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February 2, 2012

### VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED AND E-MAIL

Delta Stewardship Council  
Attention: Terry Macaulay, PE  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814  
E-mail: [eircomments@deltacouncil.ca.gov](mailto:eircomments@deltacouncil.ca.gov)

### **DELTA COALITION JOINT COMMENTS ON DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT FOR FIFTH DRAFT DELTA PLAN**

Dear Ms. Macaulay:

Thank you for the opportunity to comment on the Draft Program Environmental Impact Report (Draft EIR or DPEIR) for the 5<sup>th</sup> Staff Draft Delta Plan (Plan).

The Delta Coalition (Coalition) made up of San Joaquin County (County), the seven cities in the County, water agencies, business interests, and civic groups within and surrounding the County have come together to better represent our interest, coalescing around a set of principles that will enable us to move forward collaboratively (see attachments). Coalition members have respectfully submitted separate comments on the DPEIR (incorporated by this reference). This joint Coalition submittal is yet another effort to bring to your immediate attention the fact that the DPEIR and the Plan, in their current format, gravely lack critical information and data essential for the development of a technically and legally adequate DPEIR, and a Plan that will accomplish the coequal goals as specified in the Delta Reform Act.

In addition to our concerns regarding the adequacy of the DPEIR, the Coalition remains seriously concerned regarding the scope of the Plan. We further assert that the DPEIR is premature in that it has not considered viable alternatives, or adequately assessed the far-reaching impacts of the broad-stroked policies in the Plan. The Plan alludes to vague, future mitigation programs and studies; the Plan does not identify tangible impacts and specific mitigation measures. Until and unless this critically important information is developed, an opportunity for full and informed public review and comment is unreasonable and infeasible.

Again, our hope is that the Delta Stewardship Council (DSC) will take into serious consideration the comments put forth, and that you will ultimately recognize the Sacramento-San Joaquin River Delta as the home of many thousands of residents, and one of the most agriculturally-rich regions in California. The Coalition will continue to work together to provide meaningful comments on the Delta Plan, and is committed to working closely with the DSC and DSC staff. Should you have any questions, please contact Tom Gau, Director of Public Works, San Joaquin County, at (209) 468-3100 and/or Michael Niblock, Community Development Program Specialist, City of Stockton, at (209) 937-8090.

Sincerely,



Frank L. Ruhstaller, Second District  
San Joaquin County Board of Supervisors



Ann Johnston, Mayor  
City of Stockton

Attachments

cc: San Joaquin County's State Delegation  
Escalon City Council  
Lathrop City Council  
Lodi City Council  
Manteca City Council  
Ripon City Council  
Tracy City Council  
Port of Stockton

Stockton City Council  
Bob Deis, Stockton City Manager  
Michael E. Locke, Stockton Deputy City Manager  
John Luebberke, Stockton City Attorney  
Jeff Willett, Stockton Acting Municipal Utilities Director  
Michael Niblock, Stockton Community  
Development Interim Program Specialist  
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February 2, 2012

File No.  
32215.02

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED  
AND E-MAIL**

Delta Stewardship Council  
Attn: Ms. Terry Macaulay  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814  
E-mail: [eircomments@deltacouncil.ca.gov](mailto:eircomments@deltacouncil.ca.gov)

**Re: San Joaquin County, South Delta Water Agency, and Central Delta  
Water Agency's Comments to the Draft Delta Plan Program  
Environmental Impact Report..**

Dear Ms. Macaulay:

Thank you for the opportunity to comment on the Draft Delta Plan Program Environmental Impact Statement ("DPEIR") for the Fifth Delta Plan ("Delta Plan") issued on November 4, 2011. This office represents the South Delta Water Agency, the Central Delta Water Agency (hereinafter referred to as the "Water Agencies"), and the County of San Joaquin ("County") (collectively, the "Public Agencies").

These three Public Agencies urge the Delta Stewardship Council ("Council") to reject the DPEIR as premature, incomplete in its failure to consider many potentially significant environmental impacts of the Delta Plan and alternatives to the Delta Plan, and otherwise failing to meet the requirements of the National Environmental Policy Act

(“NEPA”)<sup>1</sup>, the California Environmental Quality (“CEQA”), the Clean Air Act (“CAA”), the Federal Reclamation Act of 1902, the Clean Water Act (“CWA”), the Coastal Zone Management Act (“CZMA”), the Central Valley Project Improvement Act of 1992 (“CVPIA”), and numerous other statutory and common law provisions described in greater detail within the comment letter. The Public Agencies urge the Council to reissue the DPEIR after completing an adequate environmental assessment based on a site-specific project design.

### **BACKGROUND**

The County includes seven cities and spans across approximately 921,600 acres. It is considered to be one of the most agriculturally rich regions in California. For example, the County is the number one producer of asparagus statewide, with 24,000 acres of county farmland dedicated to production of this crop, as well as many others including wheat, alfalfa, cotton, and corn.

The County is supported by various departments that oversee flood management, water resources, water quantity and quality, engineering services, as well as the operations and finances, all of which will be significantly impacted by the vague “policies” set forth in the Delta Plan. The Water Agencies are both located within the County and support its agricultural production by working to protect water quality and supply for Delta landowners that grow crops on roughly 250,000 acres of highly productive farmland within the Delta region.

### **PUBLIC AGENCIES’ COMMENTS ON THE DPEIR**

As discussed in further detail in the attached **Table “A”**, the DPEIR has not considered viable alternatives or adequately assessed the far-reaching impacts of the broad-stroked policies set forth in the Delta Plan, including but not limited to geologic and

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<sup>1</sup> 40 U.S.C., §4321, *et seq.* and 40 C.F.R., Parts 1500-1508.

soil resources, water resources, water quality, threatened and endangered species, land use, and flood control issues.<sup>2</sup> Since it provides an incomplete analysis of alternatives, the DPEIR necessarily fails to provide mitigation measures, to prevent the significance of these impacts. These deficiencies include inadequate or missing provisions for monitoring and reporting to federal, state, and local regulatory authorities.

Rather than identify tangible impacts and specific mitigation measures, the DPEIR merely alludes to vague, future mitigation programs and studies. Studies of existing conditions in the Primary Delta<sup>3</sup>, including the identification of appropriate water flows and multiple baseline parameters, are essential for identifying and assessing the magnitude of environmental impacts arising from the Delta Plan. Were this information provided in the DPEIR, as required by law, the conclusions provided in the document about environmental impacts and necessary mitigation measures would have meaning. Unless this critically important information is developed, an opportunity for full and informed public comment will remain an illusion.

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<sup>2</sup> The Public Agencies reserve the right to join in any of the comments and issues raised by any other parties commenting to the DPEIR following the close of the review and comment period on February 2, 2012.

<sup>3</sup> The Primary Delta is defined by Public Resources Code section 29728, as follows:

“ . . . the delta land and water area of primary state concern and statewide significance which is situated within the boundaries of the delta, as described in Section 12220 of the Water Code, but that is not within either the urban limit line or sphere of influence line of any local government's general plan or currently existing studies, as of January 1, 1992. The precise boundary lines of the primary zone includes the land and water areas as shown on the map titled "Delta Protection Zones" on file with the State Lands Commission. Where the boundary between the primary zone and secondary zone is a river, stream, channel, or waterway, the boundary line shall be the middle of that river, stream, channel, or waterway.”

As set forth in Table "A", the Public Agencies' comment letter will address the following:

**A. CEQA Challenges**

1. Failure to identify a lead agency
2. Inadequate project description
3. Failure to identify the appropriate baseline
4. Failure to evaluate alternatives, including an incomplete analysis of Alternative 3
5. Miscellaneous CEQA challenges

**B. Other Non-CEQA Challenges**

1. Infringement on the County's constitutional local land use authority
2. Failure to preserve area of origin protections
3. Failure to consider wheeling statutes
4. Failure to comport with Clean Air Act requirements
5. Other inconsistencies within the DPEIR and the Delta Plan
6. Inconsistencies with Delta related legislation
  - a. Watershed Protection Act (Wat. Code, §§ 11460, *et seq.*) and Delta Protection Act (Wat. Code, §§ 12200, *et seq.*)
  - b. Federal Reclamation Act of 1902
  - c. Coastal Zone Management Act
  - d. NEPA
  - e. Public Trust Doctrine
7. Impacts on agriculture are not addressed

**C. Specific Comments to the DPEIR**

1. Section 1 - Introduction
2. Sections 2A and 2B - Proposed Project and Alternatives and Introduction to Resource Sections
3. Section 3 - Water Resources
4. Section 4 - Biological Resources
5. Section 5 - Delta Flood Risk
6. Section 6 - Land Use and Planning
7. Section 11 - Geology and Soils
8. Section 14 - Hazards and Hazardous Materials
9. Section 16 - Population and Housing
10. Section 19 - Transportation, Traffic, and Circulation
11. Section 20 - Utilities and Service Systems

12. Section 21 - Climate Change and Greenhouse Gas Emissions
13. Section 32 - Bay Delta Conservation Plan
14. Section 24 - Other CEQA Considerations
15. Section 25 - Comparison of Alternatives

The County and Water Agencies are particularly concerned that the DPEIR contains an inadequate description, discussion, and analysis of the “project” overall, fails to address many baseline environmental conditions, and inadequately evaluates the future direction of the Delta Plan. At a minimum, the DPEIR must set forth basic metrics, such as costs, and clearly defined baseline conditions so that the “project” can be measured against the various alternatives. Without these necessary components, the Delta Plan cannot achieve the stated goal of transparency, and the DPEIR cannot establish a requisite degree of credibility. Should you have any questions regarding this letter, please contact me at (916) 564-5400.

Very truly yours,

/s/

Joseph A. Salazar of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

JAS:kah  
Enclosures

cc: David Wooten, County Counsel of San Joaquin Valley  
Dante J. Nomellini  
John Herrick  
Terrence R. Dermody, Special Water Counsel  
Malissa Hathaway McKeith, Esq.

## TABLE "A"

### DETAILED COMMENTS ON DRAFT DELTA PLAN PROGRAM ENVIRONMENTAL IMPACT REPORT ("DPEIR")

#### A. CEQA CHALLENGES.

##### 1. The DPEIR Fails to Identify a Lead Agency.

The DPEIR states that "it is being prepared by the Council as the Project proponent and State lead agency under the California Environmental Quality Act (CEQA)." (DPEIR at Section 1.4, p. 1-13, lines 20-21.)

CEQA defines a "Lead Agency" as follows: "'Lead Agency' means the public agency which has the principal responsibility for carrying out or approving a project that may have a significant effect upon the environment." (Pub. Res. Code, § 21067, emphasis added.) The lead agency is tasked with the responsibility of determining whether a specific project requires an Environmental Impact Report ("EIR"), as well as other enumerated obligations. (*See* Pub. Res. Code, § 21080.4, subd. (a).)

Aside from the Council's self-proclaimed "lead agency" title, it is unclear how the Council can serve as lead agency when the Delta Plan unequivocally states that the Council will not play an active role in proposing and/or construction projects under the Delta Plan. In fact, both the Delta Plan and the DPEIR repeatedly acknowledge that "the [Delta Stewardship] Council does not propose or contemplate constructing, owning, or operating any facilities or directly undertaking any specific activities to implement the Delta Plan recommendations or regulatory policies, there would be no direct physical change in the environment due to adoption of the Delta Plan." (DPEIR at Section 1.4, p. 1-13, lines 27-30.)

The process of identifying a lead agency follows well established guidelines and should not be an onerous task. CEQA Guideline section 15051 provides the following "criteria" to consider when making a lead agency determination:

"Where two or more public agencies will be involved with a project, the determination of which agency will be the Lead Agency shall be governed by the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the Lead Agency even if the project would be located within the jurisdiction of another public agency.

(b) If the project is to be carried out by a nongovernmental person or entity, the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The Lead Agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

(c) Where more than one public agency equally meet the criteria in subdivision (b), the agency which will act first on the project in question shall be the Lead Agency.

(14 Cal. Code of Regs. § 15051 (“CEQA Guidelines”), emphasis added.)

The distinction between a lead agency and a "responsible agency" is that the latter is any public agency, other than the lead agency, which has the responsibility for approving the project where more than one public agency is involved. As set forth later in this comment letter, the County has constitutionally guaranteed authority within its boundaries. (*See* Section B.1. below at pp. 18-20.)

Furthermore, the lead agency is required to meet with any responsible agency when a request is made “to determine the scope and content of the environmental information that any of those responsible agencies, the office, or the public agencies may require.” (Pub. Res. Code, § 21080.4, subd. (b).) As a “responsible agency” that squarely falls within the scope of the defined term, the County has been denied the opportunity to meet with the lead agency to determine the scope and content of the environmental information that it is entitled to obtain under Section 21080.4, subdivision (b).

In *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, the County Sanitation District (“CSD”) filed a final program EIR for the Joint Outfall System 2010 Master Facilities Plan in June 1995. (*Id.* at p. 1626.) The CSD’s draft Program EIR contained some level of specificity. For instance, the Draft Program EIR recognized that emissions generated by trucks would be considered a significant impact

under the South Coast Air Basin's thresholds. (*Id.* at p. 1627.) To mitigate this impact, CSD stated it would perform maintenance on its trucks to reduce harmful emissions. (*Ibid.*)

The court noted that a lead agency is "the public agency [that] has the principal responsibility for carrying out or approving a project [that] may have a significant effect upon the environment." (CEQA Guidelines, § 21067.) "If more than one public agency is involved in a project but only one public agency carries out the project, then 'that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.'" (CEQA Guidelines, § 15051, subd. (a), emphasis added; see also Pub. Res. Code, § 21165.)

The DPEIR states that the Council "does not exercise direct review and approval authority over covered actions to determine their consistency with the regulatory policies in the Delta Plan." (DPEIR at Section 1-2, p. 1-4, lines 25-26.) Because there is no true lead agency for the Delta Plan, the County has lost the opportunity for substantive input, as well as the opportunity to require environmental information for those activities contemplated within its borders that will surely create significant environmental impacts. Said impacts will undoubtedly encroach upon the County's land use authority.

When a dispute exists as to which agency is lead, the Governor's Office of Planning and Research ("OPR") is charged with selecting the appropriate lead agency:

"(a) If there is a dispute over which of several agencies should be the Lead Agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to the Office of Planning and Research. If an agreement cannot be reached, any public agency, or the applicant if a private project is involved, may submit the dispute to the Office of Planning and Research for resolution.

(b) The Office of Planning and Research shall designate a Lead Agency within 21 days after receiving a completed request to resolve a dispute.

(c) Regulations adopted by the Office of Planning and Research for resolving Lead Agency disputes may be found in Title 14, California Code of Regulations, Sections 16000 et seq.

(d) Designation of a Lead Agency by the Office of Planning and Research shall be based on consideration of the criteria in Section 15051 as well as the capacity of the agency to adequately fulfill the requirements of CEQA."

(*Id.*, emphasis added.)

Because there is inherent confusion regarding the identity of the lead agency, the OPR should be first consulted. Consequently, the comment period on this DPEIR should be suspended until any such determination is made.

## **2. The DPEIR Does Not Constitute a “Project” under CEQA.**

According to the opening paragraph of the DPEIR Executive Summary, the Delta Plan is “a legally enforceable, comprehensive, long-term management plan for the Delta.” (DPEIR at p. ES-1.) The Project is defined in the DPEIR, as follows:

“The Delta Plan is a suite of twelve regulatory policies (that would have the force of law once adopted as State regulations). The policies and recommendations do not contain a list of physical projects to achieve the coequal goals. Rather, they are statements of policy direction to other agencies which, if the direction is followed, could lead to types of specific physical actions and sixty-one nonbinding recommendations, which collectively constitute the Proposed Project.”

(DPEIR, ES at p. ES-2.)

As currently drafted the DPEIR’s Project falls short of complying with the definition of “project” as set forth in Public Resources Code section 21065. That section states:

“‘Project’ means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

(a) An activity directly undertaken by any public agency.

(b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.”

(*Id.*, emphasis added.)

None of the three enumerated activities are found within the Delta Plan. On its face, the purported “project” is more accurately described as a proposed conceptual

activity or role, i.e., overseeing the integration of the Delta Plan policies into state law. As defined, the Project is nothing more than a compilation of ambiguous policies that will purportedly evolve into subsequent projects at a later time.

The Council attempts to minimize this defect by stating that “[t]his EIR is a program-level EIR due to the broad, program level of the Delta Plan . . . hence, this program EIR is not intended to provide project-level clearance for any specific project.” (DPEIR at p.ES-2.) While the document may be a programmatic EIR, the fact remains that the DPEIR provides no identifiable project(s), is impermissibly vague, and is riddled with inconsistencies. Program EIRs are commonly used as a vehicle to address large-scale projects with regional impacts. The scope of this DPEIR, however, is so broad that it does not provide any meaningful assessment or alternatives analysis.

This approach is rejected by the courts. In *City of Santee v. County of San Diego* (2010) 186 Cal.App.4th 55, the Court of Appeal held that the county’s execution of a siting agreement for the future construction of a facility did not constitute a “project” under CEQA. Though the siting agreement identified up to three potential sites for the placement of a state facility, the court noted that the siting agreement did not require CEQA review because:

“it does not identify a site for the reentry facility . . . , it does not describe any project which would be subject to any meaningful CEQA analysis. Rather, the face of the agreement places it squarely in the realm of preliminary agreement needed to explore and formulate projects for which CEQA review would be entirely premature.”

(*Id.* at p. 55.)

The same vagaries exist in the DPEIR, thereby preempting the Public Agencies’ ability to engage in meaningful CEQA analysis.

### **3. The DPEIR Fails to Identify a Baseline.**

Not only does the DPEIR fail to adequately define the scope of the Project , it neglects to identify a definitive baseline against which the public can adequately assess potential environmental impacts. The DPEIR states generally that “[t]he baseline for assessing the significance of impacts of the Proposed Project is the existing environmental setting, not the No Project Alternative.” (DPEIR at Section 2.3.2, p. 2A-

85.) This overly generalized statement sets an invalid baseline for several reasons. It fails to take into account that the current Delta ecosystem is on life support due to excess water exports. Due to the statewide impacts of the projects involved, which could take decades to complete from project start to finish, it is questionable whether this generic baseline will sufficiently protect the coequal goals set forth in the DPEIR.

Pursuant to CEQA Guideline section 15125, subdivision (a), an EIR must include a description of the physical environmental conditions in the vicinity of the project as they exist at the time the Notice of Preparation is published or, if no notice is published, at the time environmental analysis is commenced. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. (CEQA Guidelines, § 15125(a).) The absence of any meaningful baseline analysis renders the DPEIR defective.

In *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, the plaintiff sought to challenge the EIR alleging that it failed to disclose the baseline physical conditions, particularly concerning the water quality of water bodies surrounding the project area. (*Id.*) The court noted that in order to ensure “meaningful assessment of a proposed project's significant environmental impacts and the consideration of mitigation measures, an EIR must provide a ‘description of the existing physical conditions on the property at the start of the environmental review process . . .’” (*Id.* at pp. 540-541.)

The Delta Plan acknowledges the changes that have occurred in the Delta over time, and notes the extensive changes from the early “wild” Delta to the “domesticated” Delta. (*See*, Delta Plan at pp. 107-108.) The one defined baseline for fish populations is mistaken. The Delta Plan lists the following as an “outcome performance measure”: “[p]rogress toward achieving the state and federal ‘doubling goal’ for wild Central Valley salmonids. This performance measure contains a clear target: doubling the salmonid population relative to 1995 levels.” (Delta Plan, Ch. 5 at p. 128.)

The footnote references the CVPIA section 3406, subdivision (b)(1). That section adopted a wholly different time frame from 1967-1991, a period when fish populations were much higher than those in 1995. It states:

“(1) Develop within three years of enactment and implement a program which makes all reasonable efforts to ensure that, by the year 2002, natural production of anadromous fish in Central Valley rivers and streams will be

sustainable, on a long-term basis, at levels not less than twice the average levels attained during the period of 1967-1991.”

(CVPIA, §3406, subd. (b)(1), emphasis added.)

Recent population studies for Delta fish species demonstrate that the population levels between the two time frames listed above are exceptionally distinct. (U.S. Fish and Wildlife Service, Cal. Dept. of Fish and Game, Doubling Graphs at <http://www.fws.gov/stockton/afpr/documents/Doubling%20goal%20graphs%20041811v3.ppt>, attached hereto as Exh. “1”.) The Delta Plan also limits the “doubling goal” to “wild Central Valley salmonids”. The CVPIA doubling goal, however, applies to “anadromous fish” in the Central Valley - a more expansive population which includes salmon, steelhead, sturgeon, striped bass (a non-native species), and American shad. (CVPIA, §3403, subd. (a).)

The discrepancy in identifying the appropriate baseline for the fish population is just one of many examples of where the baseline is not identified and thus cannot be properly analyzed.

#### **4. The DPEIR Fails to Adequately Assess Reasonable Alternatives.**

CEQA requires that the lead agency use its independent judgment to formulate and evaluate, in an EIR, a reasonable range of alternatives to the project that could “feasibly attain most of the basic objectives of the project and avoid or substantially lessen any of the potential adverse environmental impacts of the project.” (CEQA Guidelines, §15121, subd. (a).) This DPEIR describes five alternatives of the Proposed Project, alternatives that necessarily suffer from the highest level of abstraction inherited from the Proposed Project description itself. What follows, then, is an insufficient analysis that is so shallow in its depth that there is absolutely no starting point for alternatives analysis.

In addition to the “No Project Alternative”, the DEIR includes four alternatives that are based upon generalized comments and alternative proposals received from various stakeholder groups, communities, and other interested persons. By merely taking these alternative proposals from other stakeholders, the Council failed to formulate its own assessment of reasonable alternatives. This failure is significant because it illustrates a

breach of the Council's affirmative, public trust duties. Like the Proposed Project, the proposed alternatives are detached from any quantitative input, making true comparisons among the alternatives akin to debating shades of grey.

a. *The DPEIR Provides an Incomplete Analysis of the Project Alternative 3.*

Given the serious limitations noted above, the DPEIR incorrectly identifies the Proposed Project as the environmentally superior alternative. While the Public Agencies do not support Project Alternative 3 as a complete or preferred alternative by any means, there are some elements of Alternative 3 that are superior to the Proposed Project. Despite these slight benefits, the bottom line remains that the volume and quality of water flowing into the Delta are the primary variables that will dictate the viability of restoring the Delta.

Alternative 3 calls for a reduction in Delta water exports, in combination with habitat restoration on public (not private) lands, and a more aggressive approach to invasive species management. (DPEIR at Section 2.3.6, pp. 2A-102 - 2A-103.) From a flood control perspective, Alternative 3 promotes greater levee repair, maintenance, and channel dredging. Even though Alternative 3 limits ecosystem restoration to public lands, historic floodplains, and riparian corridors, a substantial amount of ecosystem restoration remains without impacts to productive agriculture lands.

The Proposed Project, on the other hand, emphasizes ecosystem restoration throughout the Delta on privately owned agricultural lands, turning a blind eye to the unavoidable reduction in food production and economic stimulus. In comparison to the Proposed Project, Alternative 3 provides a stronger platform in which to reach the Delta Plan's identified policy goals, namely flood risk reduction, water supply reliability, Delta ecosystem restoration, and water quality improvement. (DPEIR at Section 2.3.1.3, p. 2A-63.)

For example, because the Delta has a number of invasive plant and animals species that threaten waterways and other areas, Alternative 3 includes an assessment of how to control invasive species and other stressors that could adversely impact the Delta ecosystem. With regard to water reliability and water quality, the DPEIR again opts to side-step these critical issues by declining to assess the environmental impacts

until completion of the Bay Delta Conservation Plan (“BDCP”). (Wat. Code, § 85320(e).) Alternative 3, on the other hand, discusses water reliability and quality within the Delta by emphasizing a “through Delta” conveyance system. Without a through Delta conveyance system, the Delta is in danger of decreasing water reliability and quality, especially during dry years.

Alternative 3 also offers heightened flood protection. With an emphasis on levee strengthening and developing a more stringent levee design, especially on agricultural levees that protect 80% of the Delta, Alternative 3 considers key issues that are simply absent from the Proposed Project.

## **5. Miscellaneous CEQA Infirmities.**

Further clarification is needed to define what exactly is a “covered action” versus “non-covered action” within the Delta Plan and the potential geographical extent of covered actions.

A covered action is defined as follows:

“(a) ‘Covered action’ means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

(1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.

(2) Will be carried out, approved, or funded by the state or a local public agency.

(3) Is covered by one or more provisions of the Delta Plan.

(4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.”

(Wat. Code, § 85057.5.)

Far from exhaustive, this definition raises other questions. Do the Delta and Suisun Marsh boundaries refer to the Primary Zone (Pub. Res. Code, § 29728), Secondary Zone (Pub. Res. Code, § 29731), or the “Delta” as defined in Water Code section 12220? If a covered action is a matter of local land use control, sanitation,

public safety or other constitutionally secured authority, does the Council have any jurisdiction? As it presently stands, the definitions are so broad that the public agencies charged with making this determination are without sufficient guidance.

Moreover, the Council's "appellate" role is unclear. The Delta Reform Act provides that once a certification of consistency is filed, "[a]ny person alleging that a covered action is not consistent with the Delta Plan may appeal the certificate . . . to the Council." (DPEIR at Section 1.2, p. 1-4, lines 25-31.) The Council is tasked with holding a hearing which has all the appearances of an initial adjudication more akin to a trial court as opposed to an appellate body.

The DPEIR fails to address the impact of an unlimited ability for, "[a]ny person alleging that a covered action is not consistent with the Delta Plan may appeal the certificate...to the Council." (*Ibid.*) Litigants are traditionally limited to those who have "standing", a stake in the outcome of the process. Here, there is no apparent limitation as to who can file an appeal, leaving the potential for limitless litigation, unwarranted interference with local land use control and restrictions of basic due process rights.

## B. NON-CEQA CHALLENGES.

### 1. The Delta Plan Infringes on the County's Constitutional Local Land Use Authority Under California Constitution Article XI, Section 7.

All of San Joaquin County is within the Primary Delta, Secondary Delta, or Delta watershed. Under California Constitution Article XI, Section 7, all land use decisions in San Joaquin County are governed by either San Joaquin County or one of the respective cities in the County. No other agency shall have land use authority, unless otherwise granted by the County or one of the cities thereof, and shall not be governed by any outside agency. The California Constitution provides that, "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., Art. XI, §7.) This grant of authority is plenary.

Importantly, the general laws do not apply to the Delta:

"It is, therefore, hereby declared that a general law cannot be made applicable to said Delta and that the enactment of this law is necessary

for the protection, conservation, development, control and use of the waters in the Delta for the public good.”

(Wat. Code, § 12200, emphasis added.)

Powers delegated to the Council under several sections of the Delta Reform Act squarely encroach upon the County’s constitutional right to oversee local land use. For instance, the Delta Reform Act of 2009 (Wat. Code, § 85034) sets forth the authority and responsibilities of the Council, which include administering all contracts, grants and easements for its predecessor, the California Bay-Delta Authority. Section 85210 sets forth the powers of the Council, which include requesting reports from state, federal, and local government agencies on issues related to the implementation of the Delta Plan, and commenting on state agency EIRs for projects outside the Delta that are determined to have a significant impact on the Delta. Section 85022 articulates the fundamental goals for managing land use in the Delta. None of these provisions even acknowledge, let alone attempt to trump local control over land use.

Section 85225 offers the most glaring example. It requires the County, prior to initiating a land use decision or flood control project, to prepare and submit to the Council a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan. If that determination is challenged, the County would have to defend its action before the Council for an action wholly within its own authority. If after hearing the appeal, the Council finds that the action is not consistent with the Delta Plan, purportedly the County will not be allowed to proceed with the project unless it submits a revised certification of consistency, which in turn could be challenged again before the Council (Wat. Code, §§ 85225-85225.25.) The DPEIR fails to touch upon this clear conflict of law, and never addresses the role of the impacted local land use authority, and the pressing issue of whether the outlined process is consistent with constitutionally protected local land use authority.

The DPEIR sidesteps the issue, noting that the Delta Plan functions as a strategic document providing guidance and recommendations to cities, counties, state, federal, and local agencies (DPEIR at Section 1.1, p. 1-2.) The DPEIR further states that the Delta Plan contains several significant regulatory policies with which cities, counties, state, and local agencies are expected to comply, including the consistency

certification requirement discussed above. Finally, the DPEIR declares that the policies set forth in the Delta Reform Act are mandatory in that they will have a regulatory effect on state and local agencies proposing to implement covered actions.

The DPEIR's intent to disregard and trample local authority is clear on its face. The Final PEIR must recognize, incorporate, and where necessary, yield to local authority. This authority is well established in the California Constitution<sup>4</sup>, existing legislation<sup>5</sup>, and case law<sup>6</sup>. If the Delta Plan is going to realize its stated goals, it will have to work with local government, the affected counties in particular.

a. *Flood Control Under the Central Valley Flood Protection Plan and Senate Bill 5 Falls Squarely within the County's Jurisdiction over Local Safety Issues.*

Without question, flood control is a matter of public safety and well being. As previously established, the County has constitutionally protected authority to enact and enforce ordinances and regulations in order to protect the public.

In 2008, the California Legislature passed Senate Bill 5, the Central Valley Flood Protection Act ("CVFPA"), codified at Water Code sections 9600-9625. The CVFPA addresses the expanding populations along the Sacramento and San Joaquin River floodplains and these areas' susceptibility to flooding due to levee failure. (Wat. Code, § 9601). The legislation's goal is to increase public awareness of flood risk and ultimately provide urban areas with 200 year flood protection. (Wat. Code, § 9602, subd. (i).) Like the Delta Reform Act, the CVFPA calls for the creation of a plan to achieve its stated goals. (Wat. Code, § 9603.) But, that is where the similarities end.

Unlike the Delta Reform Act, the CVFPA recognizes local authority and seeks to work with the local agencies, cities, and counties. For example, Section 9616 of the Water Code states:

"(a) The plan shall include a description of both structural and nonstructural means for improving the performance and elimination of deficiencies of levees, weirs, bypasses, and facilities,

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<sup>4</sup> See Cal. Const. Art. XI.

<sup>5</sup> See Gov't. Code, § 65300, *et seq.*

<sup>6</sup> *Delta Wetlands v. County of San Joaquin* (2004) 121 Cal.App.4th 128, 145.

including facilities of the State Plan of Flood Control, and, wherever feasible, meet multiple objectives, including each of the following:

...

(5) Increase the engagement of local agencies willing to participate in improving flood protection, ensuring a better connection between state flood protection decisions and local land use decisions."

(*Id.*, emphasis added.)

Other portions of the CVFPA recognize local flood agencies<sup>7</sup>, integrate counties as contributors to the Flood Plan<sup>8</sup>, and, in certain circumstances, provide for county or local operation and maintenance of a facility<sup>9</sup>. In contrast, the Delta Plan's "covered action" process puts everything into the hands of the Council, relegating nothing to local control. Additionally, the Delta Reform Act specifically gives the Delta Plan the authority to take permissive notice of local agency input:

"(a) The Delta Plan may identify actions to be taken outside of the Delta, if those actions are determined to significantly reduce flood risks in the Delta.

(b) The Delta Plan may include local plans of flood protection."

(Wat. Code, § 85307, emphasis added.)

The Delta Plan must recognize the authority for local government to take local control in areas where it has local jurisdiction. Anything less will not pass constitutional muster.

## 2. The DPEIR Does Not Preserve the Area of Origin Protections.

California's area of origin statutes are codified at Water Code sections 11460-11463. These statutes were enacted to alleviate the concern that the construction of the Central Valley Project ("CVP") would leave inadequate water supplies for local uses. Initially, these protections were limited to acts by the Department of Water Resources.

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<sup>7</sup> Wat. Code, § 9622.

<sup>8</sup> Wat. Code, § 9621.

<sup>9</sup> Wat. Code, § 9613, subds. (4)-(5).

Later, Section 11128 of the Water Code made the limitations applicable to any agency of the state or federal government undertaking the construction or operation of the CVP, or any unit thereof. The statutes read as follows:

“11460. In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.

11461. In no other way than by purchase or otherwise as provided in this part shall water rights of a watershed, area, or the inhabitants be impaired or curtailed by the department, but the provisions of this article shall be strictly limited to the acts and proceedings of the department, as such, and shall not apply to any persons or state agencies.

11463. In the construction and operation by the department of any project under the provisions of this part, no exchange of the water of any watershed or area for the water of any other watershed or area may be made by the department unless the water requirements of the watershed or area in which the exchange is made are first and at all times met and satisfied to the extent that the requirements would have been met were the exchange not made, and no right to the use of water shall be gained or lost by reason of any such exchange.”

(Wat. Code, §§ 11460-11463, emphasis added.)

The area of origin doctrine was generally described in 1986 by the California Court of Appeals in *United States v. State Water Control Board*, as "reserving to the Area of Origin an undefined preferential right to future water needs." (*U.S. v. SWRCB* (1986) 182 Cal.App.3d 82, 139.) These protections prevent the Council, or any other state or federal agency from diverting water to the extent the diversion impairs the water rights possessed by the diverters in Water Agencies.

The present day operations of the CVP and State Water Project (“SWP”) utilize a through Delta water conveyance, thereby diluting the Delta’s existing waters to the point that they can be used for irrigation. As noted, the San Joaquin River has a high concentration of salts where it enters the Delta, a concentration much greater than the Sacramento River water. (Delta Plan at p. 138.) Under the current pumping operations, water quality declines from north to south. The Project, to the extent it includes anything

other than a through Delta conveyance, will reduce the dilution factor of the Sacramento River water and impair the water diverters' rights to an "adequate supply" that can satisfy their "beneficial needs" and reduce salinity control as required by Water Code section 12200. The DPEIR fails to account for this unavoidable fact.<sup>10</sup>

**3. The DPEIR Fails to Address Requirements Under the Wheeling Statutes for Water Transfers.**

Clearly, one of the key projects under consideration is a so-called peripheral canal or conveyance mechanism to move water through the Delta and potentially to southern California. Under most scenarios, the conveyance would run through San Joaquin Valley.

In 1986, the California legislature enacted the "wheeling statutes". (Wat Code, §§ 1810-1814.) Set forth below, these statutes provide that a public agency that owns a water conveyance facility (such as a canal, pipeline, aqueduct, or pumping station, etc.) with excess capacity must allow others that want to transfer water the use of excess capacity under certain conditions. The thrust of the statutes is to facilitate water transfers while concurrently ensuring that others are not injured by those transfers.

Because wheeling statutes will undoubtedly play a role in the Delta Plan, it is problematic that the Council has opted to wholly ignore any analysis of this critical issue. As codified, the wheeling statutes require that water transfers cause no injury to the legal user of water and that the owner of the water transfer facility provide written findings to that effect. Neither analysis has been provided or even considered as part of the Delta Plan or the DPEIR. This complete omission is surprising given the fact that Section 2A of the DPEIR dedicates an entire section to projected conveyance facilities for surface water projects. (DPEIR at Section 2A, 2.2.1.2.3., p. 2A-9.)

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<sup>10</sup> The Department of Water Resources released a bulletin in 1993 which confirmed that "[t]he 1992 CVP Improvement Act (P.L. 102-575) prohibits transfers that significantly reduce the quantity or quality of water available for fish and wildlife." (DWR's Water Transfers in California: Translating Concept into Reality, Nov. 1993 at p. 601.) The Final PEIR needs to adequately address this reality.

a. Area of Origin Analysis.

California Water Code section 1810, in relevant part provides:

“Notwithstanding any other provision of law, neither the state, nor any regional or local public agency may deny a bona fide transferor of water the use of a water conveyance facility which has unused capacity, for the period of time for which that capacity is available, if fair compensation is paid for that use, subject to the following:

(a) Any person or public agency that has a long-term water service contract with or the right to receive water from the owner of the conveyance facility shall have the right to use any unused capacity prior to any bona fide transferor . . .

(d) This use of a water conveyance facility is to be made without injuring any legal user of water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and without unreasonably affecting the overall economy or the environment of the county from which the water is being transferred.”

(*Id.*, emphasis added.)

Under subsection (d) of Section 1810, the statute requires that no adverse effects be suffered in the county of origin of transfer during the wheeling or exchange process. The plain meaning of the “non-injury” requirement is clearly incorporated on the face of the code provision. Accordingly, in order for the Delta Plan to comply with applicable statutes, as well as any subsequent projects, a finding that the use of the conveyance facility will be made “without unreasonably affecting the overall economy or the environment of the county from which the water is being transferred” is legally required.

If the BDCP alternate conveyance goes forward and the point of diversion is near the town of Hood, there will be multiple counties of origin, including the County of San Joaquin. Without performing an exhaustive list, multiple upstream counties (where water originates and eventually flows to the point of diversion) will also have to be analyzed.

b. *Written Findings of Non-Adverse Impacts are Required by the Entity that Owns the Conveyance.*

The wheeling statutes require that the entity that owns the conveyance provide written findings to support its determinations concerning water transfers. (Wat. Code, § 1813 [“In making the determinations required by this article, the respective public agency shall act in a reasonable manner consistent with the requirements of law to facilitate the voluntary sale, lease, or exchange of water and shall support its determinations by written findings.”].)

Though in a slightly different context, this written finding requirement is further supported by *Sierra Club v. City of Hayward* (1981) 28 Cal.3d 840 (“*Hayward*”) and *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506 (“*Topanga*”). In *Hayward*, a conservationist group sought to set aside a city council’s resolution which cancelled an “agricultural preserve” contract. (*Id.*) The Williamson Act authorizes the cancellation of a policy only if the relevant agency finds “[t]hat the cancellation is not inconsistent with the purposes of [the act] . . . and [t]hat cancellation is in the public interest.” (*Id.* at p. 847.) The Supreme Court held that the city council failed to provide substantial evidence supporting its determination that the cancellation was consistent with purposes of the act. (*Id.* at p. 854.)

Similarly in *Topanga*, the court noted that a governing administrative agency, in adjudicating an application for a variance, is required to make findings to support its determination. (*Topanga, supra*, 11 Cal.3d at p. 514 [“that body must render a finding sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis of the board’s action.”].)

Here, the Delta Plan and DPEIR provide absolutely no analysis of the wheeling statutes and how the construction and/or use of existing facilities to transfer water would impact local agencies. Given the large capacity of the anticipated conveyance facilities and far-reaching scope of subsequent programs that will be felt throughout the State of California (“State” or “California”), the environmental impacts and probable continued ecosystem degradation must be assessed before the enactment or approval of any overarching policies.

c. Written Findings of Non-Adverse Impacts are Required by the State Lands Commission.

The present water conveyance to the CVP and SWP are the channels and canals that make up the current Delta. The State Lands Commission is the owner of the lands that form and underlie portions of a number of these channels and canals. To the extent that any portion of these channels and canals comprise a water conveyance facility to be used for water transfers under the Delta Plan, the State Lands Commission must provide the written findings discussed above.

4. The DPEIR Does Not Comport with Requirements under the Clean Air Act ("CAA").

The CAA requires the Environmental Protection Agency ("EPA") to identify air pollutants that endanger the public health and welfare and to formulate national standards that specify the maximum permissible concentrations of those pollutants in the ambient air (the NAAQS) and ensure that regional areas are in attainment of the standards. (42 U.S.C., §§ 7408-7409, and 7506(d).) EPA established such standards for PM10<sup>11</sup>. (40 C.F.R., Part 50.6.) The states, or regions within the state, are designated as in "attainment" or "nonattainment" depending on whether the area meets the national standards for a particular pollutant. (42 U.S.C., § 7407(d).) The County of San Joaquin is located in a nonattainment area. (17 Cal. Code of Regs., § 60205.)

The CAA requires that non-attainment areas adopt a State Implementation Plan ("SIP") that sets forth all possible emission controls and sources to the extent necessary to attain the NAAQS. (42 U.S.C., §§ 7410(a)(1)-(2), 42 U.S.C., § 7407(a).) The state and/or local air district are primarily responsible for developing and implementing the SIP. (42 U.S.C., §§ 7401, 7407, and 7410; Cal. Health & Safety Code, §§ 40000-40001.) To prevent federal interference with the SIP's attainment strategy, Congress included a prohibition in the CAA that "[n]o department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance

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<sup>11</sup> PM10 is the acronym for particulate matter less than 10 microns in size, enabling it to penetrate deep into the lungs where it becomes a significant health concern.

for, license or permit, or approve, any activity which does not conform to an implementation plan [SIP].” (42 U.S.C., § 7506(c)(1); Rule 925(A).)

Until such time as the “Project” is described with any specificity, the Public Agencies cannot determine whether the SIP will be violated. Undoubtedly, it will be difficult, if not impossible, to conform to the SIP since most of the Delta proposals involve large construction-type projects.

