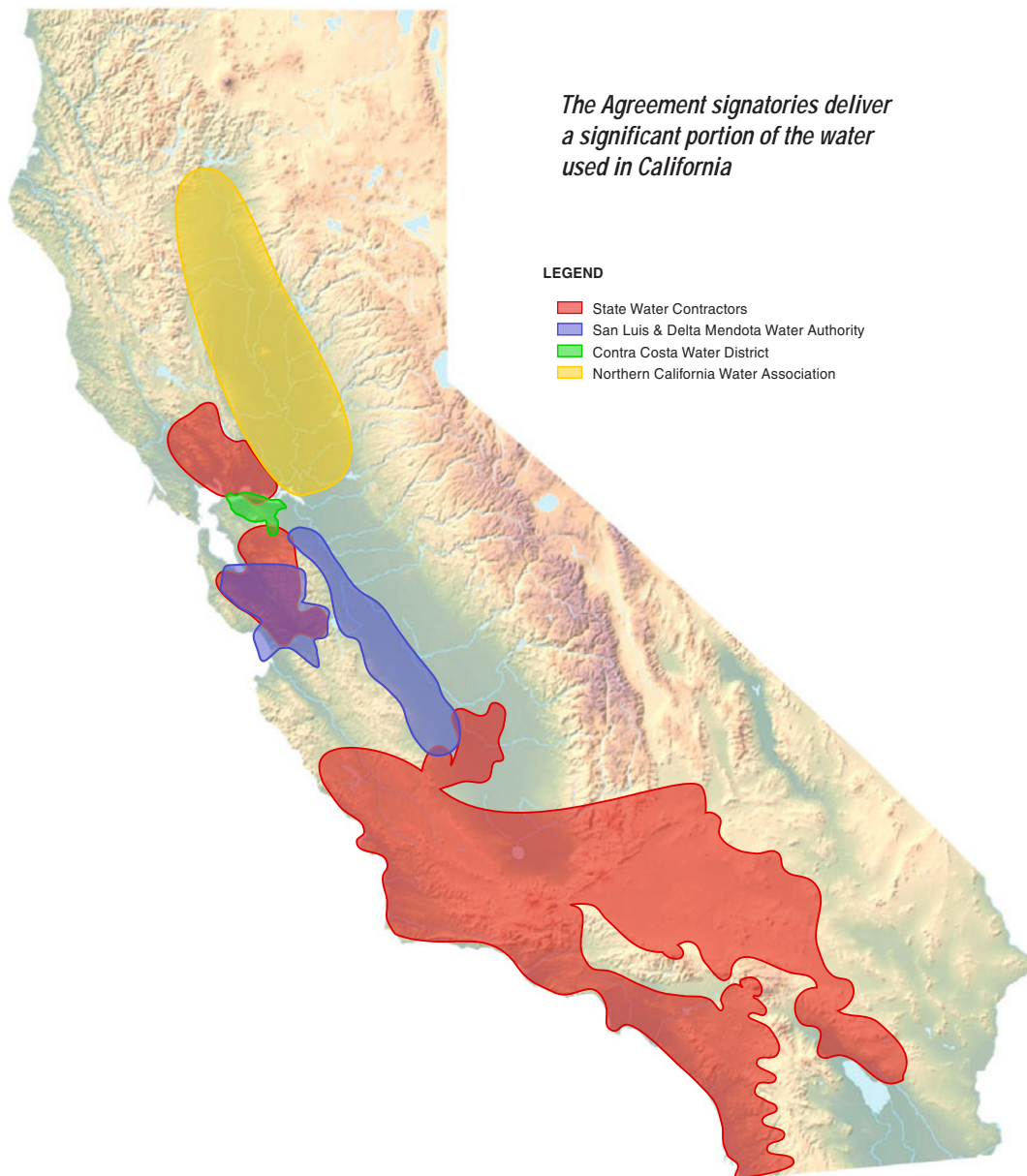
Water Management Agreement

Contents

- Pg. 3 Agreement Benefits
- Pg. 4 Bay-Delta Water Quality
- Pg. 7 Unprecedented Cooperation
- Pg. 8 Workplans for Implementation
- Pg.11 Appendix A - The Sacramento Valley Water Management Agreement
- Pg.17 Appendix B - U.S. Bureau of Reclamation and California Department of Water Resources Letter
- Pg.19 Appendix C - State Water Resources Control Board Decision

The Sacramento Valley Water Management Agreement

In April 2001, more than 100 organizations reached an unprecedented agreement to manage water in a way that meets water supply, water quality, and environmental needs in the Sacramento Valley and throughout California.



Agreement Benefits



Increased supplies for all uses

Through integrated water management strategies, upstream and export water users will be able to optimize existing water supplies, enhance water quality, and develop additional supplies. This will enable them to meet existing and future water needs and enhance their water management flexibility.



Sustainable solution

The Sacramento Valley Water Management Agreement (Agreement) calls for solutions to complex problems, rather than stopgap measures. Solutions will be implemented in two tiers, based on how quickly the project can be implemented and begin providing benefits.



Timely resolution

The Agreement provides firm milestones to complete a joint workplan for short-term projects within the first 180 days. These projects will provide benefits for the 2002 and 2003 water years; a long-term workplan will be completed within 1 year.



Environmental restoration

The programs and projects provided for in the Agreement will avoid unmitigated impacts to Delta water quality and the environment and will be developed and implemented to provide environmental benefits, including benefits to fish and wildlife, in the Sacramento River watershed.



Water quality standards will be met

The California Department of Water Resources and the U.S. Bureau of Reclamation will continue to voluntarily meet the requirements in the State Water Resources Control Board 1995 Water Quality Control Plan to protect the Bay-Delta until a long-term solution is negotiated as a part of the Agreement.



Consistent with other water management activities

The projects implemented under this Agreement are consistent with the August 2000 CALFED Bay-Delta Program Record of Decision and with the CALFED Integrated Storage Investigation.

A 40-Year Struggle for Bay-Delta Water Quality

1959
Delta Protection Act passed.

1973
California Department of Fish and Game (DFG) conclude Peripheral Canal best Delta water facility.

1977
California experiences driest year on record.

1978
SWRCB issues Water Right Decision 1485 (D-1485) requiring Central Valley Project (CVP) and State Water Project (SWP) operations to meet Delta water quality standards.

1982
Voters defeat Proposition 9 – the Peripheral Canal Measure.

1971
State Water Resources Control Board (SWRCB) issues Delta Water Right Decision 1379.

1974
Department of Water Resources (DWR), DFG, U.S. Bureau of Reclamation (USBR) and U.S. Fish and Wildlife Service (USFWS) sign statement of intent that agencies will provide protection of Delta fish and

1979
USBR announces CVP will voluntarily comply with D-1485 until mandatory compliance is resolved.

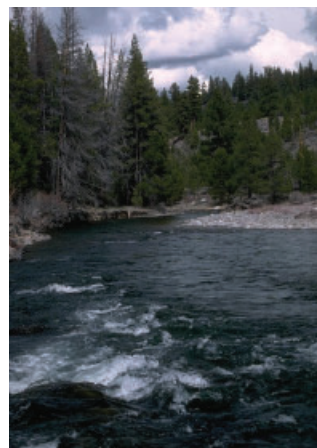
1986
Racanelli Appellate Court Decision requires SWRCB to revise water rights and water quality process.

Historic USBR-DWR Coordinated Operation Agreement authorized by Congress.

California's Sacramento Valley is rich in agricultural and environmental resources and serves as a major resting point for millions of migratory waterfowl on the Pacific Coast Flyway. The Sacramento River is the lifeblood of this Valley. The Sacramento River and its tributaries are major habitat and spawning grounds for threatened and endangered fish species and supply more than 80 percent of the inflows to the Sacramento-San Joaquin Delta. The Delta is the largest estuary on the west coast and serves as the hub for California's water system.

Competing agricultural, environmental, and urban uses create serious water management challenges within the Sacramento Valley. Current forecasts predict continuing statewide water shortages in both average and drought years. Water managers are striving to ensure that the water supply is of both adequate quantity and quality for the many uses.

For nearly 40 years, the State of California has struggled to develop the appropriate water quality standards for the Bay-Delta and to determine which water sources are required to meet those standards. This struggle has involved years of contention and litigation and has been elevated to the United States Supreme Court.



