

February 8, 2011

VIA EMAIL & U.S. MAIL

Ms. Kari Kyler
Environmental Scientist
State Water Resources Control Board
P.O. Box 2000
Sacramento, California 95812-2000
kkyler@waterboards.ca.gov

Re: Stockton East Water District/San Joaquin River Flows

Dear Ms. Kyler:

On behalf of Stockton East Water District (Stockton East) we submit the following comments on the State Water Resources Control Board (State Water Board) Notice of Opportunity for Public Comment on the Review of and Potential Modifications to the San Joaquin River Flow and Southern Delta Salinity Objectives included in the 2006 Water Quality Control Plan for the San Francisco Bay/Draft Technical Report on the Scientific Basis for Alternative San Joaquin River Flow and Southern Salinity Objectives.

Alternatives for Evaluation

The State Water Board has been exclusively focused on the development of tools and information needs in order to generate a range of alternatives. In order for interested parties to have meaningful input, we believe that the State Water Board must first develop and publish the range of alternatives that it will be considering for the San Joaquin River flow objectives and Vernalis and Interior Delta salinity objectives. The alternatives should be released for public review and comment prior to initiating work on the environmental document. Once the parties know the range of alternatives, we will be better able to submit useful information to assist in development of the Substitute Environmental Document ("SED"). It is important to note that the State Water Board has requested modeling assistance from United States Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR), however, no information has been released as to the scope of the modeling to be conducted. The workplan currently under development must be released to the public and interested parties must have an opportunity to comment on the assumptions and modeling proposed.

In developing a reasonable range of alternatives, Stockton East reiterates that the State Water Board has absolutely no legal, factual or practicable authority to exclude water from the Upper San Joaquin River as contributing to meet any new San Joaquin River flow or salinity objective. The Upper San Joaquin is an out of basin user of water that must contribute just like the other tributaries to the San Joaquin River. It is not only fundamentally unfair to exclude Upper San Joaquin River flows in this process, it is illegal.

Furthermore, it is unclear what range of potential salinity objectives will be evaluated besides the existing objectives. The Hoffman Report indicated that a water quality objective of anywhere from 0.9 to 1.4 EC may be protective of agricultural beneficial uses in the Southern Delta. As such, there must be a range of potential salinity objectives for Vernalis and Interior Delta salinity objectives not simply the existing objectives.

Flows in Excess of 1,250-1,500 cfs after February 1st are Prohibited on the Stanislaus River unless required for flood control

It is very important for the State Water Board to recall the history of the New Melones Project and lengthy legal battle that ensued over issuing the water rights to Reclamation for the New Melones Project and filling the New Melones Reservoir.

Landowners on the lower part of the Stanislaus River are directly impacted by the Reclamation's operation of New Melones Reservoir. In the early 1980's, these landowners were intervenors in the lawsuit brought by the State of California against the United States regarding filling New Melones for consumptive uses.

In 1982 the case of United States v. State Water Resources Control Board, et al. was on appeal to the 9th Circuit from the Eastern District. In February 1982, the State of California petitioned the 9th Circuit Court of Appeal for interim injunctive relief pending the outcome of the appeal. The 9th Circuit granted the interim injunction on February 2, 1982. On the State of California's petition to modify the injunction, the 9th Circuit issued an amended injunction on March 10, 1982 (**See Attachment A**). This injunction was designed to prevent Reclamation from making releases from New Melones Reservoir that would cause damage to downstream properties, and provides in relevant part:

"The United States...[is] enjoined and prohibited from impounding or storing water in the reservoir of the New Melones project in excess of the amounts provided by condition 2 of decision 1422...subject to the following:

(a) With respect to waters already stored or impounded in excess of the elevation 844 feet mean sea level and as to any additional waters in the project reservoir above that level, releases shall be made

commencing now, except when such releases will cause damage or potential damage to downstream properties or to other legitimate downstream interests, and provided further that such releases shall not be made unless consistent with accepted principles for dam and reservoir operation."

The order also provided that on or before March 17, 1982, Reclamation was to provide the State of California with a plan, study or other documentation to effect compliance with this portion of the injunction. This plan had to provide the criteria and assumptions for protection of downstream property from damages caused by inundation or seepage based upon the 844 feet impoundment limitation. The order stated that the United States shall provide amended documentation whenever the release rates and/or schedules are substantially altered, and further provided that if the plan, study, or other documentation provided by the plaintiff fails to support the operative release rates and/or schedules, the defendants shall have the right to apply to this court for modification of said release rates and/or schedules.

When the 9th Circuit issued its final opinion in the case in December of 1982, it instructed, "The injunction previously issued by the court may be modified or amended by the district court as it deems necessary and appropriate in view of this opinion and the present circumstances of the dam and its storage facility."

Reclamation provided the required documentation to the State of California in 1982 pursuant to the court's order (**See Attachment B**). The Operating Plan for New Melones dated February 11, 1982 states that based on Reclamation's studies a flow in excess of 1,250 cfs at Ripon will cause damage to sugar beet crops. After harvest of the sugar beets, a non-damaging flow at Ripon will be 1,500 cfs. The Operating Plan further states that flows above 1,500 cfs will damage almond and walnut orchards along the Stanislaus River. To our knowledge, no updated operation plans have been submitted since 1982.

As a result of that litigation and for the protection of downstream landowners, water released from New Melones Reservoir is restricted during the non-flood control period. Specifically, Reclamation may not make non-flood control releases in excess of 1,250 -1,500 cfs after February 1st because of the damage that flows in excess of that amount causes to orchards along the Stanislaus River.

It is clear that flows in excess of 1,500 cfs cause damage to landowners along the Stanislaus River. Reclamation is well aware of this potential for damage, and has acknowledged injury to orchards with flows above 1,500 cfs in the Stanislaus River and therefore has capped the releases from New Melones Reservoir to not exceed 1,500 cfs unless required for flood control. As such, any implementation of unimpaired flow alternatives on the Stanislaus River will be limited by 1,500 cfs flow restrictions in place for the protection of the downstream landowners.

Program of Implementation must comply with recent Congressional Legislation that requires reduction in use of New Melones Reservoir to meet the San Joaquin River flow and salinity objectives

In an effort to cure the inequitable and adverse impact on New Melones Reservoir CVP water contractors from Reclamation utilizing New Melones solely to achieve Vernalis water quality objective and dedicating large amounts of water to meet the San Joaquin River flow objectives, Congress stepped in and passed legislation providing direction regarding New Melones Reservoir and specifically, actions that should be taken to increase the water supply available to the New Melones CVP water contractors, including Stockton East. We believe it is very important in any program of implementation, the State Water Board must comply with the Congressional direction contained in HR 2828.

The following is a brief highlight of the important aspects of HR 2828 that the State Water Board must consider:

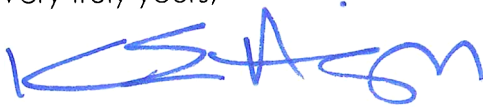
- o HR 2828 (Public Law 108-361, signed October 25, 2004) contains important direction for the Secretary of the Interior and the Bureau of Reclamation regarding operation of New Melones Reservoir (**See Attachment C**)
- o HR 2828 requires not later than one year from the enactment, the Secretary must develop **and initiate implementation** of a program (Program) to meet all existing water quality standards and objectives for which the CVP is responsible. Despite this requirement, Reclamation has not undertaken any new actions to relieve the burden on New Melones to meet existing Vernalis flow and water quality objectives.
- o HR 2828 clearly describes what should be included in the Program: (1) Recirculation program to provide flow, reduce salinity concentrations and **reduce the reliance on New Melones Reservoir for meeting water quality and fishery objectives** through the use of excess capacity in export pumps and conveyance facilities; (2) Best Management Practices (BMP) Plan that focus on reducing water quality impacts from discharges from wildlife refuges. The BMP plan is to be coordinated with other entities discharging water into the San Joaquin River to reduce salinity concentrations discharged into the River, including the timing of discharges to optimize their assimilation.
- o The overall purpose of the Program is to provide Interior with greater flexibility in meeting the existing objectives **so as to reduce the demand on water from New Melones Reservoir used for that purpose and to assist the Secretary in meeting any obligations to CVP contractors from the New Melones project.**

- o HR 2828 also expressly authorizes acquisition of water from willing sellers to meet the water quality and flow objectives for which the CVP is responsible so as to assist in meeting allocations to CVP contractors from the New Melones Project.

HR 2828 provides clear direction; there must be action to **reduce the existing demand on water from New Melones Reservoir for meeting water quality objectives and fishery objectives**, so that increased deliveries can be made to the New Melones CVP water contractors. The State Water Board should consider this clear direction from Congress in any program of implementation to achieve the San Joaquin River flow objectives and the Vernalis and Interior Delta salinity objectives. Releases from New Melones Reservoir should not be continued as they have in the past as these releases frustrate the original New Melones Congressional Authorization, they deprive New Melones CVP water contractors of water needed in their service areas and are contrary to the most recent Congressional Authorization mandating reduction in releases from New Melones to meet these objectives.

We appreciate this opportunity to comment. If you have any questions, please feel free to contact me.

Very truly yours,



KARNA E. HARRIGFELD
Attorney-at-Law

KEH:lac

Attachments

cc: Kevin Kauffman
DeeAnne Gillick

Attachment “A”

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 10 1982

CLERK, U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	Nos. 81-4189X
)	81-4309X
vs.)	
)	
STATE OF CALIFORNIA, et al.,)	ORDER
)	
Defendants-Appellants.)	
_____)	

Before: KENNEDY, PREGERSON, and REINHARDT, Circuit Judges.

Having considered the submissions of the parties, and their arguments in a telephone conference held on Wednesday, March 10, 1982, at 10:00 a.m., our order granting injunction pending determination of appeal is amended. The order in its entirety is now as follows:

(1) The United States and its officers, agents, and employees are enjoined and prohibited from impounding or storing water in the reservoir of the New Melones project in excess of the amounts provided by condition 2 of decision 1422 issued by the State Water Resources Control Board, as set forth in Water Rights Order 80-20, subject to the following:

(a) With respect to waters already stored or impounded in excess of the elevation 844 feet mean sea level and as to any additional waters in the project reservoir above that level, releases shall be made

commencing now, except when such releases will cause damage or potential damage to downstream properties or to other legitimate downstream interests, and provided further that such releases shall not be made unless consistent with accepted principles for dam and reservoir operation.

(b) The United States may impound and store or release waters as it deems necessary for flood control purposes.

(2) On or before March 17, 1982, the United States shall provide the State of California with a plan, study, or other documentation to effect compliance with the provisions of paragraph (1) of this order. Such plan, study, or documentation shall indicate the criteria and assumptions which provide the basis for regulation for flood control purposes and for protection of downstream property from damages caused by inundation or seepage based upon the 844 feet impoundment limitation. The United States shall provide an amended plan, study, or other documentation whenever the release rates and/or schedules are substantially altered. If the plan, study, or other documentation provided by the plaintiff fails to support the operative release rates and/or schedules, the defendants shall have the right to apply to this court for modification of said release rates and/or schedules.

(3) The United States shall release water from the New Melones Project through alternative waterways and facilities to the extent that such releases will not substantially increase the flow rates at Ripon, under

circumstances where such releases are physically and economically feasible and will not cause damage to downstream properties or levees from inundation and seepage. The United States shall provide documentation by no later than March 17, 1982, indicating the extent to which releases can be made that meet this criteria, and the extent to which such releases are being made. If releases cannot be made that meet this criteria, the documentation shall fully explain the reasons in support of this conclusion. The United States shall confer in good faith with the districts or entities controlling such alternative waterways and facilities to effect the purpose of this paragraph.

(4) Nothing in the order restrains the United States from release of water to fully satisfy vested prior rights held by any party and recognized by the State Water Resources Control Board, or authorizes the United States to fail to release such water.

(5) Nothing in this order requires the United States to impound water which would otherwise be released, absent this order.

(6) The United States shall provide documentation as soon as possible and no later than March 17, 1982, describing the extent to which specific downstream properties are covered by flood control easements, and estimates of damage, including monetary damage, that would occur to downstream properties at various rates of release ranging from 1200 c.f.s to 3500 c.f.s.

Attachment “B”



United States Department of the Interior
OFFICE OF THE SOLICITOR

PACIFIC SOUTHWEST REGION
2800 COTTAGE WAY
ROOM E-2753
SACRAMENTO, CALIFORNIA 95825-1890

IN REPLY REFER TO:

CRRenda/4331

February 11, 1982

Donald B. Ayer
United States Attorney
3305 Federal Building - U.S. Courthouse
650 Capitol Mall
Sacramento, California 95814

Attn: Stuart L. Somach, Assistant U.S. Attorney

Re: United States of America v. State of California,
et al., 9th Cir. Nos. 81-4189X and 81-4309X

Dear Sir:

In accordance with the directives of the Ninth Circuit Court of Appeals in the recent Order entered in the above-entitled case, the Bureau of Reclamation has initiated releases from Goodwin Diversion Dam on the Stanislaus River as described in more detail in the enclosed documentation. Also, as required in said Order of February 2, 1982, the Bureau has formulated an operating plan for the New Melones Reservoir. We enclose that operating plan for your subsequent distribution to the court and to the appropriate State of California representatives.

