



ENVIRONMENTAL REPORT

APPENDIX 1

to

Water Quality Control Plan for the San Francisco Bay / Sacramento-San Joaquin Delta Estuary

STATE WATER RESOURCES CONTROL BOARD
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LIST OF ABBREVIATIONS

AF	acre-foot
BMP	best management practices
BOD	biological oxygen demand
°C	degrees Celsius
CA	California
CCR	California Code of Regulations
cfs	cubic feet per second
cm	centimeter
Cx	carbon emissions
D-1422	Water Right Decision 1422
D-1485	Water Right Decision 1485
DDT	Dichlorodiphenyltrichlorethane
DO	dissolved oxygen
EC	electrical conductivity
EWMP	efficient water management practices
°F	degrees Fahrenheit
FED	federal
fps	feet per second
Gg/yr	gigagrams per year
km	kilometers
m	meters
MAF	million acre-feet
mg/l	milligrams per liter
mm	millimeter
mmhos/cm	millimhos per centimeter
mS/cm	milliSiemens per centimeter (equivalent to millimhos per centimeter)
MW	megawatts
NO _x	nitrogen oxides
P.L.	Public Law
PCB	polychlorinated biphenyls
PM ₁₀	particulate matter less than 10 microns in diameter
POC	particulate organic carbon
ppm	parts per million
ppt	parts per thousand
QWEST	QWEST is calculated by subtracting Delta exports and 65 percent of net Delta consumptive use from central Delta inflow
ROG	reactive organic gases
RPA	reasonable and prudent alternative
SIC	Standard Industrial Classification
SO _x	sulphur oxides
TAF	thousand acre-feet
TDS	total dissolved solids

μ /l	micrograms per liter
U.S.C.	United States Code
X2	2 parts per thousand salinity measured near the bottom of the water column
YOY	young-of-the-year

LIST OF ACRONYMS AND AGENCIES

ACID	Anderson-Cottonwood Irrigation District
ACWA	Association of California Water Agencies
BDOC	Bay-Delta Oversight Council
CCWD	Contra Costa Water District
CEQA	California Environmental Quality Act
CMSP	Caswell Memorial State Park
CNPS	California Native Plant Society
COA	Coordinated Operation Agreement
CRBSCF	Colorado River Basin Salinity Control Forum
CUWA	California Urban Water Agencies
CVAPM	Central Valley Agricultural Production Model
CVP	Central Valley Project
CVP-OCAP	Long-term Central Valley Project Operations Criteria and Plan
CVPIA	Central Valley Project Improvement Act
DFA	California Department of Food and Agriculture
DFG	California Department of Fish and Game
DHS	California Department of Health Services
DWR	California Department of Water Resources
DWRSIM	Department of Water Resources Simulation Model
EIR	Environmental Impact Report
ESA	Endangered Species Act
FERC	Federal Energy Regulatory Commission
GCID	Glenn-Colusa Irrigation District
IEP	Interagency Ecological Program
JWU	Joint Water Users
LADWP	Los Angeles Department of Water and Power
MWD	Metropolitan Water District of Southern California
NHI	Natural Heritage Institute
NMFS	National Marine Fisheries Service
PFMC	Pacific Marine Fisheries Commission
PG&E	Pacific Gas and Electric Company
PPD	Pollutant Policy Document
RWQCB	Regional Water Quality Control Board
SAWPA	Santa Ana Watershed Project Authority
SCE	Southern California Edison
SCS	U.S. Soil Conservation Service
SCVWD	Santa Clara Valley Water District

SDCWA	San Diego County Water Authority
SDWA	South Delta Water Agency
SFEP	San Francisco Estuary Project
SJRI	San Joaquin River Salmon Index
SJVDP	San Joaquin Valley Drainage Program
SJWYI	San Joaquin Water Year Index
SMPA	Suisun Preservation Agreement
SMPA-DEF	Suisun Marsh Preservation Agreement deficiency standard
SRCD	Suisun Resource Conservation District
SRI	Sacramento River Salmon Index
SWC	State Water Contractors
SWP	State Water Project
SWRCB	State Water Resources Control Board
USBR	U.S. Bureau of Reclamation
USCOE	U.S. Army Corps of Engineer
USDA	U.S. Department of Agriculture
USEPA	U.S. Environmental Protection Act
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey
WACO	Water Advisory Committee of Orange County
WAPA	Western Area Power Administration
WESCO	Western Ecological Services Company