A major breakthrough occurred in late 1994 with the so-called Bay-Delta Accord (Accord). The Accord set water quality standards and required the State Water Resources Control Board (Board) to determine which water users would be responsible to meet these standards. In 1995 the Board adopted the Water Quality Control Plan (Plan) as a tool to implement the Accord. The California Department of Water Resources (Department) and the U.S. Bureau of Reclamation (Bureau) have been voluntarily meeting the Plan's water quality standards on an interim basis. Meanwhile, the Board held water rights proceedings to determine final responsibility for meeting the standards.



1987
SWRCB begins proceedings to revise D-1485 upon U.S. Environmental Protection Agency (USEPA) declaration that it is inadequate to protect Bay-Delta water quality.

1992
President George Bush signs CVP Improvement Act, requiring among other things, 800,000 a.f. of water annually for the environment.

1994
Bay-Delta Accord signed. CALFED formed.

Sacramento River winter-run chinook salmon listed as federal endangered species.

1995
SWRCB adopts new water quality standards and begins water rights proceedings.

1998
CALFED released programmatic draft EIS/EIR offering three alternatives for Delta restoration.

2001
Sacramento Valley Water Management Agreement.

1988
Senate Bill 34 passes, providing \$120 million over 10 years for Delta levee maintenance.

1991
SWRCB releases new salinity control plan for Bay-Delta.

USEPA calls for more stringent standards.

1993
Delta smelt declared federal threatened species. SWRCB resumes work on permanent Delta Water Quality Standards.

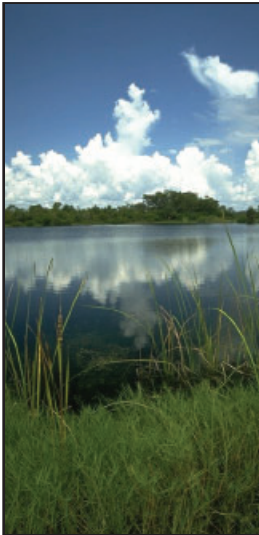
USEPA proceeds with setting federal Bay-Delta standards.

1997
Steelhead listed as federal threatened species.

1999
Splittail minnow and spring-run chinook salmon listed as federal threatened species.

2000
CALFED Record of Decision.

San Joaquin River Agreement.



Bay-Delta Water at a Glance

- More than 22 million people depend on the Delta for drinking water.
- More than 750 species of plants and animals call the Bay-Delta home, making it the richest ecosystem on the west coast.
- Seven million acres of the nation's most productive agricultural lands depend on Bay-Delta water to irrigate crops and water livestock.
- The Delta is a critical source of freshwater to blend with high salinity waters in other areas of the state to provide safe water for agricultural, environmental, and urban uses.

Phases 1 through 7 of the water rights proceedings involved the San Joaquin Valley and other Delta issues. After completion of these phases, the contentious Sacramento Valley issues (Phase 8) loomed over the State's water users.

In Phase 8, the Department and the Bureau claim that certain water rights holders in the Valley must cease diversions or release water from storage to help meet Delta water quality standards. Sacramento Valley water users believe

their use has not contributed to water quality problems in the Delta; and as senior water right holders and water users within the watershed and counties of origin, they contend they are not responsible for meeting these standards. The Phase 8 process would ultimately determine which entities and individuals (if any) would be responsible for meeting water quality standards.

Agreement Partners

California Department of Water Resources
 U.S. Bureau of Reclamation
 State Water Contractors

San Luis & Delta-Mendota Water Authority
 Contra Costa Water District
 Northern California Water Association

San Luis & Delta-Mendota Water Authority includes the following:




- Banta-Carbona Irrigation District
- Broadview Water District
- Central California Irrigation District
- Centinella Water District
- City of Tracy
- Columbia Canal Company
- Del Puerto Water District
- Eagle Field Water District
- Firebaugh Canal Water District
- Fresno Slough Water District
- Grassland Water District
- James Irrigation District
- Laguna Water District
- Mercey Springs Water District
- Oro Loma Water District
- Pacheco Water District
- Pajaro Valley Water Management Agency
- Panoche Water District
- Patterson Irrigation District
- Plain View Water District
- Pleasant Valley Water District
- Reclamation District 1606
- San Benito County Water District
- San Luis Canal Company
- San Luis Water District
- Santa Clara Valley Water District
- Tranquility Irrigation District
- Tummer Island Water District
- West Side Irrigation District
- West Stanislas Irrigation District
- Westlands Water District
- Widren Water District


Northern California Water Association includes the following:

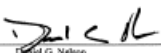
- Brophy Water District
- Browns Valley Irrigation District
- Cordua Irrigation District
- Feather Water District
- Garden Highway Mutual Water Company
- Glenn-Colusa Irrigation District
- Joint Water Districts Board
 - Biggs-West Gridley Water District
 - Butte Water District
 - Richvale Irrigation District
 - Sutter Extension Water District
- Maxwell Irrigation District
- Natomas Mutual Water Company
- Pelger Mutual Water Company
- Plumas Mutual Water Company
- Princeton-Codora-Glenn Irrigation District
- Provident Irrigation District
- Ramirez Water District
- Reclamation District 108
- Reclamation District 1004
- South Sutter Water District
- South Yuba Water District
- Sutter Bypass-Butte Slough Water UA
- Sutter Mutual Water Company
- Tehama-Colusa Canal Authority
 - Colusa County Water District
 - Corning Water District
 - Cortina Water District
 - Davis Water District
 - Dunnigan Water District
 - 4-M Water District
 - Glenn Valley Water District
 - Glide Water District
 - Holthouse Water District
 - Kanawha Water District
 - Kirkwood Water District
 - LaGrande Water District
 - Myers-Marsh Mutual Water Co.
 - Orland-Artois Water District
 - Proberta Water District
 - Thomes Creek Water District
 - Westside Water District
- Thermalito Irrigation District
- Tudor Mutual Water Company
- Western Canal Water District
- Yuba County Water Agency

State Water Contractors includes the following:


- Alameda County Flood Control and Water Conservation District Zone 7
- Alameda County Water District
- Antelope Valley-East Kern Water Agency
- Casitas Municipal Water District
- Castaic Lake Water Agency
- Central Coast Water Authority
- City of Yuba City
- Coachella Valley Water District
- County of Kings
- Crestline-Lake Arrowhead Water Agency
- Desert Water Agency
- Dudley Ridge Water District
- Empire-West Side Irrigation District
- Kern County Water Agency
- Littlelock Creek Irrigation District
- Metropolitan Water District of Southern California
- Mojave Water Agency
- Napa County Flood Control and Water Conservation District
- Oak Flat Water District
- Palmdale Water District
- San Bernardino Valley Municipal Water District
- San Gabriel Valley Municipal Water District
- San Geronimo Pass Water Agency
- San Luis Obispo County Flood Control and Water Conservation District
- Santa Clara Valley Water District
- Solano County Water Agency
- Tulare Lake Basin Water Storage District

DEPARTMENT OF WATER RESOURCES
 DATED: 3/23/01 By: 
 Approved as to legal form and authority.

 ASST. DIR. OF LEGAL COUNSEL
 DIVISION OF LEGAL COUNSEL
 OFFICE OF REGIONAL SOLICITOR
 DEPARTMENT OF WATER RESOURCES
 UNITED STATES BUREAU OF RECLAMATION
 MID-PACIFIC REGION
 DATED: 3/14/01 By: 
 Lester A. Shaw
 Regional Director

STATE WATER CONTRACTORS
 DATED: 4/3/01 By: 
 John C. Coburn
 General Manager

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
 DATED: 3/30/01 By: 
 David G. Nelson
 Executive Director

CONTRA COSTA WATER DISTRICT
 DATED: 4/3/01 By: 
 Walter J. Binkley
 General Manager

NORTHERN CALIFORNIA WATER ASSOCIATION
 DATED: 4/4/01 By: 
 David J. Gray
 Executive Director

Unprecedented Cooperation

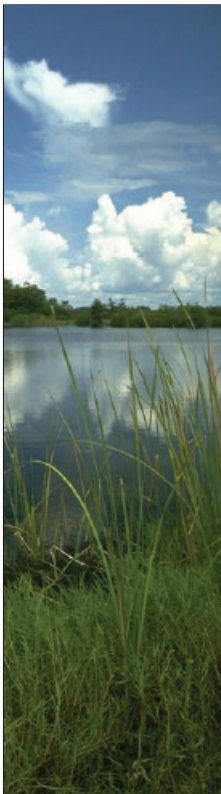
The Sacramento Valley Water Management Agreement is a grassroots, collaborative effort to increase water supplies to farms, cities, and the environment.