In the 1990 CAA amendments, Congress further strengthened the requirements so that “conformity” means that federal approval must conform to the SIP’s purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and that such activities will not cause or contribute to any new violation of any standard in any area; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. (42 U.S.C., § 7506(c)(1)(A)-(B)(i)-(iii).)

The CAA conformity regulations at issue are codified in the San Joaquin Valley Unified Air Pollution Control District’s Rule 9110, which provides, in relevant part:

“(b) The Federal conformity rules under this subpart and 40 CFR part 93, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the Act requirements until such time as the required conformity SIP revision is approved by EPA. A State’s conformity provisions must contain criteria and procedures that are no less stringent than the requirements described in this subpart. A State may establish more stringent conformity criteria and procedures only if they apply equally to non-Federal as well as Federal entities. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable SIP, the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the State’s conformity provisions that is not approved by EPA. In addition, any previously applicable SIP requirements relating to conformity remain enforceable until the State revises its SIP to specifically remove them from the SIP and that revision is approved by EPA.”

(*Id.*, citing Federal General Conformity Regulation, § 51.851, emphasis added.)

Only when it is shown that the activity produces no emissions, or a *de minimis* level of emissions that could not interfere with the SIP, may a full scale conformity

analysis be avoided. The purpose of permitting *de minimis* exemptions is to avoid imposing a regulatory requirement that would “yield a gain of trivial or no value.” (*Natural Res. Def. Council, Inc. v. U.S. E.P.A.* (9th Cir. 1992) 966 F.2d 1292, 1306 *citing* *Alabama Power Co. v. Costle* (D.C. Cir. 1979) 636 F.2d 323, 361 (“*Alabama Power*”).) A *de minimis* exception does not provide “an ability to depart from the statute, but rather a tool to be used in implementing the legislative design.” (*Alabama Power, supra*, 636 F.2d at p. 360.)

Congress intended the CAA conformity requirement to integrate federal actions and air quality planning “to protect the integrity of the SIP by helping to ensure that SIP growth projections are not exceeded, emissions reduction progress targets are achieved, and air quality attainment and maintenance efforts are not undermined.” (*Environmental Defense Fund, Inc. v. E.P.A.* (D.C. Cir. 1996) 82 F.3d 451, 468 .) A high level of justification is necessary to support a *de minimis* exemption, and the agency bears the burden of making the required showing. (*Alabama Power, supra*, 636 F.2d at p. 360.)

Specific activities that are considered to be trivial or zero emissions sources are identified as exempt in Rule 925 (D)(3)(b), (D)(4)-(D)(5). In addition, activities may be exempted when it is demonstrated that the activity’s total direct and indirect emissions are below specific thresholds - referred to as the “general conformity *de minimis* emission thresholds.” (Rule 925 (D)(2), (D)(3)(b).) Despite these exceptions, when the emissions of any pollutant from a federal action represent 10 percent or more of a nonattainment area’s total emissions of that pollutant, the action is defined as a “Regionally Significant Action” and a full-scale conformity analysis is required even if the emissions are considered *de minimis*. (Rule 925 (D)(9).) An applicability analysis must be performed to demonstrate that the activities’ emissions do not exceed the general conformity *de minimis* emission thresholds or that the activity is not a Regionally Significant Action. (*City of Las Vegas v. F.A.A.* (9th Cir. 2009) 570 F.3d 1109, 1117; *County of Delaware v. Dept. of Transp.* (D.C. Cir. 2009) 554 F.3d 143, 145.)

5. Other Inconsistencies within the DPEIR and Delta Plan.

a. *It is unclear whether and when the BDCP will be completed and what the forecasted timeline is for future projects.*

The current Delta Plan intends to move forward with its stated goals and acknowledges that other components - some quite large - can play catch-up at a later time.

“The study period to be considered in this EIR is defined by the purposes and uses of the Delta Plan . . . The policies will serve as the [?] [sic] basis for future findings of consistency with the Delta Plan by State and local agencies with regard to Delta-related projects that are ‘covered actions’, and for subsequent evaluation of those findings by the council on appeal, pursuant to Water Code section 85225 . . .”

(DPEIR at p. Section 1.4.1, p. 1-14.)

Several critical components hinge on the completion of the BDCP. As noted in the Delta Plan, several policies involve updated flow objectives and the development of flow criteria for certain watersheds. (Delta Plan, Ch. 4 at p. 86.) More problematic, however, is the timing of these documents. The Draft Delta Plan expressly states that “[t]he BDCP process is not expected to be completed until after the first Delta Plan is adopted by the Delta Stewardship Council . . . [and in turn, the BDCP] will become part of the Delta Plan.” (Delta Plan, Ch. 5 at p. 125.) Therefore, it is unclear how the “revised” flow requirements (as well as any other quantitative measure that will provide the lead agency with some context) will be incorporated into the Delta Plan if they will not be determined in the BDCP until after the Delta Plan is adopted.

Another irreconcilable conundrum is the State Water Resources Control Board’s underlying jurisdiction, authority, and obligation to determine the proper and reasonable balancing required to determine flow criteria under the Porter-Cologne Act. Accordingly, the Delta Plan and the Council are without legal authority to establish the priorities and level of balancing.

b. *The DPEIR Misstates Key Language Regarding Covered versus “Statutory Exemptions of a Covered Action”.*

The DPEIR, Section 2.1.2.2, entitled “Administrative Exemptions of a Covered Action” states that certain types of projects, such as “emergency” projects and temporary water transfers of up to 1 year in duration are not “covered actions” under Water Code section 85057.5, subdivision (a)(4). This is a gross misstatement. In the 2009 Delta Reform Act, Section 85057.5 states:

“(a) ‘Covered action’ means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

(4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.”

(Wat. Code, § 85057.5, subd. (a)(4)).

There are no other provisions in the 2009 Delta Reform Act that create such administrative exemptions for “short-term” water transfers, transfers that could have significant impacts on the co-equal goals.

c. *The Water Reliability and Water Quality Sections are Impermissibly Vague.*

The DPEIR readily acknowledges the lack of any specificity in the Delta Plan - a critical deficiency that handcuffs any practical analysis:

“The Proposed Project does not require specific water reliability projects; rather it contains broad requirements and recommendations such as the identification by water suppliers or specific programs and projects that will improve self-reliance. Given both the general nature of the Proposed Project policies and recommendations and the uncertainty concerning the extent to which the Proposed Project will result in any particular action, it is unclear what types of projects will actually be implemented as a result of the Proposed Project policies and recommendations. Nevertheless, this EIR assumes that the Proposed Project will lead to an increase in local and regional water reliability projects.”

(DPEIR at Section 2.2.1.1, p. 2A-6, emphasis added.)

An EIR that has to make such assumptions falls well short of the measured analysis that is foundational to the CEQA and NEPA process. Some projects have been identified, including the: (1) north-of-the-Delta off stream Storage Investigation, which includes 8 initial options, including the possible construction of sites reservoirs with two major dams; (2) Los Vaqueros Reservoir Expansion Investigation; and (3) Upper San Joaquin River Basin Storage investigation. Simply identifying projects does little in the way of balancing alternatives when there is no tie-in discussion of how these various projects will fit into what remains as nothing more than lofty policy goals, tied to an accelerated timeline, both of which seek justification from after-the-fact science.<sup>12</sup>

What results is the Delta Plan's determination to develop flow criteria before the BDCP has been completed. The process is circular by design: the BDCP findings will likely have a significant impact on flow modeling assumptions; this in turn undermining the foundation for the previously produced flow criteria. This methodology begs the question: How can impacts of future "covered actions" be adequately assessed when the critical metrics are unknown and "best available science" undefined?

## **6. Inconsistencies with Delta Related Legislation.**

### **a. *The Watershed Protection Act (Wat. Code, §§ 11460, et seq.) and the Delta Protection Act of 1959 (Wat. Code, §§ 12200 et seq.)***

The Watershed Protection Act and the Delta Protection Act of 1959 impose fundamental limitations on the SWP and the federal CVP's ability to transfer surplus water from the Delta watershed to dry areas to the south and west of the Delta. The Delta Protection Act among things, places primacy upon salinity control, existing water rights within the Delta and requires operation of through Delta water flows to achieve

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<sup>12</sup> Just one example from the DPEIR illustrates the point. "The DWR report, CALFED Surface Storage investigations Progress Report . . . , projects completion and environmental documentation by mid-2013 and decisions on the investigations by December 2014. The progress report stated that because many of the planning, biological, and regulatory conditions have changed since the Initial Alternatives Information reports and Plan Formulations Reports were completed, the final range of options to be considered in 2014 could be substantially different." (DPEIR at Section 2.2.1.2.4, p. 2A-12, emphasis added.)

these objectives, “to the maximum extent possible.” (Wat. Code, §§12202, 12203, and 12205.)

The Council’s primary responsibility is to develop, adopt, and implement a long-term management plan for the Delta and the Suisun Marsh that achieves the coequal goals. According to the Proposed Project, “[c]oequal goals means the two goals of providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place (Water Code section 85054).” (DPEIR at Section 1.1, p. 1-4.) For the reasons set forth above, the DPEIR does not achieve the coequal goals of providing a more reliable water supply and restoring the Delta ecosystem in a manner that *protects and enhances* the agricultural values of the Delta.

Under the proposed Delta Plan, it is virtually impossible to reconcile competing interests to achieve these coequal goals. For instance, the Delta Plan’s interpretation of the “coequal goals” as to require a more reliable water supply only for the SWP and CVP exports from the Delta (to the detriment of the various areas of origin) is in direct contravention of several keys statutes. For example, Section 85031 of the Water Code states that:

“(a) This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law. This division does not limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive.”

(Wat. Code, § 85031, emphasis added.)

Moreover, Water Code sections 12200 through 12205 are clear as to the legal requirements needed to provide salinity control for the Delta and provide an “adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban

and recreational development.”<sup>13</sup> Therefore, the Delta Plan and its DPEIR violate the 1959 Act by degrading these protections and relegating them to a less than co-equal status with water exports.

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<sup>13</sup> For ease of reference, the relevant provisions of the Water Code sections are provided, as follows:

**§12200. Legislative findings and declaration**

The Legislature hereby finds that the water problems of the Sacramento-San Joaquin Delta are unique within the State; the Sacramento and San Joaquin Rivers join at the Sacramento-San Joaquin Delta to discharge their fresh water flows into Suisun, San Pablo and San Francisco bays and thence into the Pacific Ocean; the merging of fresh water with saline bay waters and drainage waters and the withdrawal of fresh water for beneficial uses creates an acute problem of salinity intrusion into the vast network of channels and sloughs of the Delta; the State Water Resources Development system has as one of its objectives the transfer of waters from water-surplus areas in the Sacramento Valley and the north coastal area to water-deficient areas to the south and west of the Sacramento-San Joaquin Delta via the Delta; water surplus to the needs of the areas in which it originates is gathered in the Delta and thereby provides a common source of fresh water supply for water-deficient areas. It is, therefore, hereby declared that a general law cannot be made applicable to said Delta and that the enactment of this law is necessary for the protection, conservation, development, control and use of the waters in the Delta for the public good. *(Added by Stats. 1959, c. 1766, p. 4247, §1.)*

**§12201. Necessity of maintenance of water supply**

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

**§12202. Salinity control and adequate water supply; substitute water supply; delivery**

Among the functions to be provided by the State Water Resources Development System, in coordination with the activities of the United States in providing salinity control for the Delta through operation of the Federal Central Valley Project, shall be the provision of salinity control

(footnote continued)

The reliability of water supply for California is enhanced by improving Delta levees and assuring that levee breaks be immediately repaired and flooded areas dewatered. The levee systems are critical to the efficient repulsion of salinity intrusion and avoidance of the evaporative losses from flooded areas and swampland which are significantly higher than the consumptive use resulting from typical Delta farming.

b. Federal Reclamation Act of 1902.

Section 8 of the Federal Reclamation Act of 1902 provides that “nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, . . .” (*Id.*) Contrary to the laws set forth in the Federal Reclamation Act, the Delta Plan seeks to transfer water rights away from the Delta and other areas of origin.

c. Coastal Zone Management Act.

The CZMA encourages states to preserve, protect, develop, and where possible, restore or enhance valuable natural coastal resources. (16 U.S.C., §§ 1451, *et seq.*) These resources include wetlands, floodplains, and estuaries, as well as the fish and wildlife using those habitats.

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and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta. If it is determined to be in the public interest to provide a substitute water supply to the users in said Delta in lieu of that which would be provided as a result of salinity control no added financial burden shall be placed upon said Delta water users solely by virtue of such substitution. Delivery of said substitute water supply shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code. (*Added by Stats. 1959, c. 1766, p 4247, §1.*)

**§12203. Diversion of waters from channels of delta**

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

In its reauthorization of the CZMA in 1990, Congress identified nonpoint source pollution as a major factor in the continuing degradation of coastal waters. The policies set forth in the Delta Plan and DPEIR are not congruent with the CZMA by degrading water quality due to reduced flows.

d. NEPA.

Section 1.4 of the DPEIR provides generally that:

“This EIR is being prepared to be consistent with most of the requirements of the National Environmental Policy Act (NEPA) in anticipation that a federal agency will consider this document in preparation of a NEPA environmental analysis. Therefore, all of the alternatives analyzed in this EIR, including the Proposed Project and No Project Alternative, are evaluated at an equal level of detail (while avoiding unnecessary repetition) consistent with NEPA requirements.”

(DPEIR at Section 1, p. 1-14.)

Under CEQA, the lead agency is strongly encouraged to prepare a combined EIS/EIR that satisfies both NEPA and CEQA for projects. (Pub. Res. Code, § 21083.6; CEQA Guidelines, § 15222.) Though the Council specifically recognized the federal component to the environmental analysis, it failed to prepare a combined EIS/EIR document. Similar to its state counterpart, NEPA is intended to provide sufficient and a transparent process to vet and consider certain projects that could have an adverse environmental impact. Since both CEQA and NEPA apply coequally to the DPEIR, the same shortcomings addressed in the CEQA portion of this comment letter apply to the NEPA analysis as well.

e. Public Trust Doctrine.

The historic purpose of the Public Trust Doctrine was to ensure that the state’s lands and submerged waters were held in trust and protected for the people of the state. (*Illinois Central R.R. Co. v. Illinois* (1892) 146 U.S. 387, 452.) After over a century, the underlying legislative intent remains the same today. In *Nat’l Audubon Soc’y v. Superior Court* (1983) 33 Cal.3d 419 (“*Aubudon*”), the Supreme Court stated that “the core of the public trust doctrine is the state’s authority as sovereign to exercise a continuous

supervision and control over the navigable waters of the state and the lands underlying those waters.” (*Id.* at p. 425.)

Under the Public Trust Doctrine, the Council has no authority to put off sound environmental analysis, place expediency before sound science, and otherwise ignore existing environmental protections secured under both state and federal law. In accordance with the general sense of ambiguity that runs constant throughout the DPEIR, the Delta Plan and DPEIR are silent on whether the Council intends to provide an analysis under this doctrine. The sweeping nature and scope of the Delta Plan necessarily implicates California’s public trust obligations pertaining to water rights, rights that share equal footing with the reasonable use and appropriative rights doctrines and the Final PEIR must address these substantive obligations. (*Audubon* at pp. 446-448.)

#### **7. Impacts on Agriculture are Not Addressed.**

The DPEIR does not adequately address the potential impacts that ecosystem restoration can have on neighboring agricultural lands. Overall, the DPEIR fails to identify, discuss, or mitigate many of the Proposed Project’s very significant impacts on agriculture. More importantly, the DPEIR is in direct contradiction of the San Joaquin County’s Right to Farm Ordinance<sup>14</sup>, which provides that reasonable, continued agricultural operations are not public or private nuisances. The underlying purpose of this ordinance is to protect agricultural operations.

The EIR’s total lack of recognition of Delta’s agriculture is abundantly evident by the statement found in the DPEIR that describes the Delta Plan’s goals: “Fundamentally, the Delta Plan seeks to arrest (and ultimately improve) declining water reliability and declining environmental conditions related to the Delta ecosystem, flood risk, and water quality, as well to improve recreation opportunities in the Delta and protect Delta legacy towns.” (DPEIR at Section 25.4, p. 25-2, lines 12-14.) Agriculture, the Delta’s largest land use and economic contributor, is conspicuously left out of the fundamental goals of the Delta Plan.

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<sup>14</sup> Codified at Division 9 of Title 6 of the Ordinance Code of San Joaquin County.

As required by Water Code section 85054, the Delta Plan does nothing to protect or enhance agriculture in the Delta. The DPEIR totally ignores this fact and does not address the issue. The DPEIR only discusses noise, access constraints, dust, etc. from ecosystem projects as potential impacts to agricultural lands. However, there are a number of other more serious impacts that the DPEIR does not mention. A few examples are as follows:

- Farmers next to ecosystem restoration projects that are designed to provide endangered species habitat may have to alter their farming practices to protect the newly established habitat.
- Special restrictions and conditions required by ecosystem projects may prohibit certain neighboring farming practices that are necessary for cost effective food production.
- Neighboring natural habitats could serve as a reservoir for weeds, insects, diseases, and rodents at levels that would make farming in the area impossible.
- Serious invasive weeds detrimental to agriculture that are presently aggressively controlled in the Delta could quickly once again become very troublesome and costly if left unchecked in natural ecosystem.

When agriculture is encroached upon by conflicting land uses and historical farmland is converted from private to public lands, the result can have severe economic impacts on the County. For instance, local farming generates revenues for the County through fee assessments to compensate the County for services provided. The reduction or elimination of such revenues over time could result in devastating impacts on the County if substantial acres of farmland are retired.

In terms of public safety, reclamation districts throughout the State are charged with the important task of maintaining levees to lessen flood risks. Reclamation districts are typically funded by special assessments on the landowners for levee maintenance. When private land is converted to public ownership, those lands are typically not subject to special assessments or County property taxes. In addition to the loss of food production, the end result is that assessments become too expensive for farmers within the impacted reclamation district and the County's tax base is further eroded.

In addition, the DPEIR does not adequately address the on-farm impacts that would result under the Delta Plan. The Plan's goals are to substantially limit any development in the Primary Zone. The problem is that a modern farming operation is not just a field of produce. It is a system of buildings that complements and supports the field operation. These buildings include maintenance and storage shops, packing sheds, worker housing, and other related structures. The need for these support facilities, especially for on-site worker housing, which includes substantial equipment theft deterrence, has not been adequately considered.

## **C. THE PUBLIC AGENCIES' SPECIFIC COMMENTS TO DPEIR AND THE FIFTH DELTA PLAN.**

### **1. Section 1- Introduction.**

- Section 1-1, line 9: "The... (Delta Reform Act), requires the development of a legally enforceable, comprehensive, long-term management plan for the Delta..." However, the current document is not a plan, but a description of objectives. To be a master plan for the Delta, it is necessary to include comprehensive guidance to achieve the objectives.
- Section 1-3, line 3: The Council should make use of "all available science", not "best available science," which indicates a preference/opinion and/or biased exclusion of data.
- Section 1, pages 1-3, lines 15 - 18: The Council, in consultation with the Central Valley Flood Protection Board, is required to incorporate in the Plan priorities for state investments in project and non-project levees. The challenge with this is that the first version of the Central Valley Flood Protection Plan does not address needed improvements to non-project levees. This information is not expected to be available until the next update of the Plan which is due in 2017. So, it is unclear where the Council could derive this information.
- Section 1-3, lines 30-31: In order for the Independent Science Board to truly give independent science advice for the Delta Plan, scientists must have no monetary ties and/or material interests in the Delta Plan or the Delta Stewardship Council.
- Section 1-4, line 4: The document states, "Achievement of the coequal goals and eight "inherent" objectives, in a manner that: (1) furthers the statewide policy to reduce reliance on the Delta in meeting the State's future water supply needs through regional self-reliance,..." this should be the number one focus of this document and for the State. Currently, the State has not implemented any enforceable policy to encourage sustainable water supply to meet current

needs. In addition, the Delta Plan does not promote regional self-reliance or provide guidance to achieve regional self-reliance.

- Section 1-5, line 31: Add "to" to the sentence: "... deliver water to cities and irrigated farmland..."
- Section 1-15, line 3: In figure 1-1 the Delta Watershed Area is depicted as ending above Fresno; this figure is flawed. Any water that reaches the Delta by natural or manmade means is part of the Delta watershed, including waters from the Kings River that drains through Fresno Slough according to the State of California Department of Conservation Watershed Portal.
- Section 1-16, line 15: Add "are" to the sentence: "...the alternatives that are evaluated in this EIR are as described in Section 2A ..."
- Section 1-17, line 3: Change "Appendix F: Biology Appendixes" to "Appendix F: Biological Appendices".

## **2. Sections 2A and 2B - Proposed Project and Alternatives and Introduction to Resource Sections.**

- Section 2A-1, line 11: Based on San Joaquin County's experience with the Federal Government, we recommend reevaluating the statement "provide guidance" regarding the federal agencies.
- Page 2A-17, line 5: General Comment - Somewhere in the discussion concerning alternatives for wells and other groundwater storage facilities, there should be a reference that any proposed well and pump installation and construction activity must comply with State and local well construction, permitting and inspection standards.

San Joaquin County ("SJC") Ordinance Code and Well Standards (shown below) prescribe the requirements regarding the location, construction, repair, maintenance and destruction of all types of water wells and borings (test wells, subsurface borings, monitoring, geotechnical, geophysical, recharge, reconditioning, deepening, cathodic protection, injection, extraction and vapor probes) to ensure protection of water quality and potability of underground water sources.

### Sources:

- SJC Ordinance Code, Title 5, Health and Sanitation Division 4 - Wells and Well Drilling
- SJ Ordinance Code, Title 9, Division 11 Infrastructure Standards and Requirements  
Chapter 9-1115 - Water Well and Well Drilling Regulations
- SJC Standards for Well Construction and Destruction

- Section 2A-24, line 16: The Delta Plan recommends that the Bay Delta Conservation Plan (BDCP) be completed by December 31, 2014, after the Delta Plan. The paragraph describes that “the BDCP is likely to be a major project involving large-scale improvements in water conveyance and large-scale ecosystem restorations in the Delta.” These actions are “covered actions” as the Delta Plan is written; this BDCP should adhere to the Delta Plan and not be incorporated into the Delta Plan. If the Delta Plan is the guidance document, then the BDCP should follow the guidance document.
- Section 2A, Page 2A-46, Lines 17 - 24: The Flood Risk Reduction Improvements listed here should include the construction and expansion of flood bypasses. These improvements are specifically addressed elsewhere in the document, including in the bottom paragraph on this page (in lines 34, 40 and 41).
- Section 2A, Page 2A-47, Lines 7 - 10: Development in non-urban areas outside of legacy communities would be required to achieve a higher level of flood protection, from 100-year to 200-year. However, this is inconsistent with and exceeds the requirements of SB 5. The document does not discuss the rationale for requiring this higher level of protection, particularly given its inconsistency with State law.
- Section 2A, Page 2A-47, Lines 14 -18: The Proposed Project encourages DWR to complete its report providing guidance on investment strategies for Flood Management by January 1, 2013. It should be noted that the implementation plan associated with the CVFPP is not expected to be available until 2017. Therefore, encouraging an earlier completion of the report on investment strategies guidance may not result in any earlier implementation of Flood Management improvements in the Delta.
- Section 2A, Page 2A-49, Lines 9 - 10. This statement restates a recommendation in the Plan (RR R9) regarding flood insurance purchases. Specifically, it states “RR R9 encourages mandatory participation in flood insurance programs in flood prone areas.” It should be noted that this mandate already exists for areas identified to be subject to inundation in a 100-year event through FEMA and the NFIP. However, to avoid confusion, “flood prone” should be defined or reference should be made that the intent is to be consistent with current mandates of FEMA and NFIP.
- Section 2A, Page 2A-49, Lines 42 - 44: This statement describes one of the assumed “principles” under which the Plan’s recommendations are based for Flood Management investments. Specifically, this assumed principle is that DWR will “leverage” its investments by securing federal and local cost-sharing. Unfortunately, due to recent policy changes with the Corps of Engineers regarding federal funding participation commitments, it appears that it will become more difficult to obtain federal cost sharing commitments for future projects. This “principle” should be re-worded to recognize this.
- Section 2A, Page 2A-50, Lines 13 - 17: A recommendation of the Plan is that funding priority should be given for the improvement of levees that protect water

quality and water supply over those of flood water conveyance. This statement should be reconsidered given that the adequate conveyance of flood waters is likely more critical for the immediate safeguarding of lives when near urban areas than the protection of water quality and water supply facilities.

- Section 2A, Page 2A-50, Section 2.2.4.3, “Stockpiling of Materials:” It should be acknowledged that this activity is exempt under the Delta Plan (as a covered action) since it is directly related to a maintenance function (refer to third “bullet” on Page 2A-3). It still may result in impacts, but it is not regulated under the Plan.
- Section 2A, Page 2A-50, beginning with Line 36: This statement refers to the following as “new facilities,” yet two of the following three “bullets” don’t include new facilities.
- Section 2A, Page 2A-55, Section 2.2.5.3: This Section discusses possible construction of additional retail stores and restaurants in Legacy Towns to support tourism. Unfortunately, the construction of buildings for such businesses may not be permitted under current building restrictions mandated by FEMA for areas within 100-year floodplains. Many of the Legacy Towns are located within such areas.
- Section 2A-67, line 14: This document needs to provide more information about the alternatives analysis to support the findings. Otherwise, it is difficult to determine if the alternatives are true alternatives and not a diversion to help support a staff recommendation for the Delta Plan.
- Table 2B-1, Page 2B-7, “Flood Risk Reduction,” under the heading “Named Projects, Plans, Programs:” Consideration should be given for specifically listing the proposed Lower San Joaquin River Bypass. This project is mentioned by name throughout the document, and was recently presented to the CVFPB.

### **3. Section 3 - Water Resources.**

- Page 3-10, Section 3.3.3.2. The discussion of a variety of influences on surface water quality within the Delta fails to properly discuss or evaluate what is considered to be the main cause of salinity problems within the southern Delta. The State Water Resource Control Board has studied this issue and concluded that “[s]alinity problems in the southern Delta result from low flows in the San Joaquin River and discharges of saline drainage water to the river.” (SWRCB Decision D 1641 at p. 89.)
- Page 3-11, line 26. Paragraph modified to read: “A variety of bioaccumulative contaminants are found throughout the Delta, resulting in the development of numerous fish consumption advisories. The Office of Environmental Health Hazard Assessment (OEHHA) has issued, and continues to update, fish consumption advisories for many parts of the Delta to provide safe eating

information for fish that are known to be high in mercury or other contaminants fish advisory limits such as these for the Port of Stockton stating that no fish or shellfish should be consumed because of contamination from mercury, dioxins, furans, and polychlorinated biphenyls (PCBs) (OEHHA 2007). A statewide study of fish that included the Delta concluded that mercury and PCBs were the most common contaminants bioaccumulated into fish at levels of concern; the other detectable contaminants in tissue included selenium, dieldrin, DDT, chlordane but generally low in concentration (Davis et al. 2010). Links to the OEHHA fish consumption safe eating guidelines can be found at [http://oehha.ca.gov/fish/so callindex.html](http://oehha.ca.gov/fish/so%20callindex.html).”

- Page 3-27, Lines 36-42. The reference to the Northeastern San Joaquin County Groundwater Banking Authority is outdated, as the most recent groundwater management document produced is the 2007 Eastern San Joaquin Integrated Regional Water Management Plan and the Eastern San Joaquin Integrated Conjunctive Use Program Environmental Impact Report.
- Page 3-90, Lines 41-42. Sentence modified to read: “Increased boating would cause an the increase in engine emissions exhaust-aricl-fuel-spills and the potential for fuel and sewage discharges, which could affect water quality.”

#### **4. Section 4 - Biological Resources.**

- Section 4-2, line 13: Gathering information by summarizing or quoting from existing documentation is adequate for general discussion within the document; however, there is no mention or reference to any self-obtained empirical data to support the findings of the Delta Plan.
- San Joaquin County has an adopted Multi-Species Habitat Conservation Plan (HCP) in place that is administered by the San Joaquin Council of Governments. Implementation of the Delta Plan may potentially impact the HCP and biological resources. Implementation of the BDCP and other projects called for in the Plan could impact land with existing habitat conservation easements, as well as limit the land available for future habitat easements.

#### **5. Section 5 - Delta Flood Risk.**

The following are specific comments on the EIR description of the current emergency management system set forth in Section 5.3.7: Emergency Management:

- Section 5, Page 5-69, Line 17 - 18: This mitigation measure discusses taking measures to limit flooding from conveyance facility failure. This should be expanded to include taking additional safeguards when a facility is near populated areas, particularly schools, hospitals and residences.

- Section 5, Page 5-70, Line 20: As a mitigation measure, add: “Prohibit in-channel construction activities during the flood season.”
- Replace Section 5.3.7.1.1, Preparation, on Page 5-25, Lines 10-18, with the following:

“Preparation involves emergency management activities undertaken in advance of an emergency. These activities include developing risk assessments, operational capabilities, training programs, plans, flood contingency and evacuation maps, and improving public information and communications systems. Development of plans and procedures, and collection of critical information for decision making, during this phase is critical. During the preparation phase, emergency managers need to determine the best methods of responding to various sizes and types of disasters. For flood events, this includes collection of critical topographical, infrastructure, and other information upon which risk assessments and coordination and decision making protocols will be based. This process, in turn, involves the development of complex maps and other documents and systems to display this critical information.

Most local emergencies, such as structure fire, traffic accidents, and small-scale hazardous materials spills are less complex and can be handled by local agency resources through routine coordination procedures. Larger emergencies, such as a major oil spill resulting from a commercial shipping accident in the Delta, are more complex and involve the need to coordinate not only larger numbers of resources from different disciplines but the actions of multiple, separate, jurisdictions. Catastrophes require large scale coordination of larger amounts of resources from multiple jurisdictions in an environment where the local response and coordination capability may be greatly degraded.

It is important to note that the preparation phase, particularly for complex disaster events such as large floods, is a continuing process involving ongoing expenditures to maintain systems and plans put in place. Completed risk assessments, plans, and procedures need ongoing update and revision based on how the environment within which they will be used changes. Extensive changes in the topography and other characteristics of the area will require increased levels of expenditures to ensure that the capability of the emergency response system is maintained or improved to meet additional demands.”

- Add the following paragraph to Section 5.3.7.4 Mitigation on Page 5-26, after Line 11:

In building, modifying, or expanding physical infrastructure within the area of interest, mitigation actions to protect such infrastructure, particularly critical infrastructure upon which the health and welfare of large populations depend, can lessen the effects of future disasters. Mitigation of critical infrastructure whose loss would impact the safety of regional populations, such as treatment plants, should as a matter of policy for the Project extend beyond placement of a single protective primary levee regardless of its level of protection. Secondary protections from

effects of flooding, e.g. ring levees, should be included in mitigation actions for such critical infrastructure. Mitigation of existing critical infrastructure and proposed new or modified facilities to the highest level of protection possible are important elements of sustainable community development.

- Section 5, Page 5-67, Line 27: As a mitigation measure, add: “Prohibit in-channel construction activities during the flood season.”
- Modify following paragraphs starting on Page 5-30, Line 35 to Page 5-31, Line 6:

The mission of DWR’s Division of Flood Management is to prevent the loss of life and reduce property damage caused by floods. As a component of the Division of Flood Management, DWR coordinates flood *fight* operations with various federal, State, and local agencies and operates the State-Federal Flood Operations Center (FOC) in Sacramento, ~~which provides the necessary components for a statewide emergency response in the event of a natural disaster.~~ *which coordinates State response to flood control and water transfer facilities in the State in the event of a natural disaster.* The National Weather Service and DWR monitor storm weather systems for forecasted or actual flooding. Under the guidance of the SEMS, the FOC will be activated during such flood warnings or events to carry specific functions such as the following:

Management: The FOC is responsible for overall policy and coordination of flood *fight* response management *and response to impacts to the State water project.* The FOC is the clearinghouse of requests for emergency support *by DWR resources and other resources under direct control of DWR,* especially for flood fighting as well as the repair and rehabilitation of flood damaged *flood control and water transfer* infrastructure such as levees.

Operations: The FOC will coordinate the *DWR* field operation units *dispatched at the request of local agencies* for flood fights and emergency repairs. Operations will also dispatch flood fight incident commanders *responsible for DWR personnel operating within areas defined by the Department.*

Planning: Responsible for disseminating flood emergency information through preparations of reports and formulation of action plans *for DWR personnel.*

Logistics: Makes available necessary services and support personnel as well as equipment and facilities *under the control of DWR* in support of all operations of the FOC.

- Rewrite Paragraphs under heading “Delta Multi-Hazard Coordination Planning (Senate Bill 27), Page 5-32 to 5-34:

This description of the SB27 process is so flawed that editing it would be too difficult. The discussion focuses on single meetings out of context with the extended process, equates the task force report with other unrelated planning activities, and has a rambling discussion of the report contents and the activities leading up to SB27. A simple rewrite is, as follows:

In 2007, the five Delta counties formed the Sacramento-San Joaquin Delta Flood Response Group through written agreement to coordinate regional efforts to improve flood response. This group issued a white paper in 2008 providing recommendations for improving response including the creation of a multi-agency coordination system (MACS) for the Delta. The Flood Group subsequently issued an operations manual in 2009 for establishing a Delta MACS. In 2008, the Delta Protection Commission (DPC) and the Governor's Office of Emergency Services (now CalEMA) together issued their Phase I Report on "A Strategy for Collaborative Emergency Response Planning in California's Delta Region" (CCP 2008). The Phase 1 Report provided a draft work plan for further collaboration on an emergency planning process. Subsequent to these efforts, Senate Bill 27 was passed establishing a Sacramento-San Joaquin Delta Multi-Hazard Coordination Task Force to be facilitated by CalEMA. The Task Force included representatives from the five Delta counties, the Department of Water Resources (DWR), and the Delta Protection Commission. Senate Bill 27 directed the Task Force to:

*Make recommendations to the OES relating to the creation of an interagency unified*

*Command system organizational framework in accordance with the guidelines of the NIMS and SEMS.*

*Coordinate the development of a draft emergency preparedness and response Strategy for the Delta region for submission to the Director of the OES. Where Possible, the strategy shall utilize existing interagency plans and planning processes of the involved jurisdictions and agencies that are members of the Delta Protection commission.*

*Develop and conduct an all-hazard emergency response exercise in the Delta, designed to test regional coordination protocols already in place.*

The Task Force was to submit its report to the Secretary of CalEMA who was to forward it to the Governor and Legislature on or before January 1, 2011. This deadline was extended to January 1, 2013 by Senate Bill 1443 (2010). The report is finished but has not been forwarded yet to the Governor and legislature.

- Revise Paragraph on Page 5-34, Lines 11-15 as follows:

Although the DPC does not have emergency management authority or responsibility, it has been assisting with the collaboration among the five counties, DWR, and Cal EMA to develop an integrated and unified approach for

emergency preparedness in the Delta. Its initial efforts culminated in a Phase I Report authored by the Center for Collaborative Policy (CCP 2008). ~~The effort is being continued through the Delta Multi-Hazard Coordination Task Force. The DPC continued its involvement through participation on the Delta Multi-Hazard Coordination Task Force established by SB27.~~

*The DPC is currently sponsoring an effort to develop a regional application for a new DWR grant for emergency preparedness projects involving jurisdictions in the Delta responsible for flood response. The regional application and subsequent joint implementation of flood response projects will be completed with the assistance of Cal EMA and DWR. DPC will serve as lead applicant to facilitate joint preparedness funding efforts by the separate Delta jurisdictions.*

- Section 5.4 - Impacts Analysis of Project and Alternatives. The document does not adequately identify potential impacts on emergency response resulting from implementation of the Project. The primary potential changes affecting Impact 5-4 mentioned are: (1) increasing the rate or probability of levee failure, (2) changing flood flows, patterns, and fill times, and (3) changing response times of emergency responders. The discussions of the Project and Alternate Projects also seem to indicate that the importance of emergency response services may be increased or decreased in general by implementation of specific alternates.

The following potential impacts on emergency response must be added throughout the document and mitigation actions identified.

1. Impact on the cost and time required to revise and keep current flood contingency maps, emergency plans, and emergency response systems developed before and during project implementation.
2. Increase in complexity of response due to construction of new facilities whose loss would have catastrophic impacts on public health and safety unless adequately mitigated making its loss by flooding virtually impossible.
3. Increase in the need for development of regional response systems and protocols due to the construction of new critical facilities that extend across multiple jurisdictions in the Delta.
4. Impact on the cost and time required to update risk assessments as specific areas of the Delta are changed by implementation of the Project.

It should also be made clear that implementation of the Project or of any of the Alternate Projects would not reduce the need for a high quality and complete emergency response system. Implementation may improve risk of levee failure or otherwise possibly reduce the overall demands on emergency response systems during an event. However, a complete and high quality response system would need to be maintained for all alternatives into the future to deal with residual risk. The cost of maintaining a high quality and complete flood response system would not be reduced by any action

resulting from implementation of the Project unless it could be shown that all risk of flooding has been eliminated.

- 5.4.3.1 - Reliable Water Supply.

This section lists several general types of projects that could result from the Delta Plan recommendations and policies. The most likely changes to occur in San Joaquin County from implementation of reliable water supply projects would be additional or modified treatment facilities and a new conveyance facility. The following impacts should be added to the EIR.

1. Costs associated with revising flood contingency and evacuation maps and other emergency plans as projects are constructed changing the topography or other characteristics of the area.
2. Costs associated with developing regional response systems for protection of a new conveyance facility crossing multiple jurisdiction boundaries.
3. Degradation of local ability to protect the public by placement of new or enlarged treatment plants serving regional areas where catastrophic health conditions to regional populations could be created by their loss.
4. Costs associated with updating risk assessments and response priorities as the Project implementation changes topography and other local conditions.

If the EIR does not provide a mitigation action to address the additional costs of maintaining accurate and up-to-date flood contingency and evacuation maps and other plans and procedures as the Project changes the characteristics of the area then public safety and the possibility of exposing people and structures to a higher risk of loss are increased.

If the EIR does not provide a mitigation action that would require a second line of defense (ring levee, etc.) for any new or modified treatment facilities arising from Project implementation where the health and safety of regional populations could be affected by its loss then the exposure of people to significant risk of loss or injury from a flood would be increased.

If the EIR does not provide a mitigation action to cover the costs of developing security and regional response systems to address the safety, security, and emergency protection of new facilities crossing county lines, such as a conveyance facility, during a disaster event then the exposure of people to significant risk of loss or suffering is increased.

5.4.3.2-Delta Ecosystem Restoration. Potential facilities listed in this section would have the following additional impacts from those identified in the document.

1. Costs associated with revising flood contingency and evacuation maps and other emergency plans as projects are constructed changing the topography or other characteristics of the area.
2. Costs associated with updating risk assessments and response priorities as Project implementation changes topography and other local conditions.

- 5.4.3.3-Water Quality Improvement. Potential facilities listed in this section that may result from meeting water quality objectives in San Joaquin County include treatment plants and conveyance facilities. The following additional impacts should be added and mitigation actions identified.

1. Costs associated with revising flood contingency and evacuation maps and other emergency plans as projects are constructed changing the topography or other characteristics of the area.
2. Costs associated with developing regional systems for protection of a new conveyance facility crossing multiple jurisdiction boundaries.
3. Degradation of local ability to protect the public by placement of new or enlarged treatment plants serving regional areas where catastrophic health conditions to regional populations could be created by their loss.
4. Costs associated with updating risk assessments and response priorities as the Project implementation changes topography and other local conditions.

- 5.4.3.4-Flood Risk Reduction. The potential projects identified in this section may reduce the demand on emergency response systems but since the Project does not indicate that all risk would be eliminated then the following negative impacts should be added and mitigation actions identified.

1. Costs associated with revising flood contingency and evacuation maps and other emergency plans as projects are constructed changing the topography or other characteristics of the area.
2. Costs associated with updating risk assessments and response priorities as the Project implementation changes topography and other local conditions

- 5.4.3.6.3- Mitigation Measure 5-4. This discussion of mitigation measures is confusing. The Project identifies in Chapter 7 of the Delta Plan recommended actions for improving emergency response. Yet in this section isolated, fragmented, and incomplete actions are identified for improving emergency response and intermixed with potential levee and floodway improvements.

In order to be consistent with the Delta Plan itself the mitigation actions listed by the authors for improving emergency response should be replaced with a single mitigation action to implement the SB27 Task Force strategy.