CHAPTER I. INTRODUCTION

There is a critical need to divert water within and export water from the watershed of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Estuary, Bay-Delta, or Estuary). Millions of people rely upon the water originating within this watershed for municipal, industrial and agricultural purposes.

Significant declines in populations of fish and wildlife living in or migrating through the Bay-Delta Estuary (Figure I-1) have been clearly established in the recent past. These declines are due to many causes, some of which are within the regulatory authority of the State Water Resources Control Board (SWRCB).

The SWRCB is reviewing for adequacy the fish and wildlife objectives of the 1991 Water Quality Control Plan for Salinity for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (1991 Bay-Delta Plan) and the previously unmodified fish and wildlife objectives in the 1978 Water Quality Control Plan for the Sacramento-San Joaquin Delta and Suisun Marsh (1978 Delta Plan). California Water Code section 13240 requires that water quality control plans adopted by the SWRCB must be periodically reviewed and may be revised. In addition, section 303(c) of the federal Clean Water Act requires that water quality standards¹ adopted to fulfill requirements in the Clean Water Act be reviewed at least every three years.

The SWRCB's intent in this review of the 1991 Bay-Delta Plan is to review all of the factors that have contributed to the decline of fish and wildlife resources in the Bay-Delta Estuary. Objectives will be considered for the factors that have both contributed to the decline of fish and wildlife uses and are within the regulatory control of the SWRCB. Recommendations will be made to other agencies for action on the factors that lie within their regulatory control and have also contributed to the decline.

The SWRCB will not review objectives established for the protection of municipal, industrial and agricultural uses during this review process. These objectives are adequate to protect the designated uses.

A. PURPOSE OF REPORT

The purpose of this report is to document the SWRCB's analysis of the needs for and effects of new water quality objectives for the protection of fish and wildlife in the Bay-Delta Estuary adopted in the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

¹ The term "standard" is used variably in this document to mean, depending on the context, a standard under the federal Clean Water Act as defined at 33 U. S. C. section 1313(c)(2)(A); a water quality objective adopted under the California Water Code section 13000 et seq.; or a term, condition, or other requirement in a water right order or decision.

FIGURE I-1. BAY-DELTA ESTUARY



The SWRCB must comply with the requirements of the California Environmental Quality Act (CEQA) when amending a water quality control plan. CEQA requires that discretionary actions by State agencies undergo an environmental review, but CEQA also provides that a program of a State regulatory agency is exempt from the requirements for preparing Environmental Impact Reports (EIRs), Negative Declarations, and Initial Studies if certified by the Secretary of the Resources Agency as meeting the criteria in Public Resources Code section 21080.5. The SWRCB program to establish and amend water quality control plans has received this certification and is a substitute for the CEQA process (14 Cal. Code Regs. § 15251(g)). Therefore, this report, although not an EIR, fulfills the requirements of CEQA to analyze the environmental effects of a proposed regulatory activity and its alternatives.

The SWRCB must also comply with section 13241 of the Porter-Cologne Act when developing and adopting new water quality objectives. This section requires that the SWRCB consider at least the following factors in establishing water quality objectives: (1) past, present, and probable future beneficial uses of water; (2) environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto; (3) water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area; (4) economic considerations; (5) the need for developing housing within the region; and (6) the need to develop and use recycled water. All of these factors are considered in this report.

B. BACKGROUND

The background discussion is divided into three parts: institutional setting, history of SWRCB action, and legal authority.