We will, of course, keep you advised concerning any substantial changes in the proposed flows and/or operating plan.

Sincerely yours,

Charles R. Renda
Regional Solicitor
Pacific Southwest Region

Encs.

cc: MP-100 (Mr. Catino)
Associate Solicitor, Div.
of Energy and Resources
(Attn: Gary Fisher)

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that said is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion as to be competent to serve papers.

That on 2-12-82 she served a copy of the attached

letter dtd February 12, 1982

by placing said copy in a postpaid envelope addressed to the persons herein-after named, at the places and addresses stated below, which are the last known addresses, and by depositing said envelopes and contents in the United States Mail at Sacramento, California:

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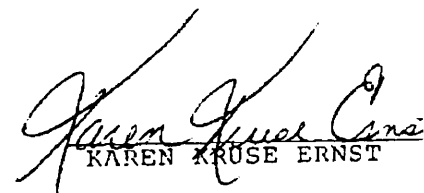
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KAREN KRUSE ERNST



United States Department of the Interior

BUREAU OF RECLAMATION
MID-PACIFIC REGIONAL OFFICE
2800 COTTAGE WAY
SACRAMENTO, CALIFORNIA 95825

IN REPLY
REFER TO: MP-2300
511.

FEB 11 1982

To: Regional Solicitor, Pacific Southwest Region
From: ^{Acting} Regional Director

Subject: Operating Plan for New Melones Reservoir as Required by the
February 2, 1982 Order of the United States Court of Appeals
for the Ninth Circuit

Investigations made by Mr. Dave DeBruyn, consultant to the U. S. Attorney, Sacramento, and by various members of my staff have led us to conclude that there is a potential for damage downstream from Goodwin Diversion Dam on the Stanislaus River when flows at the Ripon Gaging Station exceed 1,250 ft³/s. I am enclosing memoranda by Mr. DeBruyn and USBR employees William R. Cooke (supervisory geologist), Gordon Lyford (agricultural engineer), and Robert D. Shaffer (outdoor recreational planner) which provide supporting information for these conclusions.

Our studies show that a flow in excess of 1,250 ft³/s at Ripon will cause the water table beneath a sugar beet field on the Collier ranch to rise into the root zone of the beets. This normally results in the beets rotting in the ground. Following the harvest of the sugar beet crop, we expect that a non-damaging flow at Ripon will be approximately 1,500 ft³/s. Our investigations indicate that flows above 1,500 ft³/s will create water tables high enough to have the potential to damage the almond and walnut orchards adjacent to the river.

On February 3, 1982, we initiated a release of 1,000 ft³/s from Goodwin Diversion Dam. On February 4, 5, and 7, we had observers along the Stanislaus River evaluating the potential for damage. On February 8, 1982, the release from Goodwin Diversion Dam was increased to 1,250 ft³/s.

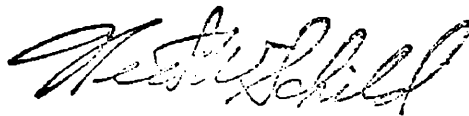
Our plan of operation is to maintain a flow of 1,250 ft³/s as measured at the Ripon Gaging Station for a period of 10 days. At that time, we will observe the surface and ground-water conditions along the Stanislaus River and determine whether the 1,250 ft³/s is a nondamaging flow. If we determine that flows greater than 1,250 ft³/s can be tolerated without a potential for damage then the flow will be increased by 250 ft³/s and the evaluation process will be

repeated. Incremental increases and evaluations will continue until we determine that we have reached the maximum nondamaging flow. Investigations, including ground-water measurements, will be substantially as recommended by Mr. DeBruyn.

The attached table shows the forecasted operation of New Melones Dam and Reservoir. This forecast is based on the following assumptions:

1. Melones inflow for the months of February 1982 thru September 1982 is estimated from current conditions with median precipitation for the remainder of the year. Melones inflow for October 1982 thru September 1983 is an estimate for a median-type year.
2. For the period when New Melones elevation is greater than 844 feet, the release to the Stanislaus River at Goodwin Dam was maintained at 1,250 ft³/s. Because of accretions/depletions to the Stanislaus River, the net flow at Ripon may be higher or slightly lower than the Goodwin release. Accretions to the river in the winter months are caused by surface water runoff from local rainstorms. During the summer months, agricultural irrigation return flows are responsible for river accretions. These accretions, for the purposes of this study are assumed to be 250 ft³/s year round.
3. For the period when New Melones elevation is at or below 844 feet, releases to the Stanislaus River at Goodwin are equal to the fishery flow plus water quality release.

Notable in the operation are the end of month storages. The 1982 water year runoff is forecasted to be much above normal and as a result the lake surface remains above 844 feet all year. If the 1983 water year is near median values, the lake should fall below 844 feet by the end of July. By making only minimum releases in August and September the lake continues to drop, with the September end of month elevation falling to 811 feet.



Enclosures

FORECASTED NEW MELONES OPERATION
 ASSUMES 1,250 ft³/s RELEASE TO THE STANISLAUS RIVER

Month	Melones Inflow (KAF)	Tri-Dam Canals (KAF)	Fish Release (KAF)	W. Q. Release (KAF)	Tulloch F.C. (KAF)	Melones Release (KAF)	Melones Change (KAF)	EOM Storage (KAF)	EOM Elev (Ft)
1982									
Jan	85	0	7	0	0	69	16	493	856
Feb	155	25	8	0	5	107	48	509	360
Mar	250	85	28	6	10	169	81	557	870
Apr	385	100	17	3	0	177	208	638	885
May	265	110	2	8	0	184	81	846	920
Jun	85	110	2	8	0	187	-102	927	932
Jul	40	105	2	8	0	182	-142	825	917
Aug	35	75	2	8	0	149	-114	683	894
Sep	35	15	4	4	0	92	-57	569	872
Oct	40	0	12	0	0	74	-34	512	860
Nov	55	0	8	0	0	77	-22	478	853
Dec								456	848
1983									
Jan	75	0	8	0	0	77	-2	454	847
Feb	80	0	7	0	0	69	11	465	850
Mar	105	25	8	0	5	107	-2	463	850
Apr	160	85	28	6	10	169	-9	454	847
May	250	100	17	3	0	177	73	527	863
Jun	165	110	2	8	0	184	-19	508	859
Jul	55	110	2	8	0	124	-69	439	844
Aug	35	105	2	8	0	115	-80	359	824
Sep	35	75	2	8	0	85	-50	309	811

NOTE: EOM = end of month storage
 KAF = thousands of acre-feet

PROPOSED RESERVOIR RELEASE PLAN
NEW MELONES PROJECT

By
Dave DeBruyn

Background and Supporting Information.

A careful review of historical information gathered in 1980 concerning riverflows versus seepage of water to cropped land within the river flood plain was made. During the 1980 period, a few auger hole transects were established on properties that appeared to be susceptible to adverse seepage from the river. Also, temporary river staff gages were established and used in conjunction with auger hole data to correlate riverflow levels to adjacent levels of ground water in cropped fields developed to permanent and field-type crops. The data clearly shows a direct correlation does exist. As riverflows rise or fall, adjacent ground water levels measured in the auger holes also rise and fall within the same time period.

The major crops expected to be adversely affected by sustained high riverflows lie primarily within the flood plain of the river. The main crops consist of walnuts, almonds, peaches, vineyards, grain, and sugar beets.

Followup field reviews and discussions with farmers, representatives from the State Parks and Recreation Department, a sewage plant director, and others this February of 1982, has reconfirmed the fact that adverse impacts to the lower river system will be felt at sustained flows in excess of 1,250 to 2,000 ft³/s as measured at the Ripon Gage. Such adverse impacts will cause the following type of damages:

1. Excessive seepage as described above will stunt and/or kill walnut, almond, grain, and sugar beets on land adjacent to the river. High water tables caused by river seepage will cause tree root systems to deteriorate due to lack of sufficient oxygen and thereby causing crop damage. Soil saturation from river sources occurs as lateral seepage from the river in 2 to 4 weeks under normal conditions. This time period could be less if the soils are at high moisture conditions when the process begins. Such is the case this year, being a high rainfall year.

Tree crops are particularly susceptible to damage from high water tables as their root systems are usually much deeper (6 to 12 feet) than grain or sugar beets, which generally do not exceed 3 to 4 feet. In other words, the tree crops are affected by rising water tables first, due to their greater root depth. Additionally, tree crops, particularly almonds, are expected to break their winter dormancy period sometime between the 10th and 20th of February. In effect, the tree is becoming active and will be highly susceptible to damage caused by the high water tables that infringe upon their root zone. Also, root activity of walnut trees is expected to begin around the 15th to the 20th of February, and if average weather conditions prevail for the next month, they can be expected to fully break their dormancy around the 15th of March this year.

Some work by Dr. Catlin of the University of California at Davis includes some important pathogens that can attack walnuts under flooded or waterlogged conditions. Several fungi in the genus

"Phytophthora" are pathogens of walnut, and the literature suggests that black walnut rootstock is highly susceptible to Phytophthora crown rot. Dr. S. M. Mircetich, USDA, Department of Plant Pathology, University of California at Davis, found in greenhouse studies that 48 to 72 hours can allow Phytophthora species to infect walnut seedlings.

One field (approximately 60 acres) of sugar beets located on the Collier Ranch on the north side of the river in T. 2S., R. 8 E., Section 24, appears will be severely affected at flows that exceed 1,250 ft³/s. The sugar beets at this location were not harvested last fall due to rainfall conditions at that time. The beets will be carried through the winter and cannot be harvested until the second week of March at the earliest. Therefore, any high water tables (2 or 3 feet in depth) created by excessive river seepage on this field will rapidly create anaerobic conditions and rapid deterioration of the high sugar content crop can be expected.

2. High riverflows, those generally in excess of 3,500 ft³/s, will adversely affect Caswell State Park. The use of the park will be restricted and affect public usage at such riverflows. Flows of this magnitude or greater generally flood their parking lots and some of the area used by the public.

Also, later on in the season when swimming begins, flows in excess of 2,000 to 2,500 ft³/s create safety hazards due to swift river currents. Therefore, public enjoyment of the Park will be impaired or made hazardous to a limited extent during the summer period with flows in excess of 2,000 ft³/s.

3. Riverflows generally in excess of 2,000 to 3,000 ft³/s begin to limit the operational capability of the Ripon Sewage Treatment Plant. The city operates two treatment plants, one for industrial wastewater and the other for domestic wastewater. Both of these facilities are of the percolation pond type. The lower positioned (topographically) percolation ponds are adversely affected by high ground water tables caused by seepage from high riverflows. Percolation rates in such ponds are greatly reduced, thereby reducing the overall plant capability. Under such conditions, the lowered percolation rates would soon cause the ponds to overflow directly into the river, thereby violating the State Water Resources Control Board's discharge permit.
4. Riverflows generally in excess of 1,000 to 1,200 ft³/s would significantly reduce the recreational activities of the canoe enthusiasts. During 1981, there were about 211,000 recreational visitor days on the river system below Orange Blossom Bridge. The number of recreational canoe days of the total is not known. However, such activity has steadily increased in the lower river system. As a general rule, optimum canoeing in the area occurs at flows between 600 and 1,000 ft³/s.

Additional Factors and Considerations.

1. Ground-water levels beneath lands with crops adjacent to the river will be affected by seepage from the river at a faster rate because of the high soil moisture conditions.
2. Riverflow data as equated to river gage heights this year compared to 1980 conditions may in all probability show that given flow rates (such as at Ripon Gage) will reflect higher water surface elevations for the same amount of flow. This is principally due to greater vegetative growth in the channel prism now as compared to 1980. If it is found that such is the case, higher river elevations for a given riverflow will translate to higher ground-water elevations beneath the adjacent properties to the river. The above-described factor needs to be verified however.
3. It should also be pointed out that high long-term riverflows (in excess of 1,000 to 1,500 ft³/s at the Ripon Gage) throughout the crop growing season may also cause the adjacent regional ground-water (that ground water originating from natural recharge and enhanced with return flows from irrigation) body to be effectively blocked from draining into the river.

Based upon a ground-water contour map prepared by the Department of Water Resources depicting ground-water conditions during the spring of 1968, shows the Stanislaus River to be a gaining stream. That is to say, that during low flow periods, the river prism is

effectively acting as a drain for the much larger regional ground water system adjacent to the river. Raising the riverflows also raises the water elevation in the river, which in turn causes the adjacent ground water to rise. This rise in the flood plain area causes the ground water next to the flood plain to rise, because gradients towards the river are reduced and somewhat blocked from discharging into the river. Therefore, two basic effects will occur as a result of increasing the flows in the river. The first is the direct seepage of water by lateral subsurface movement through the soils, raising the ground water levels in the flood plain lands immediately adjacent to the river, and the second is to raise ground water levels by indirect means in the adjacent ground water basins as a result of blocking subsurface drainage of ground water to the river.

Data Collection Activities - Recommendations.

During the course of our field investigations during the week of February 1, 1982, it was discovered that a number of auger holes and temporary river staff gages were destroyed since originally installed in early 1980.