*Implement the SB27 Task Force recommendations and establish a funding program for maintaining plans, contingency maps, protocols, and systems in a current and effective state as Project implementation changes the risks, topography, and other conditions of the study area.*

Where the authors list physical mitigation actions such as building new evacuation - roads, etc., these should be replaced with a single mitigation action as follows.

*Implement and fund a mitigation program for identifying and placing new physical structures and facilities needed to mitigate the negative impacts on emergency response capabilities and performance of Project implementation.*

The potential placement of new or enlarged treatment plants degrades the ability of local agencies to protect public health and safety by creating conditions where one levee failure could eliminate potable water supplies and waste disposal systems for regional populations. The only acceptable mitigation action would be one where the potential for extended loss of such facilities is extremely low. Any level of protection of a levee where it is the single source of flood protection for such facilities would not be adequate to meet this requirement. Mitigation for such facilities should include the placement of a secondary flood defense, e.g. ring levee or structure elevation, in addition to the level of protection provided by a primary levee.

*For facilities arising from implementation of Project policies and recommendations which provide potable water or waste treatment services to regional populations, a secondary flood defense will be added to facility design where flood protection is limited to only one primary flood control structure, e.g. levee.*

## **6. Section 6 - Land Use and Planning.**

- Page 6-15, 6.2.1.4.1, line 24 states that the updated General Plan is anticipated in Summer 2011. The Community Development Department anticipates that the updated General Plan may go to the Board of Supervisors in Fall 2012 for consideration.
- Page 6-15, 6.2.1.4.2, line 41 states that Mountain House is “projected to eventually become a small, incorporated city.” Mountain House, at build out, is anticipated to be a community of approximately 48,000 people.
- Page 6-36, lines 21-23, states that growth in Tracy has been “fueled by an influx of residents who commute to work in the Bay Area via the Altamont Commuter Express (i.e., ACE train).” It is not accurate to state or imply that most residents commute to the Bay Area via the ACE train. Most, in fact, commute by automobile. Actual commute patterns can be obtained from the San Joaquin Council of Governments.
- Page 6-36, lines 27 and 28, states that public access to the San Joaquin River is limited. It should be noted that there is public access located in the general area. The San Joaquin County Department of Parks and Recreation should be contacted for details regarding public river access.

- Page 6-36, line 29, states that Lathrop has begun “to expand west of I-5 with new residential uses.” It should be noted that there are also new commercial and industrial uses to the west of I-5.
- Page 6-43, 6.4.1, lines 31 and 32 states that “The Proposed Project and alternatives would not directly result in construction or operation of projects or facilities, and therefore would result in no direct land use impacts.” This doesn’t seem to be an accurate statement, as the BDCP will be part of the Delta Plan, and therefore part of the “Proposed Project.” The BDCP will likely have significant land use impacts.
- Page 6-45, lines 3-5, states “Project-specific impacts would be addressed in project-specific environmental studies conducted by the lead agency at the time the projects are proposed for approval.” This is stated throughout the document and though we know this is a program level EIR, leads to somewhat vague discussions of impacts and a sense of incompleteness.
- Page 6-49, lines 5-7, states that San Joaquin County has land designated for “exclusive agricultural use.” This is not an accurate statement, and it appears throughout this section. The San Joaquin County General Plan has no such designation, and there is no such zoning. Most of the agricultural land in the Delta is designated A/G, General Agriculture, and zoned AG, General Agriculture. There are some uses other than agricultural land uses that are permitted or may be conditionally permitted with an approved discretionary land use permit.
- Page 6-57, line 21-26, states that “new water treatment facilities could be constructed on lands designated for exclusive agriculture use in Yolo or San Joaquin counties, conflicting with these local land use controls and resulting in a loss of agricultural land.” As stated above, there is no such “exclusive agricultural” designation in San Joaquin County. Although a water treatment facility may be conditionally permitted in agriculturally designated and zoned land in San Joaquin County, if it were proposed on land within the primary zone of the Delta, there would be potential consistency issues with General Plan policies. And even if consistent with General Plan policies and zoning, there would still be a potentially significant loss of agricultural land.
- 6.4.3.5.1 Impact 6-1e: Physical Division of an Established Community Effects of Project Operation: Page 61, Line 17, Add "to" to the sentence: "...access points in the Delta, are unlikely to physically divide communities in the Delta, and instead are likely..."

## 7. Section 11 - Geology and Soils.

- All references to "septic systems" throughout the EIR should be changed to "onsite wastewater treatment systems (OWTS)." Assembly Bill (AB) 885 (Chapter 781, Statutes of 2000) was approved by the California State Legislature and signed into law in September 2000. The legislation directed the State Water Resources Control Board (SWRCB) to promulgate statewide onsite wastewater regulations by the year 2004. Public comments on a draft statewide regulatory policy are currently being reviewed by SWRCB staff, and the draft policy is proposed for SWRCB adoption by the summer of 2012.
- Page 11-1, Line 20. Remove "disposal" and add "treatment systems" to sentence: "...soil shrinking and swelling; and the potential for construction of on-site wastewater disposal treatment systems in..."

### 11.5.3.1.8 Impact 11-8a: Have Soils Incapable of Adequately Supporting the Use of Septic Tanks or Alternative Waste Water Disposal Systems Where Sewers Are Not Available for the Disposal of Waste Water.

- Page 11-44, Lines 37-38. Remove "disposal" and add "onsite wastewater treatment systems" to sentences: "Soil properties that affect the ability to support the use of septic tanks onsite wastewater treatment systems or alternative onsite wastewater disposal treatment systems include:"
- Page 11-45, Line 9. Remove "septic" and add "onsite wastewater treatment" to sentence: "...and depth to groundwater is relatively shallow, may not be suitable for supporting a septic onsite wastewater treatment systems."

### 11.5.3.3.8 Impact 11-8c: Have Soils Incapable of Adequately Supporting the Use of Septic Tanks or Alternative Waste Water Disposal Systems Where Sewers Are Not Available for the Disposal of Waste Water

- Page 11-59, Line 9: Remove "septic" and add "onsite wastewater treatment" to sentence: "...constructed in remote locations, an septic tank onsite wastewater treatment system or alternative onsite wastewater disposal treatment system would have to be..."
- Page 11-59, Line 21: Remove "septic" and add "onsite wastewater treatment" to sentence: "...and depth to groundwater is relatively shallow, may not be suitable for supporting septic onsite wastewater treatment systems."

### 11.5.3.5.8 Impact 11-8e: Have Soils Incapable of Adequately Supporting the Use of Septic Tanks or Alternative Waste Water Disposal Systems Where Sewers Are Not Available for the Disposal of Waste Water

- Page 11-70, Lines 45-46: Remove "septic" and "disposal" and add "onsite wastewater treatment" to sentence: "...permanent facilities are constructed in remote locations, an septic tank onsite wastewater treatment system or

alternative onsite wastewater treatment disposal system would have to be installed for use during operation."

- Page 11-71, Line 5: Remove "septic" and add "onsite wastewater treatment" to sentence: "...Suisun Marsh appear to have limited suitability for supporting septic onsite wastewater treatment systems, impacts could be..."
- Page 11-71, Line 18: Remove "septic" and add "onsite wastewater treatment" to sentence: "...the proposed project included a new septic onsite wastewater treatment system/leachfield to service the restroom/shower building that..."
- Page 11-71, Line 20: Remove "septic" and add "onsite wastewater treatment" to sentence: "...construction and maintenance of restroom facilities and septic onsite wastewater treatment systems in areas prone to flooding."
- Page 11-71, Line 21: Remove "septic" and add "onsite wastewater treatment" to sentence: Because a septic onsite wastewater treatment system permit would be required from Butte County, which would include a soil profile..."
- Page 11-71, Line 23: Remove "septic" and add "onsite wastewater treatment" to sentence: "...related to soil suitability for supporting septic onsite wastewater treatment systems were less than significant. The San Luis Rey River..."
- Page 11-71, Line 25: Remove "septic" and add "onsite wastewater treatment" to sentence: "...potential impacts related to suitability of soils to support septic onsite wastewater treatment systems, but vault toilets that store sewage..."

#### **11.5.3.6.8 Mitigation Measure 11-8:**

- Page 11-77, Lines 14 to 24. Comment – The potential alternative onsite wastewater treatment systems noted in Lines 19-24 are methods of advanced sewage treatment, but they may not address issues of effluent dispersal, inadequate separation from high groundwater, or lack of adequate topsoil (which is very common in many areas of the Delta). The subject of engineered fill leach fields should be discussed as a potential mitigation for unsuitable onsite soils.

### **8. Section 14 - Hazards and Hazardous Materials.**

No comments on description of current hazardous facilities and conditions. The addition of more hazardous materials sites would create a need for additional planning by emergency responders and preparation of emergency plans by the facility owners. The cost of necessary regulatory and emergency planning activities by the County would be covered by existing fees and programs. A key problem that arises in the placement of additional hazardous materials in the Delta is the increased complexity and cost of responding to a flooded area to prevent and reduce contamination by hazardous materials in the area. Add this mitigation action:

*Fund and develop improved flood recovery and debris removal plans where Project implementation would lead to extended or permanent placement of Additional hazardous materials within the Delta.*

#### 14.3.4 Methyl Mercury

Page 14-4, Line 7. Sentence modified to read: "...1970 in the Delta indicate that mercury levels in certain fish species exceed numeric criteria established for the protection of..."

#### 14.4.2.5 San Joaquin County

##### 14.4.2.5.1 Hazardous Materials

Much of the information in "14.4.2.5.1 Hazardous Materials" for San Joaquin County is outdated. It is recommended that the language on Page 14-11, lines 9-44, and Page 14-12, lines 1-5, be replaced with the following language:

The California Environmental Protection Agency (Cal/EPA) Unified Program consolidates, coordinates, and makes consistent the administrative requirements, permits, inspections, and enforcement activities of six hazardous material and emergency response programs. The Legislature and State agencies responsible for these programs set the statewide standards, while local governments implement the standards. Cal/EPA oversees the administration of the Unified Program as a whole, while 83 government agencies at the local level are certified by the Secretary of Cal/EPA as Certified Unified Program Agencies (CUPAs).

The San Joaquin County EHD is the local CUPA responsible for the permitting, inspection, and enforcement of the six hazardous materials programs within the County as identified below:

##### a. Hazardous Materials Management Plan or Business Plan Program.

All hazardous materials that equal or exceed specified quantities must be reported to the local CUPA prior to storage of the hazardous materials onsite. Reporting quantities are 55 gallons or more of a hazardous liquid, 200 cubic feet of a hazardous gas, and 500 pounds of a hazardous solid. Facilities that store any of these amounts are required to file a Business Plan inventory and facility map that identifies specific hazardous material locations to prevent fire fighters, first responders, and other interested parties from possible exposure to chemical releases during an emergency event. There are over 2,900 regulated facilities within San Joaquin County. Source: California Health and Safety Code, Chapter 6.95, Article 1, and California Code of Regulations, Title 19.

##### b. California Accidental Release Prevention Program (CalARP).

The goal of the CalARP Program is to reduce the likelihood and severity of possible exposures to extremely hazardous material releases. Examples of extremely hazardous materials (regulated substances) include toxic gases such as chlorine, ammonia, sulfur dioxide and other toxic materials. The EHD CUPA

coordinates with facilities that handle extremely hazardous materials to evaluate the risks of covered processes and require appropriate Risk Management Programs (RMP). There are 144 CalARP/RMP regulated facilities in San Joaquin County. Source: California Health and Safety Code, Chapter 6.95, Article 1 and California Code of Regulations, Title 19.

c. Hazardous Waste Storage Program.

Under State law, every owner/operator who generates and stores hazardous waste on their property is considered a hazardous waste generator. There is no minimum generation or storage amount that triggers regulation under the program. The program goal is to ensure that hazardous waste is stored, treated, transported and disposed of properly. There are over 1,700 regulated hazardous waste generator facilities in San Joaquin County. Source: California Health and Safety Code, Chapter 6.5, and California Code of Regulations, Title 22.

d. Hazardous Waste Storage and Treatment (Tiered Permitting) Program.

A CUPA permit is required for all hazardous waste generated and treated onsite. The program goal is to ensure all hazardous waste is treated in accordance with California Health and Safety Code, Chapter 6.5, and California Code of Regulations, Title 22, requirements. There are 15 treatment facilities regulated in San Joaquin County.

e. Aboveground Petroleum Storage Act (APSA).

All petroleum stored aboveground in containers 55 gallons or larger are regulated under this program, if the total stored on site is at least 1,320 gallons. The facility owner is required to prepare a Spill Prevention Control and Countermeasure Plan (SPCC) to prevent any petroleum releases from reaching waters of the State. Aboveground tanks can be found at vehicle maintenance shops, trucking businesses, farms, school corporation yards and bulk storage fueling facilities. Near the Port of Stockton in the Delta, there are major transmission pipelines that transport petroleum fuel to bulk storage facilities for later delivery to service stations and other underground storage tank (UST) facilities. The CUPA conducts inspections at these facilities to assure compliance with the California Health and Safety Code, Chapter 6.67, and 40 Code of Federal Regulations, Part 112. There are over 700 APSA regulated facilities in San Joaquin County.

f. Underground Storage Tank Program.

The goal of the UST Program is to protect public health, the environment and groundwater from releases of hazardous materials, predominantly fuel, from USTs. To accomplish this goal, the EHD ensures that facilities with ongoing UST operations are properly permitted and meet the monitoring requirements

applicable to their type of equipment. This is accomplished during plan check and inspection activities. As the CUPA, the EHD is responsible for permitting installations of new UST systems, UST repairs, and piping removals, including plan checks and inspections. Gasoline stations are typical locations to find USTs but they can also be found at corporation yards, hospitals, communication facilities, vehicle maintenance shops, bus depots, farms, and even residential locations. Each UST site is inspected annually as mandated by State law. There are over 250 regulated facilities with USTs. Source: California Health and Safety Code, Chapter 6.7 and California Code of Regulations, Title 23.

- Page 14-12, Lines 7-8. Modify sentence to read: “No hazardous waste landfills occur in San Joaquin County, although illegal or mistaken the Forward, Inc. Landfill located at 9999 S. Austin Road, Manteca, is a Class II facility authorized to accept designated waste streams.”

Designated waste is defined in the California Water Code section 13173, as one of the following:

- Hazardous waste that has been granted a variance from hazardous waste management requirements pursuant to Section 25143 of the Health and Safety Code.
- Non-hazardous waste that consists of, or contains, pollutants that, under ambient environmental conditions at a waste management unit, could be released in concentrations exceeding applicable water quality objectives or that could reasonably be expected to affect beneficial uses of the waters of the state as contained in the appropriate state water quality control plan.

## **9. Section 16 - Population and Housing.**

Section 16 discusses certain types of populations and housing, but fails to adequately address Permanent, Migrant and Seasonal Agricultural Worker housing. Although this population is a smaller percentage than those living in more urbanized parts of the Delta, permanent, migrant and seasonal agricultural worker needs are different and unique from the general population, and should be addressed as a separate group in this section.

In San Joaquin County, and especially the Delta area, the availability of legitimate housing for agricultural workers has been declining. Migrant and seasonal dormitory-style housing has significantly decreased over the past 10 years. Many agricultural workers have found housing in older mobile homes located on agricultural lands, as available and affordable. Because limited agricultural housing is an ongoing problem, State law provides for reduced local permitting requirements for agricultural worker housing in agricultural areas.

Some agricultural workers that reside in the Delta area may have immigration status issues and may not be well accounted for in census data. The statements in the EIR that these residents, if displaced, could easily be relocated may not be factual. The structures and mobile homes where agricultural workers currently reside have special agricultural worker permitting and they may not be able to relocate to another agricultural farm or to an available or affordable mobile home park. In addition, these workers' livelihoods and sources of income are closely associated with the location of their residence. Relocation and travel costs may have a significant impact on their ability to work and will likely reduce their income levels.

Although small in number, agricultural workers play an important role in the Delta environment. Their unique and special needs should be referenced in the EIR.

**Lead.** The San Joaquin County EHD investigates lead hazards under the California Department of Public Health Childhood Lead Poisoning Prevention Program, in conjunction with the San Joaquin County Public Health Services grant. Lead hazards are investigated and mitigated in homes where a child has been identified as having an elevated blood lead level. The San Joaquin County EHD enforces lead hazard abatement activities in the unincorporated areas, in accordance with California State Housing Law, when necessary to obtain compliance.

#### **10. Section 19 - Transportation, Traffic, and Circulation.**

As a means of ensuring that previous local agency land use decisions are not compromised, transportation and other infrastructure projects which are consistent with local agency General Plans, and Specific Plans where applicable, when the Delta Plan is adopted should be incorporated into the Delta Plan and therefore exempted from review by the Delta Stewardship Council.

#### **11. Section 20 - Utilities and Service Systems.**

- 20.3.1.4 Solid Waste Collection and Disposal. Page 20-5, Line 5.
- Table 20-3 - Solid Waste Disposal Facilities In and Near the Delta.
- Modify Table under San Joaquin County to state: "San Joaquin County San Joaquin County communities are served by three four disposal and transfer station facilities located outside of the Delta Forward, Inc. Landfill and Resource Recovery Facility, Lovelace Materials Recovery Facility and Transfer Station, North County Recycling Center and Sanitary Landfill, and Foothill Sanitary Landfill."
- Page 20-12, Lines 29-35. Indicates that onsite burial would be acceptable for the four-year project, and could meet State of California's diversion goals. It may not be acceptable to bury all materials onsite. Advance authorization for any onsite

burial must be obtained from the Regional Water Quality Control Board and the Solid Waste Local Enforcement Agency.

## **12. Section 21 - Climate Change and Emissions.**

The DPEIR is sorely lacking for any substantive metrics, and the ones that are currently used throughout, cannot be relied upon.

## **13. Section 23 - Bay Delta Conservation Plan.**

The DPEIR, in its consideration of the BDCP, fails to note that shortages of water within the Bay Delta must be taken into account. California water law is based on a priority system of state water rights; the most senior water rights are protected while junior water rights confer to more senior rights. Therefore, in instances of water shortage, the priority system trumps. (*Pleasant Valley Canal Company v. Borrego* (1998) 61 Cal.App.4th 742, 770.)

- Page 23-31, lines 33 and 34, states that “operation of these projects could create land use conflicts if they are incompatible with adjacent uses.” This is true, and needs to be fully discussed in this DPEIR, but it is deferred to a later discussion, presumably after the BDCP is finished.
- Page 23-31, lines 38-40, states that BDCP-related ecosystem restoration and enhancement “could conflict with existing agricultural zoning and Williamson Act contracts. These effects could be temporary... which would not be a significant impact, or permanent.” First, a project may not conflict with zoning, but may still have a significant impact from the loss of agricultural land. Secondly, one wonders how there would not be a permanent, significant loss of agricultural land from implementation of the as yet to be completed BDCP.

## **14. Section 24 - Other CEQA Considerations.**

- Section 24-2, line 4: As the Delta Plan is written, the only obstacle removed is the ability to stop the increasing reliance on Delta water in areas outside of the Delta. The Delta Plan provides no guidance on how to provide a reliable water supply to these areas, as commented on section 1-4. In addition, if reliable water supplies were created, they would directly induce growth.

## **15. Section 25 - Comparison of Alternatives.**

- Section 25-1, line 26: From the statement, “The degree to which the alternatives might or might not satisfy the project objectives and be feasible is something the Delta Stewardship Council will consider at some point after the release of this

Draft program-level EIR but prior to consideration of final adoption of a Delta Plan,” the Delta Plan EIR indicates that the Delta Stewardship Council has not fully evaluated the alternatives before releasing the EIR to the public. This does not “foster informed decisionmaking and public participation.” (CEQA Guidelines section 15126.6(a)).

- **Section 25.5. Environmental Superior Alternative.** Page 25-11, Line 22. The comment "...380,000 acres to be fallowed within the San Luis Drainage Area, and possibly additional acreage to be periodically fallowed due to restrictions on total amount of water to be exported from the Delta. Extensive land fallowing also has adverse air quality impacts from resulting dust," may not be fully accurate. Agricultural activities such as disking open land for planting and maintaining row crops, shaking nut trees during harvest, and burning rice fields, can create adverse air quality impacts. However, a fallow field will return to growing native foliage of grasses and brush, where root and plant growth will likely prevent soils from becoming airborne and negatively impacting air quality.
- Page 25-11, Lines 29-32. "...Alternative 2 would be inferior to the Proposed Project regarding potential water supply impacts because it would result in fewer redundancies in the water supply system, thereby increasing the chance that water users could be without sufficient water during droughts affecting their water source more than another source that might be a back-up source under the Proposed Project."

This comment may not be fully accurate. During times of drought, the Delta is adversely impacted at current pumping allotments, as is groundwater quality in the Stockton area by intrusion of seawater. The use of Aquifer Storage and Recovery Wells throughout the State would be an alternate source during times of drought, which Alternative 2 references. This includes the treating of surface water from rivers, reservoirs, the ocean, and Delta to potable standards, and banking these waters in Aquifer Storage and Recovery Wells during wet seasons. This banked water can then be used during times of drought, while decreasing use of surface waters that are minimally available during these periods.

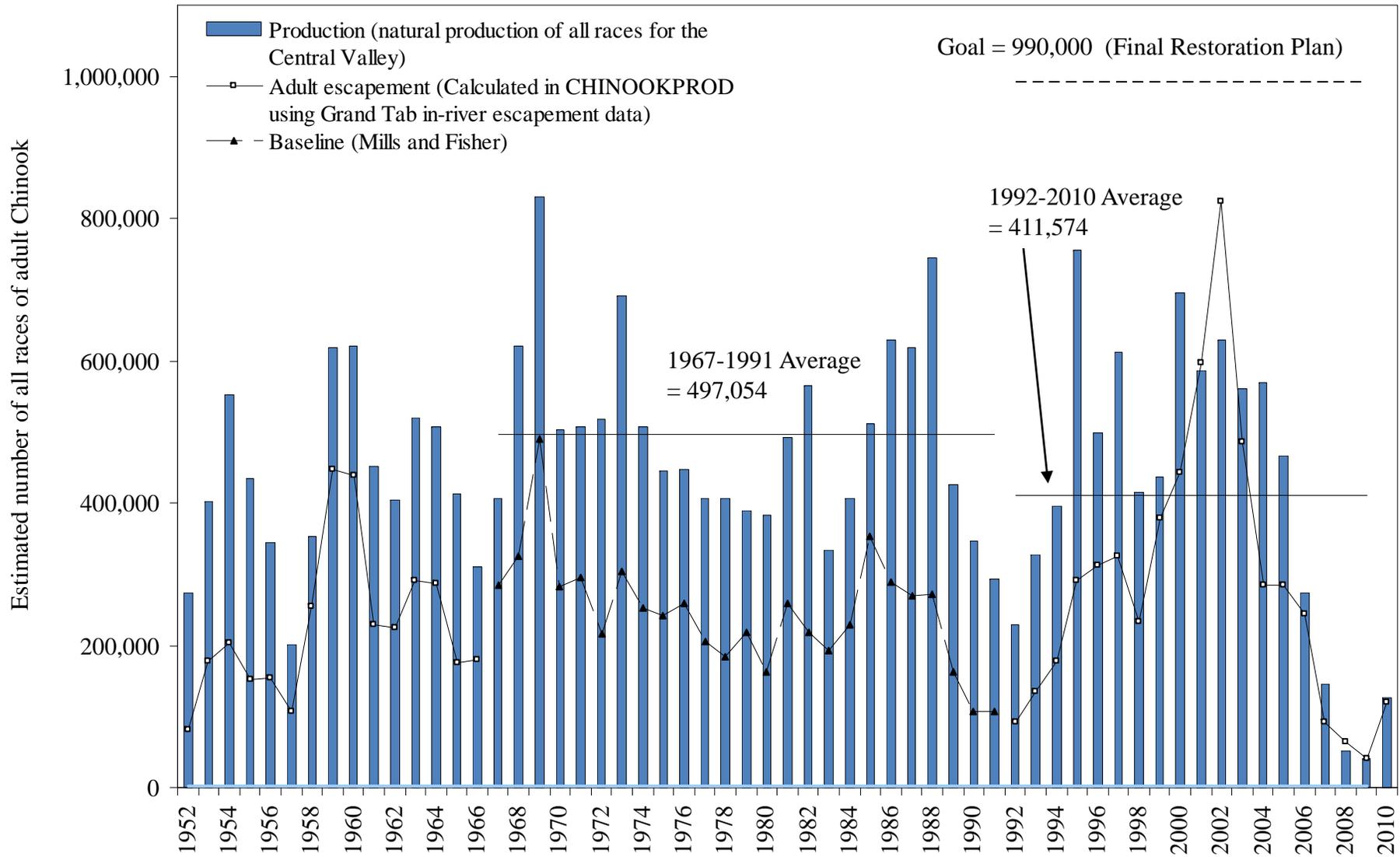


Figure 1. Estimated yearly natural production and in-river escapement of all races of adult Chinook Salmon in the Central Valley rivers and streams. 1952 - 1966 and 1992 - 2010 numbers are calculated in CHINOOKPROD using CDFG Grand Tab in-river escapement data (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

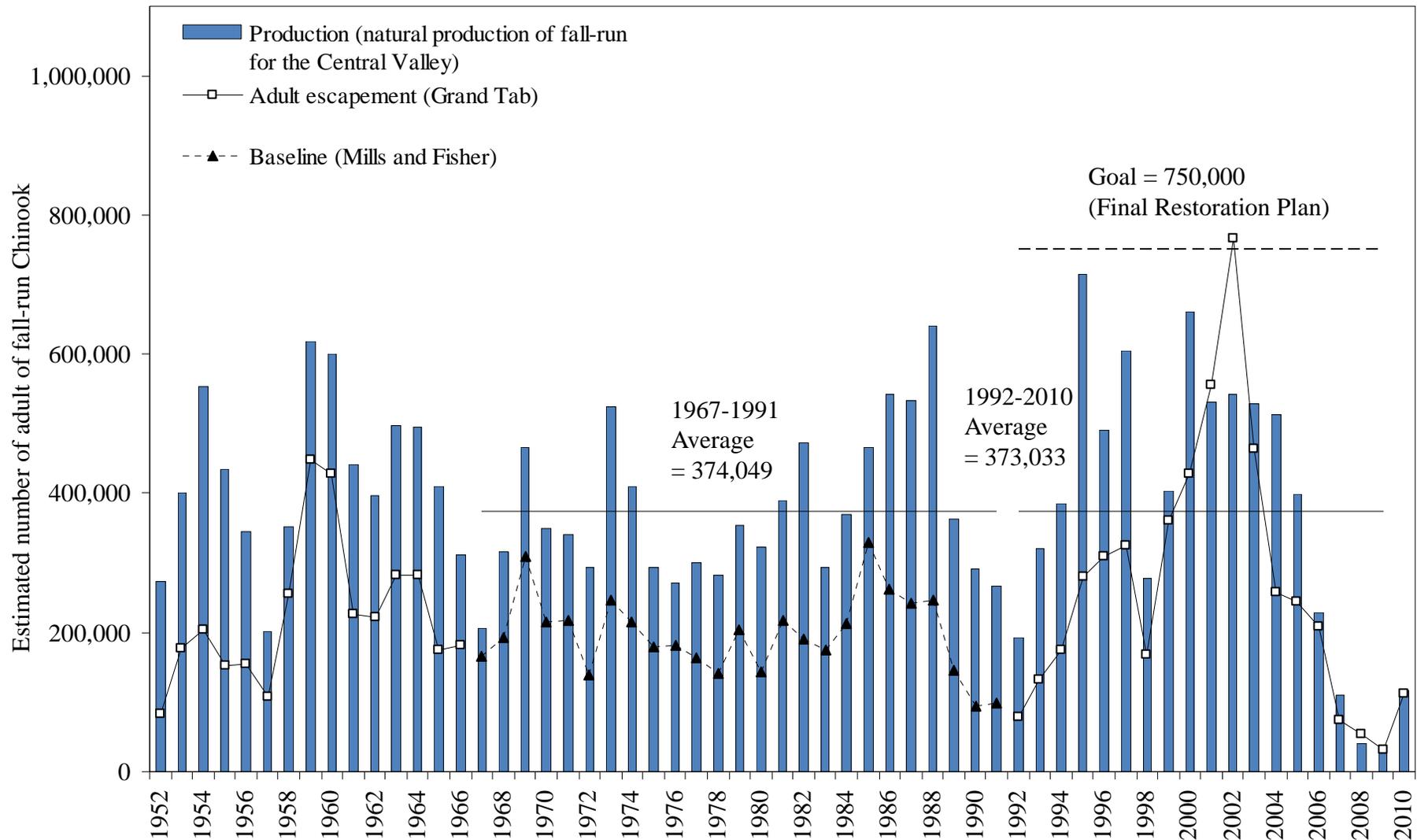


Figure 2. Estimated yearly natural production and in-river escapement of adult fall-run Chinook salmon in the Central Valley rivers and streams. 1952 - 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

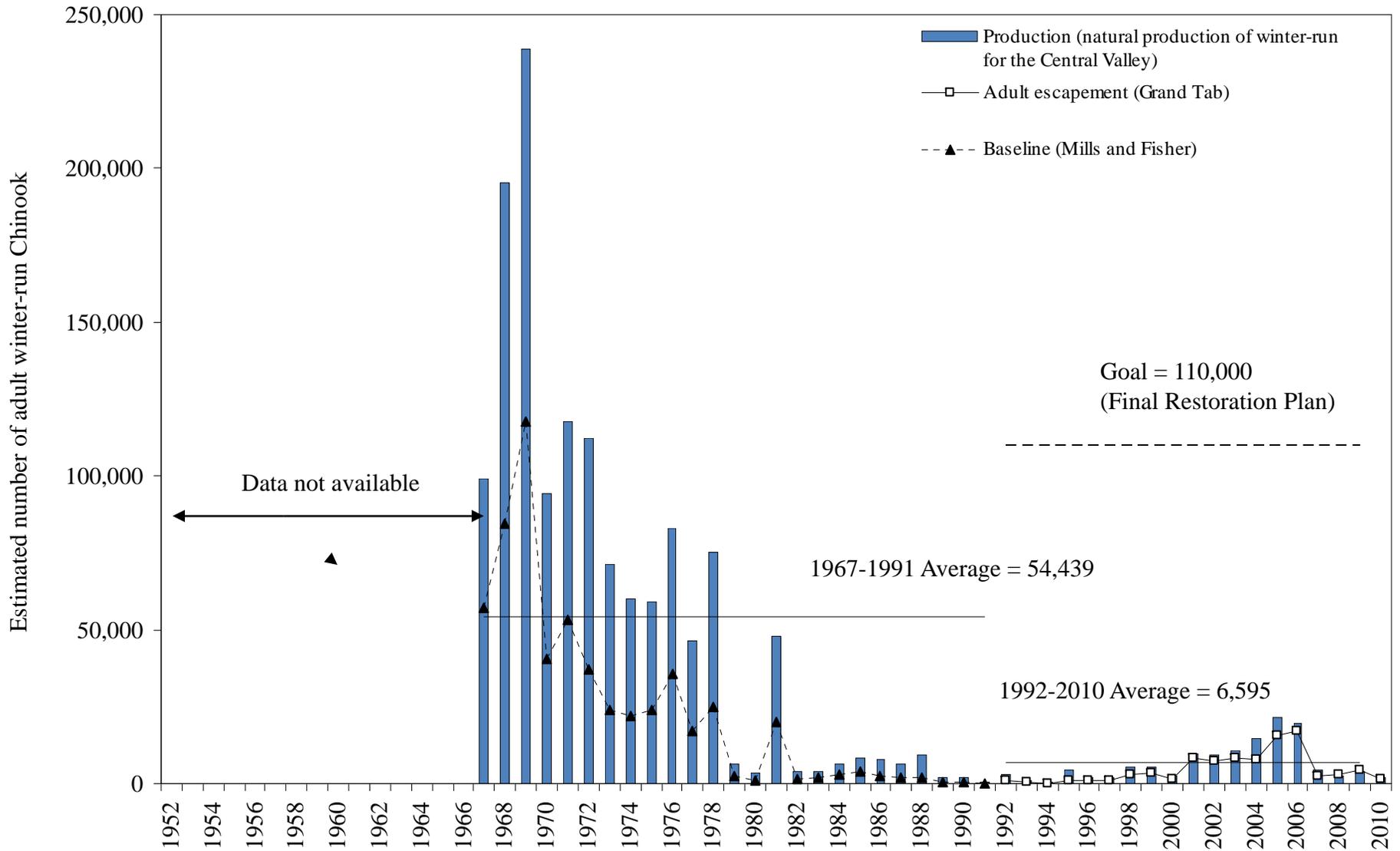


Figure 3. Estimated yearly natural production and in river escapement of adult winter-run Chinook salmon in the Central Valley rivers and streams. 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967-1991) are from Mills and Fisher (CDFG, 1994).

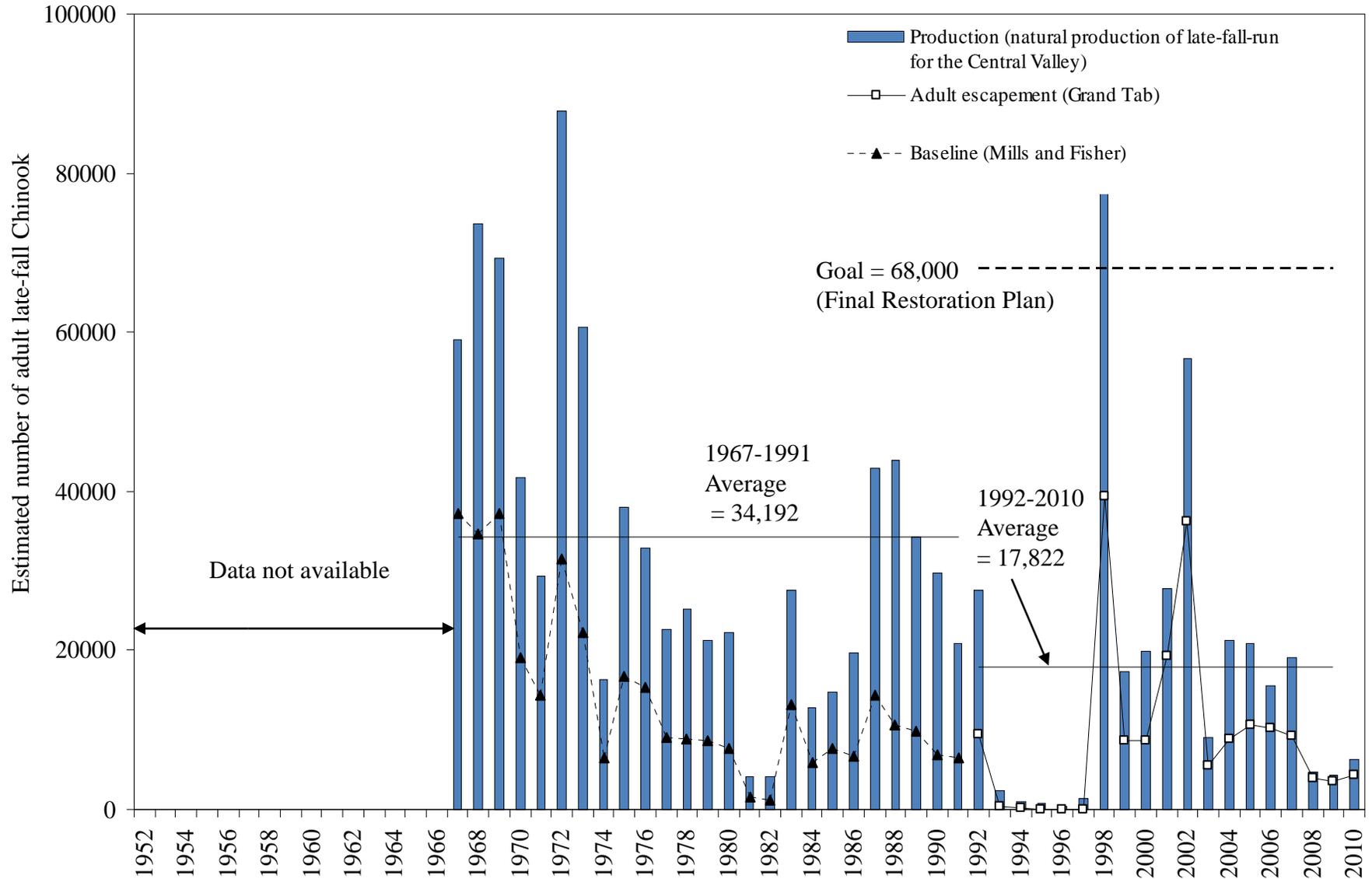


Figure 4. Estimated yearly natural production and in-river escapements of adult late-fall-run Chinook salmon in the Central Valley rivers and streams. 1992 – 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

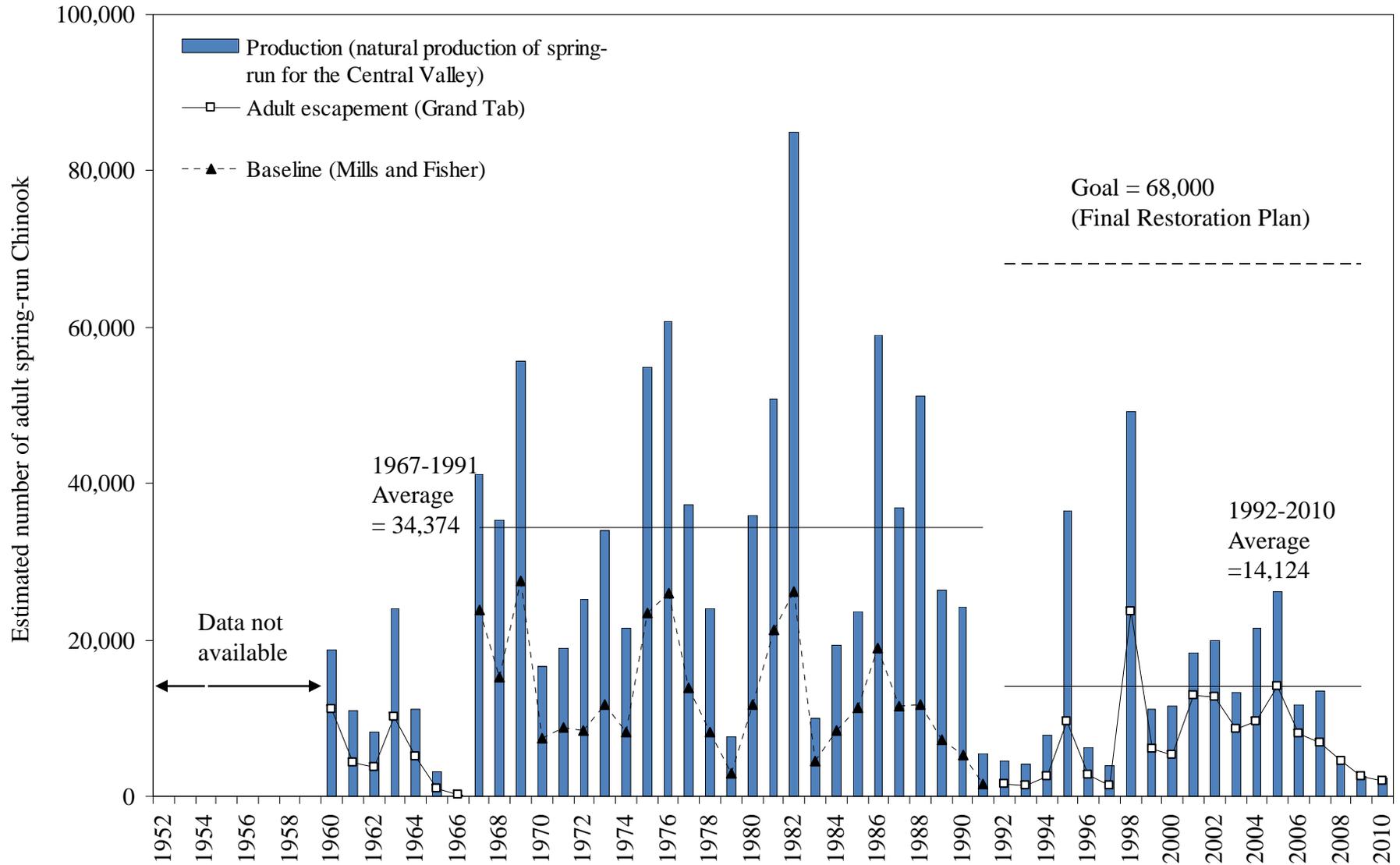


Figure 5. Estimated yearly natural production and in-river escapement of adult spring-run Chinook salmon in the Central Valley rivers and streams. 1960 - 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