1. Institutional Setting

a. **SWRCB.** The SWRCB was formed in 1967 when the State Water Rights Board and the State Water Quality Control Board were merged by the Legislature, based on the realization that decisions affecting water quality and water rights are inseparable. The SWRCB is composed of five full-time appointees of the Governor. Under its dual legal authority, the SWRCB allocates rights to the use of surface water and, together with the nine Regional Water Quality Control Boards (RWQCBs), protects water quality in all waters of the State.

The Porter-Cologne Act is the basic water quality control law for California, and it is administered by the SWRCB and the RWQCBs (Wat. Code §§ 13000 et seq). The SWRCB and the RWQCBs also implement portions of the federal Clean Water Act. One of the principal functions of the SWRCB and the RWQCBs is to prepare water quality control plans. Water quality control plans are blueprints for water quality control. The plans identify beneficial uses of waters, water quality objectives for the reasonable protection of beneficial uses, and programs of implementation for the water quality objectives. The objectives are not merely directory, but are standards that must be implemented. In most cases, water quality objectives contained in a water quality control plan are not directly

enforceable. In order to ensure their implementation, water quality objectives usually are implemented through waste discharge requirements or water right permits.

The SWRCB and the RWQCBs have adopted water quality control plans that cover all areas of the State. There are two types of water quality control plans: water quality control plans adopted by the SWRCB and regional water quality control plans adopted by the RWQCBs. Water quality control plans adopted by the SWRCB supersede any regional water quality control plans for the same waters to the extent that there is any conflict. The 1991 Bay-Delta Plan is an example of a statewide plan.

The portions of the water quality control plans that fall under the jurisdiction of the federal Clean Water Act require approval by the U.S. Environmental Protection Agency (USEPA). When approved by the USEPA, the water quality objectives and beneficial use designations become water quality standards under the federal Clean Water Act.

The SWRCB is also charged with administering the State's water right system. Rights to take surface water in California include appropriative and riparian water rights. The SWRCB has authority to amend an existing water right by invoking either: (1) its reserved jurisdiction over certain permits under Water Code section 1394; (2) its continuing authority to prevent waste and unreasonable use, or unreasonable method of use, or diversion of water under the California Constitution, Article X, section 2; or (3) its continuing authority to protect public trust uses of water.

The principal authority the SWRCB used in the past to implement Bay-Delta Plans was its water rights authority because the problems addressed in these plans were largely related to salinity intrusion and entrainment in the export pumps. The only feasible options available to control these problems are to increase upstream fresh water flows and reduce export pump rates. Both of these measures require changes in water rights.

b. Water Right Holders. California has established a water right system which allows for the orderly allocation and use of its water supply. California law recognizes two primary rights to divert water: riparian water rights and appropriative water rights.

A riparian right exists by reason of ownership of land abutting a stream or other body of water. The right allows a water user to divert from the natural flow of a stream. Storage is not allowed under a riparian right. Riparian rights are correlative. If there is insufficient water for the reasonable requirements of all the riparian users, they must share the available supply. With certain limited exceptions, riparian water users have first priority to the use of the natural flow in a river. Water remaining after riparian users have taken their share is available to appropriators. No application or license is necessary to divert water under claim of riparian right; however, a record of water use under riparian claim should be established by filing a Statement of Water Diversion and Use with the SWRCB.

Appropriative water rights fall into two general categories: pre-1914 appropriative water rights and post-1914 appropriative water rights. Prior to 1872, appropriative water rights could be acquired by simply taking and beneficially using water. The priority of the right was the first substantial act leading toward putting the water to beneficial use, provided the appropriation was completed with reasonable diligence; otherwise, priority of the right did not attach until beneficial use of the water commenced. In 1872, sections 1410 through 1422 of the California Civil Code were enacted. These sections established provisions for determining a priority of right by posting a notice of appropriation at the proposed point of diversion and recording a copy of the notice with the County Recorder. If these procedures were not followed, the pre-1914 appropriative right did not attach until water was beneficially used. No application or license is necessary to divert water under claim of pre-1914 appropriative right; however, a record of water use under claim of pre-1914 appropriative right should be established by filing a Statement of Water Diversion and Use with the SWRCB.