It is recommended that in order to develop a financial baseline of data upon the adjacent flood plain ground water body versus the river elevations, the following auger holes and staff gages be replaced or added to the data collection points:

1. Drill one new auger hole at the Barton property where new walnut plantings occur. No temporary river staff gage is needed here as the gage on the VanKonynenburg property a short distance downstream will suffice.
2. Reinstall an auger hole next to the river levee on the Collier Ranch. This hole should be located to reflect water table conditions in the beet field. Also, place a river staff gage near the point where the auger hole is to be located. Some consideration should be given to also installing a new auger hole at his new walnut plantings next to the levee.
3. Install one auger hole for ground water observation purposes next to the levee on the Wendt properties. All of the auger holes should be drilled about 2 to 3 feet into the saturated zone and perforated plastic pipe installed. Gravel pack the hole to preclude plugging of perforations. Install a temporary river staff gage near the auger hole site.
4. Reinstall a new auger hole at the Hertle property. This hole should be located at Hertle's lower field at the former site of well number H3. Also, install a temporary river staff gage near the new hole installation.
5. Install an auger hole on the C. J. Rumble property in the northwest field in the vicinity of the field drains.
6. Install an auger hole on the Mohler property next to the river levee.

Additional Recommendations.

The above recommendations concerning data collection activities are basically designed to include those areas along the river that are expected to reflect adverse crop problems initially. However, there are many other areas (too numerous to install data collection facilities for all) that may also have crop problems under high riverflows. The Bureau should stay in close contact with the Stanislaus River Flood Control Association, an organization sensitive to the various farmers and their water problems. In this manner, if other problems arise, the Bureau will be made aware of them rapidly.

In order to verify the potential problems that may arise within the beet field on the Collier Ranch, Bureau personnel should dig and remove for visual examination, a few of the beets located on the lower position (topographic) of the field. Future damage, should it occur, can then be verified as a "before and after" situation.

Proposed Riverflow Plan.

As has been pointed out in my report, there are a number of interests in the lower Stanislaus River system that will be impacted by varying flows. For instance, the Ripon Sewage Facilities will feel the impacts at about 2,000 to 2,500 ft³/s, while the recreational impacts at Caswell State Park will be impacted at about 3,500 ft³/s. Recreational use by swimmers at the Park are adversely impacted at about 2,000 to 2,500 ft³/s, while the canoe enthusiasts are affected by flows in excess of 1,000 to 1,200 ft³/s. However, it is felt that the agricultural interests and the potential that exists to damage permanent and field crops with flows in excess of 1,250 to 2,000 ft³/s is paramount. These interests have the most to lose insofar as

they are completely dependent upon the land's production for their livelihood. Therefore, the riverflow plan as given below is keyed to the potential damage that could occur to the crops located within the river flood plain.

Based upon the data gathered during the 1980 season and reconfirmed during the first week of February 1982, the following procedure of river releases should be followed to preclude damage to the crops within the flood plain of the lower river system.

Data indicates that the present releases (as of February 8) of 1,000 ft³/s could normally be increased to 1,500 ft³/s as measured at the Ripon Gage to protect the tree crops at the various locations on the lower river systems. However, because a field of sugar beets located on the Collier Ranch could not be harvested last fall as previously explained in my report, the flows should be, as an initial step, increased to 1,250 ft³/s to prevent high water tables developing in the beet field. The reason for this is because the beet field lies at a low (topographic) position that precludes raising the river to the 1,500 ft³/s as an initial step. The flow of 1,250 ft³/s as measured at the Ripon Gage should be maintained for a period of 10 days. During this time, auger holes of all sites should be measured two to three times per week.

If such measurements indicate that water tables are not infringing upon the crop root zone of both the tree and beet crops, the flows can be increased to 1,500 ft³/s as a second step of the plan. Such flows should be maintained for a period of 10 days, or until such time that data of shallow ground water levels indicate they are in fact infringing upon the root zone, or in the case of the beets, the crop itself. If, in case a

third step increase of flows can be safely undertaken, the step should be up to 1,750 ft³/s as measured at the Ripon Gage. Monitoring of ground water and river stage levels should continue to assure that no damage to the agricultural interests occurs at any point of the procedure.

Reservoir release rates will need to account for any accretions, natural or from irrigation, that may occur between Goodwin Dam and the Ripon Gage.

The attached memorandums written by W. Cooke, G. Lyford, and Bob Shaffer of the Bureau of Reclamation provide supporting data and additional information related to the Stanislaus River flow plan.

February 10, 1982

MP-230
451.2

To: Central Files

From: William R. Cooke, Supervisory Geologist

Subject: Ground-Water Levels Versus Stanislaus River Stage (Flows)--
New Malones Unit--Central Valley Project, California

During the spring and summer of 1980, the writer along with others made numerous trips to the area along the Stanislaus River between Caddale and the San Joaquin River. During the period March 22 through June 1, 1980, flows in the river exceeded 2,500 ft³/s. With flows of this magnitude, many cropped areas experienced high water either from seepage or direct overflow. These conditions were documented in Memoranda to the Central Files. During this period, no ground-water observation holes were established by the Bureau.

During July and August 1980, the Ground-Water Section measured ground-water levels in 19 shallow observation holes in fields and orchards along the Stanislaus River and also monitored river levels at the USGS gage at Ripon. Attached are hydrographs of the levels measured in these observation holes and the average water surface elevation reported at the Ripon Gage. Flows in the river had been at around 400 ft³/s level for at least 10 days prior to increased river flows noted on June 29, 1980 at the Ripon Gage. Flows peaked at 1,530 ft³/s on July 5, 1980 and then declined to the 1,100 to 1,200 ft³/s range for the period July 9 through July 24, at which time flows were reduced again to the 400 ft³/s level.

As water levels in the river fluctuate, water levels in the observation holes also fluctuate with the most rapid response being holes located near the river. Comparison of the river stage hydrograph and the hydrograph of the observation hole K-3 shows this type of direct response as experienced in this area. Ground-water levels in K-3 located in a walnut orchard rose to 5.3± feet below ground surface on July 5 and then declined following the pattern of flows in the river as recorded at the Ripon Gage. Most of the observation hole hydrographs show this early July rise in response to river flow. It should also be noted that ground-water levels as measured in all holes took longer to respond as the distance from the river increased.

Water levels in the Von Konyenburg Walnut Orchard located about one mile northeast of Highway 99 bridge range from 5.5± to 8.0± feet during the June 29 to July 24 period when flows averaged 1,220+ ft³/s. These levels would generally be in the root zone range of mature trees and could cause damage to the orchard or production. The ground-water level in hole K-3

near the river had risen to 8.1 feet below ground surface on February 7, 1982 with flow at Ripon of about 895 ft³/s and rising. On February 9, 1982, the depth to water on K-3 was 7.8 and the flow at Ripon was about 950 ft³/s. Water levels in this orchard are expected to rise to about 6.0 feet below ground with flows of 1,250 ft³/s at Ripon.

Water levels in the Barton walnut orchard located about 8,000 feet northeast of Highway 99 bridge are represented by holes B-1A, B-2, and B-3A (now destroyed) and had high water levels ranging from 9.5± feet to 13.0± feet during July 4 to July 24, 1980 period. Water levels in holes B-4A and B-5A located about one mile northeast of Highway 99 bridge in a walnut orchard had water levels ranging from 9.5± to 12.5± during the July 3 to July 24 period. On February 7, 1982, with a flow of about 895 ft³/s at Ripon, the water level in B-4A was 12.4± feet and on February 9, 1982, with a flow of about 950 ft³/s, the depth to water was 11.9 feet. The water level in this hole should rise to about a 10-foot depth with 1,250 ft³/s flow at Ripon by using a correlation with the 1980 data.

Water levels in holes C-1 and C-2 located adjacent to the river on the Collier Ranch about 3.8 miles (direct line) east of Highway 99 bridge range from a little over 5 feet to 7.5 feet during the July 7 through July 24, 1980 period. Hole C-1, now destroyed, had water levels of 5.1 to 5.7 feet during the July 7 through July 24, 1980 period with average flows at Ripon ranging from 1,340 ft³/s to 1,120 ft³/s. Flows of 1,250 ft³/s should again bring levels near the 5-foot depth. Depth to water in hole C-2 was below 8.7 feet on February 7, 1982, and 8.5 feet on February 9, 1982. This hole is located in a walnut orchard.

Holes R-1, R-2, and R-3 are located on the Robertson Ranch about 2 miles west of the Santa Fe Railroad Bridge, north of Riverbank. These holes are located in or near walnut orchards and had water levels ranging from less than 5 feet to about 9.5 feet during the July 10 through July 24, 1980 period. Hole R-2 had a water level of 10.5 feet on February 4, 1982 with a flow of about 780 ft³/s at the Ripon Gage, and depth to water of 9.8 feet on February 9, 1982. The water level in this hole can be expected to rise to about 9 feet with 1,250 ft³/s at the Ripon Gage.

The water levels in holes H-1 and H-2 located on the Hertel Farm about 3 miles downstream from the Highway 99 Bridge range from about 9 feet to about 10.5 feet during the July 9 through July 24, 1980 period. Hole H-2 was dry at 9.2 feet on February 7, 1982. Holes H-3 and H-4 were installed on July 25, 1980 in a field several hundred feet north of H-2. Hole H-3 had a depth to water of 6.0 feet on July 28, 1980 and hole H-4 had a depth of 9.8 on the same date. No doubt, water levels in these holes had been higher during the early part of the month. On February 9, 1982, depth to water on H-4 was 8.9 feet.

Data shown on the hydrographs indicate that the majority of crops should be protected with flows of 1,250 ft³/s and that ground-water levels would rise to heights that potential damage could occur to crops at flows exceeding 1,250 ft³/s.

William R. Cooke
William R. Cooke, Supervisory Geologist

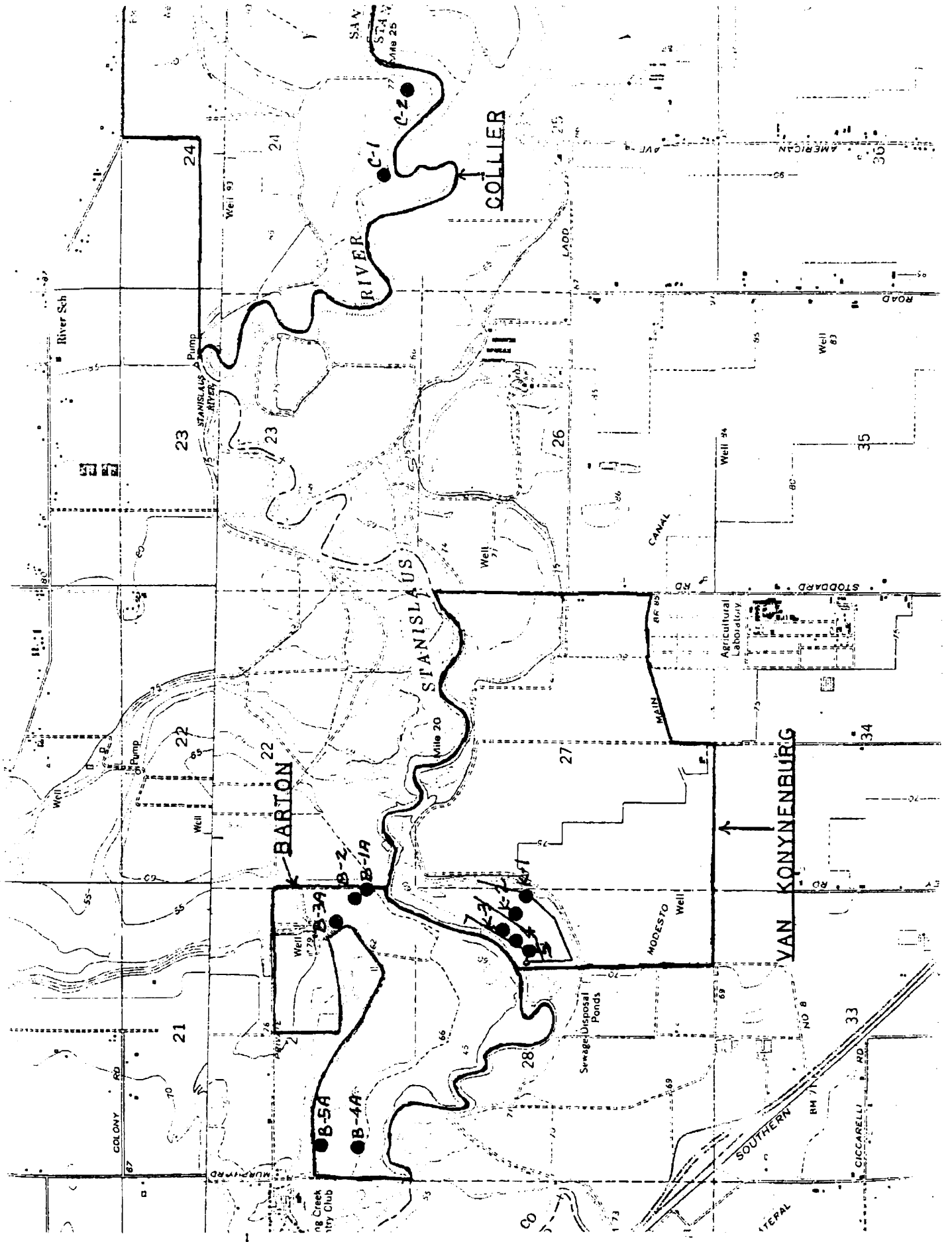
Noted: DC Madley
Acting Chief, Geology Branch