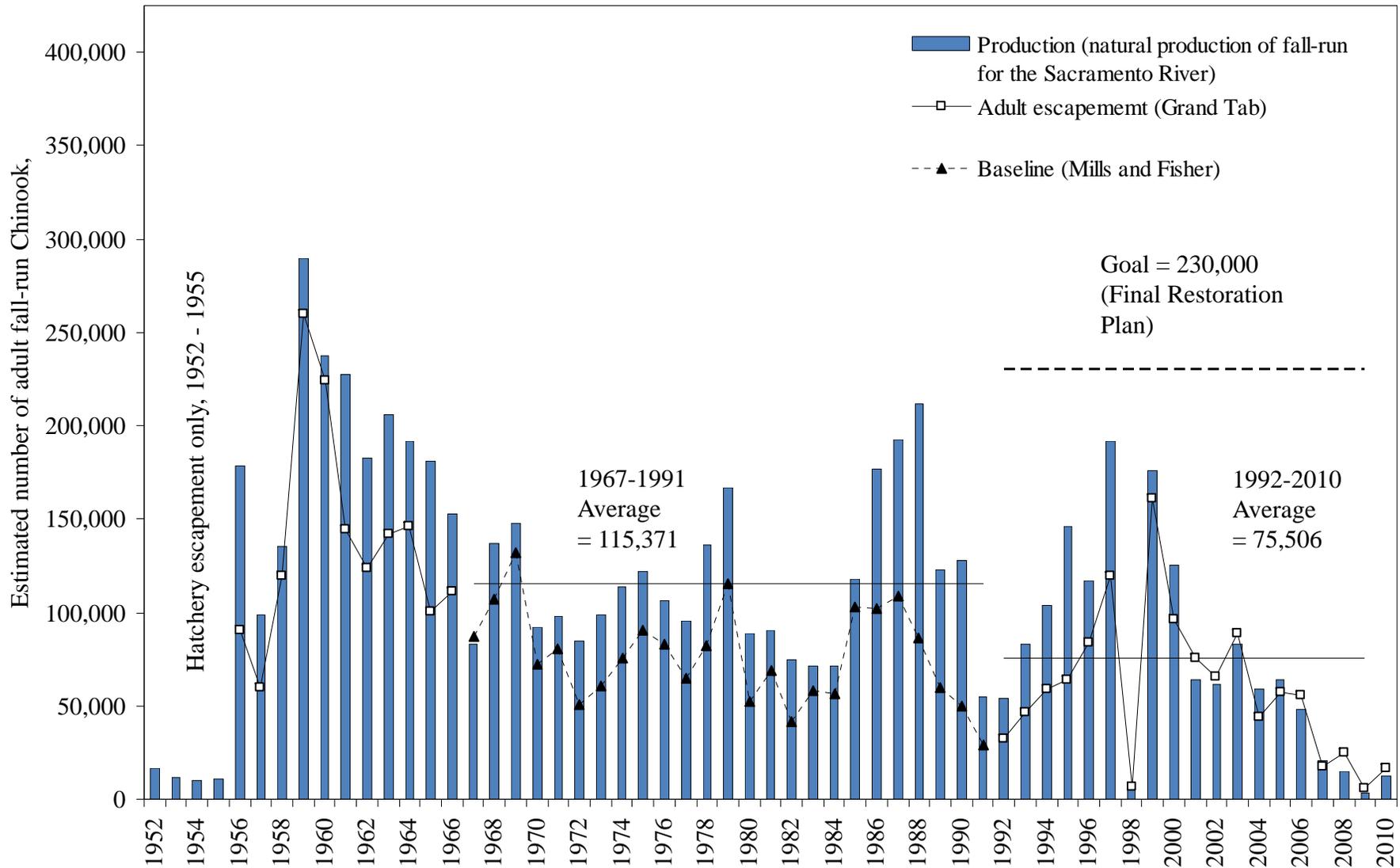


Figure 6. Estimated yearly natural production and in-river escapement for the entire mainstem Sacramento River adult fall-run Chinook salmon. 1952 - 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

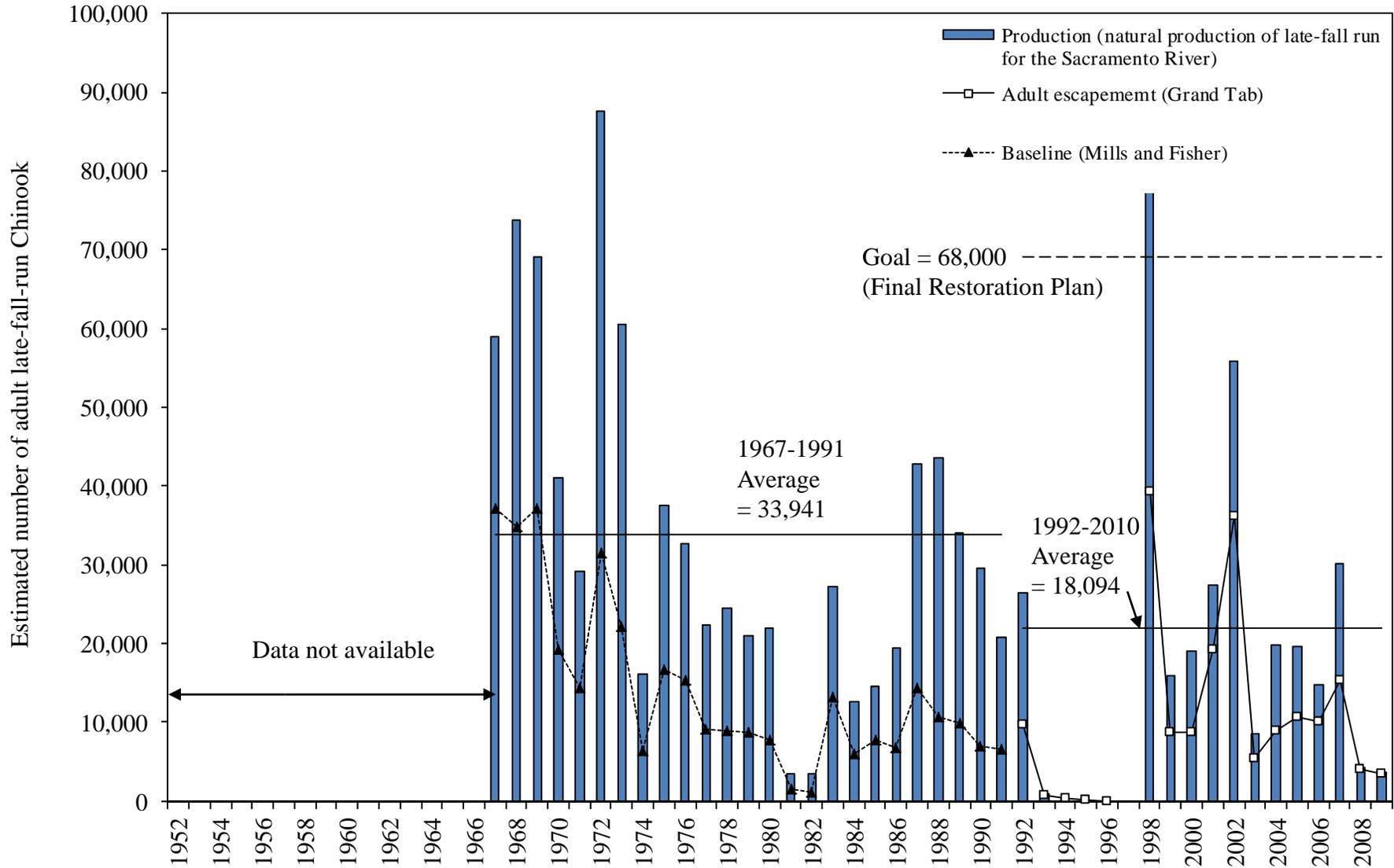


Figure 7. Estimated yearly natural production and in-river adult escapement for above RBDD mainstem Sacramento River late-fall-run Chinook salmon. 1992 -2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 – 1991) are from Mills and Fisher (CDFG, 1994).

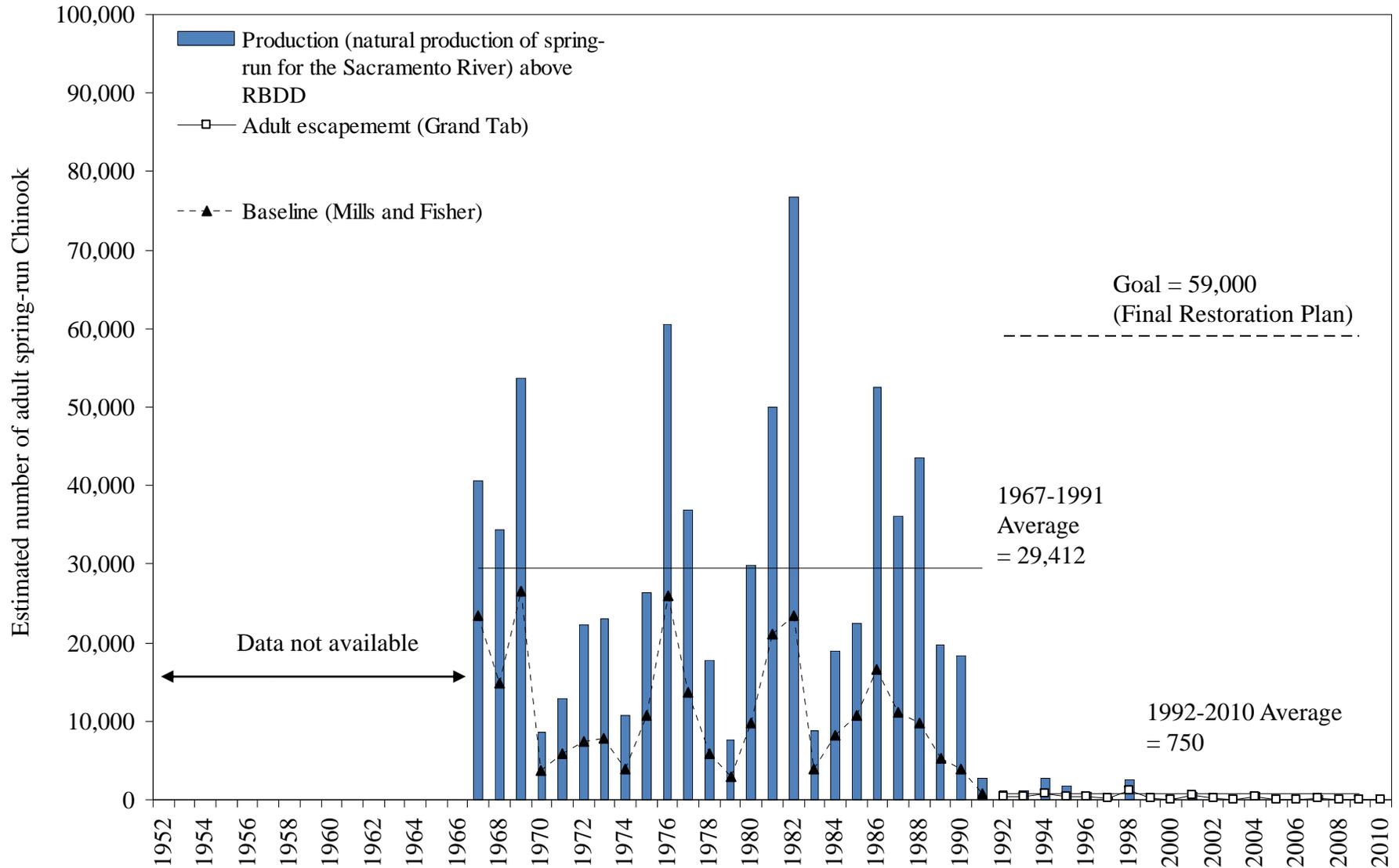


Figure 8. Estimated yearly natural production and in river adult escapement for above RBDD mainstem Sacramento River spring-run Chinook salmon. 1992-2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

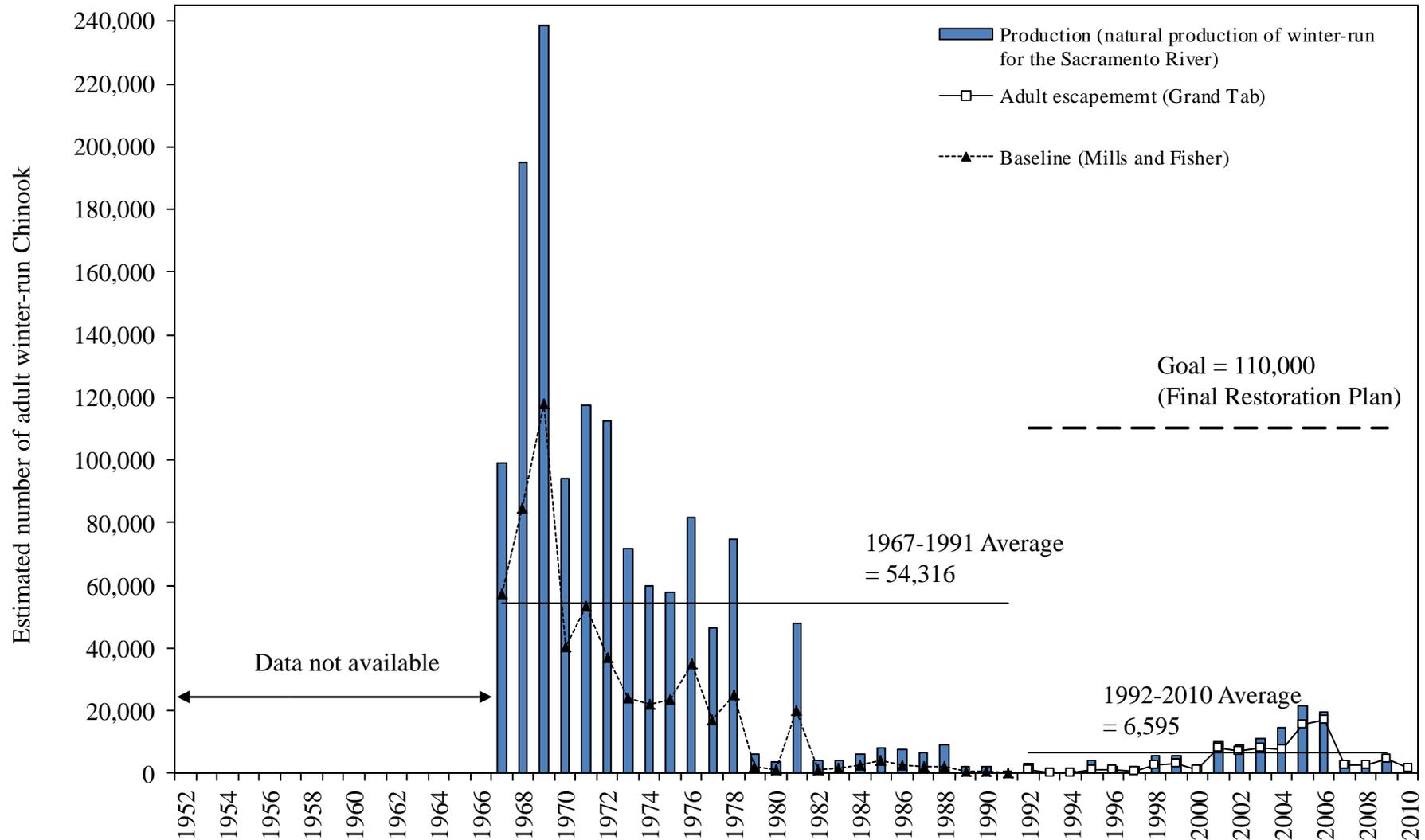


Figure 9. Estimated yearly natural production and in river adult escapement for above RBDD mainstem Sacramento River winter-run Chinook salmon. 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

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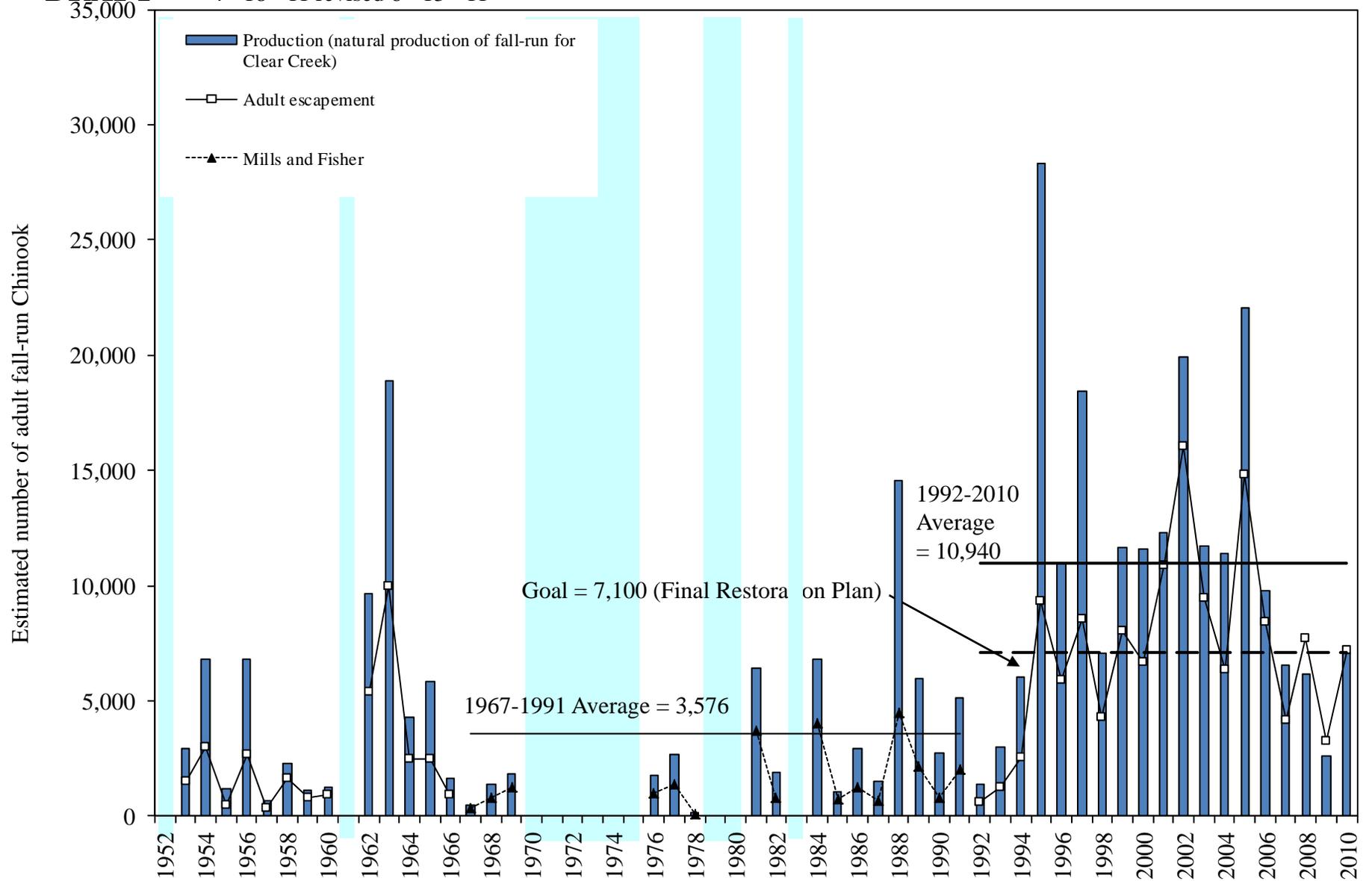


Figure 10. Estimated yearly natural production and in river adult escapement of Clear Creek fall-run Chinook salmon.

□ = data was not available for 1952, 1961, 1970-1975, 1979, 1980, 1983. 1953 – 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

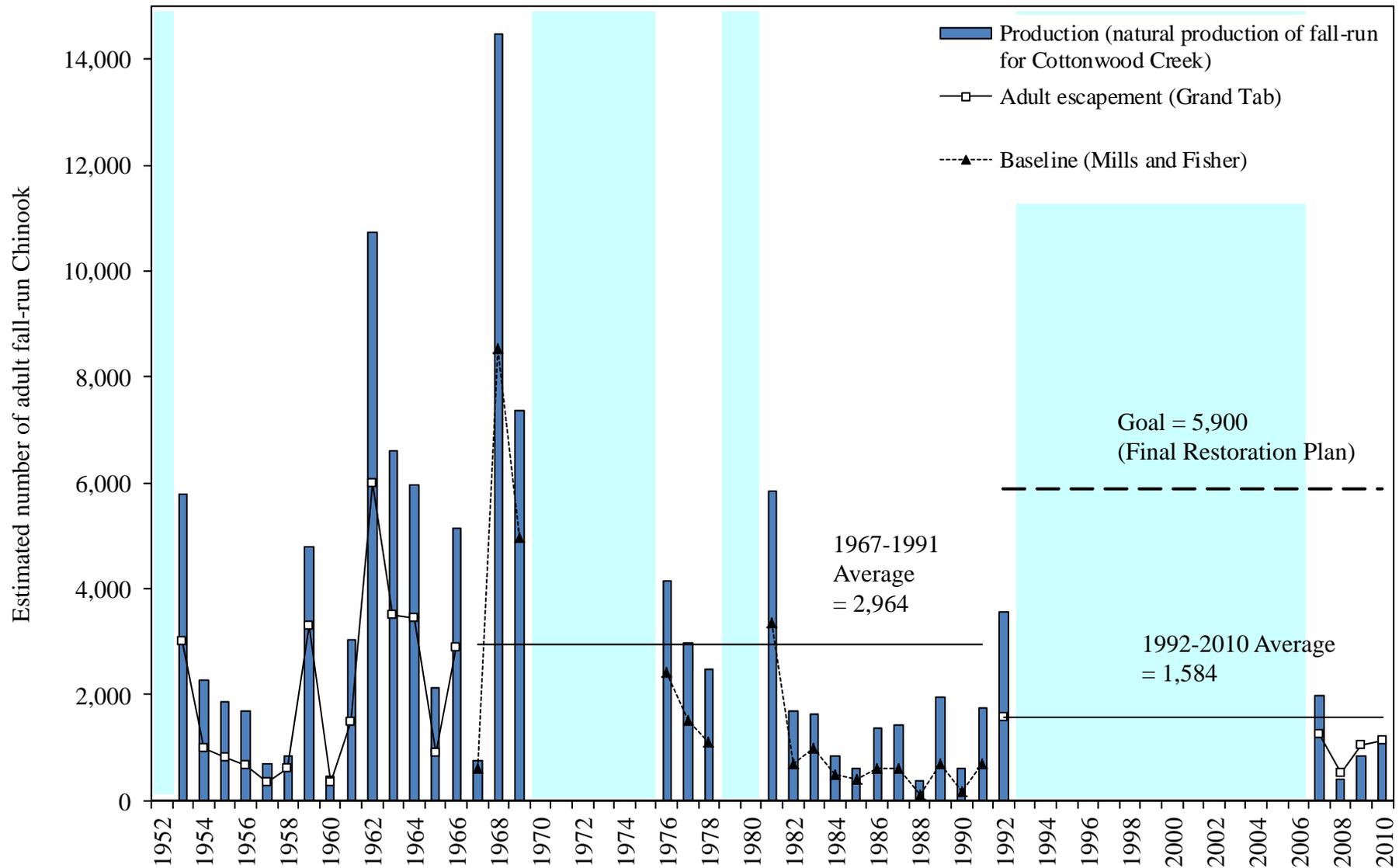


Figure 11. Estimated yearly natural production and in river adult escapement of Cottonwood Creek fall-run Chinook salmon.   
 [Light blue shaded area] = data was not available for 1952, 1970 - 1975, 1979 - 1980 and 1993 - 2005. 1952 - 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

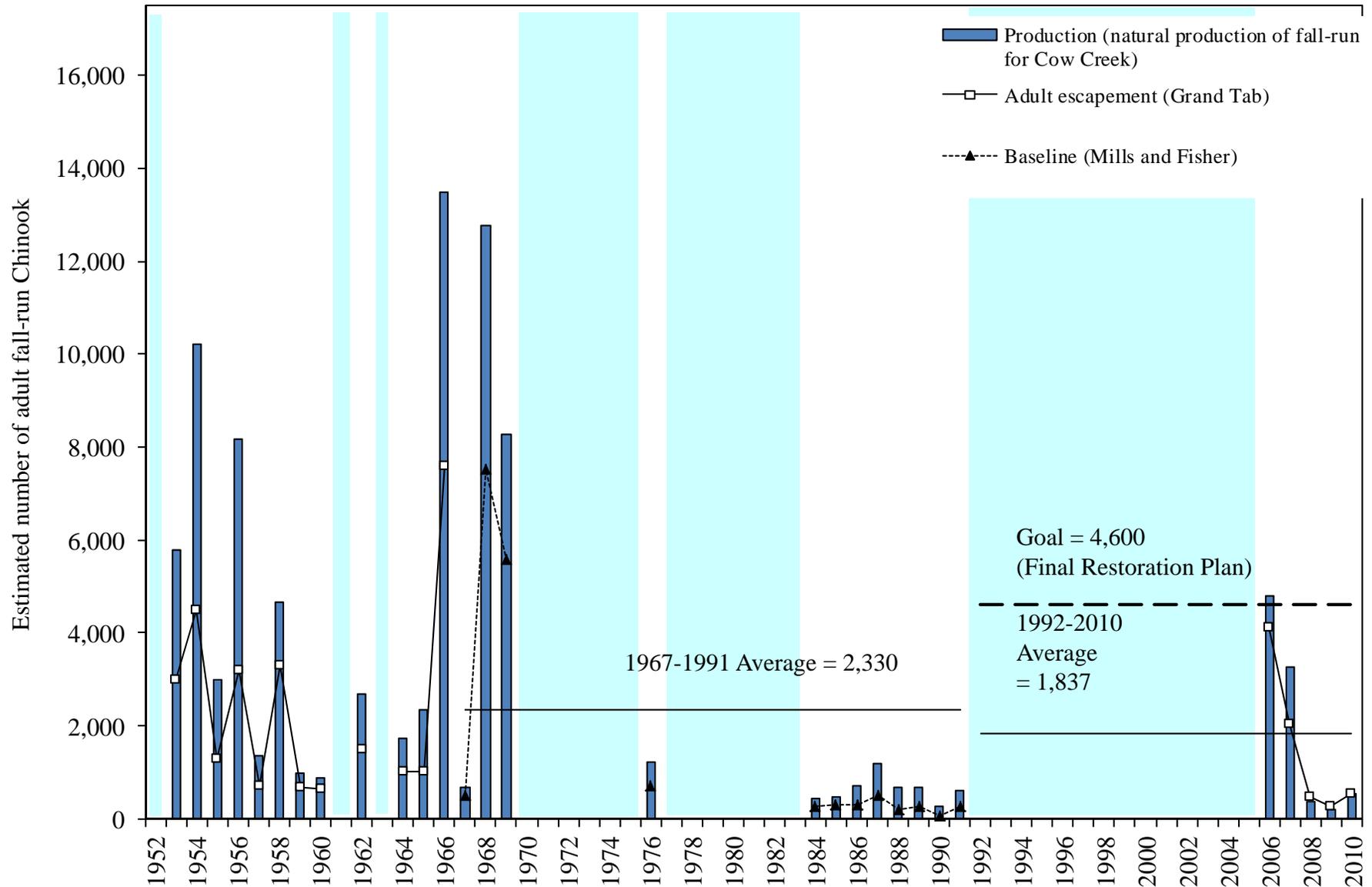


Figure 12. Estimated yearly natural production and in river escapement of Cow Creek adult fall-run Chinook salmon.

□ = data was not available for 1952, 1961, 1963, 1970 - 1975, 1977 - 1983, and 1992 - 2005. 1952 - 1966 and 1992-2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

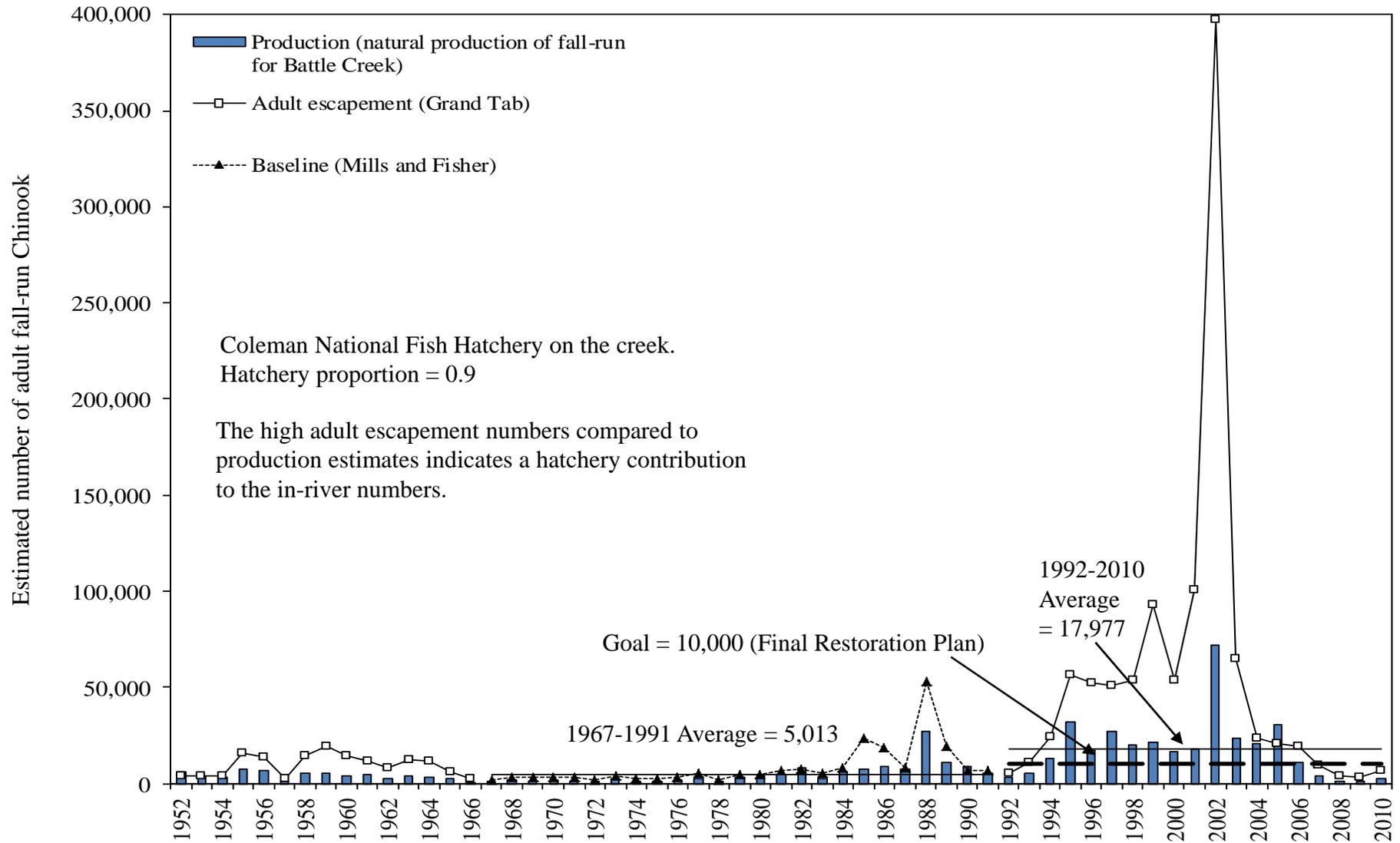


Figure 13. Estimated yearly natural production and in river escapement of Battle Creek adult fall-run Chinook salmon. 1952 - 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

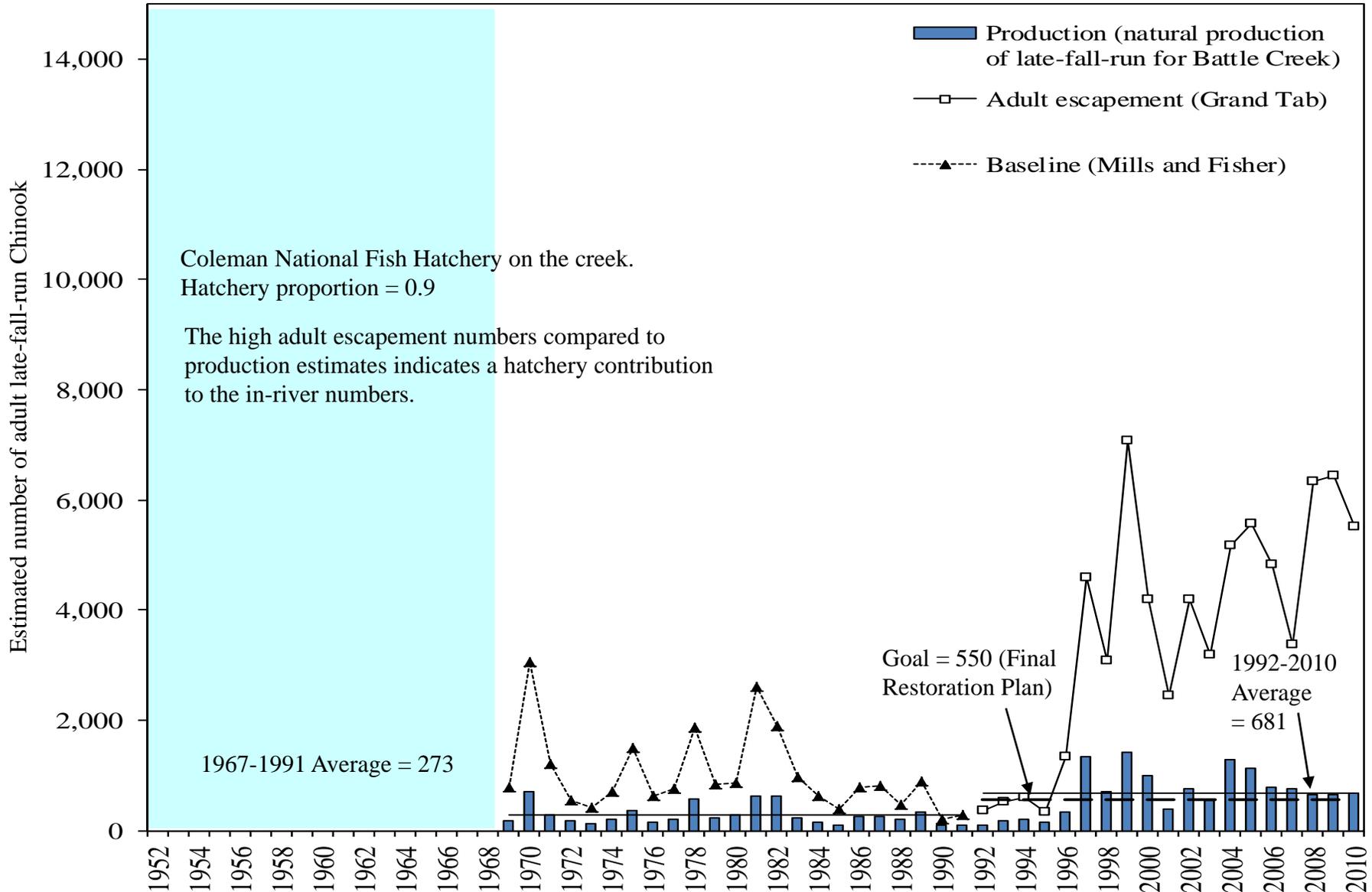


Figure 14. Estimated yearly natural production calculated from hatchery returns (in river returns were available starting in 2000) and hatchery returns of Battle Creek adult late-fall-run Chinook salmon. 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011).  
□ = data was not available for 1952-1968. Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

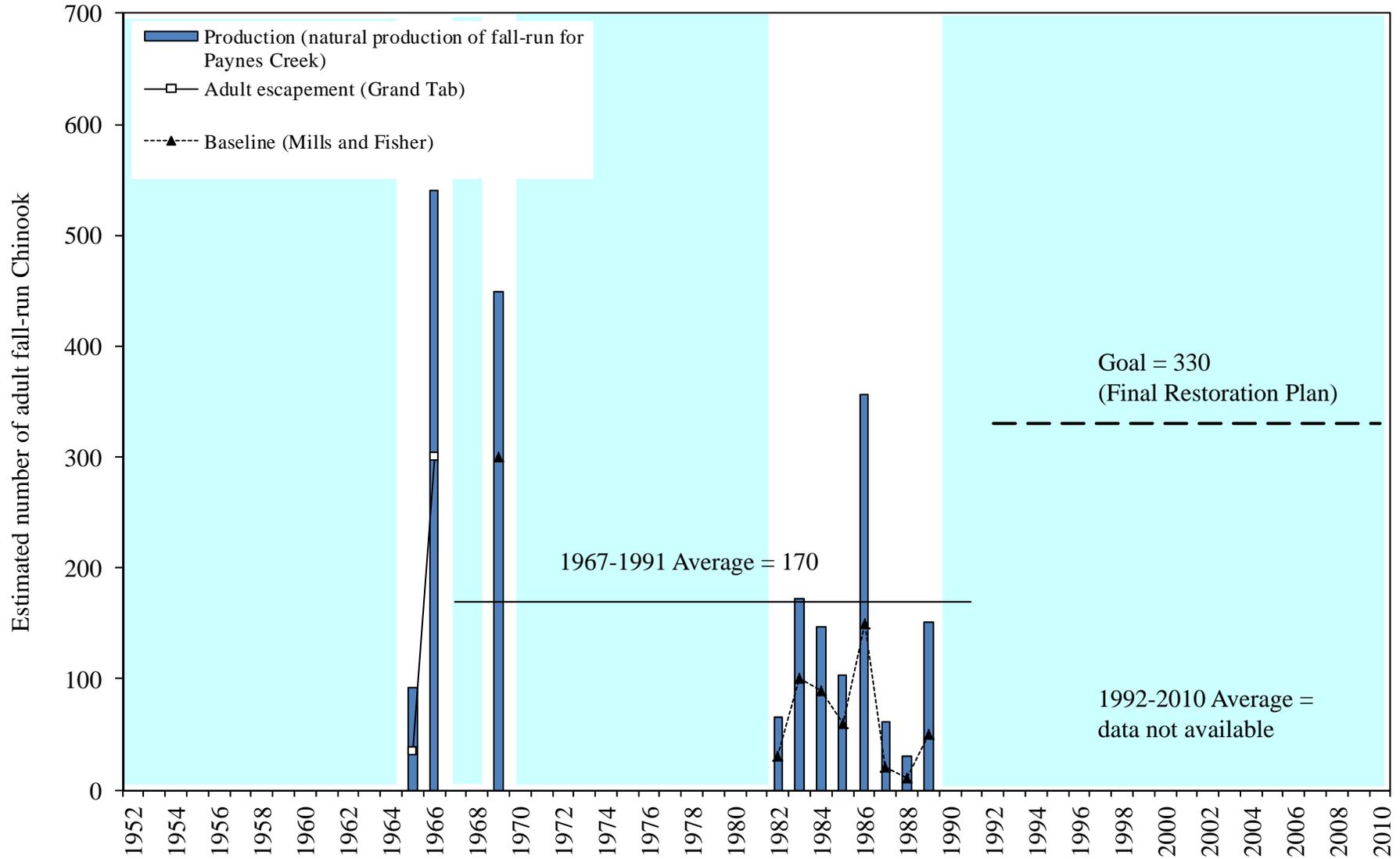


Figure 15. Estimated yearly natural production and in river escapement of Paynes Creek adult fall-run Chinook salmon.  
 = data was not available for 1952 - 1964, 1967 - 1968, 1970 - 1981, and 1990 - 2010 1965-1966 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