Proceeding with Phase 8 could involve litigation and judicial review for nearly 10 years. This extended process could result in adverse impacts to the environment and undermine progress on other statewide water management initiatives. To avoid the consequences of delay, the Sacramento Valley water users, the Department, the Bureau, and export water users developed the Sacramento Valley Water Management Agreement (Agreement). This Agreement establishes a framework to meet water supply, water quality, and

environmental needs in the areas of origin and throughout California in an unprecedented cooperative spirit. The Board on April 26, 2001, issued an order to postpone and possibly dismiss Phase 8 of its Bay-Delta water rights proceedings and allow implementation of the Agreement, thus providing an amicable way to resolve these contentious issues.

Regional Strategy Based on Collaboration

The cornerstone of the Agreement is that it was achieved and will be implemented through a collaborative process including Sacramento Valley water users, the Department, the Bureau, and export water users. This will include active participation by water district managers, technical consultants, and local political leaders. The Agreement provides the foundation for a regional strategy to ensure that local water needs are fully met while helping improve water supplies throughout the state.



Agreement Principles

- The state and federal export projects will continue to meet water quality standards in the Delta until a long-term solution is negotiated as a part of the Agreement.
- The parties fully commit to an integrated water management and water supply development program for the Sacramento Valley that will meet 100% of the water needs in the Sacramento Valley, improve the water supplies and quality for other areas of the state, and provide water for environmental purposes.
- The parties will work together to secure public funding for water management and supply projects in the Sacramento Valley that will help assure environmental restoration, optimize the use of existing water supplies and enable local interests to develop additional water supplies in areas of origin.
- By the end of 2001, the parties will prepare a joint workplan for short-term Sacramento Valley water management projects to implement the Agreement. Workplans on longer-term projects will follow in 2002.
- The parties will evaluate the projects and workplans against the Agreement's goals and principles on an ongoing basis to ensure that water needs are being met.

Next Steps: Workplans for Implementation



To implement the Agreement, the parties are preparing joint workplans. The workplans will describe certain Sacramento Valley projects and provide an estimate of the quantity of water or other water management benefits that can be realized by implementing these projects. The short-term workplan will provide benefits for 2002 and 2003 and will be completed by the end of 2001. The long-term workplan will be completed by May 2002.

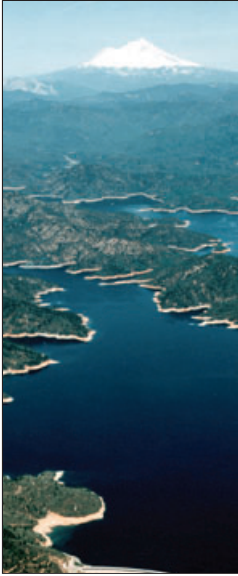
The workplans will identify a palette of voluntary water management measures that will lead to an integrated water management program. The program will include the

coordinated use of storage facilities, management and recovery of tailwater through major drains, water conservation, conjunctive management of surface water and groundwater, and transfers and exchanges among Sacramento Valley water users and other water users in the state. Furthermore, the Agreement contains a commitment to implement Sites Reservoir as an integral component of the water management and water supply development program for the Sacramento Valley.

The workplans are being developed through the process illustrated in Figure 1. It is a locally driven process, with

Figure 1 **Project Development Process**





Management Tools

Implementation of voluntary water management measures are key to accomplishing the goals of this Agreement. These include:

- Coordinated use of storage facilities
- Conjunctive management of surface water and groundwater
- Management and recovery of tailwater through major drains
- Water conservation
- Transfers and exchanges among Sacramento Valley water users and other water users in the state
- Increased surface storage

extensive involvement by all stakeholders. More than 50 stakeholders completed detailed questionnaires to propose projects for the short-term workplan. The proposed projects will be screened on the basis of a broad range of potential benefits and broad geographic coverage in the Valley.

Those projects will then be reviewed and evaluated on the basis of more detailed project summaries. From that review, projects will be selected for inclusion in the short-term workplan and implementation plans will be developed.

The next steps will be:

- Conduct environmental review and obtain necessary permits
- Secure appropriate funding
- Provide for public participation

Environmental review is a part of all projects, even those that will generate positive net effects on the environment. Envi-

ronmental documentation will be prepared for all projects, and cumulative impacts will be addressed.

Funding will be pursued from a number of sources. As most of the projects will provide multiple benefits to various participants, cost-sharing arrangements will be negotiated to reflect those benefits. Many of the projects will also provide public benefits, primarily environmental, and efforts will be made to obtain state and federal funds to support those benefits. Potential funding sources include Proposition 13, Proposition 204, and state and federal funding through the CALFED program.

Public support will be crucial to successful development of the projects. Public meetings will be held to provide opportunities for full input into the planning process.



Appendix A

AGREEMENT REGARDING RESOLUTION OF PHASE 8 ISSUES, DEVELOPMENT AND MANAGEMENT OF WATER SUPPLIES, AND A BINDING COMMITMENT TO PROCEED PURSUANT TO SPECIFIED TERMS

This Agreement is in furtherance of a resolution of Phase 8 of the State Water Resources Control Board's (hereinafter "SWRCB") current Bay-Delta Water Rights Hearings. The Parties will work together to settle issues related to obligations or potential obligations to meet existing Bay-Delta water quality and flow objectives by developing a cooperative water management partnership among (a) those south of the Sacramento-San Joaquin Delta who possess water rights or are State Water Project ("SWP") or Central Valley Project ("CVP") water users; (b) the Contra Costa Water District and those who derive SWP water from the North Bay Aqueduct (hereinafter (a) and (b) for the purposes of this Agreement referred to collectively as "Export Water Users"); (c) those who possess water rights or are water users within the watershed of the Sacramento River and its tributaries (hereinafter "Upstream Water Users"); (d) the California Department of Water Resources (hereinafter "DWR"); and (e) the United States Bureau of Reclamation on behalf of the CVP (hereinafter "Reclamation"), all of which are hereafter referred to as the Parties.

Now therefore, it is mutually agreed as follows:

1. Goals and Principles

The Parties hereto agree to the following statement of goals and principles that shall guide the implementation of all aspects of this Agreement, including development of a cooperative water management partnership. This Agreement, during its term, is intended to:

- (a) Provide the mechanism for satisfying the flow-related objectives of the SWRCB's 1995 Bay-Delta Water Quality Control Plan (hereinafter the "1995 WQCP");
- (b) Be implemented in lieu of proceeding with Phase 8 of the SWRCB's Bay-Delta process;
- (c) Facilitate the development of integrated water management strategies that will enhance the Upstream and Export Water Users' abilities to optimize use of their existing supplies, enable them to develop additional supplies to meet their existing and future water needs, and enhance their water management flexibility;
- (d) Facilitate the development of protections to ensure that water stored and released by the SWP and the CVP is available for meeting downstream flow-related objectives and for SWP and CVP purposes, including exports from the Delta;
- (e) Be implemented in a manner compatible with CALFED's goals;
- (f) Facilitate the development of new near- and long-term water supplies through agreements among the Parties, and through the Governor's drought contingency plan, in ways that do not detract from the ability to meet the existing and future needs of Upstream Water Users;
- (g) Avoid unmitigated impacts to Delta water quality or the environment;
- (h) Provide net water quality benefits for Upstream Water Users, Export Water Users, and the Delta;
- (i) Be implemented in a manner that provides that the comprehensive program will, among other factors, be cost effective, financially feasible, and affordable; and
- (j) Result in state-wide water resource and environmental benefits and, therefore, receive funding from state and federal sources where appropriate.

2. Initial Elements of the Cooperative Management Partnership.

It is intended that the Goals and Principles adopted with this Agreement be implemented through the development of specific programs and projects. The development of these programs and projects will be an ongoing process and may, over time, involve numerous entities not signatories to this Agreement. These may include agencies of the state or federal government including, but not limited to, the United States Fish & Wildlife Service ("USFWS"), the National Marine Fisheries Service ("NMFS"), and the California Department of Fish and Game ("CDFG"), and may also include in-Delta water users. Moreover, over time, the Parties may decide to employ a facilitator or mediator to assist them in moving forward with project development and implementation. In this light, the following specific matters are intended only as the initial scope of work under this Agreement, with future work to be developed and implemented as appropriate. Future work plans, if appropriate, can become amendments to this Agreement or can be the subject of subsequent related agreements.