Since 1914, appropriative rights have been obtained by receiving a permit or license from the SWRCB or its predecessor agencies. All new appropriators must file an application with the SWRCB and obtain a permit before diverting water. In granting permits, the SWRCB determines whether the water will be put to beneficial use, how much water may be taken, when and where it can be taken, and necessary conditions to protect the environment, the public trust and prior rights. If the water is diverted and applied to beneficial use in accordance with the terms of the permit for a period of years, a license may be issued confirming the extent of the permittee's right.

The largest water right holders in the Central Valley are the Central Valley Project (CVP), operated by the U.S. Bureau of Reclamation (USBR), and the State Water Project (SWP), operated by the Department of Water Resources (DWR). The watershed protection and area of origin statutes (Water Code sections 11460 and 10505 et seq.) accord first priority to water rights for use within the watershed. The CVP and SWP water rights are subject to these provisions, and diversions for export by these projects are restricted until the needs in the watershed, including protections for beneficial uses in the Estuary, are met. At present, these two water right holders are responsible, pursuant to Water Right Decision 1485 (D-1485), for meeting all of the regulatory requirements in the 1978 Delta Plan.

c. **CVP.** During the 1920's the State's political leaders recognized a need for large scale water resources development for flood protection and water supply. The Legislature, in 1921, authorized a statewide water resources investigation. The resulting plan was called the State Water Plan, and in 1933 the State legislature passed the California Central Valley Project Act to implement the plan. The Act provided financing through issuance of \$170 million in revenue bonds. The project was subjected to a referendum and won voters' approval, but California could not obtain funds to begin construction because the nationwide depression of the 1930's made the revenue bonds unmarketable. In 1935, federal authorization and financing were arranged, and the federal government has operated and maintained the CVP as a federal project since its construction. The early federal

authorization provided that the dams and reservoirs "shall be used, first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses; and, third, for power". A description of the principal features of the CVP is presented in Chapter IV (Environmental Setting).

The CVP supplies water to agricultural contractors, municipal and industrial contractors, and wildlife refuges, either through long-term contracts or on interim bases. The USBR has established the firm yield of the northern CVP to be about 8.3 million acre-feet (MAF) per year. This calculation of firm yield assumes a year 2020 projected level of watershed development, D-1485 regulatory standards, hydrology equivalent to the critically dry period of May 1928 through October 1934, and coordinated operation with the SWP, as set forth in the Coordinated Operation Agreement (COA).

The CVP operates under water rights granted by the SWRCB and its predecessors. Many of the CVP water rights came from applications filed by the State in 1927 and 1938 in furtherance of the California Water Plan. After the federal government undertook to build the CVP, some of those applications were transferred to the USBR. Applications were made by the USBR for the additional rights necessary for the project.

In granting water rights, the SWRCB places conditions in the permits to protect prior rights, fish and wildlife, and other matters it deems to be in the public interest. Conditions requiring minimum flow below CVP dams are contained in these permits. The water right permits also specify periods of the year during which water may be directly diverted and periods when water may be placed into storage at CVP facilities. Direct diversion and re-diversion of storage are permitted year round at diversion points in the Sacramento River and in the Delta. D-1485 sets salinity and outflow requirements and limits mean monthly CVP water diversion at the Tracy Pumping Plant to a pumping rate of 3,000 cubic feet per second (cfs) in May and June. In other months pumping can take place at 4600 cfs, the capacity of the Tracy Pumping Plant.