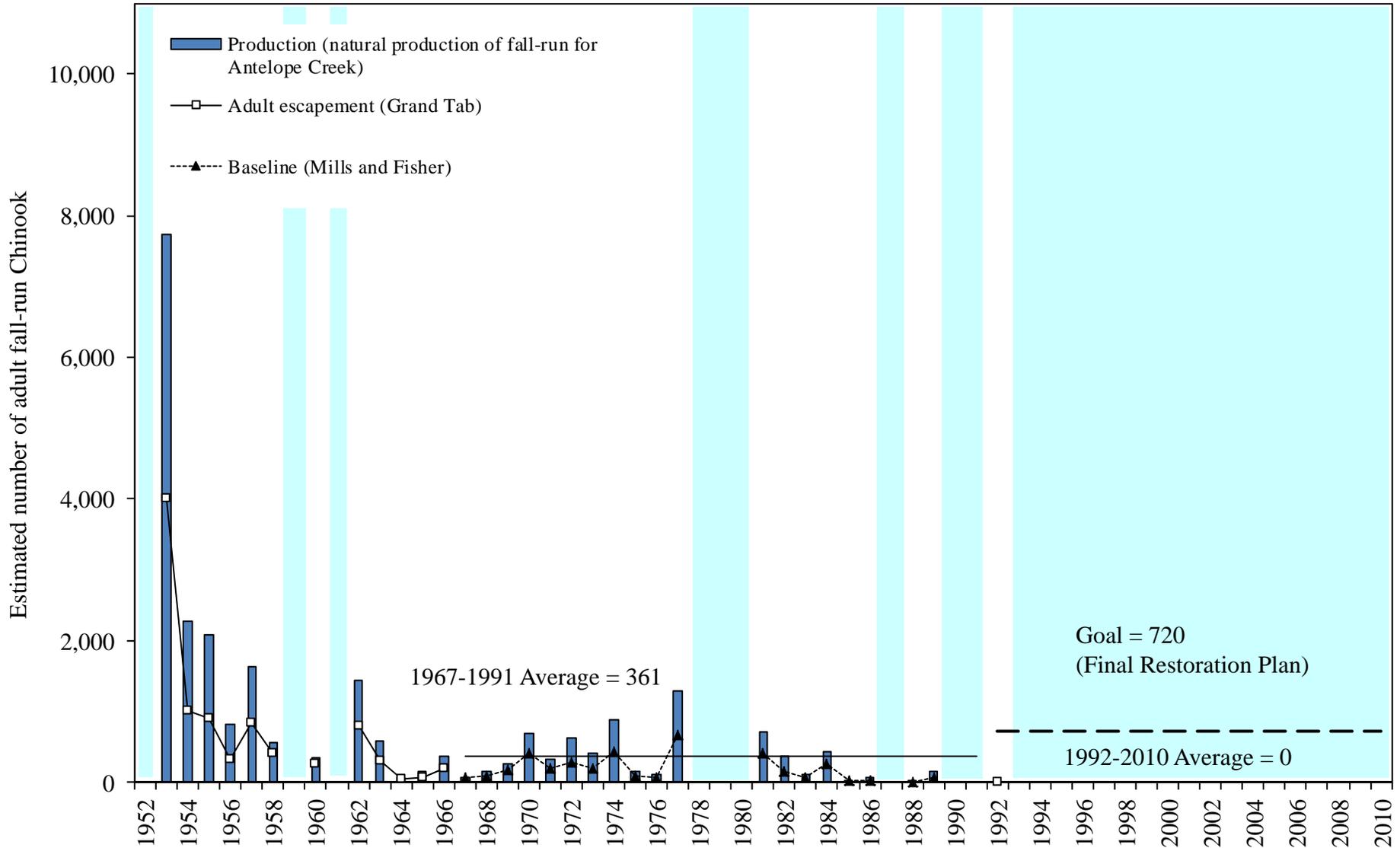


Figure 16. Estimated yearly natural production and in river escapement of Antelope Creek adult fall-run Chinook salmon.   
 = data was not available for 1952, 1959, 1961, 1978 - 1980, 1987, 1990, 1991, and 1993 - 2010. 1952 - 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

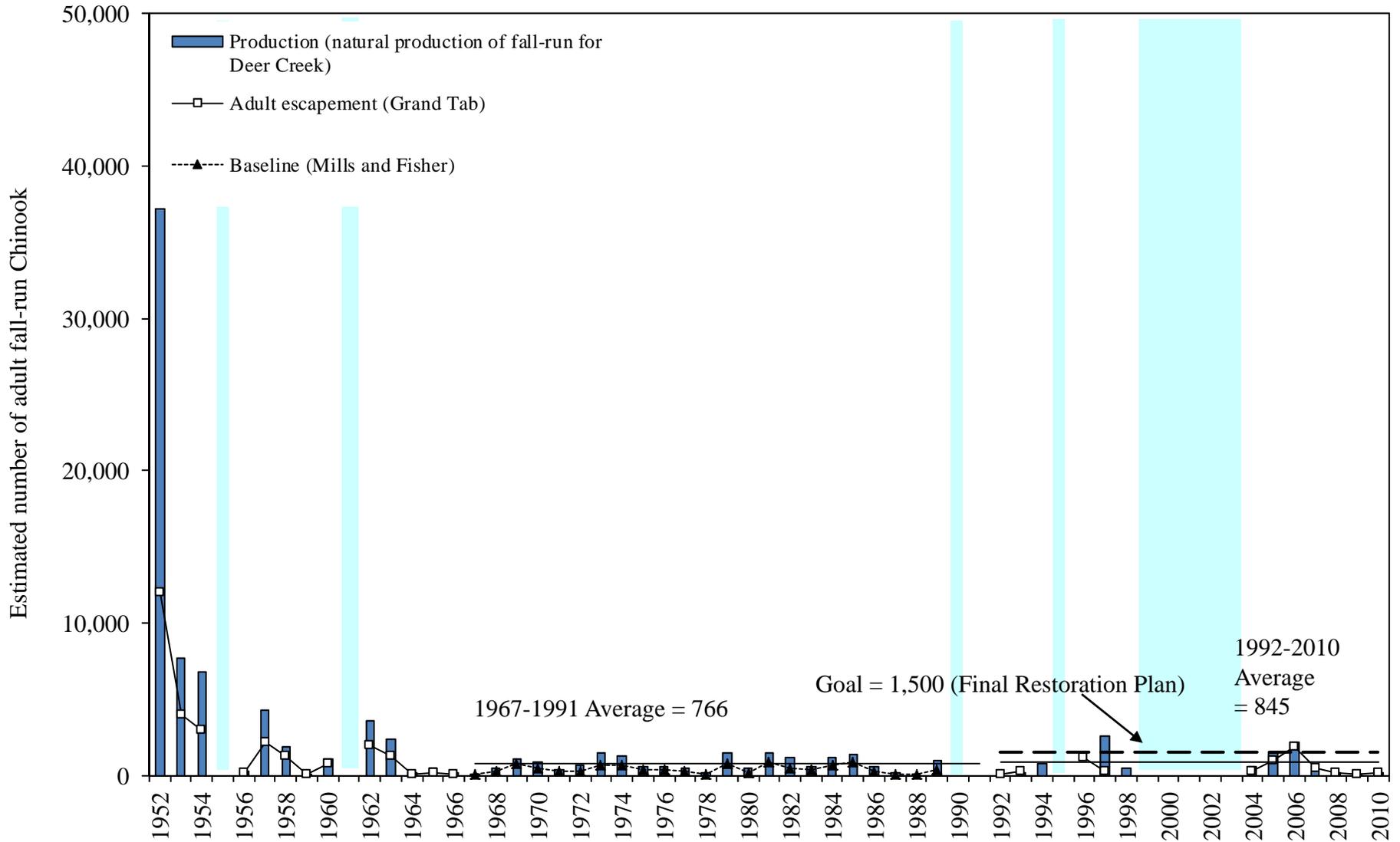


Figure 17. Estimated yearly natural production and in river escapement of Deer Creek adult fall-run Chinook salmon.   
 = data was not available for 1955, 1961, 1990 - 1992, 1995, 1996, and 1999 - 2003. 1952 - 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

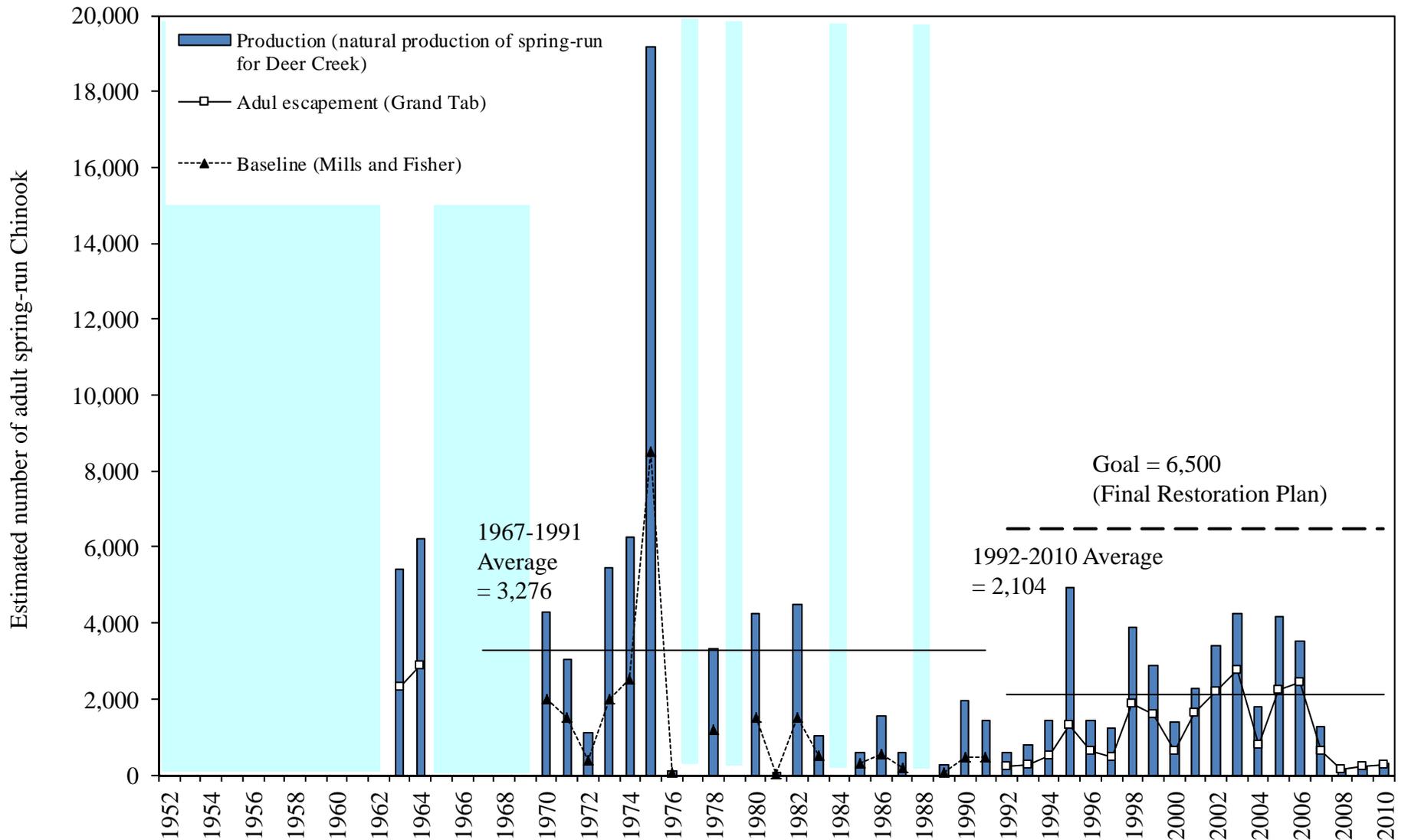


Figure 18. Estimated yearly natural production and in river escapement of Deer Creek adult spring-run Chinook salmon.   
 [Light blue box] = data was not available for 1952 - 1962, 1965 - 1969, 1977, 1979, 1984, and 1988. 1952 - 1966, and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

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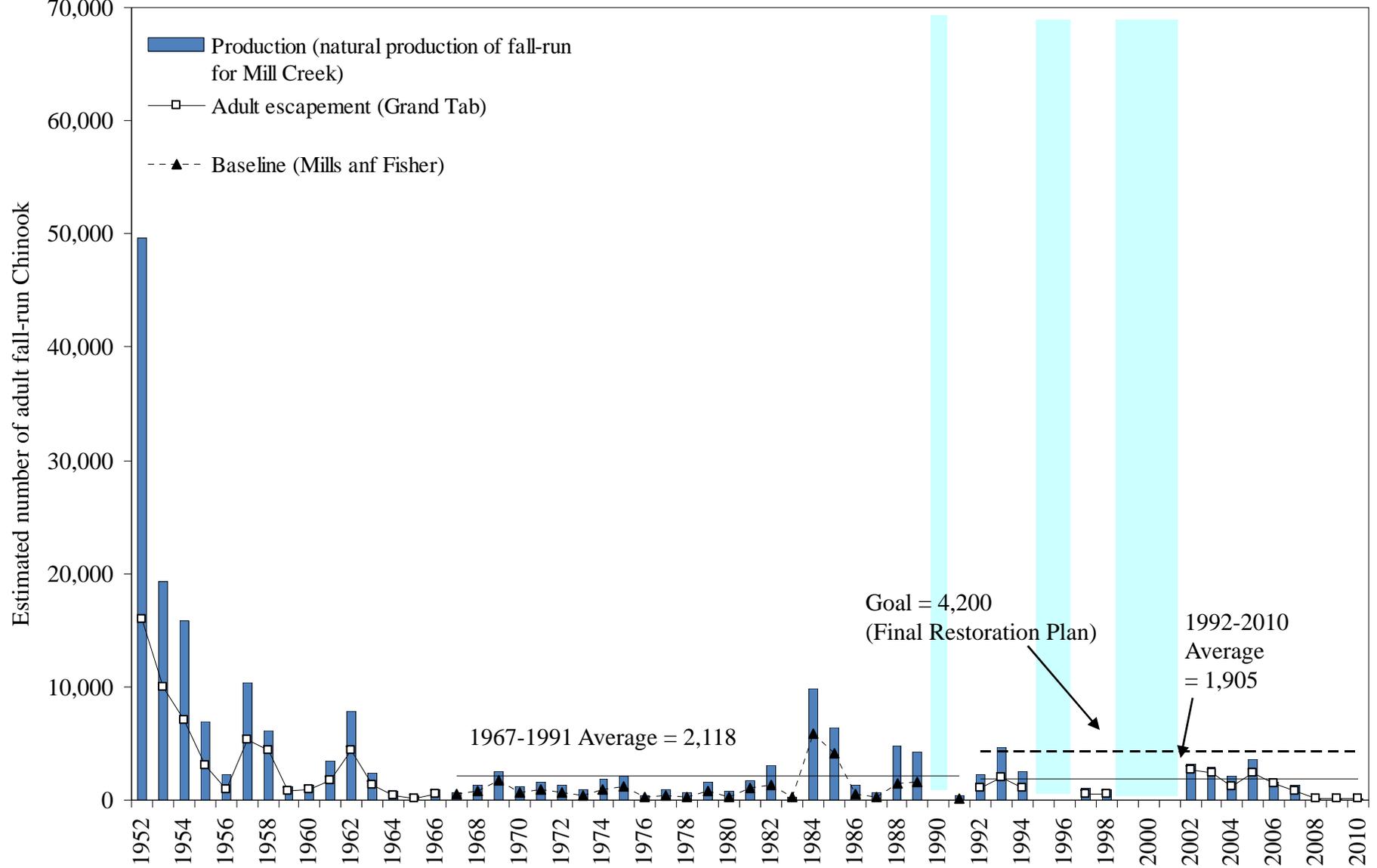


Figure 19. Estimated yearly natural production and in river escapement of Mill Creek adult fall-run Chinook salmon.

□ = data was not available for 1990, 1995 - 1996, and 1999 - 2001. 1952 -1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

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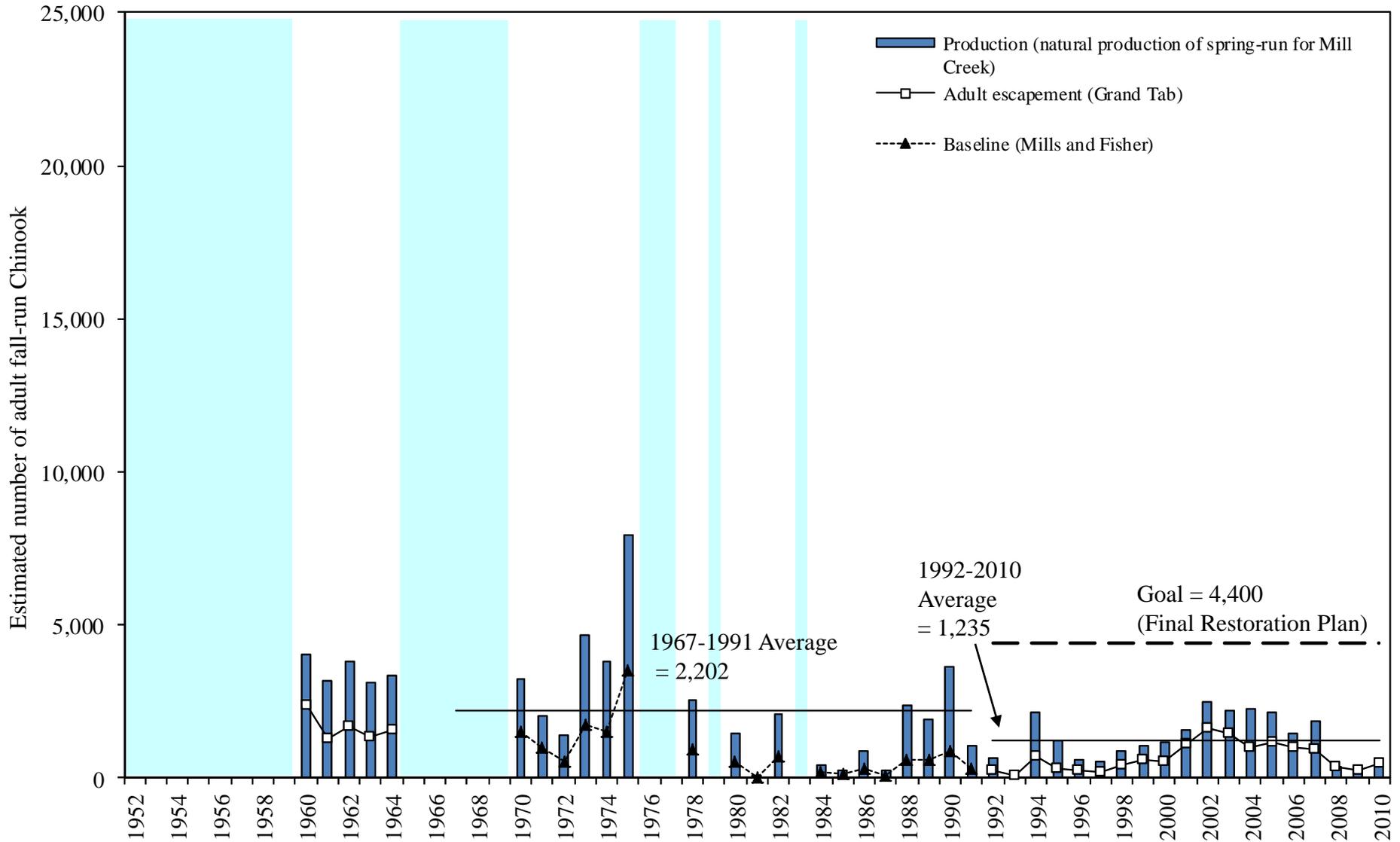


Figure 20. Estimated yearly natural production and in river escapement of Mill Creek adult spring-run Chinook salmon.

□ = data was not available for 1952 - 1959, 1965 - 1969, 1976, 1977, 1979, and 1983. 1952 - 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

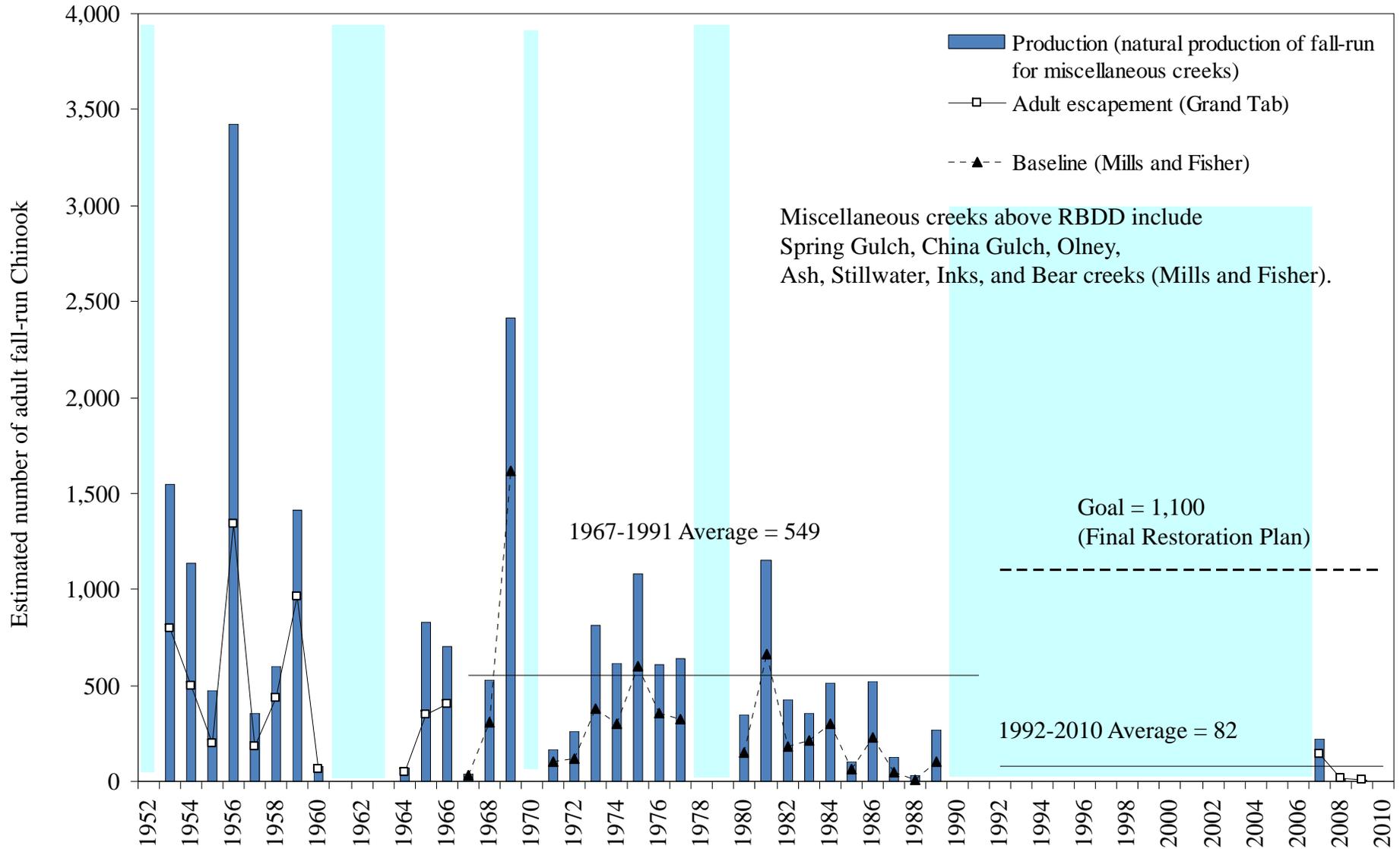


Figure 21. Estimated yearly natural production of miscellaneous creeks adult fall-run Chinook salmon above RBDD.   
 [Cyan shaded area] = data was not available for 1952 -1955, 1963 – 1968 and 1970 – 2006. 1952 – 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

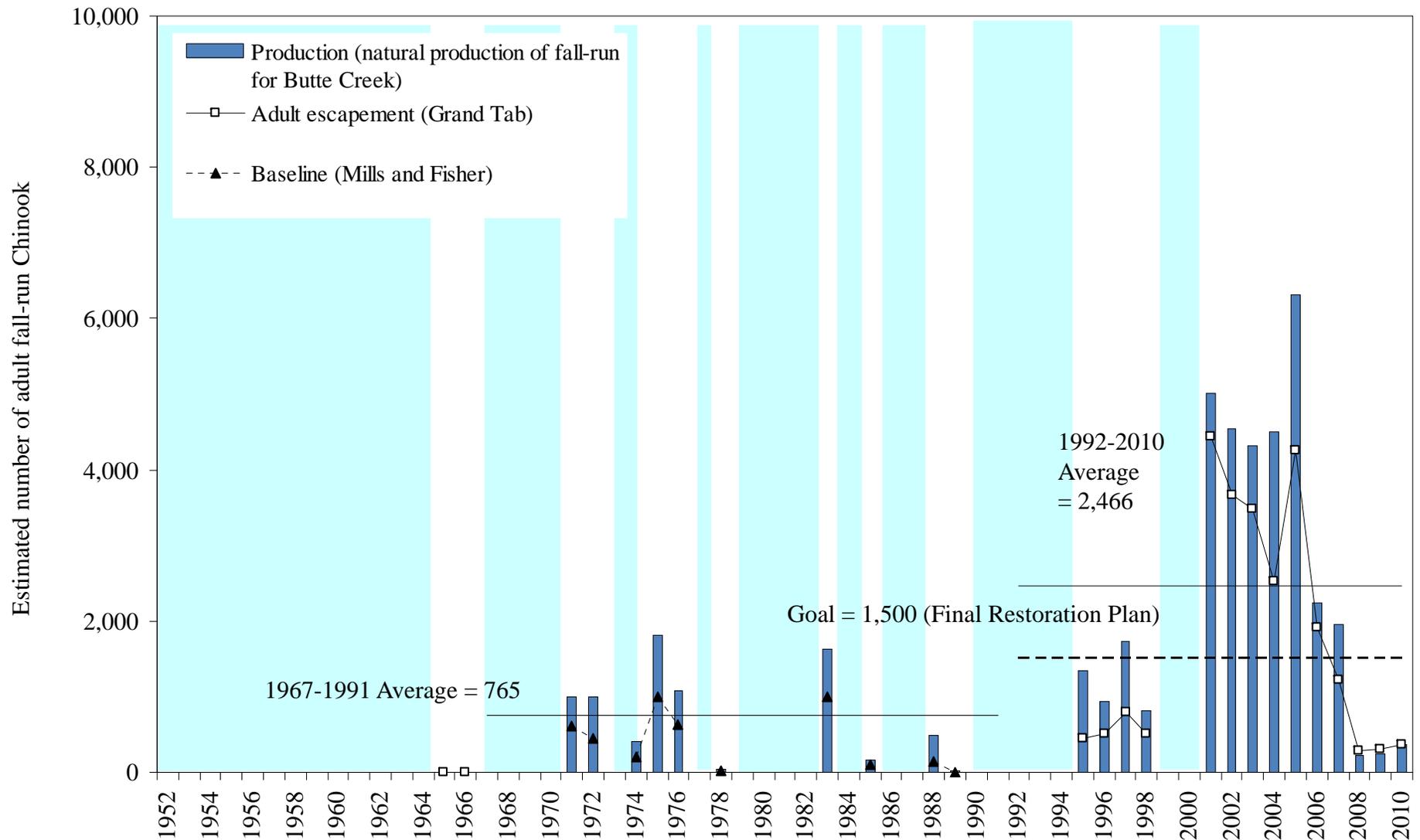


Figure 22. Estimated yearly natural production and in river escapement of Butte Creek adult fall-run Chinook salmon.  
 [Light blue box] = data was not available for 1952 - 1964, 1967 - 1970, 1973, 1977, 1979 - 1982, 1984, 1986, 1987, 1990 - 1994, and 1999 - 2001. 1952 - 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

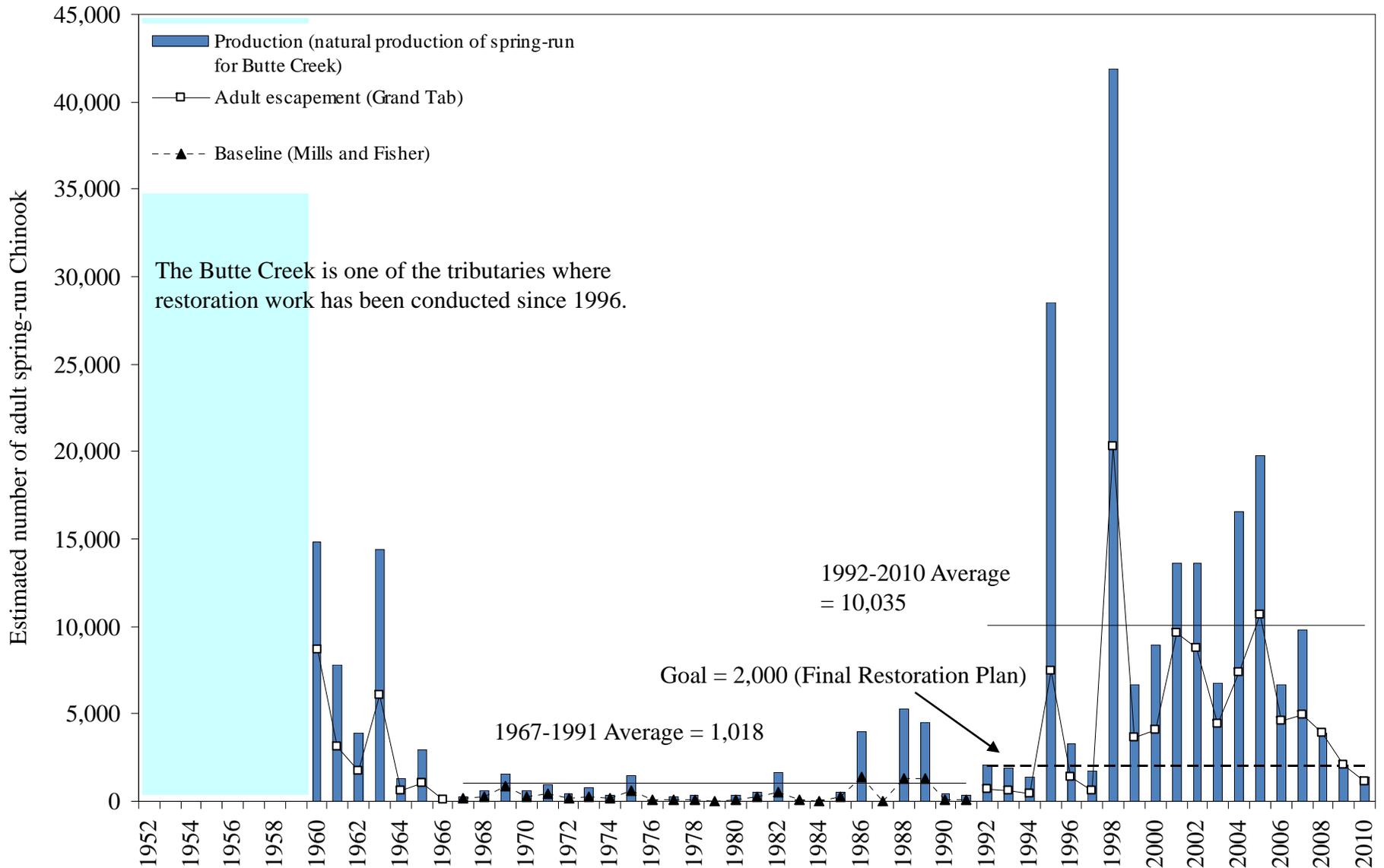


Figure 23. Estimated yearly natural production and in river escapement of Butte Creek adult spring-run Chinook salmon. 1952- 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011).   = data was not available for 1952 - 1959. Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

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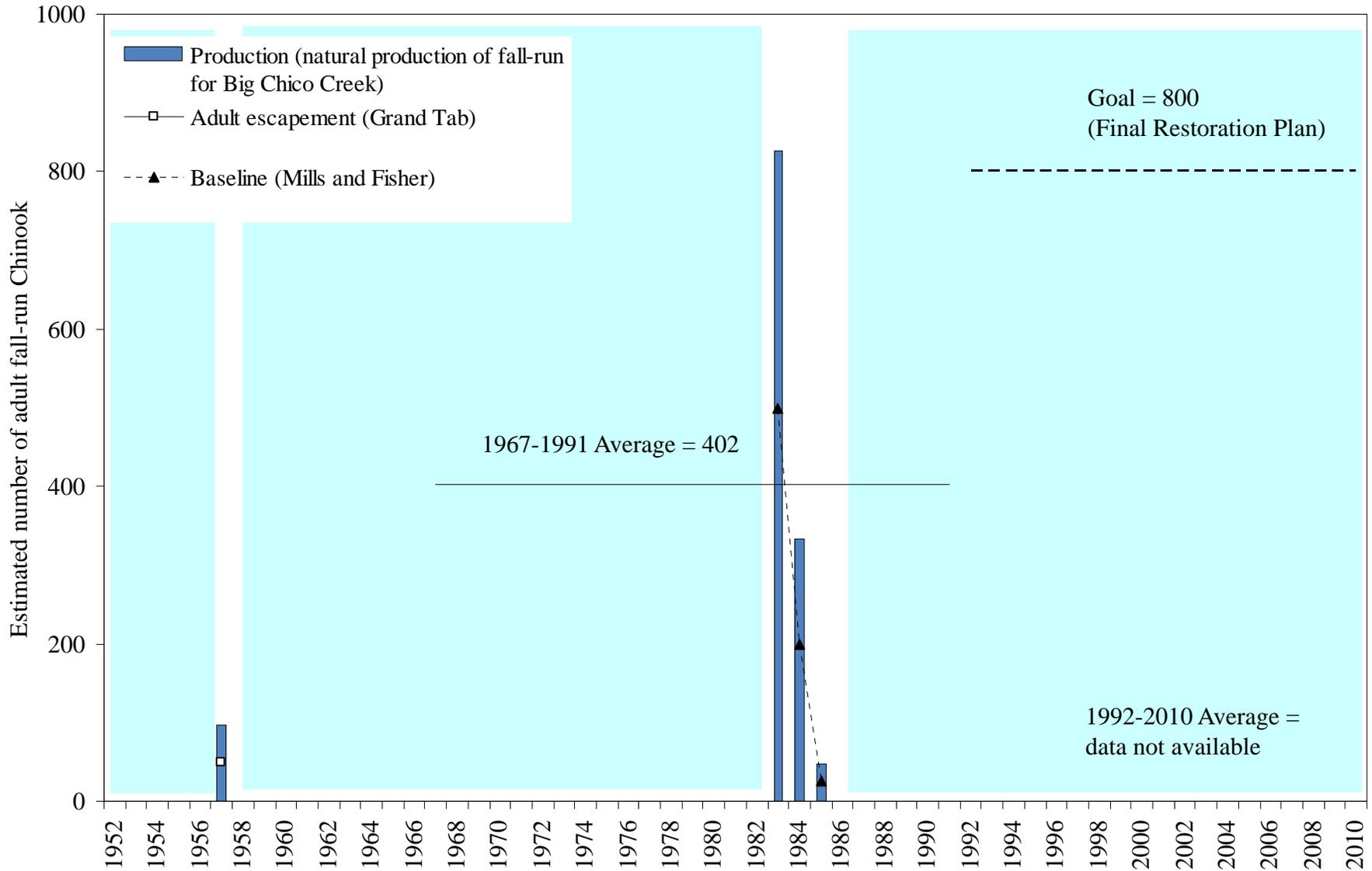


Figure 24. Estimated yearly natural production, and in river escapements of Big Chico Creek adult fall-run Chinook salmon.

□ = data was not available for 1952 - 1956, 1958 - 1982, and 1986 - 2009. 1952 - 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

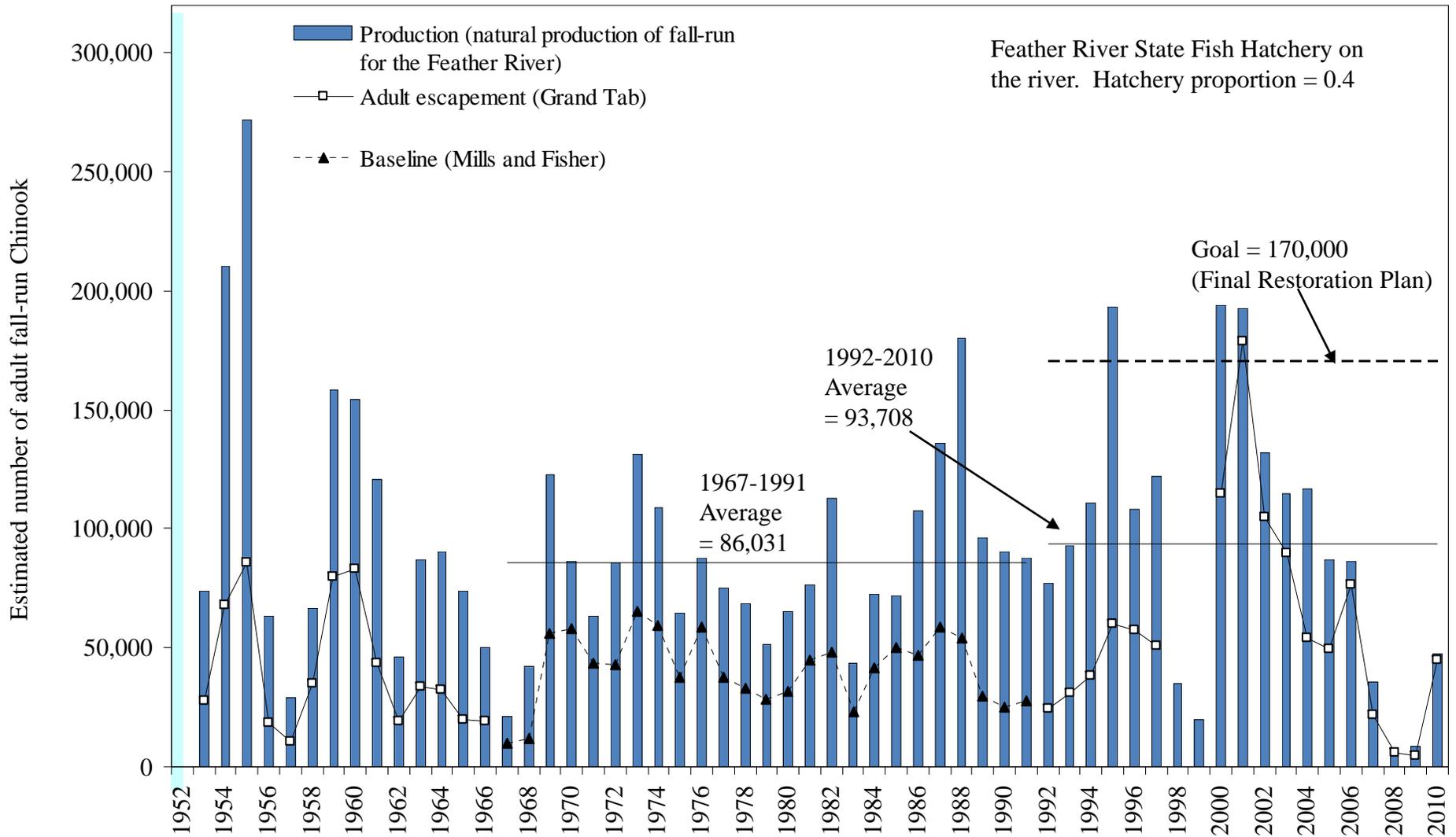


Figure 25. Estimated yearly natural production, and in river escapements of Feather River adult fall-run Chinook salmon. In-river escapements were not available for 1998 and 1999. 1952 - 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994). 1998 and 1999 are hatchery escapement only. Starting in 2005 only fall-run returns are used for hatchery escapement.