- (a) *Quantifying Water Demands and Supplies.* The Parties recognize a need to develop reliable estimates of the quantities of water that are currently being used, present unmet demands and projected future demands within the watershed of the Sacramento River and its tributaries. The Parties also need to develop estimates of the quantities of new water supplies that could be made available to Upstream areas, Export areas, and to meet the 1995 WQCP standards based on the measures included in the programs and projects described below. The Parties agree to establish a technical committee to begin immediately to develop, collect and analyze this information.
- (b) *Unmet and Future Demands in the Upstream Areas.* The Parties recognize that Upstream Water User demands may vary and that the following approximates the categories of upstream demands that will be provided for:
 - (i) Urban needs and uses within the watershed of the Sacramento River and its tributaries.

- (ii) Needs and uses within the Tehama-Colusa and Corning Canal service areas.
- (iii) Needs and uses within the Sacramento River Water Rights Settlement Contractors' collective service area.
- (iv) Needs and uses within areas that obtain supply from the drains and bypasses within the Sacramento Valley.
- (v) Needs and uses within the areas tributary to the Sacramento, American, and Feather Rivers.
- (c) *Export Water Supplies.* The Parties recognize that Export Water Users have experienced water supply reductions as a result of regulatory and other actions. The programs and projects provided for in this Agreement will improve the water supplies on both a short- and long-term basis, and improve the water quality.
- (d) *Environmental Benefits.* The Parties recognize that programs and projects provided for in this Agreement will be developed and implemented not only to meet the needs of Upstream and Export Water Users and the flow-related objectives of the 1995 WQCP, but also to provide environmental benefits, including benefits to fish and wildlife, in the watershed of the Sacramento River.
- (e) *Role of Sites Reservoir.* The Parties recognize that new off-stream surface storage is an essential part of the long-term water management program, and agree that Sites Reservoir is a potentially significant off-stream surface-water storage project that could help meet the goals and objectives of this Agreement, including providing capacity to increase the reliability of water supplies for Upstream and Export Water Users, flexibility during critical fish migration periods on the Sacramento River, and storage benefits for other CALFED programs. Work being undertaken pursuant to CALFED's Sites MOU will be integrated into this Agreement and the Parties will work with CALFED to accelerate feasibility studies and completion of appropriate environmental and permitting processes for the reservoir.
- (f) *Enlarged Shasta.* The Parties agree that other significant surface water storage opportunities may exist, including the enlargement of Shasta Reservoir. The Parties shall take all appropriate efforts to advance these other opportunities and shall integrate the benefits associated with these projects into the programs provided for in this Agreement.
- (g) *Role of the Basin-Wide Management Plan.* Reclamation and certain Upstream Water Users are currently developing a Basin-Wide Management Plan for the purpose of improving water management within portions of the Sacramento Valley. The Basin-Wide Management Plan that Reclamation and certain Upstream Water Users are developing shall serve as a model for implementation of this Agreement and could be expanded to incorporate other areas of the watershed of the Sacramento River and its tributaries, as appropriate.
- (h) *Management Tools for this Agreement.* A key to accomplishing the goals of this Agreement will be the identification and implementation of a "palette" of voluntary water management measures (including cost and yield data) that could be implemented to develop increased water supply, reliability, and operational flexibility. Some of the measures that may be included in the palette are:
 - (i) Basin-Wide Water Management Plan identified above;
 - (ii) Conjunctive uses of surface water and groundwater;
 - (iii) Coordinated use of storage facilities;
 - (iv) Management and recovery of tailwater through major drains;
 - (v) Transfers and exchanges among Upstream Water Users and with the CVP and SWP water contractors, either for water from specific reservoirs, or by substituting groundwater for surface water;
 - (vi) Substitution of water from potential north of Delta reservoirs, such as Sites Reservoir, for groundwater, or river diversions, or maintaining water quality in the Delta; and
 - (vii) Water conservation.

3. Resolution of Phase 8 Issues

- (a) The Parties agree that while this Agreement remains in effect, DWR and Reclamation shall assume responsibility for meeting the Sacramento River and its tributaries' portions of flow-related objectives established in the 1995 WQCP. Upstream Water Users shall have no obligation to release stored water, extract groundwater or forego diversions in order to help implement the flow-related objectives included in the 1995 WQCP.
- (b) In conjunction with the SWRCB, the Parties shall jointly develop a program to prevent unauthorized diversions, provided that the program is consistent with this Agreement.
- (c) The Export Water Users, DWR, and Reclamation agree that while this Agreement is in effect they shall take no action before the SWRCB or elsewhere, nor shall they support any such action to insert Term 91, or its regulatory equivalent, into existing water rights permits or licenses, or modify riparian or pre-1914 water rights through the application of the regulatory equivalent of Term 91. The Parties recognize that the SWRCB will continue to implement Term 91 according to its existing terms.
- (d) Notwithstanding the foregoing, nothing herein shall be interpreted as waiving the Parties' legal positions or rights in the event that the SWRCB proceeds with the Phase 8 hearings or otherwise attempts to determine the legal obligations of water users to meet adopted water quality or flow standards in the Bay-Delta or in streams tributary to the Bay-Delta. In addition, the Parties acknowledge and agree that nothing herein shall limit their ability to initiate a new or additional water right or water supply, transfer an existing water right, or change or modify an existing water right or a contract relating to a water supply; nor shall a Party be precluded from arguing that Term 91 should be applied or not applied by the SWRCB in any of these proceedings or that a new water right, transfer, or change or modification of an existing water right will or will not cause injury to a lawful water user.

- (e) This Agreement shall become effective on the day the SWRCB enters an order that:
 - (i) Provides for a Stay of Phase 8 of the current Bay-Delta water rights proceeding pending development and approval of the Workplans described in Paragraphs 5(a) and 5(b) of this agreement;
 - (ii) Provides that, should either of the Workplans not be completed or approved, and this Agreement is therefore terminated, the Parties shall immediately notify the SWRCB and the SWRCB will lift the stay and proceed with Phase 8;
 - (iii) Under the circumstances provided for in sub-paragraph 3(e)(ii), extends the expiration of the SWP's and CVP's obligations under Conditions 1 and 2 of the Order in Revised Decision 1641 to the earlier of the completion of a resumed Phase 8 or one year from the date of a notice to the SWRCB of termination of this Agreement; and
 - (iv) Provides that, should the Workplans described in Paragraphs 5(a) and (b) both be completed and approved, Notice of the approval provided to the SWRCB (a) automatically dismisses the Phase 8 proceedings and (b) further extends the expiration of the SWP's and CVP's obligations under Conditions 1 and 2 of the Order in Revised Decision 1641 to one year after the Notice of the termination of this Agreement to the SWRCB or such sooner time as a water rights proceeding allocating the responsibilities to meet Bay-Delta standards is completed; and
 - (v) Provides that the dates set forth in sub-paragraphs 3(e)(iii) and (iv) above may be extended for up to one year if after notice and hearing the SWRCB determines that the additional time is necessary for it to fully consider and decide the matter.

4. Resolution of Related Issues

The Parties acknowledge that there are a number of administrative, regulatory, legislative and judicial actions currently ongoing or reasonably to be anticipated that could have major effects on the Parties' ability to implement the terms of this Agreement.

In this regard, the Parties acknowledge and agree that developments in any of these or other matters may have a material effect on any Party's ability to implement this Agreement and meet the Milestones set forth in Paragraph 5 below. The Parties agree that they will work together to attempt to deal with the factual/legal situation that then exists in order to allow the Parties to proceed with the programs identified in this Agreement. Nonetheless, failure to meet Milestones, for whatever reason, shall remain a cause for the termination of this Agreement.

5. Milestones

- (a) *Short-Term Projects.* Within one hundred eighty days of the Effective Date of this Agreement, the Parties shall, working together, prepare a joint work plan listing short-term projects that can be used to implement this Agreement. Such projects are defined as those which can provide benefits for the 2002 and 2003 water years.
- (b) *Medium and Long-Term Projects.* Within one year of the Effective Date of this Agreement, the Parties shall, working together, prepare a joint work plan listing medium- and long-term projects that can be used to implement this Agreement. Medium-term projects are defined as those which will be operational by December 31, 2005. Long-term projects are defined as those which are operational by December 31, 2010.
- (c) *Workplan Standards.* For each project identified in the respective Workplan, the appropriate Workplan shall:
 - (i) Briefly describe the project, including expected 10 net benefits and their proposed allocations;
 - (ii) Provide a preliminary estimate of the quantity of water or the nature of other water management benefits that can be realized by implementing the project;
 - (iii) Provide a preliminary estimate of the cost of the project;
 - (iv) Identify any major environmental issues associated with the project; and
 - (v) Describe how the project could best be implemented (including a plan for financing for the project).