The most recent federal legislation affecting the CVP is the Central Valley Project Improvement Act (CVPIA), which was adopted in 1992. The CVPIA expanded the purpose of the CVP to include mitigation, protection, and restoration of fish and wildlife, and it set aside 800 thousand acre-feet (TAF) of CVP yield for this purpose. Additional water was also allocated to augment Trinity River flows and refuge water supplies.

d. **SWP.** California experienced rapid growth in its industrial and urban areas during the 1940's. In response to this increased demand for water, the State updated its water planning studies from the 1920's and 1930's in order to identify the water resources of the State, estimate ultimate water demand, and plan for water resources development. In the 1950's, the State summarized its findings in a series of reports leading up to Bulletin 3, The California Water Plan. The plan served to guide the planning and construction of facilities needed to manage the State's water resources. The plan identified areas of water surplus, projected areas of water deficit, and recommended methods to distribute the water. The

SWP was authorized by the Burns-Porter Act in 1959 to implement portions of the plan. Construction of the initial SWP facilities was made possible by the passage of the California Water Resources Development Bond Act of 1960. The initial major facilities of the SWP were constructed by 1973. A description of the principal features of the SWP is presented in Chapter IV (Environmental Setting).

DWR has contracts with 29 public agencies to deliver up to 4.2 MAF of SWP water. These agencies in turn supply water to more than two-thirds of the State's population and to thousands of acres of land used for irrigated agriculture. In addition to these contractual obligations for water supply, the SWP provides salinity control in the Delta. Recreation, fish and wildlife enhancement, and flood control are also SWP authorized purposes.

Almost half the SWP supply originates in the upper watershed of the Feather River Basin. The remaining supply is comprised of excess flows in the Delta. The water supply capability of the SWP depends on probabilities of rainfall and snowpack, pumping capacity from the Delta, and legal constraints on project operations. The current SWP dependable supply developed by existing facilities is calculated to be about 2.3 MAF per year during the critically dry period, assuming D-1485 regulatory conditions and coordinated operations with the CVP, as set forth in the COA. With the SWP only partially complete and the rate of population growth increasing, project contractors are now requesting more water than the existing system can dependably supply.

Much like the CVP, the SWP operates, in part, under water right applications approved by the SWRCB and its predecessors and filed by the State in 1927 and 1938 in furtherance of the California Water Plan. Applications were made by the DWR for the additional rights necessary for the project. The most recent water right decision applicable to the SWP, D-1485, sets salinity and outflow requirements and limits mean monthly SWP water diversion at the Banks Pumping Plant to a pumping rate of 3,000 cfs in May and June and 4,600 cfs in July. As set out by a letter of agreement between the DWR and the Department of Fish and Game (DFG), the diversion is additionally restricted in May and June to 2,000 cfs when stored water must be released from Oroville Dam to meet water demands. In other months, diversion rates into Clifton Court Forebay are constrained by U.S. Army Corps of Engineers (USCOE) Public Notice 5820A, as amended. Under the USCOE Public Notice, the maximum diversion rate into Clifton Court Forebay is 6,680 cfs over a three day average except from December 15 to March 15 when the SWP can increase diversions by one-third of the San Joaquin River flow at Vernalis when the flow exceeds 1,000 cfs.

e. COA. The CVP and the SWP simultaneously use the same channels of the Sacramento River and the Delta to convey water, drawing upon a common water supply in the Delta. The purpose of the COA is to assure that each project obtains its share of water from the Delta and bears its share of obligations to protect other beneficial uses of water in the Delta and the Sacramento Valley. Coordinated operation can increase the efficiency of both projects.

On May 20, 1985, both agencies agreed to a COA designed to increase the efficient use of existing water supplies by defining a sharing process for the SWP and the CVP to meet in-basin use and exports. The sharing formula provides for a CVP/SWP proportionate split of 75/25 responsibility for meeting in-basin use from stored water releases and 55/45 for capture and export of excess flow.

The agreement also requires both DWR and USBR to meet a set of protective criteria for flow standards, water quality standards, and export restrictions taken from D-1485. The projects are not to be operated to meet predetermined yields, but rather to first meet the needs in the areas of origin, including the protective criteria. Only then is water exported from the Delta. During normal water supply conditions, the flow and water quality standards require about 5 MAF of Delta outflow.