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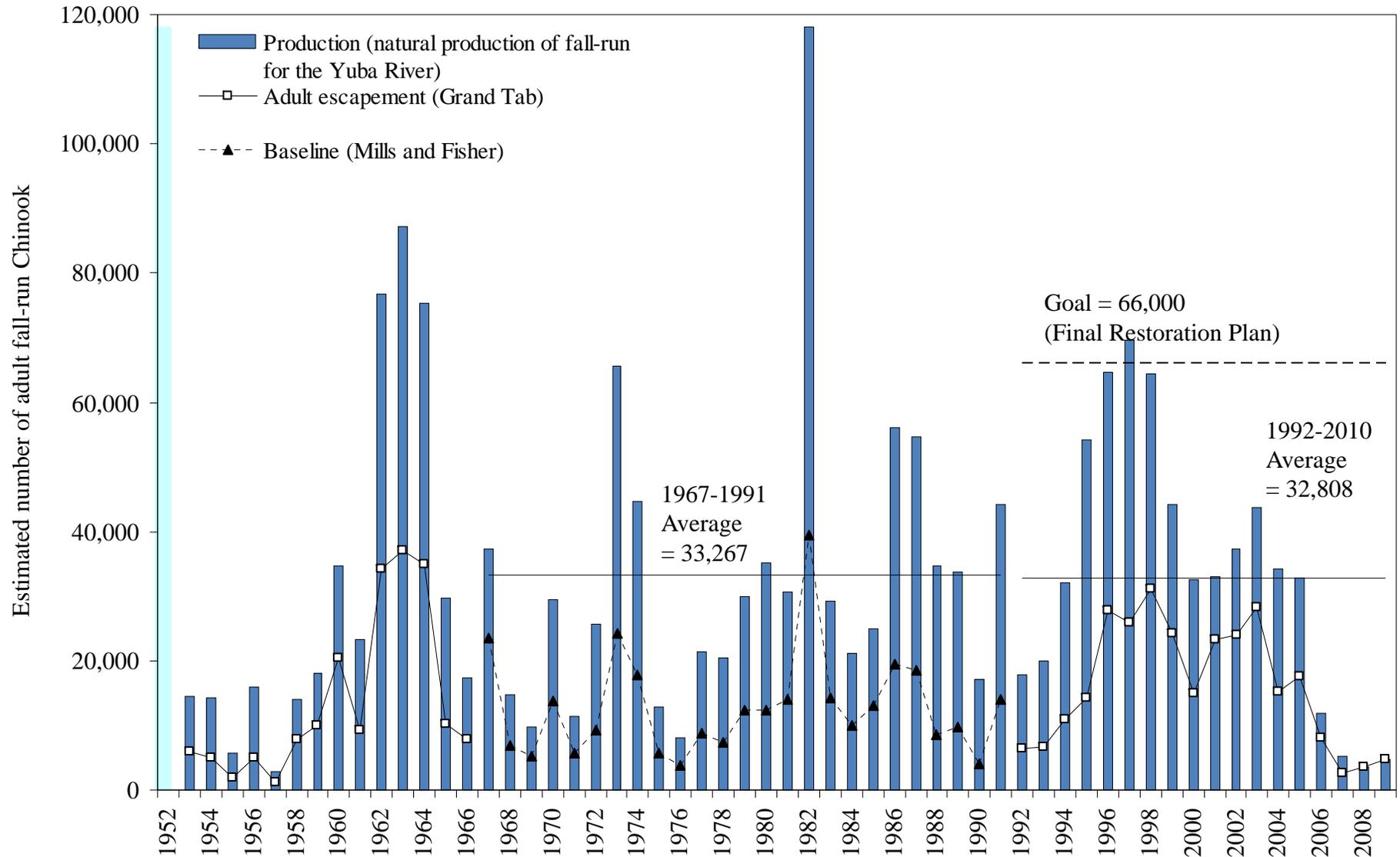


Figure 26. Estimated yearly natural production and in river escapement of Yuba River adult fall-run Chinook salmon. 1967-1991 baseline numbers are from Mills and Fisher (CDFG, 1994). 1952 - 1966 and 1992-2010 numbers are from CDFG Grand Tab (February 2, 2011). █ = data was not available for 1952.

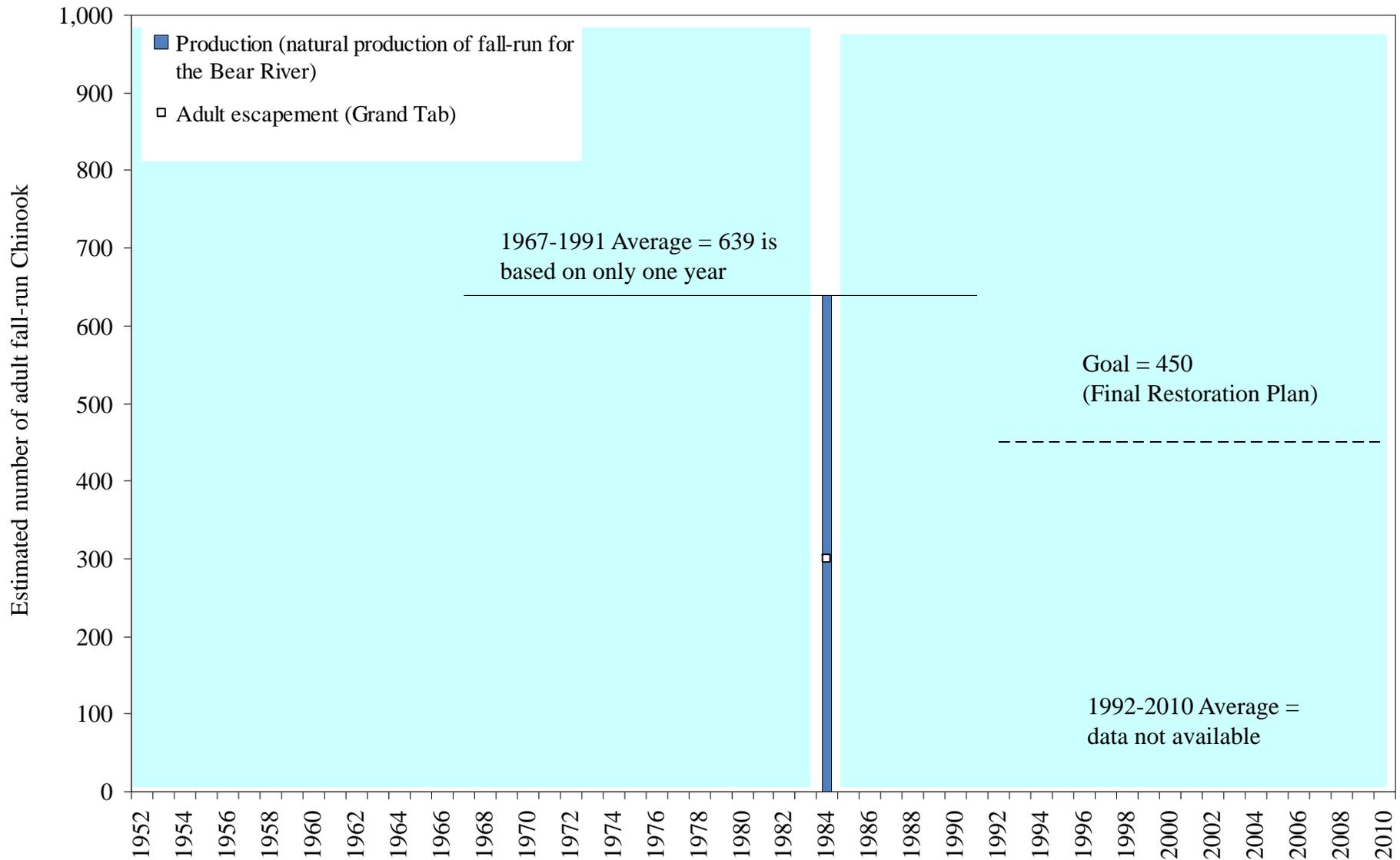


Figure 27. Estimated yearly natural production and in river escapement of Bear River adult fall-run Chinook salmon.

□ = data was not available for 1952 - 1983, and 1985 - 2010. Numbers are from CDFG Grand Tab (February 2, 2011).

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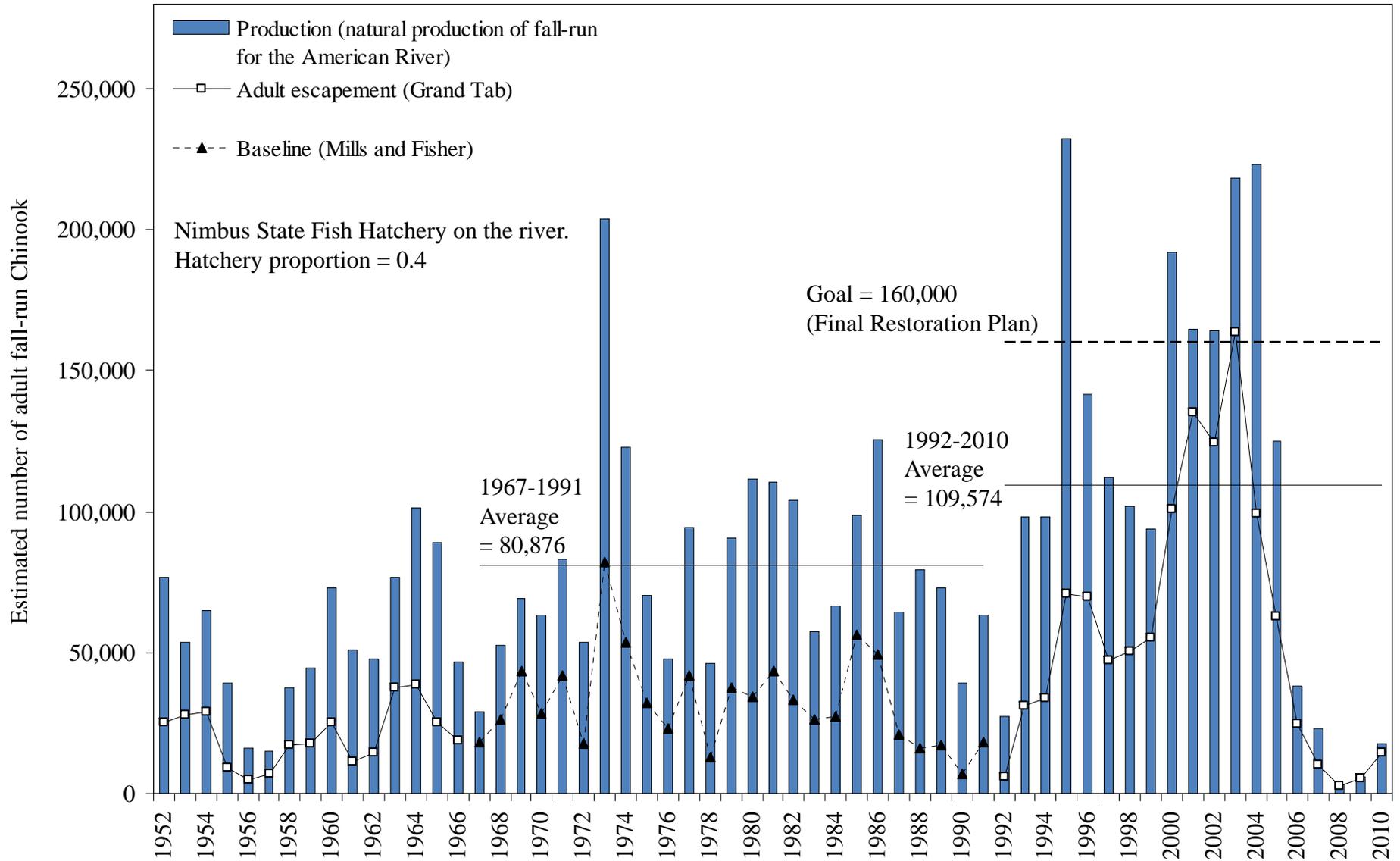


Figure 28. Estimated yearly natural production and in river escapement of American River adult fall-run Chinook salmon. 1952 - 1966, and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

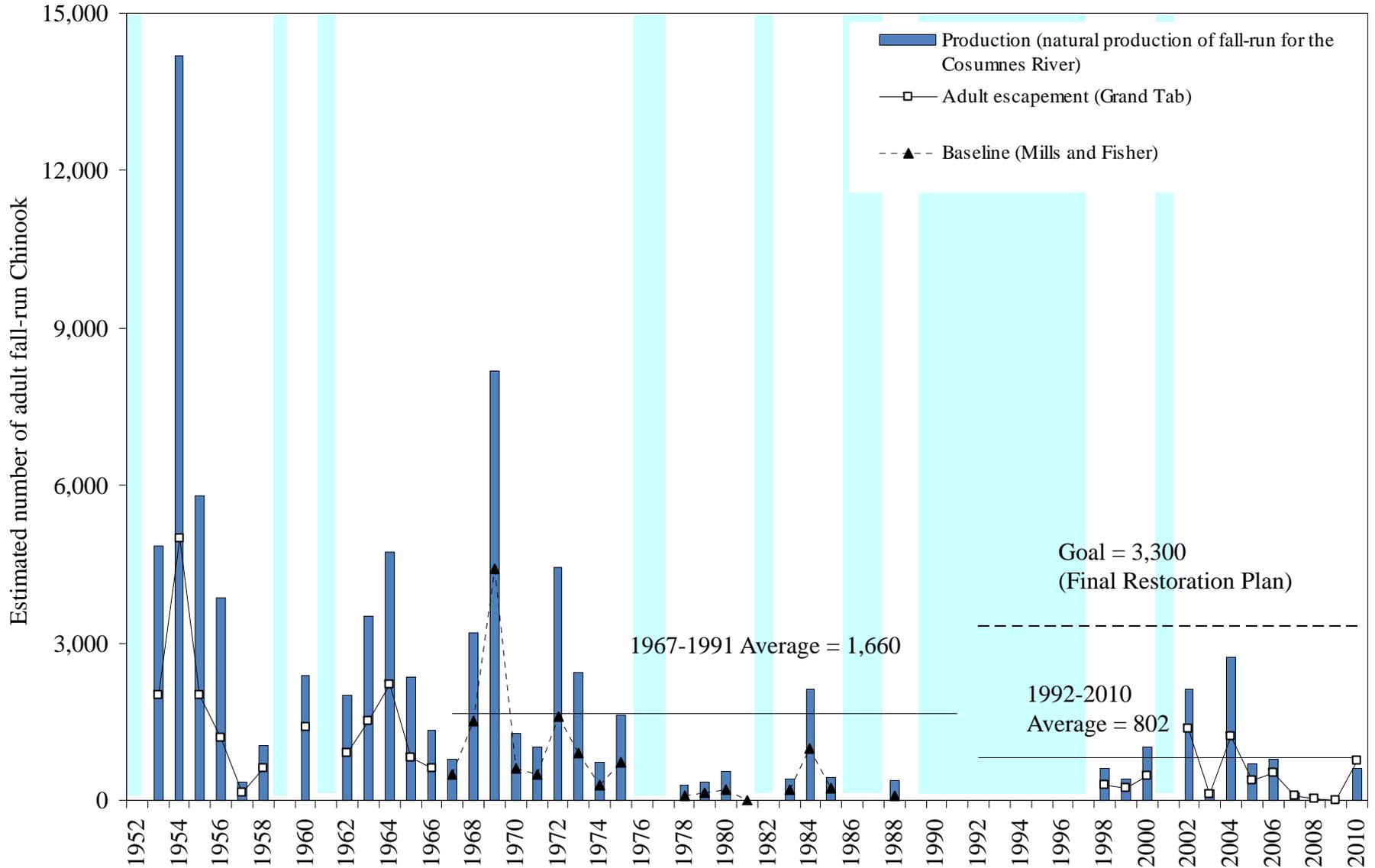


Figure 29. Estimated yearly natural production and in river escapement of Cosumnes River adult fall-run Chinook salmon.

□ = data was not available for 1952, 1959, 1961, 1976-1977, 1982, 1986, 1987, 1989 - 1997, and 2001.

1952-1966 and 1992-2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

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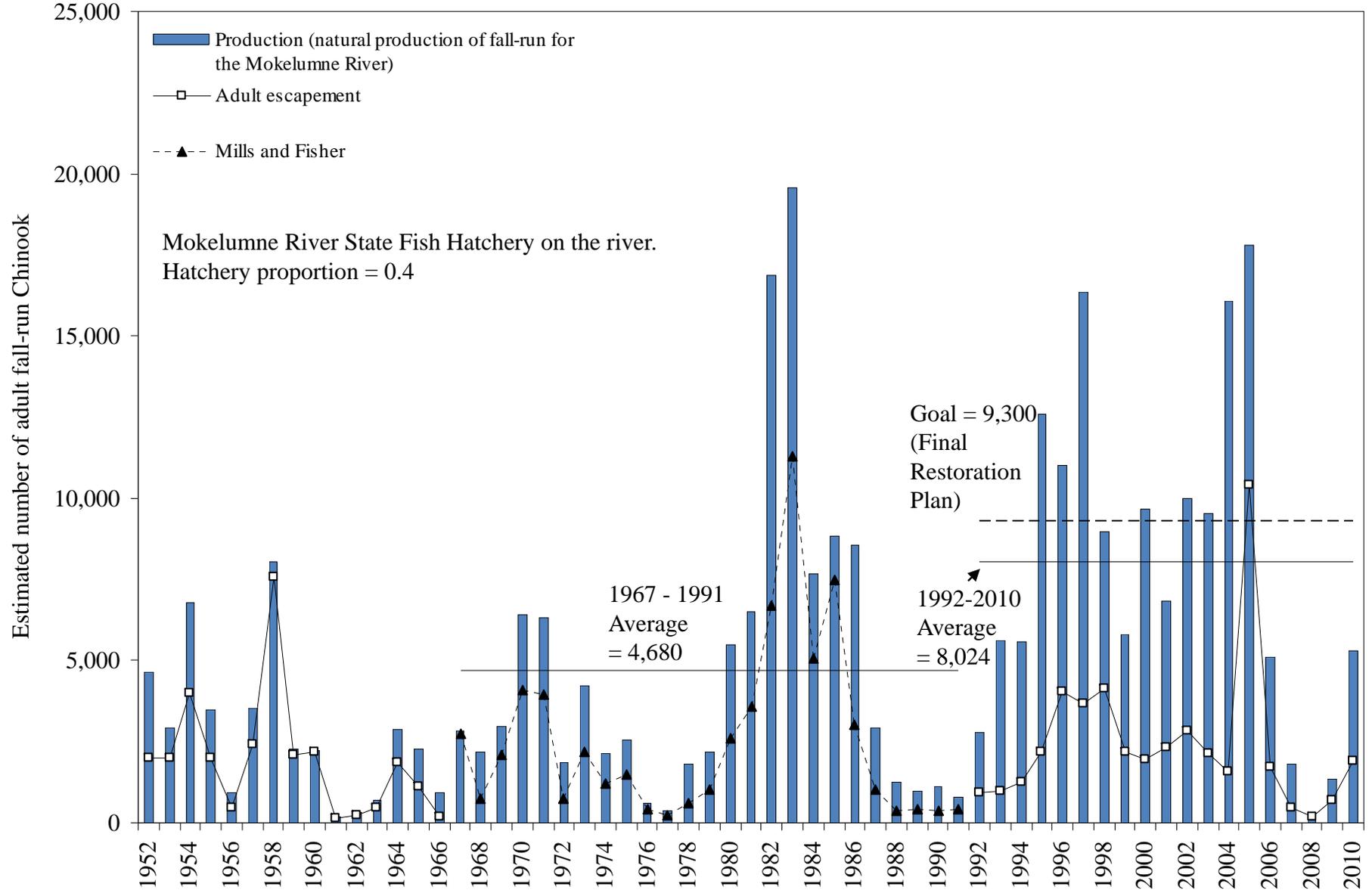


Figure 30. Estimated yearly natural production and in river escapement of Mokelumne River adult fall-run Chinook salmon. In river escapement numbers were not available for 2001. 1952 – 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

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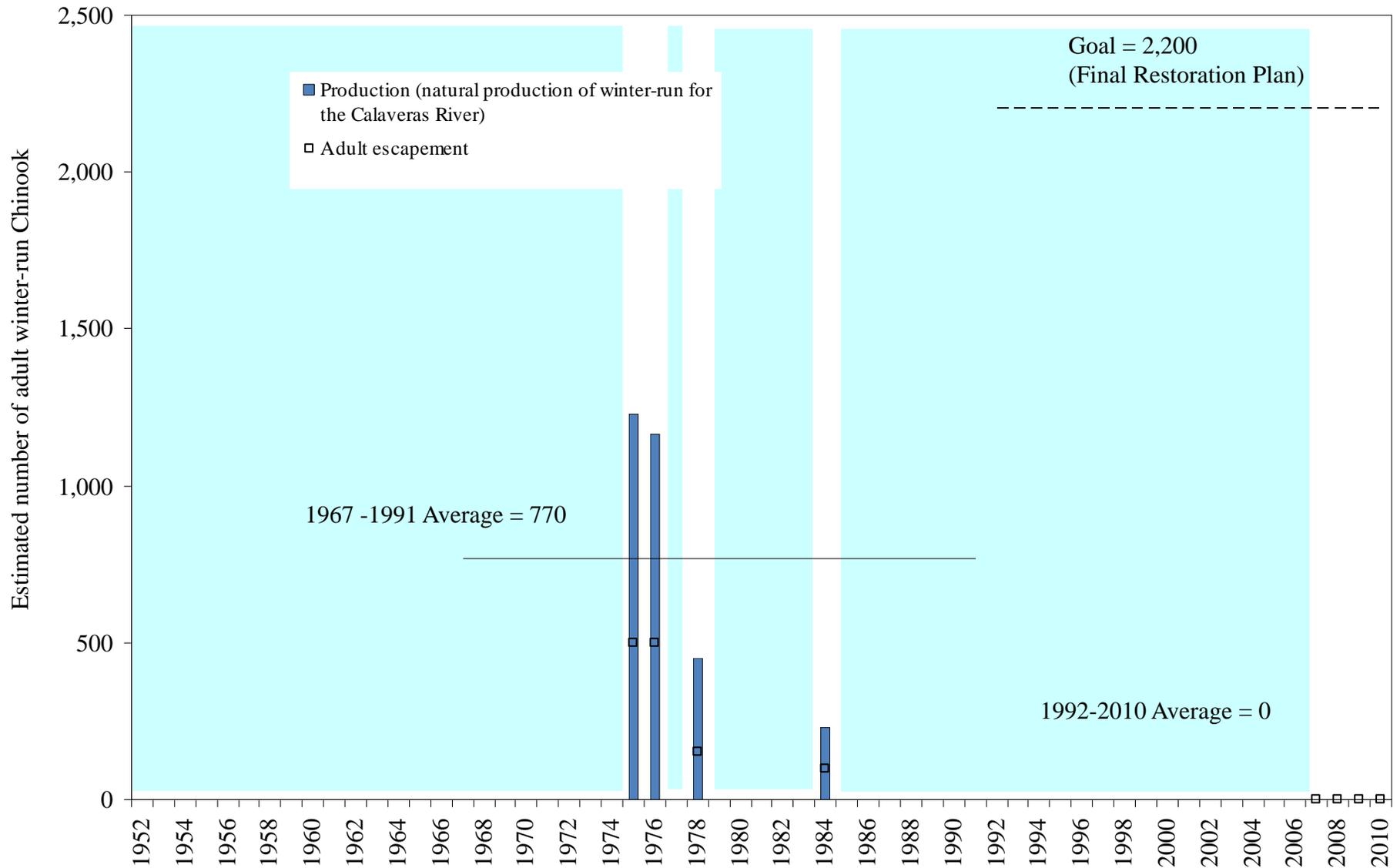


Figure 31. Estimated yearly natural production of Calaveras River adult winter-run Chinook salmon. [Light blue shaded area] = data was not available for 1952 - 1974, 1977, 1979 - 1983, and 1985 - 2006. 1952 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers from Mills and Fisher (CDFG, 1994) were not available.

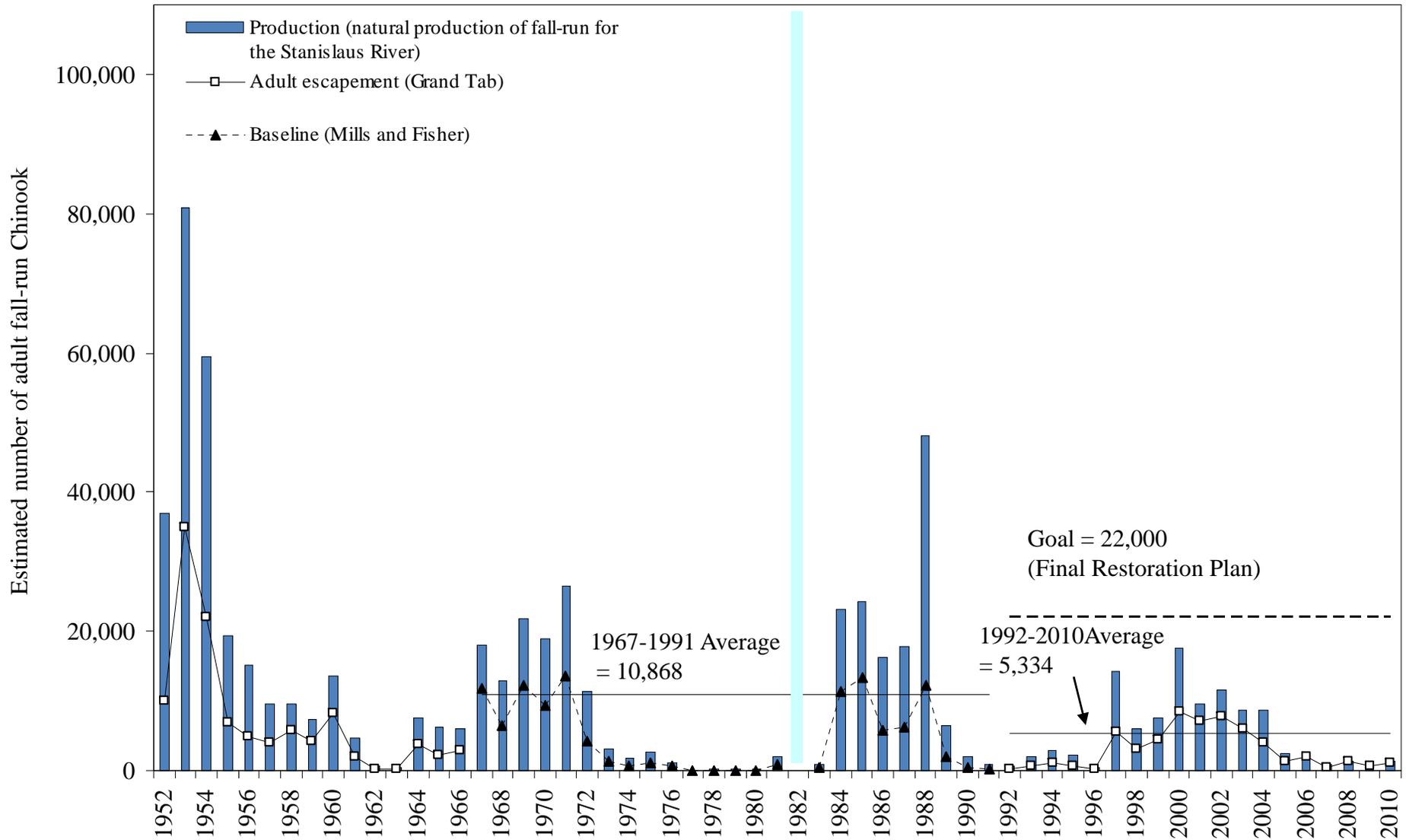


Figure 32. Estimated yearly natural production and in river escapement of Stanislaus River adult fall-run Chinook salmon. 1952 – 1966 and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).  = data was not available for 1982.

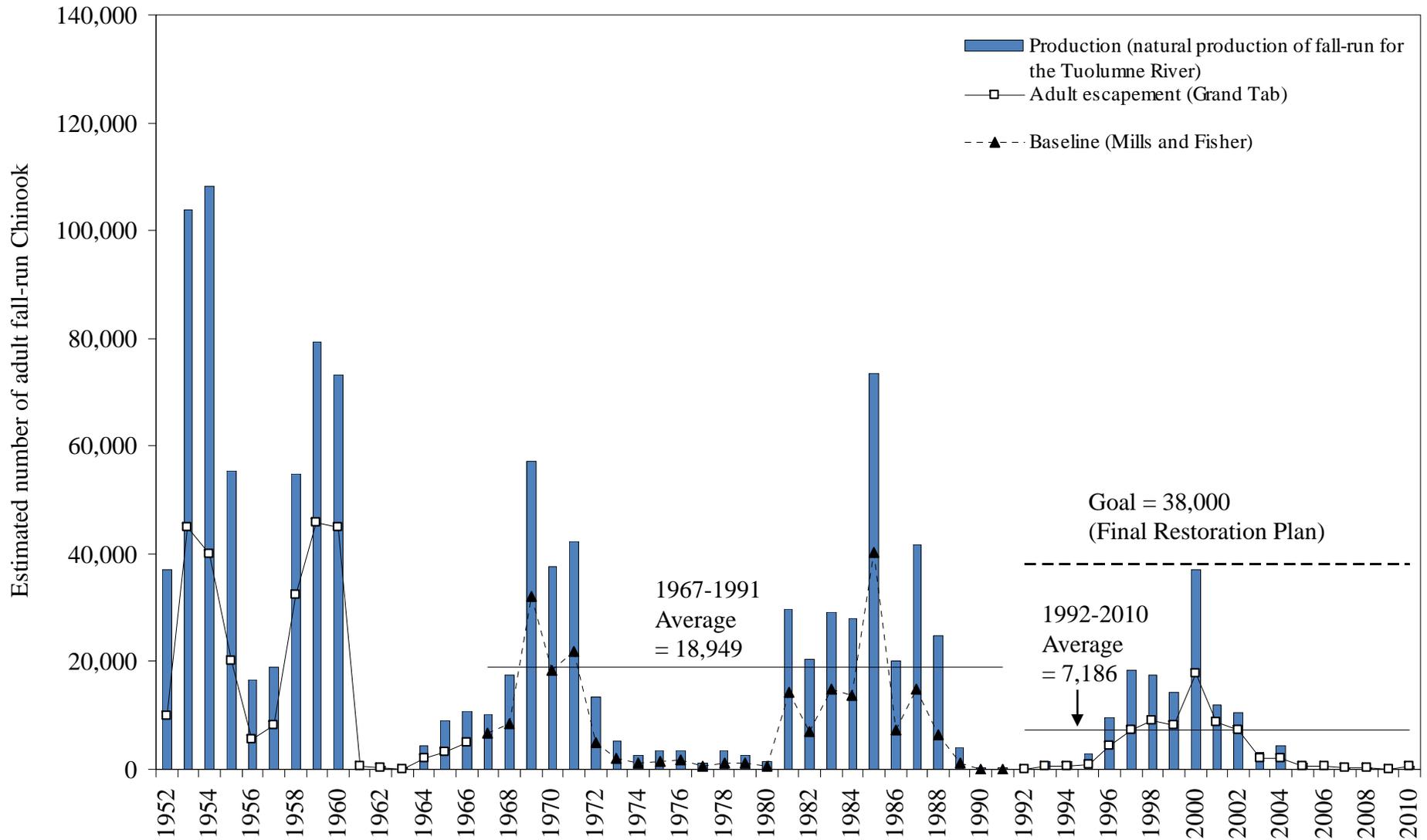


Figure 33. Estimated yearly natural production and in river escapement of Tuolumne River adult fall-run Chinook salmon. 1952 - 1966, and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

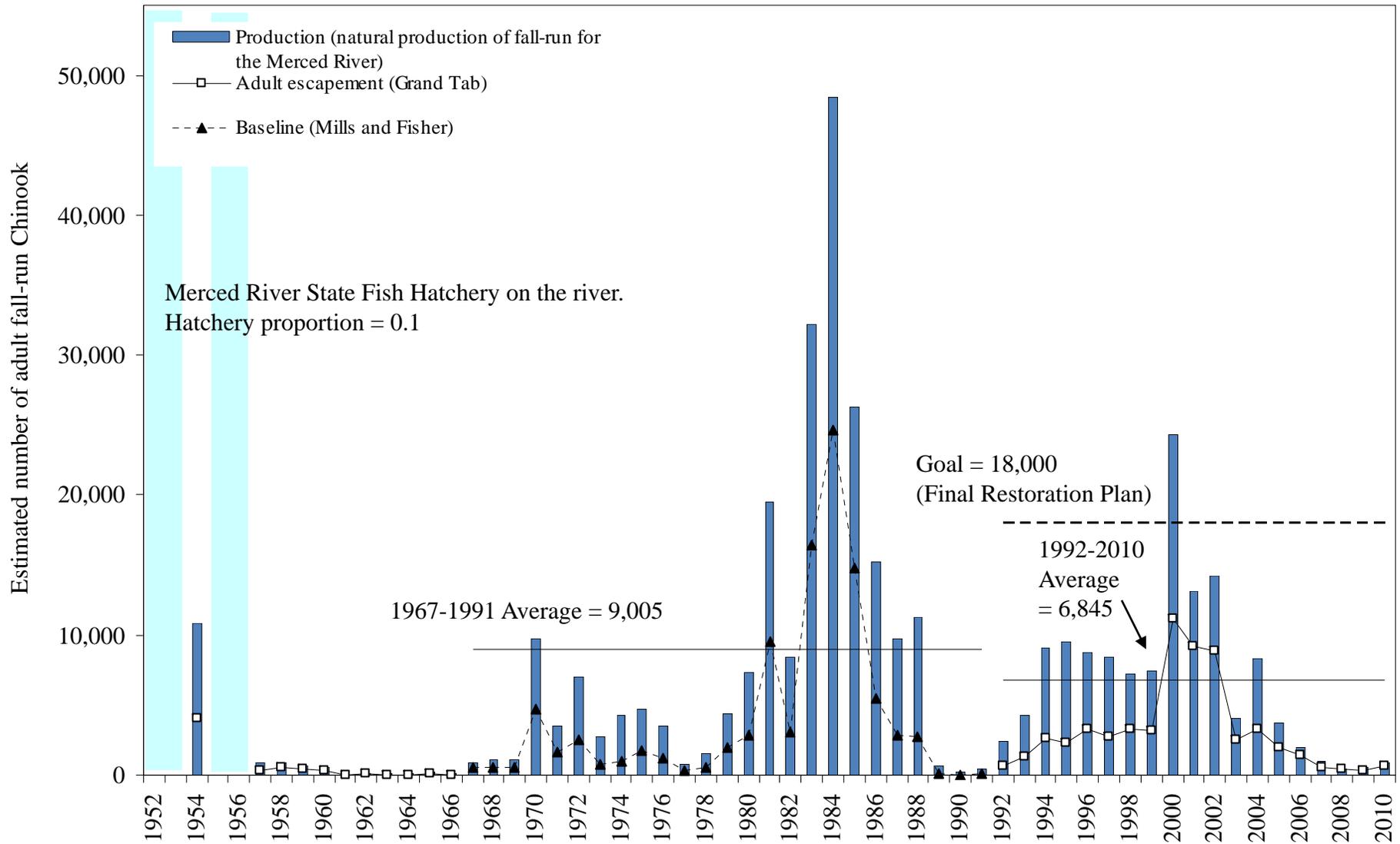


Figure 34. Estimated yearly natural production and in river escapement of Merced River adult fall-run Chinook salmon. 1952 - 1966, and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011).  = data was not available for 1952 - 1953, and 1955 - 1956. Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

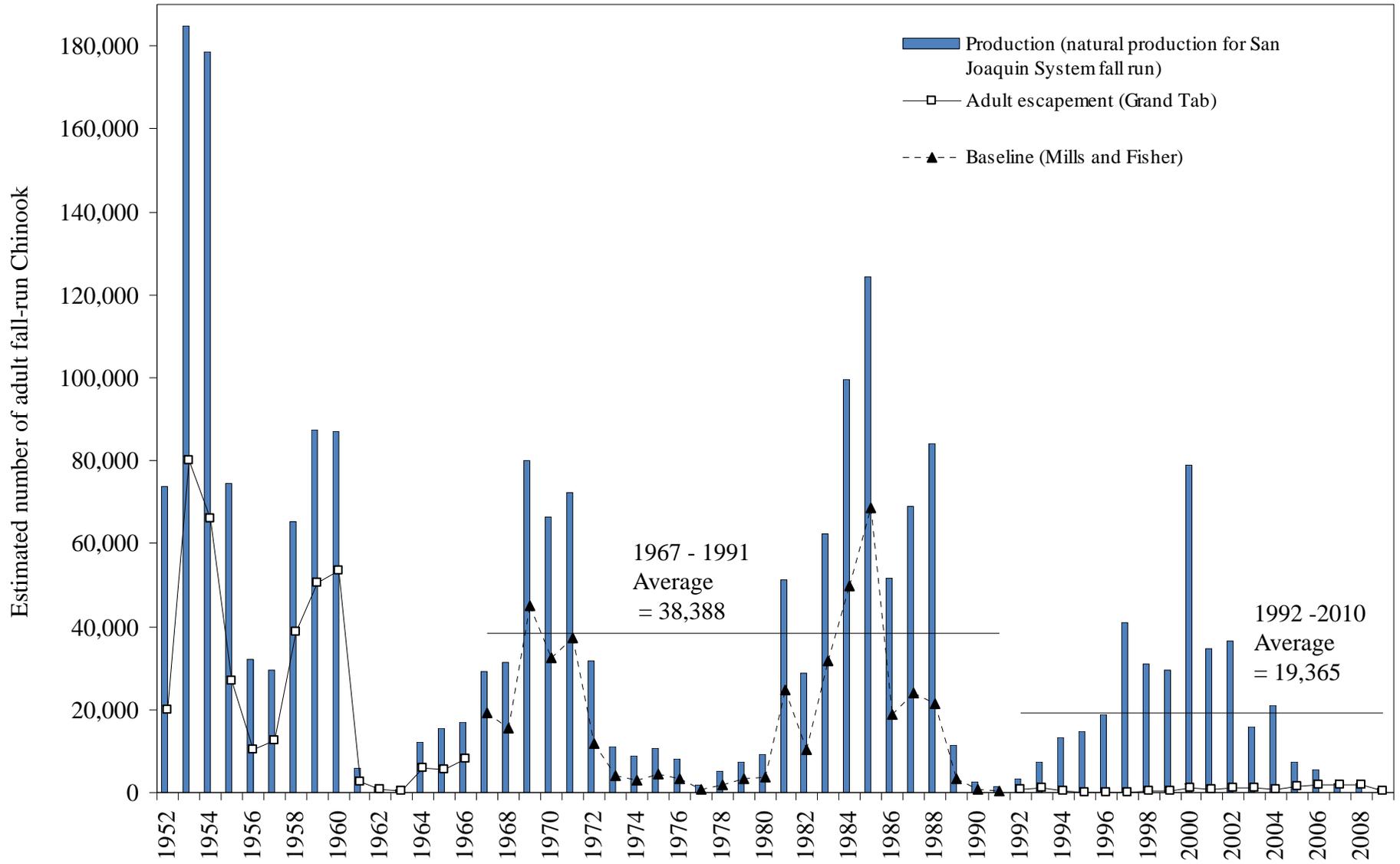


Figure 35. Estimated yearly natural production, and in river escapements of San Joaquin System adult fall-run Chinook salmon. The San Joaquin System is the sum of the Stanislaus, Tuolumne, and Merced Rivers. 1952 - 1966, and 1992 - 2010 numbers are from CDFG Grand Tab (February 2, 2011). Baseline numbers (1967 - 1991) are from Mills and Fisher (CDFG, 1994).

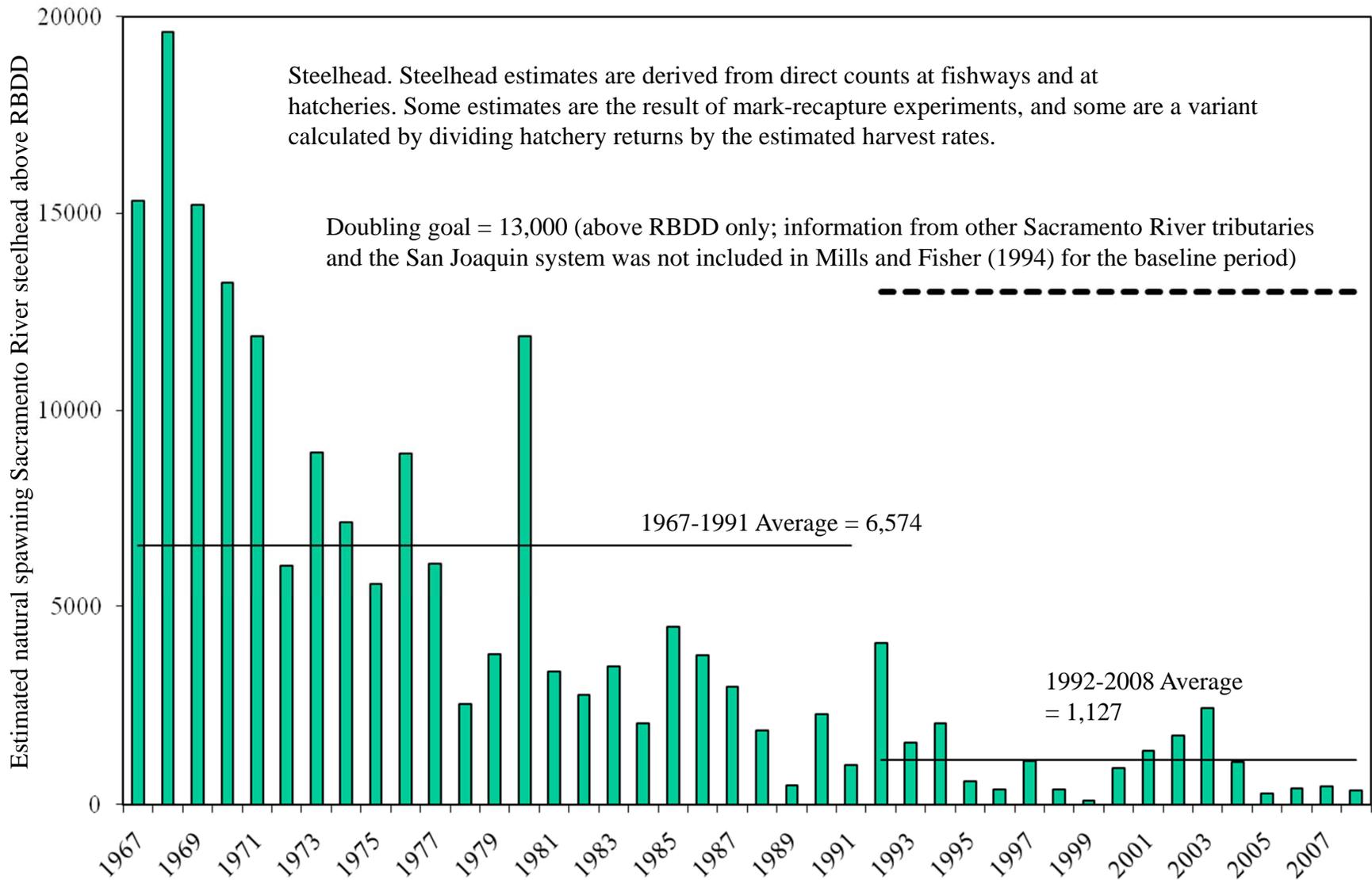


Figure 36. Estimated yearly number of natural spawning of steelhead on the Sacramento River, upstream of the RBDD (Mills and Fisher, 1994). Data for 1992-2008 is from CDFG, Red Bluff. 2008 sampling was curtailed in June due to high water temperatures.