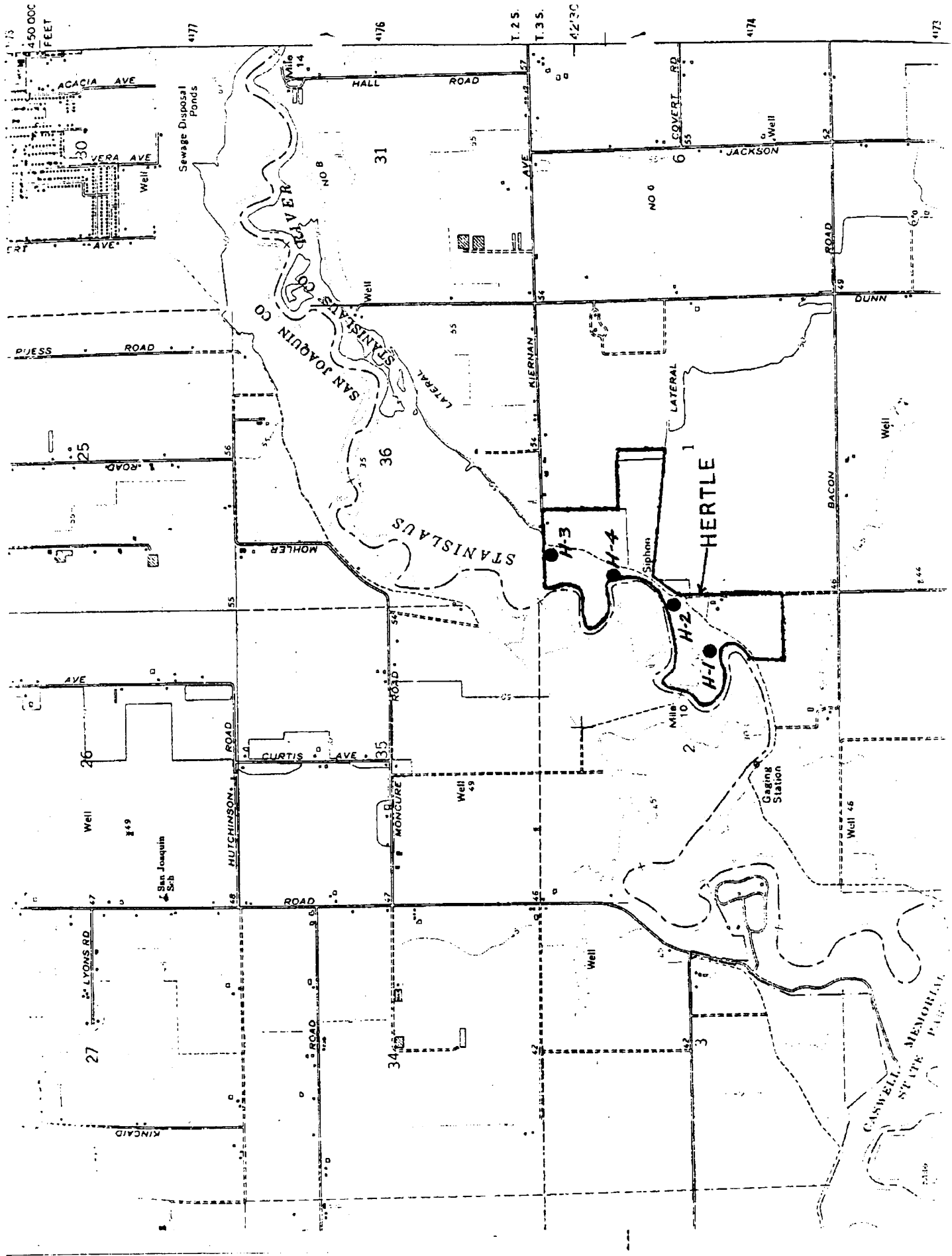
10 Feb 82
Date

Noted: [Signature]
Regional Engineer

2-10-82
Date

Attachments





1/450,000 FEET

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4176

T. 25.

T. 35.

R. 42/30.

4174

4173

ACACIA AVE
VERA AVE
WELL

Sewage Disposal Ponds

HALL ROAD

NO 8

31

NO 6

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JACKSON

PUSS ROAD

SAN JOAQUIN CO
STANISLAUS

LATERAL

NIERMAN

LATERAL

DUNN

BACON ROAD

HERTLE

H-3

H-4

H-2

H-1

Siphon

Gaging Station

AVE

26

Well

449

San Joaquin Sch

HUTCHINSONS ROAD

CURTIS AVE

35

Well

49

MONGURE

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Well

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LYONS RD

KINCAID

ROAD

ROAD

ROAD

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ROAD

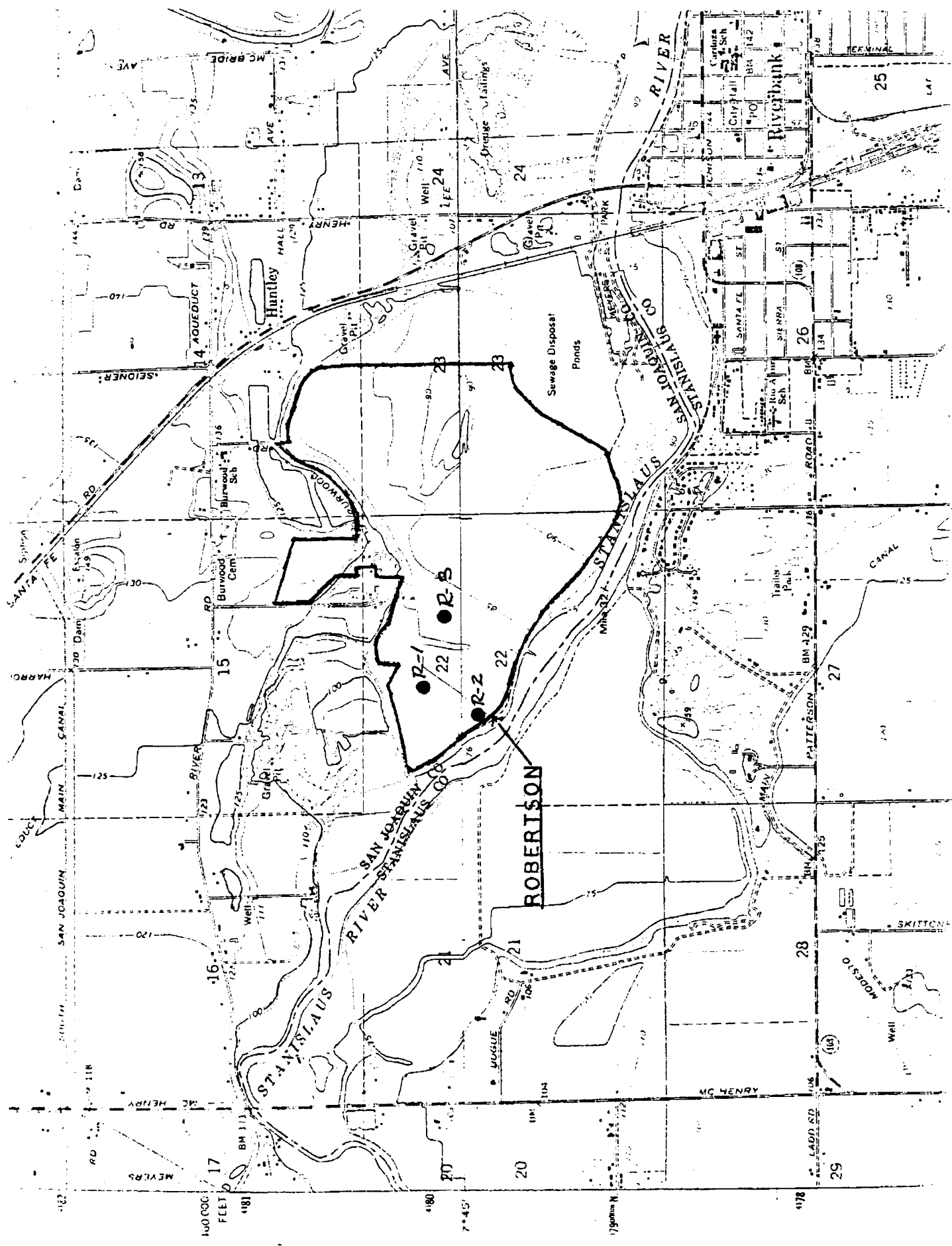
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ROAD

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CASWELL MEMORIAL STATE PARK



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U.S. Department of Justice

United States Attorney FEB 16 1982
Eastern District of California

February 12, 1982

Room 3305 Federal Building
United States Courthouse
650 Capitol Mall
Sacramento, California 95814

916/440-2331

Roderick E. Walston
Deputy Attorney General
6000 State Building
San Francisco, CA 94102

Re: United States v. State of California, et al.
Nos. 81-4189 and 81-4309

Dear Mr. Walston:

In accordance with the directives of the Ninth Circuit Court of Appeals, I am forwarding to you the enclosed documentation establishing that the United States is in full compliance with the provisions of paragraph one of the recent order entered by the court, in the above-entitled case. We will answer any question you may have with respect to the contents of the enclosed documents at the meeting arranged for this purpose. As agreed, this meeting is scheduled for 2:00 p.m. on February 16, 1982, and will be held in Room W-1140 in the Federal Building located at 2800 Cottage Way, Sacramento, California.

We will, pursuant to the court's order, keep you advised of any substantial change in the proposed flows and/or operating plan.

Sincerely,

DONALD B. AYER
United States Attorney

STUART L. SOMACH
Assistant U.S. Attorney

cc:
Honorable Anthony Kennedy, Judge
Honorable Harry Pregerson, Judge
Honorable Stephen Reinhardt, Judge

Enclosure

X
MP-420

February 10, 1982

To: Central Files
From: Gordon Lyford, Agricultural Engineer
Subject: Stanislaus River Seepage

This memo summarizes conversations with several Extension Service experts and others as to the potential effects of flooding and high water tables on crops along the Stanislaus River.

Clarence Smit - Ripon City Administrator. I talked with Mr. Smit about the effects of the riverflow on the operations of the Ripon water treatment plants. The city operates two treatment plants, one for industrial wastewater and the other for domestic wastewater. Both of these facilities are of the percolation type. Mr. Smit stated that 3,500 ft³/s will flood the industrial ponds. The operation of the industrial ponds will be adversely affected at about 2,500 (2,000-3,000) ft³/s. The domestic ponds will be affected at higher flows. He also mentioned that the Simpson Paper Company also has treatment ponds that will be affected at higher flows than those that affect the industrial ponds. He said that the high water prevents percolation and the ponds would soon overflow directly into the river, violating the State Water Resources Control Board discharge permit.

Dr. Hill - Extension Agronomist expert for sugar beets at U.C.D. I talked with Dr. Hill concerning the effects of high water tables and submergence on overwintered sugar beets. He said submergence would destroy the crop by rot very fast, and the sugar companies would not buy the crop. He also said that if the water table is lower than 3 feet from the soil surface, then there should be no problem. A water table higher than 3 feet would cause the roots to rot.

Dr. Jackson - Extension Agronomist expert for wheat. I talked with Dr. Jackson about the problem of high water tables on wheat. He said that if the wheat is submerged for less than 48 hours, the crop should be all right.

Dr. Warren Micke - Extension Pomologist for almonds and peaches. I talked with Dr. Micke concerning the effects of submergence and high water tables on orchards. He said almonds and peaches would be about the same, because the same rootstock is used for them. He said a rising water table will cause the loss of smaller roots below the water table and weaken the trees. This could also cause diseases in the roots that would migrate up the root system infecting the entire root system.

Don Rough - San Joaquin County Farm Advisor. Mr. Rough is a specialist in orchards and he said that root activity has already started in almonds. Peaches will begin root activity soon and walnuts some time later. High water tables will cause more damage when the trees are out of dormancy than when they are dormant. Flooding can cause crown rot and Phytophthora even when the temperature is cool. As the weather warms up, the damage will be more severe.

Paul Levin - Stanislaus County Farm Advisor. Paul indicated to me that walnuts are the most susceptible to waterlogging of all the crops along the river. He said that he noticed damage in walnuts and almonds from the 1980 flooding that showed up as off-color leaves and reduced yields. He said the problem zone along the river is below Salida to the confluence with the San Joaquin River. He said that trees that get root damage need to be pruned way back in order to recover. Another aspect of damage is salt accumulation near the surface due to high water. The salt can cause as much damage as water. He also indicated that root diseases can migrate up the root system.

Chuck Wilson - Farm Advisor, Sutter-Yuba Counties alfalfa expert. Dr. Wilson indicated that a newly planted alfalfa field (seedlings) will not be affected by a high water table. Later in the spring after the seedlings develop, they should have at least a 3-foot root zone. Early in the year (winter), alfalfa could be flooded for several days and still not be damaged.

Gordon R Glyford

Glyford:jm 2/10/82

MP-420
715.