2. History of SWRCB Action

Summarized below are water quality control plans and water right decisions adopted by the SWRCB or its predecessor agency dealing with management of the Bay-Delta Estuary.

a. Decision 990. The State Water Rights Board opened hearings on September 15, 1959 to consider longstanding USBR applications for water rights in the Bay-Delta watershed. Decision 990 was issued on February 9, 1961. In this decision, the State Water Rights Board approved CVP water rights for Shasta Dam, Tehama-Colusa Canal, Corning Canal, Delta-Mendota Canal and Contra Costa Canal. The permits were conditioned to prohibit export through the Delta-Mendota or Contra Costa canals by direct diversion unless in-basin demands were satisfied.

Decision 990 discussed CVP responsibility to either bypass natural flow or release storage water for Bay-Delta water quality. There was, in 1961, no impending shortage of water for the performance of that function, so the State Water Rights Board refrained from attaching specific water quality requirements to the permits. It did, however, reserve jurisdiction to impose such requirements in the future.

The State Water Rights Board urged the USBR, the DWR and the Sacramento Basin and Delta water users to negotiate an agreement for water supply by which water users would reimburse the USBR for benefits received. The USBR signed contracts with the Sacramento River water users in 1964, but negotiations between the USBR and the Delta water users did not result in a contract.

b. Decision 1275. Decision 1275, issued on May 31, 1967, provided the DWR with the water right permits necessary for operation of the SWP. In this decision, the State Water Rights Board was once again confronted with the question of how the permits should be conditioned to protect water rights in the Delta. Although the State Water Rights Board believed that sufficient information to establish permanent water quality standards was lacking, it did find that interim water quality standards for protection of agricultural

productivity could be adopted. The development of comprehensive water quality standards for the Delta began with the adoption of these standards, referred to as the November 19th criteria. The November 19th criteria were developed in 1965 by representatives of the Sacramento River and Delta Water Association, the San Joaquin Water Rights Committee, the DWR, and the USBR. Decision 1275 also determined that water was not available to the SWP for diversion from the Feather River or the Delta in July, August and September.

c. **Decision 1291.** The DWR petitioned the State Water Rights Board to reconsider Decision 1275 because the DWR believed water was available for diversion in July, August and September. Upon reviewing the evidence, the State Water Rights Board, on November 30, 1967, granted the DWR a year-round diversion season but stated that water would not always be available to satisfy the permits. On December 29, 1967, the Contra Costa Water Agency and Jersey Island Reclamation District No. 830 filed suit against the SWRCB, newly created by the amalgamation of the State Water Rights Board and the State Water Quality Control Board, in Contra Costa County to strengthen the water quality provisions of Decisions 1275 and 1291, but the suit remained dormant.

d. **Resolution 68-17.** In July 1968, the Secretary of the Interior expressed concern that existing standards for the Delta did not adequately protect municipal, industrial, agricultural and fishery uses and proposed some supplemental water quality objectives for chloride and total dissolved solids (TDS) concentrations. Following receipt of the federal comments in October 1968, the SWRCB adopted a water quality control policy for the Delta through Resolution 68-17. This policy supplemented a water quality control policy for the Delta that was developed by the Central Valley RWQCB. By letter of January 9, 1969, the Secretary of the Interior notified the SWRCB that he approved the State water quality standards even though they failed to satisfy the recommendations of the federal government regarding the spawning of striped bass and the municipal, industrial and agricultural water uses of the western part of the Delta. The Secretary indicated that his approval was taken in reliance upon the commitment from the SWRCB to conduct public hearings during 1969 and to consider supplementing the salinity standards.

e. **Decision 1379.** In accordance with the commitment made in Resolution 68-17, a hearing was initiated on July 22, 1969, and continued with intermittent recesses until October 5, 1970. Based on that hearing record, the SWRCB issued Decision 1379 on July 28, 1971. Once again, because of concern for lack of information, the SWRCB refrained from setting permanent standards, imposing interim standards instead, subject to review no later than July 1, 1978.