Each Workplan shall also provide a timetable for implementation of identified projects, which shall then constitute additional Milestones for this Agreement.

- (d) *Funding.* The Parties shall immediately jointly seek funding for the development of the two Workplans identified above from general state and/or federal sources. In addition, the Parties shall also seek funding, pursuant to Proposition 204 and other possible funding sources, to cover the cost of implementing programs identified within the respective Workplans. Milestones identified within this Agreement may need to be adjusted in order to provide ample time for the Parties to secure adequate state and federal funding to allow work to proceed. Such adjustments must be accomplished pursuant to mutual agreement of all Parties. The Parties shall not seek to acquire funds that are obligated to other programs within CALFED, and shall not seek funding that may otherwise conflict with funding commitments under the Central Valley Project Improvement Act Restoration Fund.
- (e) *Workplan Updates.* The Parties shall review and update the medium/long-term Workplan annually to incorporate information learned as a result of the cooperative process contemplated by this Agreement or as a result of other efforts. The Parties may also revise the list of projects contained in the medium/long-term Workplan, the estimates of the water supply or other benefits associated with such projects, the cost estimates for such projects, the environmental issues associated with such projects, and the implementation plan for each project. The Parties may review and update the medium/long-term Workplan as necessary in the event that circumstances identified in Paragraph 4 above occur.
- (f) *Sites Reservoir Milestones.* Because of the potential significance of Sites Reservoir or other north of Delta offstream storage to achieving the

goals of this Agreement, the following additional specific Milestones shall be adhered to:

- (i) finalize a Purpose and Needs Statement for the project satisfactory to the Parties no later than March 9, 2001;
- (ii) initiate initial scoping sessions associated with appropriate environmental review by April 9, 2001;
- (iii) initiate negotiations on all relevant Planning Agreements called for within the Sites MOU, including addressing issues dealt with in Paragraphs 7.4, 7.5 and 7.6 of the Sites MOU, by January 31, 2001;
- (iv) complete all environmental and planning documentation for the project not later than August 2004;
- (v) make a final decision with respect to the implementation and construction of the project, including obtaining all relevant permits/ biological opinions, including compliance with Clean Water Act section 404(b)(1) or 404(r) by August 2005; and
- (vi) assuming a decision to proceed, initiate project construction not later than August 2006.

6. Term and Termination

- (a) *Term.* Except as may be otherwise expressly provided, the term of this Agreement shall be until December 31, 2010.
- (b) *Annual Reviews.* The Parties shall agree upon the Workplan identified in Paragraph 5(a) of this Agreement within 60 days of its completion. A failure to do so shall cause the immediate termination of this Agreement. The Parties shall agree upon the Workplans identified in Paragraph 5(b) of this Agreement within 60 days of their completion. A failure to do so shall cause the immediate termination of this Agreement. Assuming approvals of the Workplans identified in Paragraphs 5(a) and 5(b), the Parties shall thereafter, on an annual basis as scheduled by the Parties, jointly review the status of development and implementation of all Workplans, as well as the meeting of Milestones provided for herein and in the Workplans. Each annual review shall include a detailed examination of the status of Workplan and Milestone implementation including, without limitation, project feasibility and design, environmental review, permitting and funding. Except as provided for above, this Agreement may only be terminated following an annual review performed in accordance with this Paragraph 6.
- (c) *Termination for Failure to Meet Milestones.* Any Party may terminate this Agreement if, following an annual review and after the mediation provided for in Paragraph 7 of this Agreement, it determines:
 - (i) that either reasonable progress in achieving the Milestones established under this Agreement or in the Workplans cannot be made through the exercise of reasonable diligence by the Parties; or the Milestones established under this Agreement or in the Workplans have not been substantially achieved; and
 - (ii) that the Milestones established under this Agreement or in the Workplans cannot be revised to result in the reasonable achievement of the Milestones of this Agreement.
- (d) *Termination on Modification in 1995 WQCP.* In the event the flow-related objectives contained in the 1995 WQCP are increased or decreased, the Parties shall meet and, if necessary, employ the process outlined in Paragraph 7 of this Agreement, in an attempt to address the changed circumstances associated with modified flow-related objectives. A failure to reach agreement shall cause the termination of this Agreement.
- (e) *Petition on Termination.* In the event the Workplans are not completed or approved or this Agreement is terminated, the Parties shall immediately petition the SWRCB to conduct a water rights hearing to consider the issues described in the SWRCB's Revised Notice of Phase 8 Hearing dated May 6, 1998.

7. Resolution of Disputes

Resolution of disputes, and issues which a Party believes may subject this Agreement to termination shall first be submitted to a mediator, mutually selected by the Parties, with experience in water-related disputes. The Parties will use their best efforts to resolve the issues within 30 days. The costs of any such mediation will be borne equally among the Parties.

8. Effect of this Agreement on Other Matters

Nothing in this Agreement, and nothing incorporated by reference into the terms of this Agreement, is intended or shall be construed as a precedent or other basis for any argument that the Parties to this Agreement have waived or compromised their rights which may be available under State or Federal law except as to the matters addressed in this Agreement, nor shall it be construed as an admission or determination of any Party's responsibility for meeting the requirements of the 1995 WQCP.

9. Contingent Upon Appropriations

The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted.

10. Technical and Management Committees

The Parties shall form two committees. The first shall be a technical committee which shall have the initial responsibility to develop the Workplans and related Milestones. The second shall be a management committee which shall provide policy direction to the technical committee and review and approve Workplans and Milestones. The committees shall together, in a manner that they determine, be responsible for the implementation of the Workplans. Each Party to this Agreement shall appoint one or more representatives to each of these committees.

11. Public Participation

The Parties shall hold periodic public meetings to provide an opportunity for nonparticipating individuals and entities to have input into the planning process.

12. Other Agreements

The Parties recognize that as program development progresses there will be a need to either amend this Agreement or to enter into additional agreements. In this regard, the Parties acknowledge that this Agreement will complement other relevant local partnerships and/or CALFED agreements and shall, as a consequence, be flexible enough to accommodate those other partnerships and agreements.

13. Environmental Compliance

In carrying out actions which may ultimately result from this Agreement, its amendments or subsequent agreements, the Parties hereto are committed to completing all required environmental review including all procedures and documents required by the National Environmental Policy Act and the California Environmental Quality Act, and to complying with all applicable statutes, including the federal and state Endangered Species Act. The costs of funding this environmental work and compliance shall be among the funding issues dealt with herein. Nothing contained herein is intended to affect DWR's and USBR's compliance with regulatory constraints that are imposed under the Federal Endangered Species Act, the Central Valley Project Improvement Act, the Federal Clean Water Act, or any other applicable state or federal law or regulation, including those incorporated into Tier 1 in the CALFED Record of Decision dated August 28, 2000.

14. Counterparts

This Agreement may be executed simultaneously or in one or more counterparts, each of which shall be an original but all of which together shall constitute one and the same document.

15. Notices









All notices shall be sent to the following: DWR: Thomas R. Hannigan Director Department of Water Resources P.O. Box 942836 Sacramento, CA 94236-0001 Reclamation; Lester Snow Regional Director United States Department of the Interior Bureau of Reclamation, MP-100 2800 Cottage Way Sacramento, CA 95825; Export Water Users: John Coburn, General Manager, State Water Contractors, 455 Capitol Mall, Sacramento, CA 95814; Daniel Nelson, General Manager, San Luis & Delta-Mendota Water Authority, 842 – 6th Street, Suite 7, P.O. Box 2135, Los Banos, CA 93635, Walter J. Bishop, General Manager, Contra Costa Water District, 1331 Concord Avenue, P.O. Box H2O, Concord, CA 94524; Upstream Water Users: David J. Guy Executive Director Northern California Water Association, 455 Capitol Mall, Suite 335, Sacramento, CA 95814.

16. Cooperation

The Parties shall cooperate in carrying out the Mutual Goals and Principles contained herein and the provisions and intent of this Agreement.

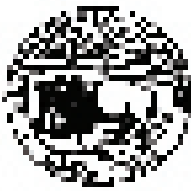
17. Effective Date

This Agreement shall become effective upon its full execution by all of the Parties hereto and the satisfaction of the conditions set forth in Paragraph 3(e) of this Agreement.