FEB 10 1982

To: Central Files
From: Robert D. Shaffer, Outdoor Recreation Planner
Subject: Cursory Review of Impacts to Recreation Use and Facilities
During Flow Regimes of 1000 ft³/sec to 1750 ft³/sec--Lower
Stanislaus River--Central Valley Project

This memorandum summarizes the subject, as discussed with Dave Chubon, U.S. Army Corps of Engineers, Park Manager, Lower Stanislaus River.

LOWER STANISLAUS RECREATION

Boating

River flows of approximately 600 ft³/sec are considered optimum for white water rafting, kayaking and canoeing. As flows increase, the quality of the white water experience proportionally decreases. At approximately 1000 ft³/sec, rapids are not as vigorous. However, the flows would be acceptable to the above watercraft up to approximately 1200 ft³/sec in the summer months when water temperatures are higher. Flows between 1200 ft³/sec and 1750 ft³/sec would be hazardous year round, but especially in the winter and spring months when water temperatures are low.

Fishing

Preferred fishing flows are between 500 and 1000 ft³/sec. Higher flows result in increased turbidity and decreased angler success. At approximately 1500 ft³/sec, inundation of fishing docks would begin. All docks would be inundated at 1650 ft³/sec.

Swimming

It has been observed that swimming activities sharply decrease when flows reach 1000 ft³/sec. From an enjoyment and safety viewpoint, 400-600 ft³/sec is most desirable.

Hiking

Flows above 1500 ft³/sec inundate and erode portions of hiking trails which would result in a decrease of this activity.

Sightseeing

This activity would remain somewhat constant regardless of flow regime. Picnic areas and boat ramps would not be affected by flows up to 1750 ft³/sec.

In summary, the most desirable flow for recreation on the Lower Stanislaus is approximately 600 ft³/sec. When flows reach 1000 ft³/sec, recreation use declines and becomes more dangerous.

James M. Petruvick

FOR / Robert D. Shaffer.

cc: MP-420

RShaffer:jgh:2/10/82

Attachment “C”

**SENATE ENROLLED VERSION OF HR 2828
LANGUAGE REGARDING NEW MELONES**

(ii) **ACTIONS TO INCREASE PUMPING-** Actions to increase pumping shall be accomplished in a manner consistent with the Record of Decision requirement to avoid redirected impacts and adverse impacts to fishery protection and with any applicable Federal or State law that protects--

- (I) water diversions and use (including avoidance of increased costs of diversion) by in-Delta water users (including in-Delta agricultural users that have historically relied on water diverted for use in the Delta);
- (II) water quality for municipal, industrial, agricultural, and other uses; and
- (III) water supplies for areas of origin.

(D) PROGRAM TO MEET STANDARDS-

(i) **IN GENERAL-** Prior to increasing export limits from the Delta for the purposes of conveying water to south-of-Delta Central Valley Project contractors or increasing deliveries through an intertie, the Secretary shall, not later than 1 year after the date of enactment of this Act, in consultation with the Governor, develop and initiate implementation of a program to meet all existing water quality standards and objectives for which the Central Valley Project has responsibility.

(ii) **MEASURES-** In developing and implementing the program, the Secretary shall include, to the maximum extent feasible, the measures described in clauses (iii) through (vii).

(iii) **RECIRCULATION PROGRAM-** The Secretary shall incorporate into the program a recirculation program to provide flow, reduce salinity concentrations in the San Joaquin River, and reduce the reliance on the New Melones Reservoir for meeting water quality and fishery flow objectives through the use of excess capacity in export pumping and conveyance facilities.

(iv) BEST MANAGEMENT PRACTICES PLAN-

- (I) **IN GENERAL-** The Secretary shall develop and implement, in coordination with the State's programs to improve water quality in the San Joaquin River, a best management practices plan to reduce the water quality impacts of the discharges from wildlife refuges that receive water from the Federal Government and discharge salt or other constituents into the San Joaquin River.
- (II) **COORDINATION WITH INTERESTED PARTIES-** The plan shall be developed in coordination with interested parties in the San Joaquin Valley and the Delta.

(III) **COORDINATION WITH ENTITIES THAT DISCHARGE WATER-** The Secretary shall also coordinate activities under this clause with other entities that discharge water into the San Joaquin River to reduce salinity concentrations discharged into the River, including the timing of discharges to optimize their assimilation.

(v) **ACQUISITION OF WATER-** The Secretary shall incorporate into the program the acquisition from willing sellers of water from streams tributary to the San Joaquin River or other sources to provide flow, dilute discharges of salt or other constituents, and to improve water quality in the San Joaquin River below the confluence of the Merced and San Joaquin Rivers, and to reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives.

(vi) **PURPOSE-** The purpose of the authority and direction provided to the Secretary under this subparagraph is to provide greater flexibility in meeting the existing water quality standards and objectives for which the Central Valley Project has responsibility so as to reduce the demand on water from New Melones Reservoir used for that purpose and to assist the Secretary in meeting any obligations to Central Valley Project contractors from the New Melones Project.

(vii) **UPDATING OF NEW MELONES OPERATING PLAN-** The Secretary shall update the New Melones operating plan to take into account, among other things, the actions described in this title that are designed to reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives, and to ensure that actions to enhance fisheries in the Stanislaus River are based on the best available science.

(F) NEW MELONES RESERVOIR-

(i) **IN GENERAL-** In addition to the other authorizations granted to the Secretary by this title, the Secretary shall acquire water from willing sellers and undertake other actions designed to decrease releases from the New Melones Reservoir for meeting water quality standards and flow objectives for which the Central Valley Project has responsibility to assist in meeting allocations to Central Valley Project contractors from the New Melones Project.

(ii) **PURPOSE-** The authorization under this subparagraph is solely meant to add flexibility for the Secretary to meet any obligations of the Secretary to the Central Valley Project contractors from the New Melones Project by reducing demand for water dedicated to meeting water quality standards in the San Joaquin River.

(iii) **FUNDING-** Of the amounts authorized to be appropriated under section 109, not more than \$30,000,000 may be expended to carry out clause (i).

(G) RECIRCULATION OF EXPORT WATER- Funds may be used to conduct feasibility studies, evaluate, and, if feasible, implement the recirculation of export water to reduce salinity and improve dissolved oxygen in the San Joaquin River.

One Hundred Eighth Congress
of the
United States of America

AT THE SECOND SESSION

Began and held at the City of Washington on Tuesday,
the twentieth day of January, two thousand and four

An Act

To authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Water Supply, Reliability, and Environmental Improvement Act".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CALIFORNIA WATER SECURITY AND ENVIRONMENTAL
ENHANCEMENT

Sec. 101. Short title.
Sec. 102. Definitions.
Sec. 103. Bay Delta program.
Sec. 104. Management.
Sec. 105. Reporting requirements.
Sec. 106. Crosscut budget.
Sec. 107. Federal share of costs.
Sec. 108. Compliance with State and Federal law.
Sec. 109. Authorization of appropriation.

TITLE II—MISCELLANEOUS

Sec. 201. Salton Sea study program.
Sec. 202. Alder Creek water storage and conservation project feasibility study and report.
Sec. 203. Folsom Reservoir temperature control device authorization.

TITLE I—CALIFORNIA WATER SECURITY
AND ENVIRONMENTAL ENHANCEMENT

SEC. 101. SHORT TITLE.

This title may be cited as the "Calfed Bay-Delta Authorization Act".

SEC. 102. DEFINITIONS.

In this title:

(1) CALFED BAY-DELTA PROGRAM.—The terms "Calfed Bay-Delta Program" and "Program" mean the programs, projects, complementary actions, and activities undertaken through coordinated planning, implementation, and assessment activities of the State agencies and Federal agencies as set forth in the Record of Decision.

(2) CALIFORNIA BAY-DELTA AUTHORITY.—The terms "California Bay-Delta Authority" and "Authority" mean the California Bay-Delta Authority, as set forth in the California Bay-Delta Authority Act (Cal. Water Code § 79400 et seq.).

(3) DELTA.—The term "Delta" has the meaning given the term in the Record of Decision.

(4) ENVIRONMENTAL WATER ACCOUNT.—The term "Environmental Water Account" means the Cooperative Management Program established under the Record of Decision.

(5) FEDERAL AGENCIES.—The term "Federal agencies" means—

- (A) the Department of the Interior, including—
 - (i) the Bureau of Reclamation;
 - (ii) the United States Fish and Wildlife Service;
 - (iii) the Bureau of Land Management; and
 - (iv) the United States Geological Survey;
- (B) the Environmental Protection Agency;
- (C) the Army Corps of Engineers;
- (D) the Department of Commerce, including the National Marine Fisheries Service (also known as "NOAA Fisheries");
- (E) the Department of Agriculture, including—
 - (i) the Natural Resources Conservation Service; and
 - (ii) the Forest Service; and
- (F) the Western Area Power Administration.

(6) FIRM YIELD.—The term "firm yield" means a quantity of water from a project or program that is projected to be available on a reliable basis, given a specified level of risk, during a critically dry period.

(7) GOVERNOR.—The term "Governor" means the Governor of the State of California.

(8) RECORD OF DECISION.—The term "Record of Decision" means the CalFed Bay-Delta Program Record of Decision, dated August 28, 2000.

(9) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(10) STATE.—The term "State" means the State of California.

(11) STATE AGENCIES.—The term "State agencies" means—

- (A) the Resources Agency of California, including—
 - (i) the Department of Water Resources;
 - (ii) the Department of Fish and Game;
 - (iii) the Reclamation Board;
 - (iv) the Delta Protection Commission;
 - (v) the Department of Conservation;
 - (vi) the San Francisco Bay Conservation and Development Commission;
 - (vii) the Department of Parks and Recreation; and
 - (viii) the California Bay-Delta Authority;
- (B) the California Environmental Protection Agency, including the State Water Resources Control Board;
- (C) the California Department of Food and Agriculture; and
- (D) the Department of Health Services.

SEC. 102. BAY DELTA PROGRAM.

(a) IN GENERAL.—

(1) RECORD OF DECISION AS GENERAL FRAMEWORK.—The Record of Decision is approved as a general framework for addressing the Califed Bay-Delta Program, including its components relating to water storage, ecosystem restoration, water supply reliability (including new firm yield), conveyance, water use efficiency, water quality, water transfers, watersheds, the Environmental Water Account, levee stability, governance, and science.

(2) REQUIREMENTS.—

(A) IN GENERAL.—The Secretary and the heads of the Federal agencies are authorized to carry out the activities described in subsections (c) through (f) consistent with—

- (i) the Record of Decision;
- (ii) the requirement that Program activities consisting of protecting drinking water quality, restoring ecological health, improving water supply reliability (including additional storage, conveyance, and new firm yield), and protecting Delta levees will progress in a balanced manner; and
- (iii) this title.

(B) MULTIPLE BENEFITS.—In selecting activities and projects, the Secretary and the heads of the Federal agencies shall consider whether the activities and projects have multiple benefits.

(b) AUTHORIZED ACTIVITIES.—The Secretary and the heads of the Federal agencies are authorized to carry out the activities described in subsections (c) through (f) in furtherance of the Califed Bay-Delta Program as set forth in the Record of Decision, subject to the cost-share and other provisions of this title, if the activity has been—

(1) subject to environmental review and approval, as required under applicable Federal and State law; and

(2) approved and certified by the relevant Federal agency, following consultation and coordination with the Governor, to be consistent with the Record of Decision.

(c) AUTHORIZATIONS FOR FEDERAL AGENCIES UNDER APPLICABLE LAW.—

(1) SECRETARY OF THE INTERIOR.—The Secretary of the Interior is authorized to carry out the activities described in paragraphs (1) through (10) of subsection (d), to the extent authorized under the reclamation laws, the Central Valley Project Improvement Act (title XXXIV of Public Law 102-575; 106 Stat. 4706), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable law.

(2) ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.—The Administrator of the Environmental Protection Agency is authorized to carry out the activities described in paragraphs (3), (5), (6), (7), (8), and (9) of subsection (d), to the extent authorized under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), and other applicable law.

(3) SECRETARY OF THE ARMY.—The Secretary of the Army is authorized to carry out the activities described in paragraphs (1), (2), (3), (7), (8), and (9) of subsection (d), to the extent

authorized under flood control, water resource development, and other applicable law.

(4) **SECRETARY OF COMMERCE.**—The Secretary of Commerce is authorized to carry out the activities described in paragraphs (2), (6), (7), and (9) of subsection (d), to the extent authorized under the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable law.

(5) **SECRETARY OF AGRICULTURE.**—The Secretary of Agriculture is authorized to carry out the activities described in paragraphs (3), (5), (6), (7), (8), and (9) of subsection (d), to the extent authorized under title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.), the Farm Security and Rural Investment Act of 2002 (Public Law 107-171; 116 Stat. 184) (including amendments made by that Act), and other applicable law.

(d) **DESCRIPTION OF ACTIVITIES UNDER APPLICABLE LAW.**—

(1) **WATER STORAGE.**—

(A) **IN GENERAL.**—Activities under this paragraph consist of—

(i) planning and feasibility studies for projects to be pursued with project-specific study for enlargement of—

- (I) the Shasta Dam in Shasta County; and
- (II) the Los Vaqueros Reservoir in Contra Costa County;

(ii) planning and feasibility studies for the following projects requiring further consideration—

- (I) the Sites Reservoir in Colusa County; and
- (II) the Upper San Joaquin River storage in Fresno and Madera Counties;

(iii) developing and implementing groundwater management and groundwater storage projects; and

(iv) comprehensive water management planning.