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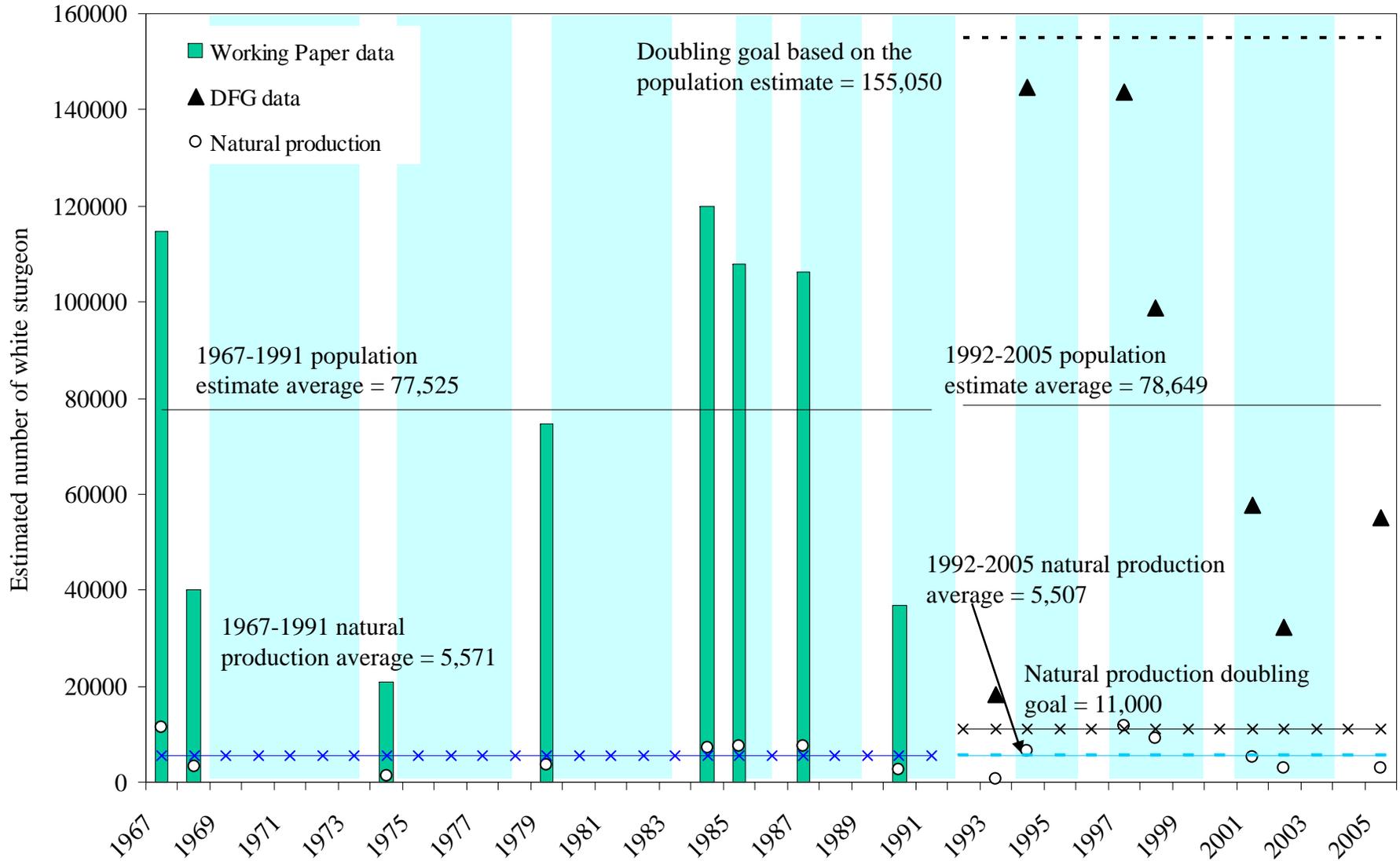


Figure 37. Yearly population estimates and natural production estimates of white sturgeon in the Central Valley. Population estimates are for  $\geq 40$  inch fish, while natural production estimates are based on age 15 fish. 1967-1991 baseline numbers are from the Working Papers on Restoration Needs, Vol. 3 (1995), and 1992-2001 numbers are from CDFG, Bay Delta.  $\square$  = data was not available for 1991-1992, 1995-1996, 1999-2000, and 2003-2004.

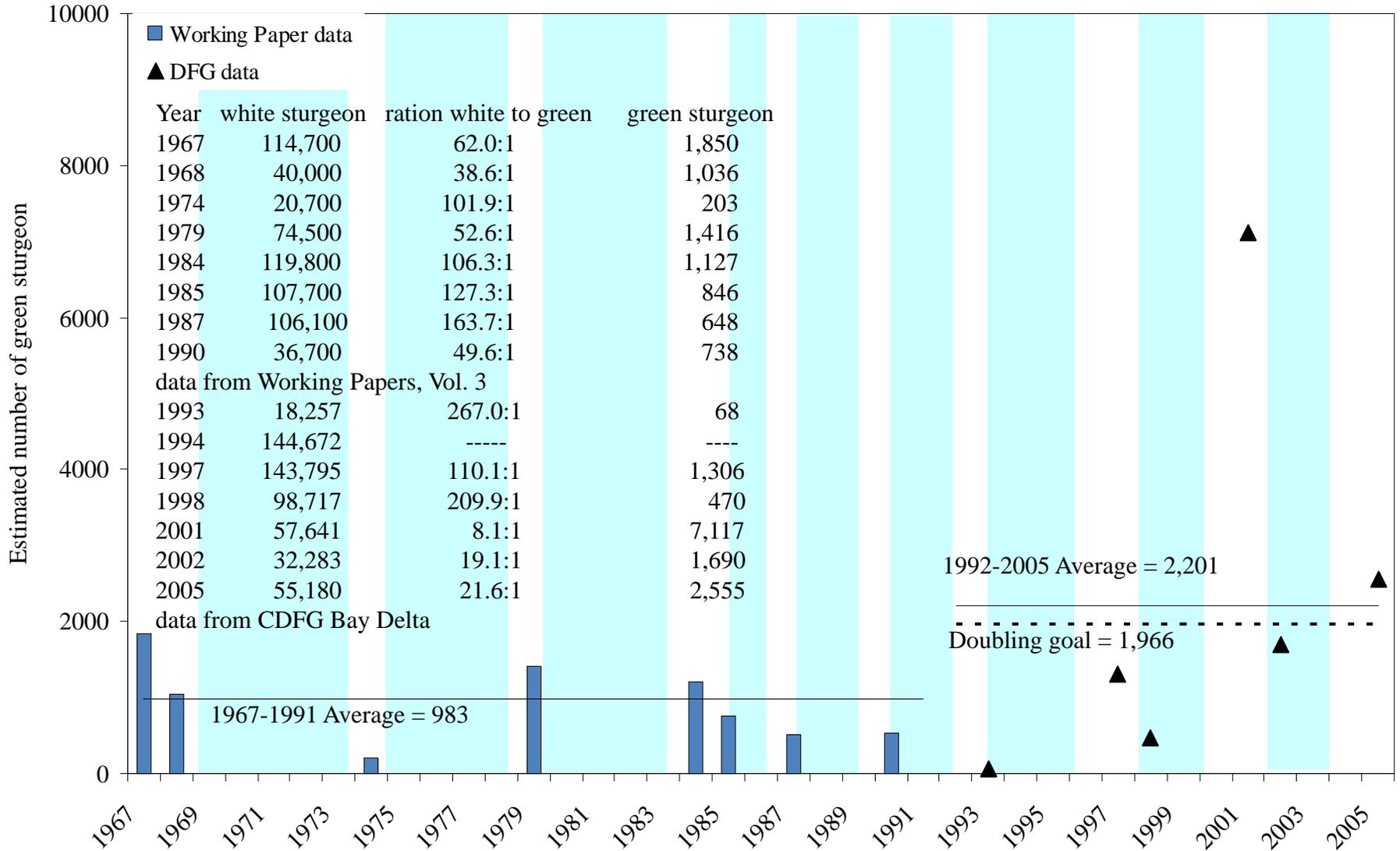


Figure 38. Yearly estimated abundance of green sturgeon in the Central Valley. 1967-1991 baseline numbers are from the Working Paper on Restoration Needs, Vol. 3 (1995), and 1992-2005 numbers are from CDFG, Bay Delta.  = data was not available for 1969-1973, 1975-1978, 1980-1983, 1986, 1988-1989, 1991-1992, 1994-1996, 1999-2000, and 2004-2005. Green sturgeon estimates were based on a ratio of white to green sturgeon captured during those years when DFG was sampling for these fish.

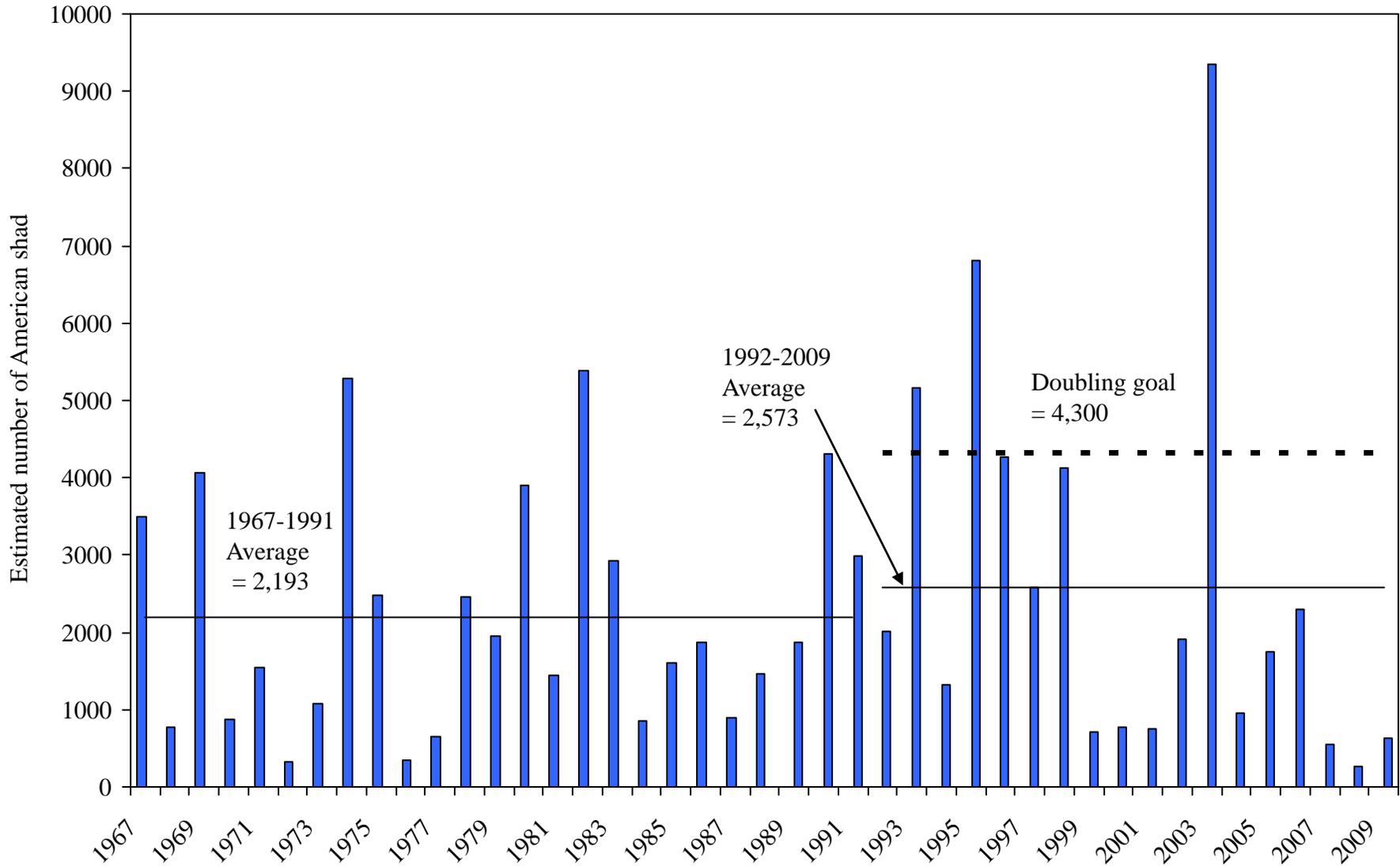


Figure 39. Yearly estimated abundance of American shad in the Central Valley, 1967 through 2005. Data, based on juvenile abundance from CDFG, Central Valley Bay Delta Branch (CVBDB) fall midwater trawl, was used as an index of production. 1967 – 1988 data is from the Working Papers, Vol.3, and 1989 – 2009 data is the from CDFG, CVBDB midwater trawl website. The Working Papers and CVBDB site a young-of year index .

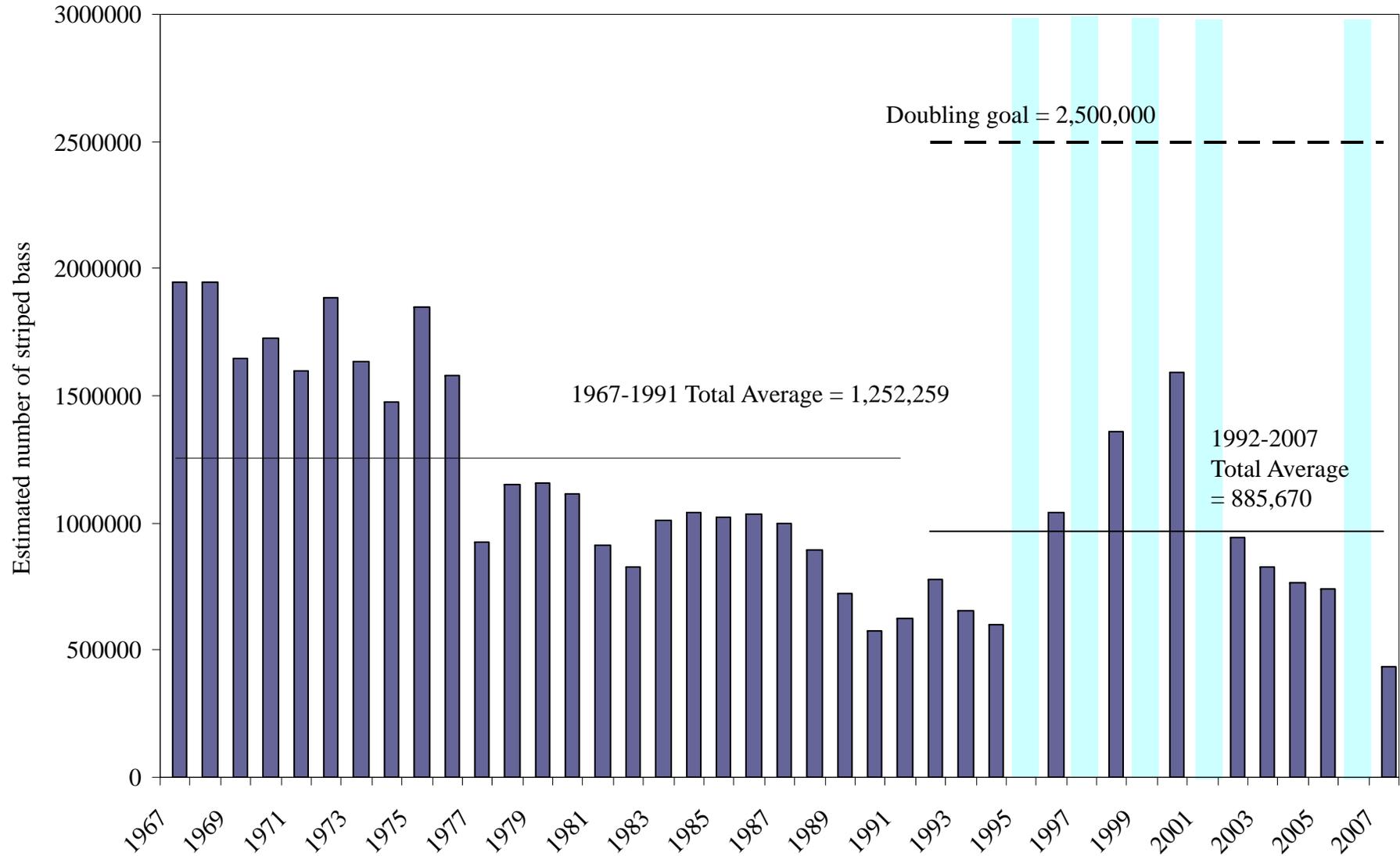


Figure 40. Yearly estimated abundance of adult sized (> 15 inches before 1982, and > 16.5 inches thereafter) striped bass in the Central Valley. Data is from the Mills and Fisher (1967-1991), and CDFG, Bay Delta (1992-2007).  = data was not available for 1995, 1997, 1999, 2001, and 2006.

ANN JOHNSTON  
Mayor

KATHERINE M. MILLER  
Vice Mayor  
District 2



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DALE FRITCHEN  
District 6

February 2, 2012

Phil Isenberg, Chairman, and Council Members  
Delta Stewardship Council  
Attn: P. Joseph Grindstaff, Executive Officer  
980 Ninth Street, Suite 1500  
Sacramento, California 95814

**CITY OF STOCKTON COMMENTS ON THE DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT (DRAFT EIR) FOR THE FIFTH STAFF DRAFT DELTA PLAN**

The City of Stockton (City) appreciates the opportunity to review and comment on the Draft Program Environmental Impact Report (Draft EIR or DEIR) for the Draft Delta Plan (Plan). This letter provides the City's individual detailed written comments on the Draft EIR in accordance with the provisions of the California Environmental Quality Act (CEQA) and CEQA Guidelines. In addition to this comment letter, the City, in conjunction with other Delta Coalition stakeholders, is submitting a separately transmitted joint comment letter, which is incorporated by this reference.

The City has been an active participant in the public process associated with development of the Delta Plan and EIR. The City has submitted detailed comments on the 5th Draft Plan, which is the subject of the EIR, as well as the prior drafts of the Plan. The City has not received any response to any of its prior comments on the drafts of the Plan and thus continues to have significant concerns about the scope and regulatory effect of the Plan. As the largest urban area in the Delta, the City is particularly concerned about the Plan's effect on the City's ability to provide for orderly planned development within its boundary and sphere of influence, as well as the related environmental, governance, water supply reliability, economic sustainability, and fiscal effects that may result from the implementation of the Draft Delta Plan.

The City's comments include both general and specific concerns regarding the technical and legal adequacy of the Draft EIR. Based on the substantive comments provided below and those of the other Delta Coalition stakeholders, the City believes that the Draft EIR fails to meet CEQA's informational mandate. In accordance with CEQA Guidelines Section 15088.5, the City respectfully requests that the Draft EIR be redrafted to adequately describe the scope and regulatory effect of the Delta Plan and

fully evaluate the Plan's potential significant environmental impacts and recirculated for another 90-day noticed public review and comment period.

## **A. MAJOR CONCERNS/COMMENTS**

Despite its extensive length, the Draft EIR leaves many key questions about the scope and effect of the Plan unanswered. The lack of information about critical elements of the Plan have deprived the City and public of the opportunity to understand and comment on key elements of the Plan and its effects and render the EIR inadequate as an informational document. The following comments summarize the City's overarching concerns/comments with regard to the technical and legal adequacy of the Draft EIR.

### **1. The EIR Does Not Adequately Address the Potential for Delta Plan Implementation to Halt or Redirect The City's Planned Growth**

The Draft EIR should specifically acknowledge that over 50 percent (21,256 acres) of the City of Stockton's incorporated urban area and an additional 7,932 acres within the City's Sphere of Influence are located within the Secondary or Primary Zones of the Delta (see attached Exhibit 1). All development within these boundaries must be consistent with the City's adopted 2035 General Plan, Infrastructure Master Plans, and the Local Agency Formation Commission's adopted Sphere Plan and Municipal Service Review for the City. A comprehensive Environmental Impact Report, which was in full compliance with CEQA and certified on December 11, 2007, and for which a Notice of Determination was filed on December 12, 2007, addressed those approved plans.

As there are still discretionary approvals required for some projects contemplated by these approved plans, the Delta Plan, as currently drafted, could act as a *de facto reversal* of the prior approvals and indirectly usurp the City's existing land use authority within the areas covered by the Delta Plan. The Delta Plan certainly cannot retroactively invalidate otherwise lawfully adopted plans and should be revised to eliminate the potential conflicts with existing adopted plans. The Draft Delta Plan should be amended to incorporate and/or exempt the City's adopted General Plan, Infrastructure Master Plans, Sphere of Influence/Municipal Service Review, and certified EIR and the Draft EIR for the Delta Plan should acknowledge that incorporation to or exemption from the Delta Plan.

The Delta Reform Act requires the Delta Council to review local land use plans. (DEIR, Section 6, Land Use, p. 6-1.) If the Council treats adopted land use plans as covered actions and requires changes in those plans, or projects that implement those plans, that have the effect of prohibiting or limiting growth, that could cause growth to be shifted away from planned areas, with resulting unevaluated, and potentially greater, impacts. If it is the Council's view that land use plans and projects implementing adopted plans constitute "covered actions," then the EIR needs to plainly disclose this and evaluate the Plan's effect on local land use

decisions and development pursuant to those plans. If the Council seeks to limit or redirect growth within the Secondary Zone of the Delta, the EIR must disclose that as an effect of the Plan and disclose the types of impacts the Plan's prohibitory effect could cause.

For example, if the Council's exercise of its appellate authority over a covered action leads to the inability to build in an area planned for development, that growth that otherwise would have occurred may be shifted to another area with different or more significant impacts, including those resulting from the potential loss of agricultural land, habitat, construction of new infrastructure (including roads, schools, utilities and wastewater treatment and conveyance facilities) and increases in vehicle miles traveled, air pollutant emissions and greenhouse gases. The redirection of planned growth as a result of the Delta Plan may also have significant growth inducing effects if infrastructure such as roads and sewer lines are required to be extended to areas outside the current urban services boundaries.

As discussed in our comment B.1, below, the City believes the statutory language indicates the Legislature did not intend that the Delta Plan stifle progress in existing urban areas or prevent orderly and carefully planned growth within the Secondary Zone of the Delta. However, because the Plan language is not clear, and statements by Council staff have raised concerns about the scope of the Plan, the Draft Delta Plan should be amended to clarify the regulatory provisions for "consistency determinations" as applied to urban areas within the Secondary Zone of the Delta and should be revised to exempt planned urban development within the incorporated City limits and the City's adopted Sphere of Influence (which would include development consistent with the City's adopted General Plan, Infrastructure Master Plans and Sphere of Influence/Municipal Service Review) which is defined as of the effective date of the Delta Plan.

The Draft EIR should be revised to specifically acknowledge and address those amendments, and make clear that the Delta Plan does not intend to stifle progress in existing urban areas or prevent orderly and carefully planned growth within the Secondary Zone of the Delta. See Detailed Comment B.1, below.

In this vein, the Draft EIR also should specifically acknowledge that existing and planned urban development within existing adopted planning areas in the Secondary Zone of the Delta, located behind levees that meet, or are planned to meet, current State or Federal standards, should be considered consistent with the Delta Plan.

**2. CEQA Review and Council Approval of the Delta Plan is Premature Because The Legislatively Mandated Performance Measures Have Not Yet Been Identified**

The Delta Reform Act of 2009 provides that the Delta Plan include concrete measures to simultaneously improve water supply reliability and to restore the Delta ecosystem, while protecting and enhancing the Delta as a Place. Specifically, the Act requires that the Plan “include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan.” (Water Code § 85308 (b).) However, the Delta Plan still contains no measurable or otherwise quantifiable targets. How does the Council intend to accomplish this mandate? What types of performance measures are being considered, and what will the process be for developing and adopting these measures? When will the required measurable quantifiable targets be adopted? How does the Council intend to comply with CEQA in adopting the required targets? The lack of discussion of the required targets in the project description and failure to evaluate the potential impacts associated with these targets makes it impossible for the City to know what the impacts of the Delta Plan will be.

**3. The Project Description is Inadequate**

The Project Description is incomplete and does not provide the reader with an adequate understanding of what the Delta Plan is intended to do, and what changes the public can expect as a result of adopting the Delta Plan. An “accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4<sup>th</sup> 713, 730.) The failure of the DEIR to adequately define and identify the scope of the project precludes the public from being able to assess the Project’s environmental impacts. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4<sup>th</sup> 713, 730 [“an accurate project description is necessary for an intelligent evaluation” of project impacts.].) Indeed, with the wide reaching nature of the Delta Plan and its invasive policies and recommendations, the lack of an accurate, stable, and finite project description leave many potentially subject to the Delta Plan unsure of the plan's impact on the environment.

The DEIR asserts that the Delta Plan “will be a legally enforceable, comprehensive management plan for the [Delta] that achieves the coequal goals and all of the inherent subgoals and objectives . . .” (See e.g. DEIR, 2A-1, 2A-84.) On the other hand, the DEIR characterizes the Project as being comprised merely of “regulatory policies” and “non-binding recommendations that are no more than “statements of policy direction to other agencies which, if the direction is followed, could lead to other types of specific physical action.” (DEIR, p. ES-2.) The DEIR indicates that the “Delta Plan does not direct the construction of specific projects, nor would projects be implemented under the direct authority of the Delta Stewardship

Council.” (DEIR, 3-85.) Instead, the DEIR posits that the Delta Plan seeks to achieve the coequal goals by “encouraging” various actions and projects. If it is true, as the DEIR suggests, that the Plan itself will not mandate any physical changes in the environment, it is not clear how the Plan will achieve its goals, subgoals, and objectives. Neither the Delta Plan nor the DEIR explain how the Delta Plan *will* achieve the coequal goals if the Delta Plan does not mandate any actions.

If the Plan will have no actual effect on the environment, the DEIR needs to be clearer about the lack of any real changes and acknowledge that the Plan as drafted will have no discernible effect on achievement of the coequal goals.

The lack of any clear identification of how the Plan affirmatively achieves the project objectives also prevents any analysis of relative environmental impacts of the Project. In particular, if the Project will not result in any physical changes to the Delta region, it is not clear how the Project is superior to the No Project Alternative. The DEIR dismisses potential alternatives, including the No Project alternative, explaining that none of the alternatives will successfully achieve the coequal goals – at least not as well as the Project.

In each of the “Policy Elements” identified in Table 2-4 of the DEIR, the DEIR suggests that the Project will effectively do “more” than the No Project Alternative to achieve the Policy Elements. However, the DEIR fails to identify and discuss how the project does more and what changes result from the Proposed Project. If the DEIR’s argument that the Project will obtain results that none of the alternatives can obtain is to be believed, the DEIR must explain with reference to substantial evidence how the Project obtains these results.

**4. The DEIR’s Discussion of the No Project Alternative is Inconsistent and Not Supported by Substantial Evidence in the Record**

The DEIR’s discussion of the No Project Alternative and the likely effects of this alternative is internally inconsistent and contradicted by evidence in the DEIR itself. For example, the DEIR’s discussion of Water Quality Improvement states that under the No Project Alternative, “drinking water quality would continue to be impaired in communities in the Delta and areas outside the Delta.” (DEIR, p. 2A-88.) No evidence or analysis is cited in support of this conclusion. The DEIR also states that the “[i]mplementation of additional local and regional water treatment facilities may not be reasonably expected to occur in the foreseeable future under the No Project Alternative based on current plans and available infrastructure.” (Ibid.)

These statements are contradicted by information in the DEIR regarding the ongoing efforts of the Regional Water Quality Control Board to develop more stringent and comprehensive water quality objectives that can be expected to drive

the construction of additional treatment facilities. (See, e.g., DEIR p. 2A-40 et seq., section 2.2.3.1.) In fact, these ongoing efforts are recognized in the numerous Plan recommendations encouraging the adoption of these standards. (Id.; see also Draft Plan Recommendations WQ R1, WQ R5, WQ R6.) If these efforts cannot be expected to result in improved water quality, what is to be gained by the Delta Plan encouraging their adoption? And many wastewater treatment facilities that discharge into the Delta are in the process of planning for or constructing upgraded treatment facilities. In Section 3.3.4.2.2 of the DEIR, San Joaquin River Watershed, Surface Water Quality, the DEIR acknowledges that cleanup programs are underway for pathogens, dissolved oxygen, and pesticides through TMDLs. Additionally, in Section 3.3.5.2.2., San Francisco Bay Area, Surface Water Quality, the DEIR notes that additional TMDLs are proposed or are being established to deal with sediments, nutrients, mercury, polychlorinated byphenols and urban pesticides. Furthermore, the DEIR notes that in addition to wastewater treatment plants, flood control, stream restoration, and land use management are being used to improve water quality through TMDLs.

The most illustrative example of planned improvements to regional wastewater treatment facilities is the recently adopted discharge permit by the Central Valley Regional Water Quality Control Board for the Sacramento Regional County Sanitation District. The costs estimated to meet this permit run into the billions of dollars. While portions of the new permit are under appeal, the Sacramento Regional County Sanitation District is already moving forward with design of additional wastewater treatment.

If the Delta Plan merely encourages the adoption of water quality regulations that are already being considered by other agencies, and new or modified wastewater treatment facilities are a likely consequence of both the Draft Plan and the No Project Alternative, it is not clear what the evidentiary basis is for concluding that water quality would improve as a result of the Plan and thus that the project offers any environmental benefit over the No Project Alternative. The DEIR's discussion of the No Project Alternative appears to be a "straw man" designed to make the proposed project appear more desirable, rather than a realistic reflection of future conditions under the existing regulatory environment.

**5. The DEIR Fails to Discuss How Incorporation of the Bay Delta Conservation Plan Will Affect the Scope and Impacts of the Delta Plan**

The Delta Reform Act directs that the Bay Delta Conservation Plan (BDCP) be automatically incorporated into the Delta Plan if the BDCP meets certain statutory requirements. The BDCP is described as covering the operation of the State Water

Project<sup>1</sup>, the construction and operation of facilities for movement of water through the Delta, the implementation of conservation actions, and diversion and discharge of water by Mirant. However, the EIR does not clearly explain how the incorporation of the BDCP into the Delta Plan will change the scope and regulatory effect of the Delta Plan. Thus the EIR's discussion of the BDCP raises more questions than it answers, both as to the BDCP's effect on the scope of the Delta Plan and its potential environmental effects.

Standing on its own, if the BDCP is adopted as a HCP/NCCP, it will apply only to those entities that voluntarily seek to participate in it and who obtain ESA coverage under the terms of any permits issued by the relevant agencies. How will the regulatory effect of the BDCP change if it is incorporated into the Delta Plan? If the BDCP is incorporated into the Delta Plan, will its provisions be deemed to constitute "policies" of the Delta Plan with which all covered actions under the Plan must demonstrate consistency? If so, then the BDCP's incorporation into the Delta Plan would dramatically expand the scope of both the BDCP and the Delta Plan, converting what was intended to be voluntary participation in a HCP into a mandatory regulatory program affecting a much wider range of actions within the Delta.

While there is a passing reference to imposing the BDCP on third parties through the consistency determination, Section 23 of the DEIR completely fails to discuss any of these potentially significant issues. (See e.g. DEIR, 2A-24 ["If BDCP is incorporated into the Delta Plan, it will become part of the Delta Plan and, therefore, part of the basis for future consistency determinations."].) How will the BDCP be used for future consistency determinations and what impacts are associated with imposing the BDCP on non-participants?

CEQA requires that an EIR evaluate the whole of the action that will be approved, including the reasonably foreseeable indirect physical changes to the environment that will occur from the project. Given that the Delta Reform Act deprives the Council of any discretion as to the Delta Plan's incorporation of the BDCP, the BDCP should properly be treated as a reasonably foreseeable future element of the Project, rather than a cumulative project, as in the Draft EIR. The DEIR should provide a full discussion of the BDCP in the project description and evaluate the impacts of the BDCP as part of the project and all alternatives. The DEIR should be revised to clearly explain how, if at all, the mandatory incorporation of the BDCP into the Delta Plan would alter or expand the scope of the Delta Plan's regulatory effect, and analyze the potential environmental effects of this expanded regulatory scope of the BDCP. For example, how would incorporation of the BDCP into the

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<sup>1</sup> The BDCP will also provide certain authorization for the continued operation of the federal Central Valley Project (CVP). It is unclear why the DEIR omits mention of operation of the CVP from a description of the BDCP.

Delta Plan affect the existing HCPs within the Delta? (See our Detailed Comments B.11 and B.12 below)

When the Legislature directed that the BDCP be automatically incorporated into the Delta Plan, it must have presumed that the BDCP would be completed prior to the Delta Plan and thus the scope and impacts of the BDCP would be known to the Council, public and potentially regulated entities. Given that the BDCP remains incomplete and continues to evolve, it is impossible to understand its impact on scope and impacts of the Delta Plan. The lack of information in the Draft EIR about the regulatory and environmental consequences of incorporating the BDCP into the Delta Plan makes it impossible for the Council and the public to comprehend the environmental consequences of adoption of the Delta Plan. The significance of this information to potentially regulated parties cannot be understated. It would be both imprudent and inconsistent with CEQA's informational mandate for the Council to adopt a Plan that is likely to have far-reaching significant impacts as a result of incorporation of the BDCP prior to the completion of the BDCP and certification of the BDCP EIR and Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA).

For these reasons, the Council should put CEQA review of the Plan on hold and request that the Legislature revise the Delta Reform Act to remove automatic incorporation of the BDCP from the Delta Plan. If the Council elects to move forward and certify an EIR on the Plan as drafted, to comply with CEQA, it must revise the Draft EIR so that the project description and impacts analysis clearly and thoroughly explain the scope of the Plan with respect to the BDCP and evaluate the resulting environmental impacts. Specifically, the DEIR must be revised to fully explain the BDCP's role in the Delta Plan and the type and significance of environmental effects that will occur if all covered actions are required to comply with the BDCP. Because the BDCP continues to evolve, the revised EIR should describe the changes that have been made to the BDCP since the Draft EIR was prepared as well as evaluate any significant environmental effects associated with those changes. The revised DEIR must then be recirculated for public review and comment so that the public, potentially regulated parties and the Council can properly evaluate the project and its impacts.

**6. The DEIR Fails to Analyze the Effects of Implementing the Recommended New Flow Criteria and a More Natural Flow Regime**

Much of the City is protected by levees in compliance with the federal 100-year standard of flood protection. The City is protected from flooding by approximately 140 miles of levees and other flood control facilities. In the 1800's, levees were first constructed for agricultural protection, but over the years have evolved to provide protection for residents and businesses in our community. There are currently levee improvement efforts underway and future flood protection projects under study. The City is concerned about the effects on its existing levees, and the

safety of its residents, homes and businesses, of potential changes in Delta flow criteria that may result from the Plan.

The Draft EIR assumes that the SWRCB will follow the recommendations contained in the Delta Plan and develop flow criteria and flow objectives for the Delta and its tributaries. (Draft EIR, 2A-39.) The Draft EIR also anticipates a “more natural flow regime” as a result of setting flow criteria and objectives. The Draft EIR, however, fails to identify the potential environmental risks associated with requiring the various water and flood control projects to operate in such a way as to provide a more natural flow regime. While the Draft EIR does discuss a natural flow regime in the context of ecosystem restoration and also discusses the State’s flood control system – it fails to discuss them in a way that informs the public of the critical connection between the two.

For example, the Draft EIR characterizes the existing Delta flood protection system as fragile. (Draft EIR, 5-11.) At the same time, the Draft EIR (and the Delta Plan) suggests that the State’s flood protection system be re-operated to provide a more natural flow regime in the Delta. The flood protection system, however, was constructed and is operated to release peak flows gradually following storm events. (Draft EIR, 5-4.) Any change in operations of the various flood control facilities to allow for water to flow more naturally could have adverse impacts on the flood control system and levees generally. To the extent a more natural flow regime would result in higher peak flows or prolonged flows – can our levee system handle this added pressure? Will levees rebound from storm events with the higher water levels one would expect from a “more natural flow regime?”

Section 5.4.3.2 of the Draft EIR, discussing Delta Flood Risk in the context of Delta Ecosystem Restoration, fails to even acknowledge the presence of increased flows in certain times of the year as part of a “more natural flow regime.” If the Delta Plan and Draft EIR assume the SWRCB will follow the Delta Plan’s recommendations and implement a more natural flow regime in the Delta – the Draft EIR must explain the connection between flows and flood risk and adequately describe the environmental impacts and risks to the public associated with those increased flows.

**7. The Plan Should Exclude From the Definition of "Covered Action" Projects Undertaken to Implement Regulatory Actions of Other State Agencies**

The Delta Plan exempts from the definition of "covered actions" regulatory actions by other state agencies. (DEIR, p. 2A-2.) However, the DEIR states that the underlying actions regulated by those agencies would not be exempt. (Id.) The failure to exempt projects undertaken to implement regulatory requirements, such as wastewater treatment plant upgrades necessitated by a NPDES permit issued by the Regional Water Quality Control Board, is a mistake that may have significant adverse consequences for these projects. The need for entities charged

with implementing regulatory requirements to prepare detailed findings of consistency with the Delta Plan and the potential for environmentally beneficial projects to be delayed by a lengthy and uncertain appellate process (not to mention the likelihood of litigation over the consistency determination) are unreasonable and counterproductive obstacles to these projects. Moreover, to the extent the Delta Council would seek to modify the projects that implement those permits, those modifications would effectively substitute the Council's inexpert judgment for that of the permitting agency.

The Delta Plan should do everything possible to facilitate and encourage projects that implement regulatory requirements, rather than creating substantial obstacles in terms of time and cost that unreasonably delay their implementation. To that end, the Delta Plan should be revised to clearly exempt projects that implement NPDES permits and similar regulatory requirements adopted for the protection of the environment. The Draft EIR should specifically acknowledge that all projects undertaken to comply with a regulatory action, including but not limited to the anticipated upgrades to the City's Regional Wastewater Control Facility (RWCF) to meet state water quality requirements, should also be exempt from the Delta Plan's "covered actions".

In a similar vein, the Delta Plan should be revised to make clear, and the Draft EIR should specifically acknowledge, that all levee improvements and other flood control projects in the Secondary Zone of the Delta, which are consistent with State and/or Federal standards and which have complied with CEQA and/or the National Environmental Policy Act (NEPA), should be exempt from the Delta Plan's consistency determination process.

**8. The Plan Should Exclude From the Definition of "Covered Action" All Projects Exempt from CEQA**

The Draft Delta Plan should be amended to incorporate the general definition of "project" to mirror the definition of "project" in CEQA, including all of the exemptions recognized by CEQA, many of which are specifically exempt because they are environmentally beneficial or otherwise desirable or necessary projects whose implementation should be facilitated, not hindered. It is illogical to subject projects that the Legislature already has determined should be exempt from CEQA to Delta Plan consistency determinations, which include the need to prepare detailed CEQA-type findings and pose the likelihood of a lengthy and uncertain appeals process. Any benefit conferred by the CEQA exemption is lost if such projects are not also exempt from the Delta Plan definition of covered action. The failure to exempt such projects creates the potential that they will be discouraged, delayed or otherwise rendered infeasible. The Draft EIR should discuss the potentially significant environmental effects that could occur from failure or substantial delay of CEQA-exempt projects as a result of the Delta Plan consistency process.