<p>DEPARTMENT OF WATER RESOURCES</p> <p>DATED: <u>3/23/01</u> By: <u></u> <small>Approved as to legal form and substance</small> <u></u> <small>Approved as to legal form and substance</small> <u></u> <small>Approved as to legal form and substance</small> DATED: <u>3/16/01</u> By: <u></u> <small>Regional Director</small></p>	<p>STATE WATER CONTRACTORS</p> <p>DATED: <u>4/3/01</u> By: <u></u> <small>General Manager</small></p> <p>SAN LUIS & DELTA-MENDOTA WATER AUTHORITY</p> <p>DATED: <u>3/30/01</u> By: <u></u> <small>Executive Director</small></p>	<p>CONTRA COSTA WATER DISTRICT</p> <p>DATED: <u>4/3/01</u> By: <u></u> <small>General Manager</small></p> <p>NORTHERN CALIFORNIA WATER ASSOCIATION</p> <p>DATED: <u>4/4/01</u> By: <u></u> <small>Executive Director</small></p>
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Appendix B



BY MAIL
2025 RELEASE
WTR-105

United States Department of the Interior

DEPARTMENT OF DELEGATION
WATER RIGHTS PROGRAM OFFICE
1400 Capitol Mall
Sacramento, California 95833-0001

Apr. 29, 2000


Mr. Terry M. Schneider
Chief, Division of Water Rights
State Water Resources Control Board
P.O. Box 2040
Sacramento, CA 95812-2000

Dear Mr. Schneider:

In a separate letter dated April 28, 2000, the United States Bureau of Reclamation (USBR) and the California Department of Water Resources (CDWR) advised you pursuant to the Treaty of the City and San Francisco Bay-Sacramento-San Joaquin Estuary, dated April 11, 2000, by the State Water Resources Control Board (SWRCB). On March 16, 2000, and March 19, 2000, respectively, the USBR and the CDWR entered into Agreement Regarding Regulation of Water Leases, Development and Management of Water Supplies, and a Binding Commitment to Mutual Payments Associated Terms. The Agreement was last amended by the remaining amendments.

The USBR and CDWR hereby agree to an extension of Conditions 1 and 2 of the Water Right Decision 1991, provided that the SWRCB adopts a final order in accordance with a final Order of April 11, 2000, including the proposed modifications to the Draft Order contained in the April 20, 2000, Agreement of USBR and CDWR. A copy of the April 20, 2000, agreement is attached hereto and is incorporated herein by reference.

Copies:


For: Lisa C. Redger
Assistant Chief, Division
Mid-Pacific Region
Law Bureau of Sacramento


Thomas H. Fairbank
Chief
California Department of Water Resources

Attachments:



Appendix C

STATE OF CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2001 - 05

In the Matter of
Implementation of Water Quality Objectives
for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary,
Amending License 1986 (Application 23) and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 16600, and 20245 (Applications 13370, 13371, 234, 1465, 5638, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 19304, and 14858B, respectively) of the United States Bureau of Reclamation and Permits 16478, 16479, 16481, 16482, and 16483 (Applications 5630, 14443, 14445A, 17512, and 17514A, respectively) of the Department of Water Resources.

Sources: Sacramento and San Joaquin Rivers and their tributaries, and the Sacramento-San Joaquin Delta Estuary
ORDER STAYING AND DISMISSING PHASE 8 OF THE BAY-DELTA WATER RIGHTS HEARING AND AMENDING REVISED DECISION 1641

By The Board:

1.0 Introduction

By this order, the State Water Resources Control Board (SWRCB) takes actions to facilitate negotiations that may lead to a settlement of the potential responsibilities of numerous water users to implement the objectives in the *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary*, adopted May 22, 1995 (1995 BayDelta Plan).[1]

In the absence of this order, the SWRCB would promptly convene the remainder of Phase 8 of the Bay-Delta Water Rights Hearing to consider the water users' potential responsibilities that have not yet been determined.

This order stays the resumption of Phase 8 for eighteen months from the date of this order. This order automatically dismisses Phase 8 at the end of eighteen months, unless the SWRCB receives notice from the Department of Water Resources (DWR) or the United States Bureau of Reclamation (USBR), within eighteen months, requesting resumption of Phase 8. This order extends the responsibilities of the DWR and the USBR under Conditions 1 and 2 to meet the water quality objectives in the 1995 Bay-Delta Plan. Unless the SWRCB issues a further order after notice and an opportunity for a hearing, the extension of their responsibilities will expire no later than one year after the DWR or the USBR requests a hearing. Upon request of the DWR or USBR, the SWRCB will resume Phase 8, or, after dismissal, will commence a new hearing. The SWRCB will expedite any hearing conducted pursuant to this order, to issue a decision within two years after receiving a request from the DWR or the USBR.

The SWRCB will, at least every six months, commencing not later than October 1, 2001, conduct a public informational workshop. The purpose of these workshops will be to provide the public and the SWRCB with information regarding the then-current status of negotiations and plans to implement the flow-dependent objectives, including information about the opportunities for non-parties to the negotiations to provide input.

2.0 Background

2.1 Procedural History

This order is part of a series of actions by the SWRCB to protect the beneficial uses of water in the Bay-Delta Estuary against the adverse effects of water diversions. In the BayDelta proceedings, the SWRCB adopts water quality objectives that, when implemented, will protect the beneficial uses. The SWRCB implements the objectives through water right orders and by requesting or directing that other agencies take appropriate actions including water quality control measures to be implemented by the Regional Water Quality Control Boards.

The 1995 Bay-Delta Plan contains the current water quality objectives. D-1641 and Order WR 2000-10 contain the current water right requirements to implement the BayDelta flowdependent objectives. D-1641 includes both long-term and temporary implementation requirements. Order WR 2000-10 requires partial implementation that will remain in effect up to thirtyfive years. In D-1641 and in Order WR 2000-10, the SWRCB assigned responsibilities, for specified periods, to water users (including the USBR and the DWR in D-1641, and the DWR in Order

WR 2000-10) in the watersheds of the San Joaquin River upstream of Vernalis, the Mokelumne River, Putah Creek, Cache Creek, within the boundaries of the North Delta Water Agency, and within the Bear River watershed. These responsibilities need not be revisited in the near future. These responsibilities require that the water users in these watersheds will contribute specified amounts of water, and that the DWR and/or the USBR will ensure that the objectives are met in the Delta.

To meet the potential responsibilities that are not yet assigned, but may be assigned to water users in areas not yet addressed, D-1641, in Conditions 1 and 2 on page 146 thereof, requires that the DWR and the USBR temporarily implement the objectives. Conditions 1 and 2 also require that the DWR and USBR meet certain objectives that the SWRCB does not contemplate assigning to other parties, such as export limits and gate closure requirements. D1641 provides that Conditions 1 and 2 will remain in effect only until the SWRCB makes further decisions establishing the responsibilities of water right holders in the areas where the potential responsibilities have not yet been determined. D-1641 sets these conditions to expire no later than November 30, 2001.

The SWRCB considered and heard comments on earlier drafts of this order at a Board meeting on March 7, 2001 and at a Board meeting on April 4, 2001.

2.2 Physical Setting

The Bay-Delta Estuary includes the Sacramento-San Joaquin Delta, Suisun Marsh, and the embayments upstream of the Golden Gate. The Delta and Suisun Marsh are located at the confluence of the Sacramento and San Joaquin rivers, which converge to flow westward through San Francisco Bay. The watershed of the Bay-Delta Estuary produces water that is used in much of the state for municipal, industrial, agricultural, and environmental purposes. The watershed is a source of drinking water for two-thirds of the state's population. The State Water Project, operated by the DWR, and the Central Valley Project, operated by the USBR, store water upstream of the Delta, release the stored water into the Delta, and export both the stored water and uncontrolled flows[2] from the Delta. The two projects export water from the Delta to areas south and west of the Delta through a system of water conveyance facilities.

Fish, wildlife, and other public trust resources also use the waterways of the Bay-Delta Estuary and its tributaries. Some of the fish that reside in the estuary or migrate through it are protected under the state or federal Endangered Species Act. Additionally, migratory birds and other animals use the marshlands of the estuary for food and habitat.

3.0 Discussion

It is the policy of the SWRCB in the Bay-Delta proceedings to encourage the parties to resolve among themselves the responsibilities for meeting the objectives in the 1995 Bay-Delta Plan, and to bring their joint proposals for establishing responsibilities to the SWRCB for approval.