(B) **STORAGE PROJECT AUTHORIZATION AND BALANCED CALFED IMPLEMENTATION.**—

(i) **IN GENERAL.**—If on completion of the feasibility study for a project described in clause (i) or (ii) of subparagraph (A), the Secretary, in consultation with the Governor, determines that the project should be constructed in whole or in part with Federal funds, the Secretary shall submit the feasibility study to Congress.

(ii) **FINDING OF IMBALANCE.**—If Congress fails to authorize construction of the project by the end of the next full session following the submission of the feasibility study, the Secretary, in consultation with the Governor, shall prepare a written determination making a finding of imbalance for the Calfed Bay-Delta Program.

(iii) **REPORT ON REBALANCING.**—

(i) **IN GENERAL.**—If the Secretary makes a finding of imbalance for the Program under clause (ii), the Secretary, in consultation with the Governor, shall, not later than 180 days after the end of the full session described in clause (ii),

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prepare and submit to Congress a report on the measures necessary to rebalance the Program.

(II) SCHEDULES AND ALTERNATIVES.—The report shall include preparation of revised schedules and identification of alternatives to rebalance the Program, including resubmission of the project to Congress with or without modification, construction of other projects, and construction of other projects that provide equivalent water supply and other benefits at equal or lesser cost.

(C) WATER SUPPLY AND YIELD STUDY.—

(i) IN GENERAL.—The Secretary, acting through the Bureau of Reclamation and in coordination with the State, shall conduct a study of available water supplies and existing and future needs for water—

(I) within the units of the Central Valley Project;

(II) within the area served by Central Valley Project agricultural, municipal, and industrial water service contractors; and

(III) within the Calif Delta solution area.

(ii) RELATIONSHIP TO PRIOR STUDY.—In conducting the study, the Secretary shall incorporate and revise, as necessary, the results of the study required by section 3408(j) of the Central Valley Project Improvement Act of 1992 (Public Law 102-575; 106 Stat. 4730).

(iii) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report describing the results of the study, including—

(I) new firm yield and water supply improvements, if any, for Central Valley Project agricultural water service contractors and municipal and industrial water service contractors, including those identified in Bulletin 180;

(II) all water management actions or projects, including those identified in Bulletin 180, that would—

(aa) improve firm yield or water supply; and

(bb) if taken or constructed, balance available water supplies and existing demand with due recognition of water right priorities and environmental needs;

(III) the financial costs of the actions and projects described under subclause (II); and

(IV) the beneficiaries of those actions and projects and an assessment of the willingness of the beneficiaries to pay the capital costs and operation and maintenance costs of the actions and projects.

(D) MANAGEMENT.—The Secretary shall conduct activities related to developing groundwater storage projects to the extent authorized under law.

(E) COMPREHENSIVE WATER PLANNING.—The Secretary shall conduct activities related to comprehensive water management planning to the extent authorized under law.

(2) CONVEYANCE.—

(A) SOUTH DELTA ACTIONS.—

(i) IN GENERAL.—In the case of the South Delta, activities under this subparagraph consist of—

(I) the South Delta Improvements Program through actions to—

(aa) increase the State Water Project export limit to 8,500 cfs;

(bb) install permanent, operable barriers in the South Delta, under which Federal agencies shall cooperate with the State to accelerate installation of the permanent, operable barriers in the South Delta, with an intent to complete that installation not later than September 30, 2007;

(cc) evaluate, consistent with the Record of Decision, fish screens and intake facilities at the Tracy Pumping Plant facilities; and

(dd) increase the State Water Project export to the maximum capability of 10,300 cfs;

(II) reduction of agricultural drainage in South Delta channels, and other actions necessary to minimize the impact of drainage on drinking water quality;

(III) evaluation of lower San Joaquin River floodway improvements;

(IV) installation and operation of temporary barriers in the South Delta until fully operable barriers are constructed; and

(V) actions to protect navigation and local diversions not adequately protected by temporary barriers.

(ii) ACTIONS TO INCREASE PUMPING.—Actions to increase pumping shall be accomplished in a manner consistent with the Record of Decision requirement to avoid redirected impacts and adverse impacts to fishery protection and with any applicable Federal or State law that protects—

(I) water diversions and use (including avoidance of increased costs of diversion) by In-Delta water users (including in-Delta agricultural users that have historically relied on water diverted for use in the Delta);

(II) water quality for municipal, industrial, agricultural, and other uses; and

(III) water supplies for areas of origin.

(B) NORTH DELTA ACTIONS.—In the case of the North Delta, activities under this subparagraph consist of—

(i) evaluation and implementation of improved operational procedures for the Delta Cross Channel to address fishery and water quality concerns;

(ii) evaluation of a screened through-Delta facility on the Sacramento River; and

(iii) evaluation of lower Mokelumne River floodway improvements.

(C) INTERTIES.—Activities under this subparagraph consist of—

(i) evaluation and construction of an intertie between the State Water Project California Aqueduct and the Central Valley Project Delta Mendota Canal, near the City of Tracy, as an operation and maintenance activity, except that the Secretary shall design and construct the intertie in a manner consistent with a possible future expansion of the intertie capacity (as described in subsection (f)(1)(B)); and

(ii) assessment of a connection of the Central Valley Project to the Clifton Court Forebay of the State Water Project, with a corresponding increase in the screened intake of the Forebay.

(D) PROGRAM TO MEET STANDARDS.—

(i) IN GENERAL.—Prior to increasing export limits from the Delta for the purposes of conveying water to south-of-Delta Central Valley Project contractors or increasing deliveries through an intertie, the Secretary shall, not later than 1 year after the date of enactment of this Act, in consultation with the Governor, develop and initiate implementation of a program to meet all existing water quality standards and objectives for which the Central Valley Project has responsibility.

(ii) MEASURES.—In developing and implementing the program, the Secretary shall include, to the maximum extent feasible, the measures described in clauses (iii) through (vii).

(iii) RECIRCULATION PROGRAM.—The Secretary shall incorporate into the program a recirculation program to provide flow, reduce salinity concentrations in the San Joaquin River, and reduce the reliance on the New Melones Reservoir for meeting water quality and fishery flow objectives through the use of excess capacity in export pumping and conveyance facilities.

(iv) BEST MANAGEMENT PRACTICES PLAN.—

(I) IN GENERAL.—The Secretary shall develop and implement, in coordination with the State's programs to improve water quality in the San Joaquin River, a best management practices plan to reduce the water quality impacts of the discharges from wildlife refuges that receive water from the Federal Government and discharge salt or other constituents into the San Joaquin River.

(II) COORDINATION WITH INTERESTED PARTIES.—The plan shall be developed in coordination with interested parties in the San Joaquin Valley and the Delta.

(III) COORDINATION WITH ENTITIES THAT DISCHARGE WATER.—The Secretary shall also coordinate activities under this clause with other entities that discharge water into the San Joaquin River to reduce salinity concentrations discharged into

the River, including the timing of discharges to optimize their assimilation.

(v) **ACQUISITION OF WATER.**—The Secretary shall incorporate into the program the acquisition from willing sellers of water from streams tributary to the San Joaquin River or other sources to provide flow, dilute discharges of salt or other constituents, and to improve water quality in the San Joaquin River below the confluence of the Merced and San Joaquin Rivers, and to reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives.

(vi) **PURPOSE.**—The purpose of the authority and direction provided to the Secretary under this subparagraph is to provide greater flexibility in meeting the existing water quality standards and objectives for which the Central Valley Project has responsibility so as to reduce the demand on water from New Melones Reservoir used for that purpose and to assist the Secretary in meeting any obligations to Central Valley Project contractors from the New Melones Project.

(vii) **UPDATING OF NEW MELONES OPERATING PLAN.**—The Secretary shall update the New Melones operating plan to take into account, among other things, the actions described in this title that are designed to reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives, and to ensure that actions to enhance fisheries in the Stanislaus River are based on the best available science.

(3) **WATER USE EFFICIENCY.**—

(A) **WATER CONSERVATION PROJECTS.**—Activities under this paragraph include water conservation projects that provide water supply reliability, water quality, and ecosystem benefits to the California Bay-Delta system.

(B) **TECHNICAL ASSISTANCE.**—Activities under this paragraph include technical assistance for urban and agricultural water conservation projects.

(C) **WATER RECYCLING AND DESALINATION PROJECTS.**—Activities under this paragraph include water recycling and desalination projects, including groundwater remediation projects and projects identified in the Bay Area Water Plan and the Southern California Comprehensive Water Reclamation and Reuse Study and other projects, giving priority to projects that include regional solutions to benefit regional water supply and reliability needs.

(D) **WATER MEASUREMENT AND TRANSFER ACTIONS.**—Activities under this paragraph include water measurement and transfer actions.

(E) **URBAN WATER CONSERVATION.**—Activities under this paragraph include implementation of best management practices for urban water conservation.

(F) **RECLAMATION AND RECYCLING PROJECTS.**—

(i) **PROJECTS.**—This subparagraph applies to—

(I) projects identified in the Southern California Comprehensive Water Reclamation and Reuse Study, dated April 2001 and authorized by

section 1606 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h-4); and

(II) projects identified in the San Francisco Bay Area Regional Water Recycling Program described in the San Francisco Bay Area Regional Water Recycling Program Recycled Water Master Plan, dated December 1999 and authorized by section 1611 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h-9).

(ii) DEADLINE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall—

(I) complete the review of the existing studies of the projects described in clause (i); and

(II) make the feasibility determinations described in clause (iii).

(iii) FEASIBILITY DETERMINATIONS.—A project described in clause (i) is presumed to be feasible if the Secretary determines for the project—

(I) in consultation with the affected local sponsoring agency and the State, that the existing planning and environmental studies for the project (together with supporting materials and documentation) have been prepared consistent with Bureau of Reclamation procedures for projects under consideration for financial assistance under the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.); and

(II) that the planning and environmental studies for the project (together with supporting materials and documentation) demonstrate that the project will contribute to the goals of improving water supply reliability in the Califed solution area or the Colorado River Basin within the State and otherwise meets the requirements of section 1604 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h-2).

(iv) REPORT.—Not later than 90 days after the date of completion of a feasibility study or the review of a feasibility study under this subparagraph, the Secretary shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report describing the results of the study or review.

(4) WATER TRANSFERS.—Activities under this paragraph consist of—

(A) increasing the availability of existing facilities for water transfers;

(B) lowering transaction costs through permit streamlining; and

(C) maintaining a water transfer information clearinghouse.

(5) INTEGRATED REGIONAL WATER MANAGEMENT PLANS.—Activities under this paragraph consist of assisting local and

regional communities in the State in developing and implementing integrated regional water management plans to carry out projects and programs that improve water supply reliability, water quality, ecosystem restoration, and flood protection, or meet other local and regional needs, in a manner that is consistent with, and makes a significant contribution to, the Califed Bay-Delta Program.

(6) ECOSYSTEM RESTORATION.—

(A) IN GENERAL.—Activities under this paragraph consist of—

- (i) implementation of large-scale restoration projects in San Francisco Bay and the Delta and its tributaries;
- (ii) restoration of habitat in the Delta, San Pablo Bay, and Suisun Bay and Marsh, including tidal wetland and riparian habitat;
- (iii) fish screen and fish passage improvement projects, including the Sacramento River Small Diversion Fish Screen Program;
- (iv) implementation of an invasive species program, including prevention, control, and eradication;
- (v) development and integration of Federal and State agricultural programs that benefit wildlife into the Ecosystem Restoration Program;
- (vi) financial and technical support for locally-based collaborative programs to restore habitat while addressing the concerns of local communities;
- (vii) water quality improvement projects to manage or reduce concentrations of salinity, selenium, mercury, pesticides, trace metals, dissolved oxygen, turbidity, sediment, and other pollutants;
- (viii) land and water acquisitions to improve habitat and fish spawning and survival in the Delta and its tributaries;
- (ix) integrated flood management, ecosystem restoration, and levee protection projects;
- (x) scientific evaluations and targeted research on Program activities; and
- (xi) strategic planning and tracking of Program performance.

(B) REPORTING REQUIREMENTS.—The Secretary or the head of the relevant Federal agency (as appropriate under clause (ii)) shall provide to the appropriate authorizing committees of the Senate and the House of Representatives and other appropriate parties in accordance with this subparagraph—

- (i) an annual ecosystem program plan report in accordance with subparagraph (C); and
- (ii) detailed project reports in accordance with subparagraph (D).

(C) ANNUAL ECOSYSTEM PROGRAM PLAN.—

(i) IN GENERAL.—Not later than October 1 of each year, with respect to each ecosystem restoration action carried out using Federal funds under this title, the Secretary, in consultation with the Governor, shall submit to the appropriate authorizing committees of

the Senate and the House of Representatives an annual ecosystem program plan report.

(ii) **PURPOSES.**—The purposes of the report are—

(I) to describe the projects and programs to implement this subsection in the following fiscal year; and

(II) to establish priorities for funding the projects and programs for subsequent fiscal years.