Decision 1379 established comparatively high standards for agricultural and municipal and industrial consumptive uses, and it afforded protection for non-consumptive fish and wildlife uses as well. Previously, Delta water rights decisions had not specifically included standards designed to preserve the Delta's ecosystem. Eight petitions for reconsideration were filed. The water project operators and their customers claimed that the integrity of both the CVP and the SWP would be jeopardized if the SWRCB's decision was not modified because less

water would be available than had been anticipated. The SWRCB, however, decided not to change its decision, and the SWRCB made only technical clarifications to the decision before readopting it on September 16, 1971. Decision 1379 was then challenged in court by the CVP and the SWP contractors. The decision was stayed, and no court ruled on it before it was superseded by D-1485.

f. Water Quality Control Plan Supplementing State Water Quality Control Policies for the Sacramento-San Joaquin Delta. The Regional Administrator of the USEPA, in an August 1972 letter, called the SWRCB's attention to the fact that there were considerations outstanding from the conditional approval previously received from the federal government. In response to that letter, the SWRCB held a hearing on proposed supplemental water quality objectives for the Delta and on April 19, 1973, by Resolution No. 73-16, adopted the "Water Quality Control Plan Supplementing State Water Quality Control Policies for the Sacramento-San Joaquin Delta".

g. D-1485 and the 1978 Delta Plan. In August 1978, the SWRCB adopted D-1485 and the 1978 Delta Plan. The 1978 Delta Plan revised existing objectives for flow and salinity in the Delta. D-1485 required the DWR and the USBR to meet the objectives. The SWRCB committed to reviewing the 1978 Delta Plan in ten years. D-1485 and the 1978 Delta Plan are discussed in greater detail in Chapter III.

Numerous lawsuits were filed by parties to the proceedings. The final appellate decision in the Delta water cases was U.S. v. State Water Resources Control Board (1986) 182 Cal.App.3d 82, 227 Cal. Rptr. 161.

h. Current Proceedings. The SWRCB started the current Bay-Delta hearing process in July 1987. A draft water quality control plan was issued in November 1988. The draft plan met intense opposition, and it was withdrawn in January 1989. Shortly thereafter, the SWRCB, with input from the San Francisco Bay and Central Valley RWQCBs, issued a draft Pollutant Policy Document (PPD) for the Bay-Delta Estuary. The draft PPD was adopted in 1990.

After withdrawing the 1988 draft plan, the SWRCB bifurcated the process. It first prepared a draft water quality control plan that did not include flow and export objectives. The plan was to be followed by a water right decision that would include flow and export requirements and allocate responsibility to meet all the standards. In May 1991, the SWRCB adopted the 1991 Bay-Delta Plan which included standards for salinity, dissolved oxygen, and temperature. Litigation ensued. In September 1991, the USEPA disapproved most of the fish and wildlife objectives in the plan. Meanwhile, the SWRCB began preparing an EIR for use in determining the environmental effects of potential changes in water rights.

In April 1992, Governor Wilson announced a new water policy. Among other provisions, the policy requested the SWRCB to initiate a hearing process to develop interim protections to stop the decline of fish and wildlife resources in the Bay-Delta Estuary.

The SWRCB conducted a water right hearing during the summer of 1992. Draft Water Right Decision 1630 (D-1630) was released in December 1992. D-1630 proposed interim water right terms and conditions to protect the Bay-Delta Estuary. On April 1, 1993, the Governor requested that the SWRCB cease its work on D-1630 and instead work on long-term protections, and the SWRCB concurred. The following two reasons for the change were cited by the SWRCB. First, the National Marine Fisheries Service (NMFS) had issued protections for winter-run chinook salmon and the U. S. Fish and Wildlife Service (USFWS) had announced that it soon would issue protections for Delta smelt. These protections, adopted under the authority of the federal Endangered Species Act (ESA), would benefit a broad range of species. Second, the end of the drought resulted in substantial uncontrolled runoff which benefitted the fishery. Under these circumstances, the interim water right decision was deemed unnecessary.

In response to litigation, the USEPA published draft water quality standards for the Bay-Delta Estuary on January 6, 1994 (59 FR 810-852). On March 25, 1994, the SWRCB gave notice of a series of workshops to review the 1991 Bay-Delta Plan. The comments and recommendations received at those workshops were used to develop this report and the plan.