The DWR, the USBR, some of their water supply contractors, and the members of the Northern California Water Association approached the SWRCB at a workshop on January 11, 2001, with a draft of an agreement among these parties. The parties proposed that the SWRCB adopt an order staying Phase 8 of the Bay-Delta Water Rights Hearing and automatically dismissing Phase 8 after the parties to the agreement complete and approve work plans for developing water supply projects. The parties presented an executed agreement to the SWRCB on April 4, 2001. The agreement includes a commitment by the DWR and the USBR to meet the objectives implemented under Conditions 1 and 2 in D-1641 so long as the agreement remains in effect, and for a period thereafter. This order is not based on the commitment in the agreement.

At the April 4, 2001, meeting, the SWRCB informed the parties to the agreement that, to be able to dismiss Phase 8 as requested, the SWRCB would need an independent commitment from the DWR and the USBR to meet the flow-dependent objectives for an interim period, and that the commitment could not be dependent on the agreement or on progress in implementing water supply projects pursuant to the agreement. The SWRCB further informed the parties that if it received the two projects' independent commitment to meet the objectives for an indefinite interim period and accept an indefinite extension of Conditions 1 and 2, it would (1) stay Phase 8 of the Bay-Delta Water Rights Hearing for up to eighteen months, (2) automatically dismiss Phase 8 after eighteen months had passed, (3) upon request of the DWR or the USBR at any time during the stay or after dismissal of Phase 8, convene a hearing to consider allocating responsibilities to meet the flow-dependent objectives to other parties, (4) set Conditions 1 and 2 to expire no later than two years after the request for hearing unless the SWRCB issues a further order after notice and opportunity for hearing, and (5) expedite the hearing to issue a decision within two years after the request for hearing.

The SWRCB has received the necessary commitment from the DWR and the USBR, by letter dated April 25, 2001. This order is based on that commitment. During the interim period, the SWRCB assumes that the DWR, the USBR, and other parties will conduct further negotiations. The SWRCB will take no part in the negotiations, and takes no position with respect to the direction of such negotiations.

After the DWR or the USBR requests a hearing to determine the responsibilities of the parties to meet the flow-dependent objectives, a hearing is likely to require two years or more. Therefore, an extension of Conditions 1 and 2 after the request for a hearing will help ensure that any necessary additional environmental documentation can be prepared and will ensure that the implementation of the objectives does not lapse. During any further hearing, the objectives in the 1995 Bay-Delta Plan must be met. A lapse in implementation could have serious consequences for the beneficial uses the objectives are intended to protect.[3] In the absence of a hearing, the SWRCB could not place responsibility for meeting

the objectives on a party or parties other than the DWR and the USBR.[4] Accordingly, the most reasonable approach is to retain the existing responsibilities to meet the objectives until the SWRCB is able to complete a hearing and make a decision after the hearing.[5]

A stay is appropriate for eighteen months, with the DWR and the USBR meeting the objectives. A dismissal after the stay is appropriate only if the objectives will be met for a reasonable, albeit interim, period. The DWR and the USBR will meet the objectives for an adequate period. Therefore, this order stays and dismisses Phase 8, effective eighteen months after the date of this order, unless either the DWR or the USBR requests, within eighteen months, that the SWRCB resume Phase 8. The stay and subsequent dismissal apply to proceedings to determine the responsibilities of the water right holders and water users within the watersheds of the Sacramento, Calaveras and Cosumnes Rivers to meet the flow-dependent objectives in the 1995 Bay-Delta Plan.

The administrative record of this order includes the entire evidentiary hearing record of the BayDelta Water Rights Hearing, from July 1, 1998, through April 12, 2000, and the notices and correspondence sent or received by the SWRCB regarding Phase 8 through the date of this order.

4.0 Environmental Considerations

Under the California Environmental Quality Act (CEQA) (Pub. Resources Code §§ 21000, et seq.), the SWRCB is the lead agency for preparation of environmental documentation for this order. The SWRCB has prepared and certified a final *Environmental Impact Report for the Implementation of the 1995 Bay-Delta Water Quality Control Plan* (BayDelta EIR). The BayDelta EIR fully analyzes the effects of several alternatives for assigning responsibility to water right holders in the watershed of the Bay-Delta Estuary, including Flow Alternative 2, under which the DWR and the USBR are jointly responsible for meeting all of the flowdependent objectives in the 1995 Bay-Delta Plan. D-1641 adopts Flow Alternative 2 as an interim measure, by including Conditions 1 and 2 in the water rights of the DWR and the USBR. This order amends Conditions 1 and 2 of D-1641 by extending the periods for which the requirements set forth in those conditions are effective.

CEQA contemplates that agencies may make serial decisions relying on a single EIR. (Cal. Code Regs., tit. 14, §§ 15165, 15168.) This order is one in a series of orders relying on the Bay-Delta EIR.

Except as applied to the Joint Point of Diversion and the San Joaquin River Agreement, the findings set forth in D-1641 in sections 14.3.1, 14.3.4, 14.3.5, 14.3.6, 14.3.7, 14.3.8, and 14.4 are applicable to the inclusion of Conditions 1 and 2 in the permits of the DWR and the USBR for an extended period. Those findings are incorporated herein by reference to the extent that they are applicable to this order. The SWRCB will file a Notice of Determination under CEQA after it adopts this order, and the Notice of Determination will state that this order relies on the BayDelta EIR.

ORDER

- A. IT IS HEREBY ORDERED that Phase 8 of the Bay-Delta Water Rights Hearing is stayed for a period of eighteen months from the date of this order. Phase 8 will be automatically dismissed at the end of eighteen months from the date of this order unless the DWR or the USBR notifies the SWRCB in writing, before the end of the eighteen month period, that it is requesting the SWRCB to resume Phase 8.[6] The purpose of the stay and dismissal is to allow water right holders whose rights might be amended after Phase 8 to negotiate toward a mutual settlement of their responsibilities to meet the flow-dependent objectives in the 1995 Bay-Delta Plan. If the DWR or the USBR requests in writing a hearing to allocate responsibilities to meet the flow-dependent objectives to other parties, the SWRCB expeditiously will convene a water right hearing, will determine whether the water right holders in the watersheds of the Sacramento, Cosumnes, and Calaveras Rivers have responsibility to meet the flow-dependent objectives in the 1995 Bay-Delta Plan, and will determine the amount of such responsibility in a decision or order.
- B. IT IS HEREBY ORDERED that License 1986 (Application 23) and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 16600, and 20245 (Applications 13370, 13371, 234, 1465, 5638, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 19304, and 14858B, respectively) of the United States Bureau of Reclamation and Permits 16478, 16479, 16481, 16482, and 16483 (Applications 5630, 14443, 14445A, 17512, and 17514A, respectively) of the Department of Water Resources shall be amended by revising Conditions 1 and 2 in SWRCB Decision 1641 as follows.
 1. Licensee/Permittee shall ensure that the water quality objectives for municipal and industrial beneficial uses and agricultural beneficial uses for the western Delta, interior Delta, and export area as set forth in Tables 1 and 2, attached, are met on an interim basis until the Board adopts a further decision assigning responsibility for meeting these objectives. Unless it is renewed pursuant to a further order after notice and an opportunity for hearing, this condition shall expire no later than one year after the DWR or the USBR requests in writing that the SWRCB convene a water right proceeding to determine whether to replace this condition with another condition that meets the objectives in Tables 1 and 2. Any extension hearing shall be for the limited purpose of determining whether additional time is necessary, and shall not include consideration of changes in allocation of responsibility. The SWRCB shall expedite any proceeding it conducts to assign long term responsibility to meet the objectives in Tables 1 and 2, in an effort to keep the proceeding under two years. This condition does not mandate that the Licensee/Permittee use water under this license/permit if it uses other sources of water or other means to meet this condition.

2. Licensee/Permittee shall ensure that the water quality objectives for Delta outflow and for Sacramento River flow at Rio Vista for fish and wildlife beneficial uses as set forth in Table 3, attached, are met on an interim basis until the Board adopts a further decision in the BayDelta Water Rights Hearing assigning responsibility for meeting these objectives. Any extension hearing shall be for the limited purpose of determining whether additional time is necessary, and shall not include consideration of changes in allocation of responsibility. Unless it is renewed pursuant to a further order after notice and an opportunity for hearing, this condition shall expire no later than one year after the DWR or the USBR requests in writing that the SWRCB convene a water right proceeding to determine whether to replace this condition with another condition that meets the objectives in Table 3. The SWRCB shall expedite any proceeding it conducts to assign long term responsibility to meet the objectives in Table 3, in an effort to keep the proceeding under two years. This condition does not mandate that the Licensee/Permittee use water under this license/permit if it uses other sources of water or other means to meet this condition.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 26, 2001.