(iii) **CONTENTS.**—The report shall describe—

(I) the goals and objectives of the programs and projects;

(II) program accomplishments;

(III) major activities of the programs;

(IV) the Federal agencies involved in each project or program identified in the plan and the cost-share arrangements with cooperating agencies;

(V) the resource data and ecological monitoring data to be collected for the restoration projects and how the data are to be integrated, streamlined, and designed to measure the effectiveness and overall trend of ecosystem health in the Bay-Delta watershed;

(VI) implementation schedules and budgets;

(VII) existing monitoring programs and performance measures;

(VIII) the status and effectiveness of measures to minimize the impacts of the program on agricultural land; and

(IX) a description of expected benefits of the restoration program relative to the cost.

(iv) **SPECIAL RULE FOR LAND ACQUISITION USING FEDERAL FUNDS.**—For each ecosystem restoration project involving land acquisition using Federal funds under this title, the Secretary shall—

(I) identify the specific parcels to be acquired in the annual ecosystem program plan report under this subparagraph; or

(II) not later than 150 days before the project is approved, provide to the appropriate authorizing committees of the Senate and the House of Representatives, the United States Senators from the State, and the United States Representative whose district would be affected, notice of any such proposed land acquisition using Federal funds under this title submitted to the Federal or State agency.

(D) **DETAILED PROJECT REPORTS.**—

(i) **IN GENERAL.**—In the case of each ecosystem restoration program or project funded under this title that is not specifically identified in an annual ecosystem program plan under subparagraph (C), not later than 45 days prior to approval, the Secretary, in coordination with the State, shall submit to the appropriate authorizing committees of the Senate and the House of Representatives recommendations on the proposed program or project.

(ii) **CONTENTS.**—The recommendations shall—

(I) describes the selection of the program or project, including the level of public involvement and independent science review;

(II) describes the goals, objectives, and implementation schedule of the program or project, and the extent to which the program or project addresses regional and programmatic goals and priorities;

(III) describe the monitoring plans and performance measures that will be used for evaluating the performance of the proposed program or project;

(IV) identify any cost-sharing arrangements with cooperating entities;

(V) identify how the proposed program or project will comply with all applicable Federal and State laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(VI) in the case of any program or project involving the acquisition of private land using Federal funds under this title—

(aa) describe the process and timing of notification of interested members of the public and local governments;

(bb) describe the measures taken to minimize impacts on agricultural land pursuant to the Record of Decision; and

(cc) include preliminary management plans for all properties to be acquired with Federal funds, including an overview of existing conditions (including habitat types in the affected project area), the expected ecological benefits, preliminary cost estimates, and implementation schedules.

(7) WATERSHEDS.—Activities under this paragraph consist of—

(A) building local capacity to assess and manage watersheds affecting the Delta system;

(B) technical assistance for watershed assessments and management plans; and

(C) developing and implementing locally-based watershed conservation, maintenance, and restoration actions.

(8) WATER QUALITY.—Activities under this paragraph consist of—

(A) addressing drainage problems in the San Joaquin Valley to improve downstream water quality (including habitat restoration projects that improve water quality) if—

(i) a plan is in place for monitoring downstream water quality improvements; and

(ii) State and local agencies are consulted on the activities to be funded; except that no right, benefit, or privilege is created as a result of this subparagraph;

(B) implementation of source control programs in the Delta and its tributaries;

(C) developing recommendations through scientific panels and advisory council processes to meet the Calfed Bay-Delta Program goal of continuous improvement in Delta water quality for all uses;

(D) investing in treatment technology demonstration projects;

(E) controlling runoff into the California aqueduct, the Delta-Mendota Canal, and other similar conveyances;

(F) addressing water quality problems at the North Bay Aqueduct;

(G) supporting and participating in the development of projects to enable San Francisco Bay Area water districts, and water entities in San Joaquin and Sacramento Counties, to work cooperatively to address their water quality and supply reliability issues, including—

(i) connections between aqueducts, water transfers, water conservation measures, institutional arrangements, and infrastructure improvements that encourage regional approaches; and

(ii) investigations and studies of available capacity in a project to deliver water to the East Bay Municipal Utility District under its contract with the Bureau of Reclamation, dated July 20, 2001, in order to determine if such capacity can be utilized to meet the objectives of this subparagraph;

(H) development of water quality exchanges and other programs to make high quality water available for urban and other users;

(I) development and implementation of a plan to meet all Delta water quality standards for which the Federal and State water projects have responsibility;

(J) development of recommendations through science panels and advisory council processes to meet the Calfed Bay-Delta Program goal of continuous improvement in water quality for all uses; and

(K) projects that are consistent with the framework of the water quality component of the Calfed Bay-Delta Program.

(9) SCIENCE.—Activities under this paragraph consist of—

(A) supporting establishment and maintenance of an independent science board, technical panels, and standing boards to provide oversight and peer review of the Program;

(B) conducting expert evaluations and scientific assessments of all Program elements;

(C) coordinating existing monitoring and scientific research programs;

(D) developing and implementing adaptive management experiments to test, refine, and improve scientific understandings;

(E) establishing performance measures, and monitoring and evaluating the performance of all Program elements; and

(F) preparing an annual science report.

(10) DIVERSIFICATION OF WATER SUPPLIES.—Activities under this paragraph consist of actions to diversify sources of level 2 refuge supplies and modes of delivery to refugees while maintaining the diversity of level 4 supplies pursuant to section

3406(d)(2) of the Central Valley Project Improvement Act
(Public Law 102-575; 106 Stat. 4723).

(e) NEW AND EXPANDED AUTHORIZATIONS FOR FEDERAL AGEN-
CIES.—

(1) IN GENERAL.—The heads of the Federal agencies described in this subsection are authorized to carry out the activities described in subsection (f) during each of fiscal years 2005 through 2010, in coordination with the Governor.

(2) SECRETARY OF THE INTERIOR.—The Secretary of the Interior is authorized to carry out the activities described in paragraphs (1), (3), and (4) of subsection (f).

(3) ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE SECRETARIES OF AGRICULTURE AND COMMERCE.—The Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the Secretary of Commerce are authorized to carry out the activities described in subsection (f)(4).

(4) SECRETARY OF THE ARMY.—The Secretary of the Army is authorized to carry out the activities described in paragraphs (3) and (4) of subsection (f).

(f) DESCRIPTION OF ACTIVITIES UNDER NEW AND EXPANDED
AUTHORIZATIONS.—

(1) CONVEYANCE.—Of the amounts authorized to be appropriated under section 109, not more than \$184,000,000 may be expended for the following:

(A) SAN LUIS RESERVOIR.—Funds may be expended for feasibility studies, evaluation, and implementation of the San Luis Reservoir lowpoint improvement project, except that Federal participation in any construction of an expanded Pacheco Reservoir shall be subject to future congressional authorization.

(B) INTERTIE.—Funds may be expended for feasibility studies and evaluation of increased capacity of the intertie between the State Water Project California Aqueduct and the Central Valley Project Delta Mandote Canal.

(C) FRANKS TRACT.—Funds may be expended for feasibility studies and actions at Franks Tract to improve water quality in the Delta.

(D) CLIFTON COURT FOREBAY AND THE TRACY PUMPING PLANT.—Funds may be expended for feasibility studies and design of fish screens and intake facilities at Clifton Court Forebay and the Tracy Pumping Plant facilities.

(2) DRINKING WATER INTAKE FACILITIES.—

(i) IN GENERAL.—Funds may be expended for design and construction of the relocation of drinking water intake facilities to in-Delta water users.

(ii) DRINKING WATER QUALITY.—The Secretary shall coordinate actions for relocating intake facilities on a time schedule consistent with subsection (d)(2)(A)(i)(bb) or take other actions necessary to offset the degradation of drinking water quality in the Delta due to the South Delta Improvement Program.

(F) NEW MELONES RESERVOIR.—

(i) IN GENERAL.—In addition to the other authorizations granted to the Secretary by this title, the Secretary shall acquire water from willing sellers

and undertake other actions designed to decrease releases from the New Melones Reservoir for meeting water quality standards and flow objectives for which the Central Valley Project has responsibility to assist in meeting allocations to Central Valley Project contractors from the New Melones Project.

(ii) **PURPOSE.**—The authorization under this subparagraph is solely meant to add flexibility for the Secretary to meet any obligations of the Secretary to the Central Valley Project contractors from the New Melones Project by reducing demand for water dedicated to meeting water quality standards in the San Joaquin River.

(iii) **FUNDING.**—Of the amounts authorized to be appropriated under section 109, not more than \$30,000,000 may be expended to carry out clause (i).

(G) **RECIRCULATION OF EXPORT WATER.**—Funds may be used to conduct feasibility studies, evaluate, and, if feasible, implement the recirculation of export water to reduce salinity and improve dissolved oxygen in the San Joaquin River.

(2) **ENVIRONMENTAL WATER ACCOUNT.**—

(A) **IN GENERAL.**—Of the amounts authorized to be appropriated under section 109, not more than \$90,000,000 may be expended for implementation of the Environmental Water Account.

(B) **NONREIMBURSABLE FEDERAL EXPENDITURE.**—Expenditures under subparagraph (A) shall be considered a nonreimbursable Federal expenditure in recognition of the payments of the contractors of the Central Valley Project to the Restoration Fund created by the Central Valley Project Improvement Act (Title XXXIV of Public Law 102-575; 106 Stat. 4708).

(C) **USE OF RESTORATION FUND.**—

(i) **IN GENERAL.**—Of the amounts appropriated for the Restoration Fund for each fiscal year, an amount not to exceed \$10,000,000 for any fiscal year may be used to implement the Environmental Water Account to the extent those actions are consistent with the fish and wildlife habitat restoration and improvement purposes of the Central Valley Project Improvement Act.

(ii) **ACCOUNTING.**—Any such use of the Restoration Fund shall count toward the 33 percent of funds made available to the Restoration Fund that, pursuant to section 3407(a) of the Central Valley Project Improvement Act, are otherwise authorized to be appropriated to the Secretary to carry out paragraphs (4) through (6), (19) through (18), and (20) through (22) of section 3406(b) of that Act.

(iii) **FEDERAL FUNDING.**—The \$10,000,000 limitation on the use of the Restoration Fund for the Environmental Water Account under clause (i) does not limit the appropriate amount of Federal funding for the Environmental Water Account.

(3) **LEVER STABILITY.**—

(A) **IN GENERAL.**—For purposes of implementing the Calif Bay-Delta Program within the Delta (as defined in Cal. Water Code § 12220), the Secretary of the Army is authorized to undertake the construction and implementation of levee stability programs or projects for such purposes as flood control, ecosystem restoration, water supply, water conveyance, and water quality objectives.

(B) **REPORT.**—Not later than 180 days after the date of enactment of this Act, the Secretary of the Army shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report that describes the levee stability reconstruction projects and priorities that will be carried out under this title during each of fiscal years 2005 through 2010.

(C) **SMALL FLOOD CONTROL PROJECTS.**—Notwithstanding the project purpose, the authority granted under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701a) shall apply to each project authorized under this paragraph.

(D) **PROJECTS.**—Of the amounts authorized to be appropriated under section 109, not more than \$90,000,000 may be expended to—

- (i) reconstruct Delta levees to a base level of protection (also known as the "Public Law 84-99 standard");
- (ii) enhance the stability of levees that have particular importance in the system through the Delta Levee Special Improvement Projects Program;
- (iii) develop best management practices to control and reverse land subsidence on Delta islands;
- (iv) develop a Delta Levee Emergency Management and Response Plan that will enhance the ability of Federal, State, and local agencies to rapidly respond to levee emergencies;
- (v) develop a Delta Risk Management Strategy after assessing the consequences of Delta levee failure from floods, seepage, subsidence, and earthquakes;
- (vi) reconstruct Delta levees using, to the maximum extent practicable, dredged materials from the Sacramento River, the San Joaquin River, and the San Francisco Bay in reconstructing Delta levees;
- (vii) coordinate Delta levee projects with flood management, ecosystem restoration, and levee protection projects of the lower San Joaquin River and lower Mokelumne River floodway improvements and other projects under the Sacramento-San Joaquin Comprehensive Study; and
- (viii) evaluate and, if appropriate, rehabilitate the Suisun Marsh levees.

(4) **PROGRAM MANAGEMENT, OVERSIGHT, AND COORDINATION.**—

(A) **IN GENERAL.**—Of the amounts authorized to be appropriated under section 109, not more than \$25,000,000 may be expended by the Secretary or the other heads of Federal agencies, either directly or through grants, contracts, or cooperative agreements with agencies of the State, for—

- (i) Program support;

- (ii) Program-wide tracking of schedules, finances, and performance;
- (iii) multiagency oversight and coordination of Program activities to ensure Program balance and integration;
- (iv) development of interagency cross-cut budgets and a comprehensive finance plan to allocate costs in accordance with the beneficiary pays provisions of the Record of Decision;
- (v) coordination of public outreach and involvement, including tribal, environmental justice, and public advisory activities in accordance with the Federal Advisory Committee Act (5 U.S.C. App.); and
- (vi) development of Annual Reports.