In the summer of 1994, the State and federal agencies with responsibility for management of Bay-Delta resources signed a Framework Agreement in which the agencies agreed to cooperate in three areas. First, the SWRCB would update and revise its 1991 Bay-Delta Plan to meet federal Clean Water Act requirements. After approval by USEPA, the SWRCB will initiate a water right proceeding to implement the requirements in the plan. Second, a CVP/SWP coordination group will be formed consisting of representatives of USFWS, USBR, NMFS, USEPA, DFG, DWR, and SWRCB to facilitate the coordination of water project operations with all of the regulatory requirements in the Delta. Third, the State and federal agencies agreed to undertake a joint long-term solution finding process for the Bay-Delta. This plan is intended to meet the State's commitment to revise the 1991 Bay-Delta Plan.

On December 15, 1994, representatives of the State and federal governments and urban, agricultural (principally urban and agricultural water exporters), and environmental interests agreed to the implementation of a Bay-Delta protection plan. The protection plan and the institutional agreements necessary to implement the plan are contained in a document, titled "Principles for Agreement on Bay-Delta Standards between the State of California and the Federal Government". This plan is consistent with the Principles for Agreement.

3. Legal Authority To Prepare And Use This Report

This document is a substitute for an EIR or negative declaration. It contains the environmental information necessary to support the accompanying water quality control plan for the Bay-Delta Estuary, and functions as a part of the plan. This document meets the requirements specified in Public Resources Code section 21080.5. The accompanying water

quality control plan is prepared under the SWRCB's basin planning authority set forth in Water Code section 13000 et seq. and under the federal Clean Water Act. (33 U.S.C. §1251 et seq.)

The SWRCB's Water Quality Control (Basin)/208 Planning Program has been certified by the Secretary for Resources as meeting the requirements of Public Resources Code section 21080.5. (14 Cal. Code Regs. §15251(g)) Because the program has been certified, regulatory activities involving the adoption or approval of standards, rules, regulations or plans for use in the program are exempt from the requirements for preparing EIRs, negative declarations, and initial studies under CEQA.

The certification, dated June 1, 1979, is based on an examination by the Secretary for Resources of the laws administered by the SWRCB as part of the SWRCB's Basin Planning Program. These laws include Water Code section 13000 et seq., regulations in Title 23, Division 3 of the California Code of Regulations, the federal Water Pollution Control Act of 1972 as amended (referred to herein as the federal Clean Water Act), and the federal regulations designated to implement the Clean Water Act. The certification contains findings supporting the conclusion that the Basin Planning Program qualifies for certification under Public Resources Code section 21080.5.

Although Public Resources Code section 21080.5 exempts preparation of this plan from the requirement to prepare an EIR, negative declaration, or initial study, it does not exempt it from other provisions of CEQA, including the policies of CEQA. To meet the requirements of section 21080.5, this document includes a description of the project, alternatives to the project, and mitigation measures to avoid or reduce any significant or potentially significant effects of the project. Written responses to significant environmental points raised in comments during the evaluation of the proposed project will accompany final action on the proposed project.

Although CEQA does not require that this document meet the requirements for an EIR or negative declaration, this document is substantially similar to an EIR or negative declaration and contains significant additional information that is not specifically required by section 21080.5. For example, this document contains a project description meeting the requirements for an EIR (14 Cal. Code Regs §15124), a discussion of the regulatory and environmental setting, and analyses of short-term uses and long-term productivity, significant irreversible changes, growth-inducing impacts, economic and social impacts, and cumulative impacts.

C. INTENDED USE OF THIS REPORT

The SWRCB will use this report to document its evaluation of the environmental impacts of regulatory alternatives to protect public trust resources in the Bay-Delta Estuary. The SWRCB will establish appropriate water quality and other measures to protect public trust resources following a public hearing during which this report and other evidence will be

considered. The SWRCB also may use this document in conjunction with subsequent implementation proceedings to modify D-1485 to eliminate inconsistencies between that decision and the plan.