AYES: Art G. Baggett
Pete S. Silva
Richard Katz

NOS: None

ABSTAIN: None

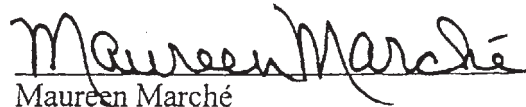
ORIGINAL SIGNED BY Maureen Marché
Clerk to the Board

Footnotes:

- [1] From July 1, 1998 through December 21, 1999, the SWRCB conducted Phases 1 through 7 of the BayDelta Water Rights Hearing. On December 29, 1999, the SWRCB adopted Decision 1641, determining some of the responsibilities for meeting the objectives in the 1995 Bay-Delta Plan and resolving other related issues. On April 11 and 12, 2000, the SWRCB conducted a session of Phase 8 of the Bay-Delta Water Rights Hearing to consider a petition for change filed by South Sutter Water District in connection with a settlement agreement to resolve the responsibilities of water right holders on the Bear River. The SWRCB approved the petition on July 20, 2000, in Order WR 2000-10.
- [2] Uncontrolled flows include both natural flow and abandoned flow.
- [3] Conditions 1 and 2 require full implementation of the objectives for municipal, industrial, and agricultural beneficial uses, and require full implementation of the flow-dependent objectives for fish and wildlife beneficial uses for an interim period. The objectives protect the public interest.
- [4] The hearing record for D-1641 supports continuing the implementation by the DWR and the USBR of the objectives in the 1995 BayDelta Plan as provided by this order. See, for example, the Bay-Delta EIR, which analyzes the effects of imposing Conditions 1 and 2 on the DWR and the USBR.
- [5] This conclusion addresses the need to extend the responsibilities of the DWR and the USBR for an adequate interim period. This conclusion does not predetermine the allocation of responsibility after completion of any further proceedings before the SWRCB, should further proceedings become necessary. The DWR and the USBR historically have been responsible for meeting Bay-Delta objectives. SWRCB Decision 1641 continues the responsibility of the DWR and the USBR to meet the municipal, industrial, and agricultural objectives, and the flowdependent fish and wildlife objectives on an interim basis. To stay or dismiss of Phase 8, it is necessary to continue the interim requirements imposed on the DWR and the USBR. If it did not extend the responsibility of the DWR and the USBR for at least two years beyond the date when the DWR or the USBR requests resumption or initiation of a hearing, the SWRCB would have to conduct a hearing to determine whether to require a party or parties to meet the objectives pending completion of the hearing. Considering their historical involvement, the public interest in continuously implementing the objectives, their role as public entities managing vast quantities of the state's water supply, and the lack of any other means for setting interim requirements, it is reasonable to continue the responsibility of the DWR and the USBR until the SWRCB establishes other responsibilities to meet the objectives.
- [6] The stay and dismissal do not apply to the following proceedings related to the Bay-Delta Proceedings:
 - (a) Any proceedings necessary to respond to a writ of mandate or other court order, decision or opinion issued in connection with litigation to which the SWRCB is a party.
 - (b) An order necessary to implement new water quality objectives or amendments to the 1995 Bay-Delta Plan.
 - (c) A proceeding on an issue that is sufficiently unrelated [e.g. carriage water] to the subject of long term responsibility to meet the

flow-dependent objectives in the 1995 Bay-Delta Plan that the proceeding will not adversely affect any negotiations among the parties seeking to settle their responsibilities to meet the BayDelta objectives. The SWRCB shall hold a workshop to obtain input from the parties before initiating any such proceedings.

- (d) A proceeding relating to the implementation of the narrative salmon doubling objective set forth in Table 3 of the objectives in the 1995 Bay-Delta Plan. The existing D-1641 terms and conditions for fish and wildlife protection provide reasonable protection for a range of aquatic species in the Bay-Delta Estuary and help implement all of the objectives, including the narrative salmon doubling objective. Compliance with the existing flow objectives and other objectives in the 1995 Bay-Delta Plan may be sufficient to implement the salmon objective. Moreover, statutorily mandated non-flow fish restoration programs currently being implemented in other forums (e.g., CVPIA implementation and CALFED) will help implement the salmon objective. As other programs are implemented and monitored, the SWRCB will review the progress toward meeting the objective and may take additional action if needed.


Maureen Marché
Administrative Assistant to the Board.

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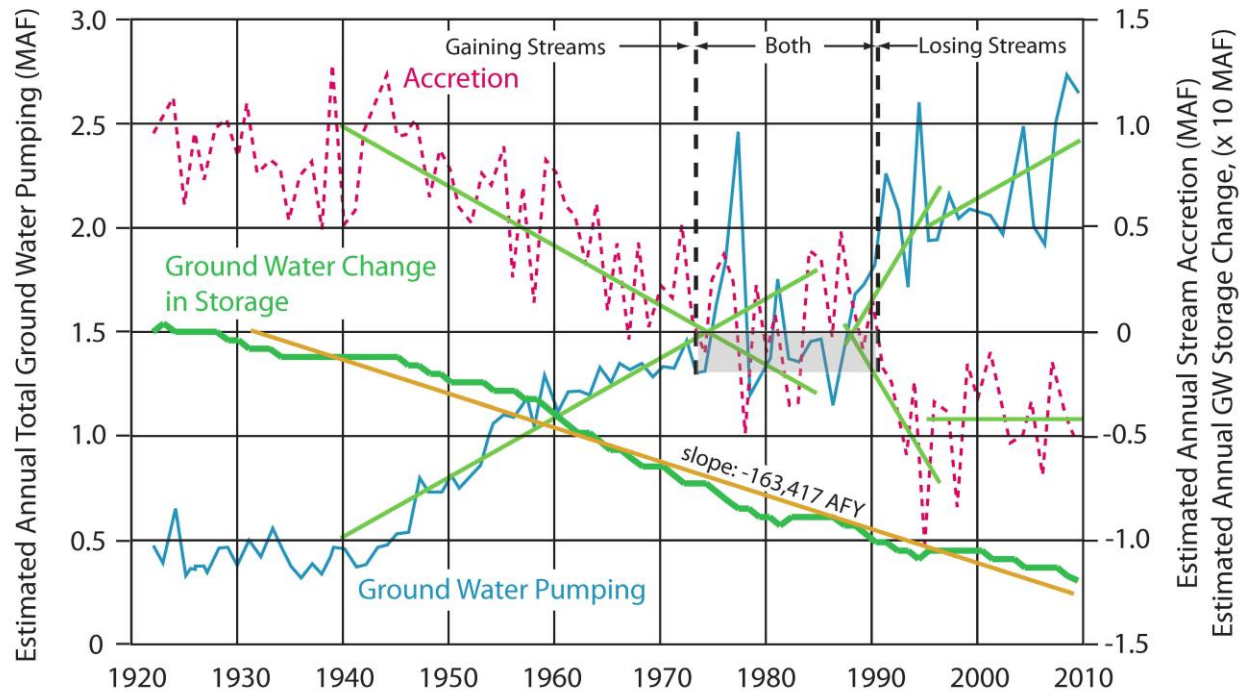


AQUALLIANCE

DEFENDING NORTHERN CALIFORNIA WATERS

Exhibit 10.7

Comparison of Ground Water Pumping and Accretion
Sacramento Valley
1920's to 2009



Changes in Accretion, Ground Water Pumping and Ground Water Storage

1. 1920's: ~+953 TAFY accretion with ~+451 TAFY gw pumping = ~ 1,400 TAFY loss in gw storage
2. Late 1960's to Early 1970's: first zero accretion occurs with ~1,300 to ~1,500 TAFY gw pumping
3. 1920' to 2009: ~ +953 TAFY accretion to ~ - 445 TAFY accretion = ~ 1,400 TAFY difference
4. Slope of Accretion 1940 to mid-1970's ~ -27,000 AFY; late 1980's to mid-1990's ~ - 85,000 AFY; ratio ~ 3X
5. 1940 to mid-1970's and late 1980's to mid 1990's slopes of ground water pumping increases are mirror images of slopes of accretion losses
6. Mid -1990's to 2010 groundwater pumping slope is similar to 1940 to mid-1970's, but accretion slope is flat.
7. Ground water change in storage ~ 12 to 14 MAF 1922 to 2009 (Figure 35, C2VSim User's Manual v. 3.02-CG, v. R374, June 2013, and Table 10 C2VSim Final Report 3.02-CG, v. R374, June 2013)

Kit Custis, certified Geologist and Hydrogeologist for AquAlliance, 2014