(B) PROGRAM-WIDE ACTIVITIES.—Of the amount referred to in subparagraph (A), not less than 50 percent of the appropriated amount shall be provided to the California Bay-Delta Authority to carry out Program-wide management, oversight, and coordination activities.

SEC. 104. MANAGEMENT.

(a) COORDINATION.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall coordinate their activities with the State agencies.

(b) PUBLIC PARTICIPATION.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall cooperate with local and tribal governments and the public through an advisory committee established in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) and other appropriate means, to seek input on Program planning and design, technical assistance, and development of peer review science programs.

(c) SCIENCE.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall seek to ensure, to the maximum extent practicable, that—

(1) all major aspects of implementing the Program are subjected to credible and objective scientific review; and

(2) major decisions are based upon the best available scientific information.

(d) GOVERNANCE.—

(1) IN GENERAL.—In carrying out the Calfed Bay-Delta Program, the Secretary and the Federal agency heads are authorized to participate as nonvoting members of the California Bay-Delta Authority, as established in the California Bay-Delta Authority Act (Cal. Water Code § 79400 et seq.), to the extent consistent with Federal law, for the full duration of the period the Authority continues to be authorized by State law.

(2) RELATIONSHIP TO FEDERAL LAW AND AGENCIES.—Nothing in this subsection shall preempt or otherwise affect any Federal law or limit the statutory authority of any Federal agency.

(5) CALIFORNIA BAY-DELTA AUTHORITY.—

(A) ADVISORY COMMITTEE.—The California Bay-Delta Authority shall not be considered an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

(B) FINANCIAL INTEREST.—The financial interests of the California Bay-Delta Authority shall not be imputed to any Federal official participating in the Authority.

(C) ETHICS REQUIREMENTS.—A Federal official participating in the California Bay-Delta Authority shall remain subject to Federal financial disclosure and conflict of interest laws and shall not be subject to State financial disclosure and conflict of interest laws.

(e) ENVIRONMENTAL JUSTICE.—The Federal agencies, consistent with Executive Order 12898 (59 Fed. Reg. 7629), should continue to collaborate with State agencies to—

(1) develop a comprehensive environmental justice workplan for the Calfed Bay-Delta Program; and

(2) fulfill the commitment to addressing environmental justice challenges referred to in the Calfed Bay-Delta Program Environmental Justice Workplan, dated December 15, 2000.

(f) LAND ACQUISITION.—Federal funds appropriated by Congress specifically for implementation of the Calfed Bay-Delta Program may be used to acquire fee title to land only where consistent with the Record of Decision.

SEC. 106. REPORTING REQUIREMENTS.

(a) REPORT.—

(1) IN GENERAL.—Not later than February 15 of each year, the Secretary, in cooperation with the Governor, shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report that—

(A) describes the status of implementation of all components of the Calfed Bay-Delta Program;

(B) sets forth any written determination resulting from the review required under subsection (b) or section 103(d)(1)(B); and

(C) includes any revised schedule prepared under subsection (b) or section 103(d)(1)(B)(iii)(II).

(2) CONTENTS.—The report required under paragraph (1) shall describe—

(A) the progress of the Calfed Bay-Delta Program in meeting the implementation schedule for the Program in a manner consistent with the Record of Decision;

(B) the status of implementation of all components of the Program;

(C) expenditures in the past fiscal year for implementing the Program;

(D) accomplishments during the past fiscal year in achieving the objectives of additional and improved—

(i) water storage;

(ii) water quality, including—

(I) the water quality targets described in section 2.2.9 of the Record of Decision; and

(II) any pending actions that may affect the ability of the Calfed Bay-Delta Program to achieve those targets and requirements;

(iii) water use efficiency;

(iv) ecosystem restoration;

(v) watershed management;

(vi) levee system integrity;

(vii) water transfers;

- (viii) water conveyance;
 - (ix) water supply reliability (including new firm yield), including progress in achieving the water supply targets described in section 2.2.4 of the Record of Decision and any pending actions that may affect the ability of the Calif Bay-Delta Program to achieve those targets; and
 - (x) the uses and assets of the environmental water account described in section 2.2.7 of the Record of Decision;
- (E) Program goals, current schedules, and relevant financing agreements, including funding levels necessary to achieve completion of the feasibility studies and environmental documentation for the surface storage projects identified in section 103 by not later than September 30, 2006;
- (F) progress on—
- (i) storage projects;
 - (ii) conveyance improvements;
 - (iii) levee improvements;
 - (iv) water quality projects; and
 - (v) water use efficiency programs;
- (G) completion of key projects and milestones identified in the Ecosystem Restoration Program, including progress on project effectiveness, monitoring, and accomplishments;
- (H) development and implementation of local programs for watershed conservation and restoration;
- (I) progress in improving water supply reliability and implementing the Environmental Water Account;
- (J) achievement of commitments under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and endangered species law of the State;
- (K) implementation of a comprehensive science program;
- (L) progress toward acquisition of the Federal and State permits (including permits under section 404(a) of the Federal Water Pollution Control Act (33 U.S.C. 1344(a))) for implementation of projects in all identified Program areas;
- (M) progress in achieving benefits in all geographic regions covered by the Program;
- (N) legislative action on—
- (i) water transfer;
 - (ii) groundwater management;
 - (iii) water use efficiency; and
 - (iv) governance;
- (O) the status of complementary actions;
- (P) the status of mitigation measures; and
- (Q) revisions to funding commitments and Program responsibilities.
- (b) ANNUAL REVIEW OF PROGRESS AND BALANCE.—
- (1) IN GENERAL.—Not later than November 15 of each year, the Secretary, in cooperation with the Governor, shall review progress in implementing the Calif Bay-Delta Program based on—
- (A) consistency with the Record of Decision; and

(B) balance in achieving the goals and objectives of the Calfed Bay-Delta Program.

(2) **REVISED SCHEDULE.**—If, at the conclusion of each such annual review or if a timely annual review is not undertaken, the Secretary or the Governor determines in writing that either the Program implementation schedule has not been substantially adhered to, or that balanced progress in achieving the goals and objectives of the Program is not occurring, the Secretary and the Governor, in coordination with the Bay-Delta Public Advisory Committee, shall prepare a revised schedule to achieve balanced progress in all Calfed Bay-Delta Program elements consistent with the intent of the Record of Decision.

(c) **FEASIBILITY STUDIES.**—Any feasibility studies completed as a result of this title shall include identification of project benefits and a cost allocation plan consistent with the beneficiaries pay provisions of the Record of Decision.

SEC. 104. CROSSCUT BUDGET.

(a) **IN GENERAL.**—The President's budget shall include such requests as the President considers necessary and appropriate for the appropriate level of funding for each of the Federal agencies to carry out its responsibilities under the Calfed Bay-Delta Program.

(b) **REQUESTS BY FEDERAL AGENCIES.**—The funds shall be requested for the Federal agency with authority and programmatic responsibility for the obligation of the funds, in accordance with subsections (b) through (f) of section 103.

(c) **REPORT.**—Not later than 30 days after submission of the budget of the President to Congress, the Director of the Office of Management and Budget, in coordination with the Governor, shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a financial report certified by the Secretary containing—

(1) an interagency budget crosscut report that—

(A) displays the budget proposed, including any inter-agency or intra-agency transfer, for each of the Federal agencies to carry out the Calfed Bay-Delta Program for the upcoming fiscal year, separately showing funding requested under both pre-existing authorities and under the new authorities granted by this title; and

(B) identifies all expenditures since 1998 by the Federal and State governments to achieve the objectives of the Calfed Bay-Delta Program;

(2) a detailed accounting of all funds received and obligated by all Federal agencies and State agencies responsible for implementing the Calfed Bay-Delta Program during the previous fiscal year;

(3) a budget for the proposed projects (including a description of the project, authorization level, and project status) to be carried out in the upcoming fiscal year with the Federal portion of funds for activities under subsections (b) through (f) of section 103; and

(4) a listing of all projects to be undertaken in the upcoming fiscal year with the Federal portion of funds for activities under subsections (b) through (f) of section 103.

SEC. 107. FEDERAL SHARE OF COSTS.

(a) **IN GENERAL.**—The Federal share of the cost of implementing the Calfed Bay-Delta Program for fiscal years 2006 through 2010

in the aggregate, as set forth in the Record of Decision, shall not exceed 33.3 percent.

(b) **PAYMENT FOR BENEFITS.**—The Secretary shall ensure that all beneficiaries, including beneficiaries of environmental restoration and other Calfed program elements, shall pay for the benefit received from all projects or activities carried out under the Calfed Bay-Delta Program.

(c) **INTEGRATED RESOURCE PLANNING.**—Federal expenditures for the Calfed Bay-Delta Program shall be implemented in a manner that encourages integrated resource planning.

SEC. 104. COMPLIANCE WITH STATE AND FEDERAL LAW.

Nothing in this title—

(1) invalidates or preempts State water law or an interstate compact governing water;

(2) alters the rights of any State to any appropriated share of the waters of any body of surface or ground water;

(3) preempts or modifies any State or Federal law or interstate compact governing water quality or disposal;

(4) confers on any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource; or

(5) alters or modifies any provision of existing Federal law, except as specifically provided in this title.

SEC. 105. AUTHORIZATION OF APPROPRIATION.

There are authorized to be appropriated to the Secretary and the heads of the Federal agencies to pay the Federal share of the cost of carrying out the new and expanded authorities described in subsections (a) and (f) of section 103 \$389,000,000 for the period of fiscal years 2005 through 2010, to remain available until expended.

TITLE II—MISCELLANEOUS

SEC. 201. SALTON SEA STUDY PROGRAM.

Not later than December 31, 2006, the Secretary of the Interior, in coordination with the State of California and the Salton Sea Authority, shall complete a feasibility study on a preferred alternative for Salton Sea restoration.

SEC. 202. ALDER CREEK WATER STORAGE AND CONSERVATION PROJECT FEASIBILITY STUDY AND REPORT.

(a) **STUDY.**—Pursuant to Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)), the Secretary of the Interior (referred to in this section as the "Secretary"), through the Bureau of Reclamation, and in consultation and cooperation with the El Dorado Irrigation District, is authorized to conduct a study to determine the feasibility of constructing a project on Alder Creek in El Dorado County, California, to store water and provide water supplies during dry and critically dry years for consumptive use, recreation, in-stream flows, irrigation, and power production.

(b) **REPORT.**—

(1) **TRANSMISSION.**—On completion of the study authorized by subsection (a), the Secretary shall transmit to the Committee

on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report containing the results of the study.

(2) **CONTENTS OF REPORT.**—The report shall contain appropriate cost sharing options for the implementation of the project based on the use and possible allocation of any stored water.

(3) **USE OF AVAILABLE MATERIALS.**—In developing the report under this section, the Secretary shall use reports and any other relevant information supplied by the El Dorado Irrigation District.

(c) **COST SHARE.**—

(1) **FEDERAL SHARE.**—The Federal share of the costs of the feasibility study authorized by this section shall not exceed 50 percent of the total cost of the study.

(2) **IN-KIND CONTRIBUTION FOR NON-FEDERAL SHARE.**—The Secretary may accept as part of the non-Federal cost share the contribution such in-kind services by the El Dorado Irrigation District as the Secretary determines will contribute to the conduct and completion of the study.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$3,000,000.

SEC. 208. FOLSOM RESERVOIR TEMPERATURE CONTROL DEVICE AUTHORIZATION.

Section 1(c) of Public Law 105-295 (112 Stat. 2820) (as amended by section 219(b) of Public Law 108-137 (117 Stat. 1863)) is amended in the second sentence by striking "\$3,500,000" and inserting "\$6,250,000".

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

Senate Bill No. 1155

CHAPTER 612

An act to add Section 138.10 to the Water Code, relating to water.

[Approved by Governor September 21, 2004. Filed
with Secretary of State September 21, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1155, Machado. Water quality standards: Sacramento-San Joaquin Delta.

Under existing law, the Department of Water Resources operates the State Water Project, which includes state water facilities, as defined. Under existing law, the State Water Resources Control Board administers a water rights program pursuant to which the state board grants permits and licenses to appropriate water.

The bill would require the Director of Water Resources, in collaboration with the Secretary of Interior or his or her designee, and on or before January 1, 2006, to prepare a plan to meet the existing permit and license conditions for which the department has an obligation, as described in a specified decision adopted by the state board. The bill would require the director to prepare the plan, and submit copies of the plan to the state board and California Bay-Delta Authority, prior to increasing the existing permitted diversion rate at a specified pumping plant.

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

SECTION 1. Section 138.10 is added to the Water Code, to read:
138.10. (a) On or before January 1, 2006, the director, in collaboration with the Secretary of Interior or his or her designee, shall prepare a plan to meet the existing permit and license conditions for which the department has an obligation, as described in the State Water Resources Control Board Decision No. 1641.

(b) The plan shall be designed to achieve compliance with the permit and license conditions described in subdivision (a). The director shall prepare the plan, and submit copies of the plan to the board and the California Bay-Delta Authority, prior to increasing the existing permitted diversion rate at the State Water Project's Harvey O. Banks Pumping Plant.

(c) Nothing in this section limits or restricts the department in its operation of the State Water Project due to failure of other water rights

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permittees or licensees to meet water quality conditions of their respective permits or licenses.

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