**9. The EIR Does Not Address the Secondary Physical Environmental Impacts That Are Likely to Result from the Plan's Financing Measures and Regulatory Delays**

In accordance with CEQA Guidelines Section 15131, the Draft EIR should acknowledge and address the secondary physical environmental effects that may result from the socio-economic/economic sustainability impacts of the Delta Plan within the Secondary Zone of the Delta, particularly in urban areas like Stockton and the Port of Stockton. The Draft EIR should specifically address the Economic Sustainability Plan prepared by the Delta Protection Commission (DPC), which focuses solely on the Primary Zone of the Delta. It should be noted that the Economic Sustainability Plan does not address the economic sustainability impacts within the Secondary Zone of the Delta. Accordingly, the Draft EIR fails to address the secondary physical environmental effects that may result from the socio-economic/economic sustainability impacts of the Delta Plan.

The implementation of the Delta Plan could adversely impact the financial viability of local communities through increased restrictions and by creating regulatory uncertainties, delays, and potentially leading to extended and costly litigation. The Draft EIR should address the Draft Plan's potential to nullify the intent and implementation of the City's General Plan and other important plans that have been adopted as a result of years of planning, community participation and at great expense. Under the Draft Plan the DSC could find that specific projects that implement the City's General Plan, specific plans or community plans or the Port of Stockton's Rough and Ready Island Development Plan, are inconsistent with the Delta Plan, thereby frustrating the City's and Port of Stockton's ability to provide for orderly planned development within their respective boundaries. This also introduces an element of uncertainty to the land development process that could stifle needed and desirable development within the existing urban areas of the Delta. If landowners and developers cannot rely on the measure of certainty provided by proposing development consistent with an adopted General Plan, specific or master plan, development agreements, and/or other land use entitlements, it is foreseeable they will choose to go elsewhere, depriving Delta cities and counties of needed economic and redevelopment. For example, the potential closure or relocation of industrial, agriculturally-related, port-related, and/or commercial businesses and the resulting loss of jobs in Stockton and San Joaquin County may lead to a corresponding loss of income, retail sales taxes, and property taxes and a resulting increase in residential and non-residential vacancies and foreclosures, which may result in an increased level of urban blight. As discussed in Comment B.42 below, Stockton already has more residential foreclosures than any other city in the United States.

Accordingly, the Draft EIR should address economic sustainability impacts that may result within the Secondary Zone of the Delta, particularly on urban areas like

Stockton and the Port of Stockton (e.g., impacts on shipping, dredging, and industrial development and operations within and in the vicinity of the Port of Stockton; agricultural operations; boating, marinas, parks, and other recreational/tourism land uses and operations; and the corresponding secondary environmental impacts that may result in increased vacancies, foreclosures, and urban blighting, etc.).

**10. The EIR Fails to Evaluate the Effect of Area of Origin Protections on the Ability to Implement Plan Policies Related to Water Supply**

The Draft EIR should acknowledge and address the fact that the Delta Plan cannot be developed, drafted, or implemented in a way that would undermine the current protections for the areas of origin, as codified in California Water Code, Section 11460. The Draft EIR should acknowledge that the Delta Plan cannot be used to prohibit water users within the areas of origin from continuing to put water to reasonable and beneficial use. The Draft EIR should note that the Delta Stewardship Council does not have authority over the diversion and use of water, and the determination of whether existing or future diversion and/or use of water complies with state law currently rests with the State Water Resources Control Board. The Draft EIR should note that the Delta Plan must not alter this regulatory framework.

**11. The EIR Fails to Recognize the Lack of Alternate Sources of Water for Delta Communities**

The Draft EIR should acknowledge and address the fact that the Delta Plan requires water users to “reduce reliance” on the Delta. The Draft EIR should note that for many local communities within the Delta, the local water supplies include the Delta and it may not be possible or practicable to find alternate sources of water. The Draft EIR should acknowledge and address the potential impacts to local water supplies and the possible environmental impacts associated with having to find alternate sources of water supplies not tied to the Delta. The Draft EIR should also discuss how the Delta Plan policies could actually inhibit regional self-reliance through the continued beneficial use of water from local sources, including the Delta.

**B. DETAILED COMMENTS**

This section provides detailed substantive and technical comments regarding specific documentation and/or determinations contained in the Draft EIR, which are listed in sequential order by page number, section, and/or line numbers, as applicable, in the Draft EIR.

1. Pages ES-2-3, Executive Summary, Description of the Project; Page 2A-3, Proposed Project and Alternatives, Sec. 2.1.2.1, Lines 24-35, Statutory Exemptions of a Covered Action; Page 2A-4, Sec. 2.2 Proposed Project; and other applicable sections of the Draft EIR:

In accordance with California Water Code, Sections 85057.5(b)(6A and B) and (7A), a "Covered Action" does **not** include the following:

- (6) Any plan, program, project, or activity that occurs, in whole or in part, in the Delta, if both of the following conditions are met:
  - (A) The plan, program, project, or activity is undertaken by a local public agency that is located, in whole or in part, in the Delta.
  - (B) Either a notice of determination is filed, pursuant to Section 21152 of the Public Resources Code, for the plan, program, project, or activity by, or the plan, program, project, or activity is fully permitted by, September 30, 2009.
- (7) (A) Any project within the Secondary Zone, as defined pursuant to Section 29731 of Public Resources Code as of January 1, 2009, for which a notice of approval or determination pursuant to Section 21152 of the Public Resources Code has been filed before the date on which the Delta Plan becomes effective.

These sections of the Water Code suggest that planned development within the Secondary Zone of the Delta was not intended to be a "covered action" within the regulatory scope of the Delta Stewardship Council. Additional statements throughout the Draft Plan and DEIR seem to confirm this. For example, the Plan policies and recommendations all relate to water use and management, water quality improvement, habitat restoration and enhancing the Delta as a place and would not apply to urban development within incorporated areas and/or the Delta Secondary Zone. Also, the EIR's statements relating to covered actions seem to indicate that land use projects in urban areas are not considered to be covered actions. For example, all of the examples of the types of projects that would be covered actions that are listed in footnote 2, DEIR p. ES-2, are water supply projects. Throughout the Project Description are discussion of the many different types of projects the Council seeks to influence; none of these is a typical land use project, such as a land use plan or development project. Also, Page 2-B2 states that the majority of other agency actions evaluated by the EIR will be noncovered actions. Appendix H lists the types of projects the DEIR states the Council intends the Plan to cover: these projects include water supply projects (including reservoirs, and desalination plants), park and habitat restoration actions, and dredging activities. Typical urban development is not included in the list of representative covered actions. Also, the DEIR states that policy RR P3 which addresses levee standards for all types of development, would "not preclude development where provided in local plans." In the population and housing

discussion, the EIR acknowledges land use changes as possible actions by others in response to the plan policies, but the only types of land use changes discussed are land fallowing, or development of new infrastructure such as wastewater treatment plants, or restoration projects. Finally, Table 22, which lists projects that the EIR does not consider to be "covered actions," and so are discussed as cumulative projects, lists the General Plan Updates for Sacramento and San Joaquin Counties as well as the Delta Protection Commission's Land Use and Resource Management Plan.

The DEIR thus strongly suggests that development undertaken pursuant to adopted land use plans of local agencies would not be considered to be "covered actions." However, the Plan and EIR's failure to clarify this issue has created substantial uncertainty among local land use jurisdictions, property owners and developers.

Based on the above-noted California Water Code Sections and the cited EIR sections, the Description of the Project and Statutory Exemptions should include a specific acknowledgment and/or clarification that existing and planned urban areas in the Secondary Zone of the Delta, including planned urban development, consistent with adopted General Plans, Specific Plans, Master Development Plans, and/or other entitlements and related certified environmental documentation, within a city's incorporated city limits and/or Sphere of Influence in the Secondary Zone of the Delta, shall be exempt from the "consistency determination" requirements for "covered actions".

By way of examples, planned development within the Secondary Zone of the Delta is covered by the City's adopted 2035 General Plan and Infrastructure Master Plans and the corresponding comprehensive Environmental Impact Report, which was certified on December 11, 2007 and a Notice of Determination, which was filed by the City on December 12, 2007, and by the San Joaquin County Local Agency Formation Commission's modified Sphere of Influence Sphere Plan and Municipal Service Review for the City, which was adopted on September 19, 2008. These plans and programs, as well as contemplated urban developments consistent with those adopted land use and infrastructure plans and implementation programs, should, therefore, be exempt from the "covered actions" provisions under California Water Code, Sections 85057.5(b)(6A and B) and (7A). Similarly, several master planned developments and related entitlements within the Secondary Zone of the Delta and the City's Sphere of Influence and/or City limits, such as the Sanctuary Master Planned Community, for which a Master Development Plan, Development Agreement, General Plan Amendments, Rezoning, a large-lot Tentative Subdivision Map, other entitlements, and corresponding environmental documents were approved/certified and a Notice of Determination was filed prior to September 30, 2009 and prior to the effective date of the Delta Plan. Such projects should also be deemed exempt from "covered actions" provisions under California Water Code, Sections 85057.5(b)(6A and B) and (7A).

Subsequent development approvals, such as small-lot Tentative Subdivision Maps, within the above-noted planning boundaries, which are consistent with the City's General Plan and approved Master Development Plans or Specific Plans, Development Agreements, and related entitlements, should also be exempt from "covered actions" provisions. This comment is consistent with the following comment and request, as previously stated in the City's September 29, 2011 comment letter regarding the 5<sup>th</sup> Staff Draft Delta Plan:

The City of Stockton and/or the Port of Stockton have several fully-entitled and environmentally-cleared development projects in the City limits located within the Secondary Zone of the Delta that are in various phases of the development process (see attached Exhibit 2). Some of those projects have approved Master Development Plans with Development Agreements, Planned Development Permits, Large-lot and/or Small-lot Tentative Subdivision Maps, or property leases, and are approaching buildout (requiring only ministerial approvals, such as Final Subdivision/Parcel Maps, building permits, etc.). Other approved master planned projects are in the early phases of the development process and may require additional discretionary entitlements (e.g., Small-lot Tentative Subdivision or Parcel Maps, Conditional Use Permits, etc.). The City respectfully requests that the buildout of those projects and future planned urban development projects in the City's corporate limits and Sphere of Influence, located within the Secondary Zone of the Delta, be exempt from the "consistency determination" provisions of the Draft Plan.

2. Pages 2A-24-25, Sec. 2.2.2 Delta Ecosystem Restoration:

This section and subsequent applicable sections of the Draft EIR should recognize and incorporate the existing and on-going habitat conservation/mitigation activities of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) as part of the existing regulatory setting and as part of the project description for San Joaquin County.

3. Page 2A-46, Overview of Improved Drinking Water and Environmental Water Quality Programs, Sec. 2.2.3.1.9 Wells:

The City (and California Water Service Company) has already implemented a program of abandoning contaminated wells, replacing them with new wells in areas with better quality water, and initiated groundwater recharge programs. However, this has limited practicality due to an over-drafted aquifer and limited surface water availability for groundwater recharge.

4. Page 2A-52, Protection and Enhancement of Delta as an Evolving Place, Sec. 2.2.5.1 Overview of the Economic Sustainability Plan:

It should be noted that the Delta Protection Commission's Economic Sustainability Plan only covers the Primary Zone of the Delta and is, therefore, incomplete. The

Economic Sustainability Plan must be expanded by addressing the Secondary Zone of the Delta and the Suisun Marsh areas to provide a comprehensive analysis of the entire Delta. Absent the completion of the Economic Sustainability Plan for the entire Delta, the Draft EIR is also incomplete with regard to addressing the potential secondary environmental effects that may result from the socio-economic/economic sustainability impacts of the Delta Plan within the Secondary Zone of the Delta and the Suisun Marsh.

See Comment A.9 above for a description of the types of reasonably foreseeable economic and land use impacts that may lead to significant physical effects.

5. Page 2A-56, Sec. 2.2.6 Recommendations for Financing Framework, Lines 31-32:

The City disagrees with the conclusion that the Finance Plan Framework recommendations shall not be considered separately in the Draft EIR. The establishment of "stressor fees" and other fees may adversely affect the ability of local agencies to implement public improvement projects, which may, in turn, result in adverse physical environmental effects if projects are delayed or abandoned. Therefore, these recommendations should be considered separately in the Draft EIR.

Moreover, information about the Finance Plan is critical to understanding the feasibility of the proposed Delta Plan, especially in relation to the alternatives. The Plan assumes that it will be successful and that the funding for Plan projects will come from entities contributing to the problem (i.e., "stressor pays"). As a result of Proposition 218, the Delta Council and potentially regulated entities such as the City lack authority to levy fees for projects such as water quality improvement projects. Instead, such fees require approval of a 2/3 vote of the electorate. History has shown that such approval is highly unlikely.

The City's efforts to increase revenues to fund stormwater quality improvements are instructive. In August of 2010, the City of Stockton mailed ballots for a vote on a Clean Water Fee for stormwater permit compliance and infrastructure operation, maintenance and repair. The existing stormwater fee of \$2.10 per month per home (without a CPI) dated from the early 1990s. The proposed fee was \$2.88, to be in addition to the \$2.10. City staff made 37 separate presentations to industrial and commercial groups, homeowner associations, rental associations and community leadership groups. Educational newsletters were mailed to 77,000 stormwater customers, a hot-line and web site was maintained, and the local government channel ran an educational video. The results of the balloting were 16,374 opposed and 7,813 in favor.

6. P. 2A-88, Section 2.3.2.4 Flood Risk Reduction, line 28:

Should include Stockton, the largest municipality in the Delta, as an example.

7. Page 3-10 Water Resources, Section 3.3.3.2. Surface Water Quality, Lines 36-43:

The statement that low dissolved oxygen is a concern in the interior Delta because of enhanced treated effluent loading from Stockton, and that loading from the Stockton Regional Wastewater Control Facility has the greatest effect in reducing DO is inaccurate. The source cited (Jassby and Hiewenhuyse, 2005) is out of date. The Final Report, Stockton Deep Water Ship Channel Demonstration Dissolved Oxygen Aeration Facility Project (ICF International, Dec. 2010) states that the Aeration Facility can increase the DWSC DO by about 1 mg/l, enough to maintain the DO objectives because the major source of inflow BOD has been eliminated since 2007 with the completion of the City of Stockton's RWCF nitrification facility.

8. Page 3-16 Water Resources, Sec. 3.3.3.4.3 Groundwater Use, Lines 3-4 and Page 3-34, Sec. 3.3.4.2.4 Groundwater Use, Lines 27-28:

The statement that the City of Stockton depends almost entirely on groundwater for its municipal and industrial water needs is incorrect. The City (and California Water Service Company) has a policy and practice of conjunctive use of surface water and groundwater, with a current allocation of approximately 75% surface water and 25% groundwater.

9. Page 4-2 Biological Resources, Environmental Setting, Sec. 4.2 Regulatory Framework:

A brief summary listing/description of all of the adopted Habitat Conservation Plans (HCPs) and Natural Community Conservation Plans (NCCPs), as described in Appendix D, should be provided as part of the environmental and regulatory setting and should be incorporated as part of the project description for the Delta Plan.

10. Page 4-3 Biological Resources, Environmental Setting, Sec. 4.3.1 Major Sources of Information:

This listing should also include the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and other adopted HCPs and NCCPs, as listed in Appendix D.

11. Page 4-67 Biological Resources, Impact Analysis, Sec. 4.4.3.1.5 Impact 4-5a, Lines 1-3:

It is noted that the Proposed Project would not affect the provisions of adopted (HCP and NCCP) plans or the long-term assurances received by the permitted entities regarding incidental take. Upon incorporation of the BDCP as an integral component of the Delta Plan, would existing adopted HCPs and NCCPs be superseded by the BDCP?

12. Page 4-72 Biological Resources, Impact Analysis, Sec. 4.4.3.2.5 Impact 4-5b, Lines 1-4:

The Draft EIR should address the potential individual and cumulative effects related to the increase in demand for lands suitable for ecosystem restoration actions associated with the implementation of the BDCP and the noted DFG Conservation Strategy and the extent to which said ecosystem restoration activities could restrict the availability of land for mitigation actions by permit holders under the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and the East Contra Costa County HCP/NCCP.

13. Page 4-110 Biological Resources, Sec. 4.5 References:

Include reference for San Joaquin Council of Governments. 2000. San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP).

14. P. 5-8, Sec. 5.3.4.2 San Joaquin River Flood Control Project, line 33:

Should Mormon Slough be on the Lower San Joaquin River Control Project?

15. P. 5-8, Sec. 5.3.4.2 San Joaquin River Flood Control Project, line 38+:

Should also include existing Paradise Cut bypass.

16. P. 5-9, Figure 5-3:

Not the San Joaquin River Flood Control Project.

17. P. 5-10, Sec. 5.3.4.3 Non-Project Levees in the Delta and Suisun Marsh, lines 17-23:

Should be rewritten. The Flood Protection Restoration Project is not a “recently initiated non-project flood protection facilities in the Delta.” The Project was completed in the late 1990s and consisted of raising existing project levees upstream of I-5 to correct freeboard deficiencies. It also did not include any new levees. The design and construction of the Project was approved/certified by USACE. As a result of the Project, FEMA did not place the greater Stockton metro area into the 100-year floodplain.

18. P. 5-13, Sec. 5.3.5.1.1 FEMA Analyses, line 3:

FEMA accepted the certification submitted by RD 17. This area no longer has a PAL designation.

19. P. 5-13, Sec. 5.3.5.1.2 FEMA Flood Areas, line 39:

FEMA accepted the certification submitted by RD 17. This area no longer has a PAL designation.

20. P. 5-14, Sec. 5.3.5.1.2 FEMA Flood Areas, line 6:

FEMA accepted the certification submitted by RD 17. This area no longer has a PAL designation. Also, typo, "Western Ranch" should be "Weston Ranch".

21. P. 5-14, Sec. 5.3.5.1.2 FEMA Flood Areas, lines 33-38:

Certification documentation for all the PAL levees in San Joaquin County were submitted to and approved by FEMA with two exceptions: i) south levee of Bear Creek west of I-5 adjacent to Twin Creeks; and ii) east levee of San Joaquin River from French Camp Slough to Stockton Deep Water Ship Channel and north levee of French Camp Slough from I-5 to San Joaquin River.

22. P. 5-15, Sec. 5.3.5.1.2 FEMA Flood Areas, line 16:

FEMA has approved the levee certifications for the Stockton, Mossdale areas with the exceptions noted in comment #20 above.

23. P. 5-20, Sec. 5.3.5.1.4 Additional Analyses, line 8:

Should be revised. If you have 100-year flood protection, there is a 26% chance of a 100-year event (not flooding because of the 100-year protection) over the life of a 30-year mortgage.

24. P. 5-20, Sec. 5.3.5.2, Earthquake Risks, line 23:

It should mention that strong ground motions will not only affect existing levees but also any new water conveyance within the Delta.

25. P. 5-24, Sec. 5.3.6 Current Levee Design Standards, line 30:

Should also include commercial/industrial structures.

26. P. 5-24, Sec. 5.3.6 Current Levee Design Standards, line 43:

Need to certify after 2015 that 200-year protection is available or adequate progress.

27. P. 5-35, Sec. 5.4.1 Assessment Methods, line 44:

Define "major development."

28. P. 5-42, Sec. 5.4.3.1.4 Impact 5-4a, lines 1-11:

The 5<sup>th</sup> Staff Draft Delta Plan, P. 166, **Levee Classifications for Protection of Land and Resources Uses**, 4<sup>th</sup> paragraph: States that "...flood hazards in the Delta cannot be eliminated... Therefore, to be assured consistency with the Delta plan, future land use decisions should not permit or encourage construction of significant numbers of new residences in the Delta in the face of the flood hazards." This conflicts with the EIR, PP. 23-30 & 23-31 which states that BDCP-related ecosystem restoration and enhancement and Delta conveyance "are not likely to expose people or structures to flood hazards....because the design of levee modifications.... would be required by federal and State law to be completed in accordance with the requirements and or guidelines of the U.S. Army Corps of Engineers..., Federal Emergency Management Agency,...Central Valley Flood Protection Board, DWR and local flood management agencies. Why are these levees "not likely to expose people to flood hazards", but levees built to the same standards to protect residences should not be permitted?

29. P. 5-69, Sec. 5.4.3.6.3 Mitigation Measure 5-4, lines 17 & 18:

Same as comment #28 above. Also, why is a conveyance facility failure "unlikely" and a levee failure around development in the Secondary Zone too risky?

30. Page 6-3 Land Use and Planning, Sec. 6.2 Regulatory Framework, Lines 12-13:

This section states that "Appendix D provides an overview of the federal, State, and regional, and local plans, policies, laws, and regulations relating to the land use and planning within the study area". However, the land use and planning sections of local City and County General Plans and regulatory documents are not listed or described in Appendix D.

31. Page 6-45 Land Use and Planning, Impacts Analysis, Sec. 6.4.2 Thresholds of Significance; Page 6-46, Sec. 6.4.3 Proposed Project; and Pages 6-62 – 6-64 Mitigation Measures:

The impact analyses, thresholds of significance, and mitigation measures addressed in relation to potential conflicts with applicable land use plans, policies, or regulations of local agencies are overly limited and inadequate for a statutory and regulatory plan of this magnitude and with such far reaching implications to affected local governments. The Draft EIR should specifically address the potential implications and any potential conflicts of the governance and regulatory provisions contained in the Draft Delta Plan on and with each of the applicable local land use plans and regulatory documents listed under Section 6.2.1 (Local Land Use Plans) of the Draft EIR.

The Delta Plan may conflict with the Stockton General Plan (approved December 2007) that includes several goals and policies (listed below) adopted for the protection of the environment and to promote infill development and redevelopment. Given this potential conflict, Stockton's growth may not be able to

proceed in an orderly, phased, manner, and infill development may be hampered (portions of the Downtown and most of the infill areas of the City are located in the Secondary Zone of the Delta). Should the Council limit or impede development in the Secondary Zone, urban sprawl into existing agricultural lands may be induced. The provision of public services may be made less efficient if the Council treats adopted land use plans as covered actions and requires changes in those plans, or projects that implement those plans. Treating adopted land use plans as covered actions will have the effect of prohibiting or limiting growth in the Secondary Zone, which in turn could cause growth to be shifted away from planned areas, with resulting unevaluated, and potentially greater, environmental impacts. If it is the Council's view that land use plans and projects implementing adopted plans constitute "covered actions," then the EIR needs to plainly disclose this and evaluate the Plan's effect on local land use decisions and development pursuant to those plans. If the Council seeks to limit or redirect growth within the Secondary Zone of the Delta, the EIR must disclose that as an effect of the Plan and disclose the types of impacts the Plan's prohibitory effect could cause.

The following General Plan Goals and Policies demonstrate the City's commitment to environmental protection and smart, sustainable growth:

**Goal LU-1** To ensure that Stockton's future growth will proceed in an orderly manner, encourage and provide incentives for infill development, prevent urban sprawl, and promote the efficient and equitable provision of public services.

**Policy LU-1.12 Commuting Distances**

The City shall strive to minimize the commuting distances between residential concentrations and employment centers by encouraging infill development and a mix of residential densities.

**Policy LU-1.13 Growth Phasing**

The City shall phase growth based on the availability of adequate water supplies, market forces, infrastructure financing capacity, and the timing of the design, approval, and construction of water supply and transportation facilities and other infrastructure.

**Goal LU-2** To promote the protection of agricultural lands outside the Urban Service Area to the north and east, and to discourage the premature conversion of agricultural lands within the Urban Service Area.

**LU-2.1 Agricultural Land Preservation**

The City shall limit the wasteful and inefficient sprawl of urban uses into agricultural lands.

Should the Council consider already adopted land use entitlements as being subject to the covered action provisions of the Delta Plan, Stockton's efforts to: reduce VMT, through promotion of an efficient arrangement of land uses, improved public transit, increased mode-share of bicycle and pedestrian travel, maximize use of existing investments in Downtown transit facilities and Bus Rapid Transit, facilitate TOD projects (including those in and around the Altamont Commuter Express (ACE) neighborhood, and encouraging job creation in the Downtown and Port of Stockton will be severely constrained. If already planned and approved development in the Secondary Zone is pushed to other areas on the edge of Stockton as a result of the Council's covered actions provisions, it would result in environmental impacts ranging from increased air pollution (including green house gas emissions), longer commute distances, less "smart growth" projects, and increased reliance on the single-occupant vehicle. Additionally, the ability of the Port of Stockton, a major economic engine in the region, to develop and produce jobs will be significantly curtailed. The City has also committed to meet the requirements of Assembly Bill 32 and the 2008 Settlement Agreement with the Sierra Club and state Attorney General, to locate 4,400 of Stockton's new housing units in the Downtown. The following Goals and Policies of the Stockton General Plan demonstrate the City's commitment to smart growth:

**Policy TC-2.17 Vehicle Miles Traveled (VMT) Reduction**

To improve air quality and reduce congestion, the City shall seek to reduce vehicle-miles-traveled per household by making efficient use of existing and planned transportation facilities; supporting policies are detailed in the City's adopted list of Reasonably Available Control Measures. These measures include:

- a. Promoting efficient arrangement of land uses.
- b. Improving public transportation and ridesharing.
- c. Facilitating more direct routes for pedestrians and bicyclists and other non-polluting modes.

**Goal TC-3** To minimize single-occupant vehicle demand and reduce vehicle emissions on the transportation system and reduce vehicle emissions by encouraging use of alternative transportation modes as well as alternatives to travel.

**Policy TC-3.8 Downtown Transit Facilities/Services**

The City shall enhance the Downtown's intermodal role by integrating mass transit facilities and services such as Bus Rapid Transit.

**Policy TC-3.9 Programs for Smart Growth/Transit-Oriented-Development**

To facilitate development of transit-oriented development projects, the City shall support and capitalize on existing and proposed "smart growth" or transit-oriented development (TOD) programs, which award funds for transportation projects to

local jurisdictions that approve building permits for compact housing and mixed use development near transit.

**Goal TC-5** To promote development of pedestrian and bikeway facilities for transportation and recreation.

**Goal TC-8** To encourage and maintain the operation of the Port of Stockton as an asset to the community and a source of jobs, while minimizing environmental impacts in accordance with CEQA.

**Goal HS-4** To improve air quality and to minimize the adverse effects of air pollution on human health and the economy.

**Policy HS4-15 Infill Near Employment**

The City shall identify and adopt incentives for planning and implementing infill development projects within urbanized areas near job centers and transportation nodes.

**Policy HS-4.20 Develop Policies Requiring Minimizing of Greenhouse Gas Emissions**

The City shall adopt new policies, in the form of a new ordinance, resolution, or other type of policy document, that will require new development to reduce its greenhouse gas emissions to the extent feasible in a manner consistent with state legislative policy as set forth in Assembly Bill (AB) 32 (Health & Safety Code, § 38500 et seq.) and with specific mitigation strategies developed by the California Air Resources Board (CARB) pursuant to AB 32. In furtherance of this effort, the City shall monitor the process by which CARB promulgates rules, regulations, limits, plans, and reduction measures pursuant to AB 32 to determine whether they result in recommended or mandatory principles or strategies by which greenhouse gas emissions reductions or minimization can be achieved through the land use planning process. If CARB does formulate any such principles or strategies, the City's own greenhouse gas emission reduction and minimization strategies shall be consistent with those promulgated by CARB. If CARB's efforts pursuant to AB 32 do not result in recommended or mandatory principles or strategies by which greenhouse gas emissions reductions or minimization can be achieved through the land use planning process, the City shall develop its own such principles and strategies. In doing so, the City shall consider the following potential mitigation strategies:

a. Increased density or intensity of land use, as a means of reducing per capita vehicle miles traveled by increasing pedestrian activities, bicycle usage, and public or private transit usage;

b. Increased energy conservation through means such as those described in Appendix F of the State Guidelines for the California Environmental Quality Act;

c. Greenhouse gas sequestration measures, such as increasing the effectiveness of carbon dioxide sinks through tree-planting, for example;

d. The payment of fair share fees, or participation in fair share measures, that are imposed pursuant to a reasonable mitigation plan under which the fair share payment or fair share participation will foreseeably result in actual, enforceable mitigation that will offset some or all of the greenhouse gas emissions of development projects (e.g., through energy conservation, greenhouse gas sequestration, or increased usage of energy sources that do not contribute, or contribute only minimally, to global warming). In order to help achieve the maximum technologically feasible and cost effective greenhouse gas emissions reductions, and in furtherance of the inter-agency coordination objectives of AB 32, such a reasonable mitigation plan may include a multiple-agency program by which City imposed fees are used to fund mitigation strategies implemented in whole or in part by regional or state agencies (e.g., the Air Resources Board, the Public Utilities Commission, or the State Energy Resources Conservation and Development Commission).

e. Public education measures intended to instruct future landowners, tenants, and users with respect to means by which they can reduce their own greenhouse gas emissions. For purposes of this policy, “feasible” shall have the same meaning as that set forth in Section 15364 of Title 14 of the California Code of Regulations and in case law interpreting the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.).

32. Page 6-45 Land Use and Planning, Impacts Analysis, Sec. 6.4.2 Thresholds of Significance; Page 6-46, Sec. 6.4.3 Proposed Project; and Pages 6-62 – 6-64 Mitigation Measures:

The Draft EIR should specifically address the potential environmental implications from the implementation of Delta Plan Governance Policy G P1 (Certifications of Consistency with the Delta Plan) on the City’s ability to implement planned urban development and infrastructure as designated in, and/or which is consistent with, the City’s adopted General Plan, Sphere of Influence/Municipal Service Review Sphere Plan, Infrastructure Master Plans (Water, Wastewater, Stormwater, Transportation/Circulation, Bicycle, and Parks), Specific Plans, Master Development Plans, and related land use entitlements and regulatory documents. The Draft EIR should also specifically address the potential individual and cumulative socio-economic, economic sustainability, and fiscal impacts and associated secondary physical environmental effects that may result should the Delta Stewardship Council (DSC) uphold appeals and/or order modifications to approved projects that effectively nullify local land use decisions within the Secondary Zone of the Delta that are consistent with local land use plans.

As mentioned above, the 2008 Settlement Agreement between the City, the Sierra Club, and the Attorney General of the state of California requires that at least 4,400 units of Stockton's new housing growth be located in the Downtown area. As previously mentioned, much of the Downtown area is located in the Secondary Zone of the Delta. The Settlement Agreement also requires that City staff submit, for City Council adoption, policies and programs (e.g. Climate Action Plan, amendments to the 2035 General Plan) that specifically direct growth to infill areas (e.g. Downtown). Should the City not be able to fulfill its commitments to accommodate new infill growth in the Secondary Zone, then Stockton will necessarily grow into areas on the urban fringe, thereby violating the intent of the 2008 Settlement Agreement, the Goals and Policies of the General Plan, and cause previously unanticipated significant environmental impacts as a result of pushing growth, including supporting utility infrastructure to the edge of the urbanized area.

The Draft EIR should address the proposed project's and alternatives' potential environmental, socio-economic, and fiscal impacts that may result should the Delta Stewardship Council (DSC) uphold appeals and/or order modifications to approved projects that effectively nullify local land use decisions within the Secondary Zone of the Delta that are otherwise consistent with the City's General Plan and other local land use plans for the western half of the City of Stockton and its Sphere of Influence. Specifically, the Draft EIR should address the effects of the potential relocation of planned development from the western half of the City and the City's Sphere of Influence to other eastern areas within and outside of the City's existing 10-year Sphere of Influence Sphere Plan. In particular, the Draft EIR should address the potential effects on groundwater supplies, water quality, traffic, noise, air quality, flood protection and storm drainage facilities, wastewater collection and treatment facilities, police and fire protection services, and other utilities and services, as well as socio-economic and fiscal impacts that may affect existing adjacent unincorporated communities, such as the Morada community on the City's northeastern border, and other developed areas and undeveloped agricultural areas on the City's eastern fringe, which are located within and outside of the City's 10-year Sphere of Influence.

33. Page 6-59 – 6-60 Land Use and Planning, Impacts Analysis, Sec. 6.4.3.4.2 Impact 6-2d, Conflict of Flood Risk Protection Policy (Reduced Risk Policy 3) with Local Land Use Plans, Lines 39-41 on Page 6-59 and Lines 1-12 on Page 6-60:

This section notes that Reduced Risk Policy 3 “requires a minimum level of flood protection based on specified levee design criteria currently used throughout the Delta” and that “this policy would not change the minimum level of flood protection on areas within urban areas (defined as an area with a population greater than 10,000) ...” Please confirm that this policy is not intended to change the existing law as it applies to the City of Stockton, with a population of over 293,000 and the remaining area within the City's 10-year Sphere of Influence Plan, is and will

continue to be subject to the current 100 year federal flood protection level, until the State's 200 year flood protection level becomes effective in the year 2025.

34. Page 7-18 Agriculture and Forestry Resources, Impacts Analysis of Project and Alternatives:

The Draft EIR should specifically address the potential environmental implications from the implementation of the Delta Plan on the conversion of agricultural land and related impacts on agricultural resources due to redirected urban development from currently designated growth areas within the City's General Plan boundaries located within the Secondary Zone of the Delta to areas located outside of the Secondary Zone. The redirection of urban development may result if the Delta Stewardship Council (DSC) upholds appeals, and/or orders modifications to approved projects such that they become infeasible thereby, effectively nullifying land use decisions, that are otherwise consistent with adopted land use plans for areas within the City's General Plan boundaries located within the Secondary Zone.

35. Page 9-13 Air Quality, Impacts Analysis of Project and Alternatives:

The Draft EIR should specifically address the potential environmental implications from the implementation of the Delta Plan on the localized air quality conditions due to redirected urban development from currently designated growth areas within the City's General Plan boundaries located within the Secondary Zone of the Delta to areas located outside of the Secondary Zone. The redirection of urban development may result if the Delta Stewardship Council (DSC) upholds appeals and/or orders modifications to approved projects such that they become infeasible, thereby effectively nullifying local land use decisions that are otherwise consistent with adopted land use plans for areas within the City's General Plan boundaries located within the Secondary Zone. Secondary impacts that could occur include, but are not limited to, increased air pollutant and greenhouse gas emissions from the construction of infrastructure to serve new growth areas as well as increased vehicle emissions from longer trips associated with growth that occurs farther from existing services and job centers.

36. Page 16-15 Population and Housing, Impacts Analysis of Project and Alternatives:

On page 16-15, the EIR's thresholds of significance for population and housing impacts address the Plan's potential to induce growth based on projects the Plan could encourage. If the Plan is intended to prevent urban development in areas where it is planned, the EIR must be revised to acknowledge this and analyze the potentially significant impacts that could occur as a result of projects the Plan prevents, not just projects the Plan encourages. For example, if the Council's actions implementing the Plan result in restrictions or prohibitions on land development in the Delta, there may be significant environmental impacts of shifting planned growth elsewhere. The Draft EIR should specifically address the

potential environmental implications from the implementation of the Delta Plan on population and housing growth and related secondary physical environmental impacts of associated urban growth due to redirected urban development from currently designated growth areas within the City's General Plan boundaries located within the Secondary Zone of the Delta to areas located outside of the Secondary Zone. The redirection of urban development may result if the Delta Stewardship Council (DSC) upholds appeals and/or orders modifications to approved projects such that they become infeasible, thereby effectively nullifying local land use decisions that are otherwise consistent with adopted land use plans for areas within the City's General Plan boundaries located within the Secondary Zone. These impacts may preclude the development of anticipated housing projects, which may, in turn, result in the City's non-compliance with our adopted Housing Element goals and in the non-achievement of our Fair Share Housing Allocation.

37. Page 17-29 Public Services, Impacts Analysis of Project and Alternatives:

The Draft EIR should specifically address the potential environmental implications from the implementation of the Delta Plan on the provision of local public services and related secondary physical environmental impacts associated with reduced service levels in existing and planned urban areas due to redirected urban development from currently designated growth areas within the City's General Plan boundaries located within the Secondary Zone of the Delta to areas located outside of the Secondary Zone. The redirection of urban development may result if the Delta Stewardship Council (DSC) upholds appeals and/or orders modifications to approved projects such that they become infeasible, thereby effectively nullifying local land use decisions that are otherwise consistent with adopted land use plans for areas within the City's General Plan boundaries located within the Secondary Zone.

As an example, if growth in a partially developed area of the City was effectively halted as a result of DSC action on a City approved project (e.g. small lot tentative map to implement a master plan development), the already developed part of the project could experience higher vacancies and foreclosures, resulting in reduced property values, lower private and public revenues (e.g. decreased rents, utility payments, property taxes), reduced or diluted City services, and increased crime. This may lead to a direct physical impact on the community in the form of blight. Such a scenario is not hypothetical in that Stockton has already experienced blight in some areas of the City where development was only partially completed as a result of the foreclosure crisis.

38. Page 19-17 Transportation, Traffic, and Circulation, Impacts Analysis of Project and Alternatives:

The Draft EIR should specifically address the potential environmental implications from the implementation of the Delta Plan on the construction, operation, and

management of the existing and planned transportation, traffic, and circulation system and related secondary environmental impacts associated with the reduced long-term operability, service levels, and function of transportation facilities and systems in existing and planned urban areas due to redirected urban development from currently designated growth areas within the City's General Plan boundaries located within the Secondary Zone of the Delta to areas located outside of the Secondary Zone. The redirection of urban development may result if the Delta Stewardship Council (DSC) upholds appeals and/or orders modifications to approved projects such that they become infeasible, thereby effectively nullifying local land use decisions that are otherwise consistent with adopted land use plans for areas within the City's General Plan boundaries located within the Secondary Zone. Secondary environmental impacts could result from, but are not limited to, the need to construct new roads and growth inducing impacts from the extension of roads to areas currently not planned for growth.

39. Page 20-6 Utilities and Service Systems, Impacts Analysis of Project and Alternatives:

The Draft EIR should specifically address the potential environmental implications from the implementation of the Delta Plan on the construction, operation, and management of the existing and planned utilities and service system and related secondary environmental impacts associated with the reduced long-term operability, service levels, and function of utilities and systems in existing and planned urban areas due to redirected urban development from currently designated growth areas within the City's General Plan boundaries located within the Secondary Zone of the Delta to areas located outside of the Secondary Zone. The redirection of urban development may result if the Delta Stewardship Council (DSC) upholds appeals and/or orders modifications to approved projects such that they become infeasible, thereby effectively nullifying local land use decisions that are otherwise consistent with adopted land use plans for areas within the City's General Plan boundaries located within the Secondary Zone.

For example, if the City's planned expansion / modification of the City's wastewater treatment plant (located in the Primary and Secondary Zone of the Delta) was for all intents and purposes stopped as a result of DSC action, the City may be forced to move its wastewater treatment facility and related utility infrastructure out of the Delta. The geographical placement of the existing wastewater treatment plant takes advantage of gravity in-flows thereby reducing energy consumption and the resultant air pollution that would otherwise be needed to pump effluent for treatment. Relocating the existing wastewater treatment plant to anywhere else (i.e higher ground) in the City, would by necessity, increase air pollution due to increased pumping and no doubt cause a significant impact on an already impacted air basin. Should other existing and planned utilities and service systems need to be planned or relocated out of the Secondary Zone due the DSC's effective prohibition on development in this area to other areas of the City (e.g.

north or east) increases in environmental impacts would occur (e.g. agricultural land conversion, increased vehicle miles traveled, air pollution).

40. Pages 20-9 - 20-10, Impact 20-2: Require or Result in the Construction of New Wastewater Treatment Facilities or the Expansion of Existing Facilities, the Construction or Operation of Which Would Have Significant Environmental Effects:

The statement that new wastewater systems are prompted by increased customer demand ignores the historic record of increasingly strict water quality regulations or that treatment plants constructed decades ago require reconstruction or the conversion to more efficient technology. Prior comments made by the City of Stockton on the Draft Delta Plan have suggested that construction at wastewater treatment plants to meet standards imposed by the Regional Water Quality Control Board should be exempt as covered actions, as the imposition of those standards are exempt from covered actions. Additionally, construction to replace aging and failing infrastructure or antiquated treatment technology should be exempt.

The City is concerned that construction of new wastewater systems could be determined to not be in conformance with the Delta Plan. In particular, wastewater treatment plants are typically constructed to use gravity to the greatest extent possible to move wastewater to the plant. Consequently, Stockton's wastewater treatment plant is located within the legal Delta. By not excluding improvements to existing wastewater treatment plants to meet standards imposed by the Regional Water Quality Control Board, the City is concerned that the Delta Plan could require such construction to be moved out of the Secondary Zone. The potential impacts of such a move would necessarily involve substantial wastewater pumping with the associated energy demand, and could involve construction of a completely new treatment facility. Such impacts are not considered in the Draft EIR and could well be considered significant.

41. Pages 20-10 - 20-11, Impact 20-3: Require or Result in the Construction of New Stormwater Drainage Facilities or the Expansion of Existing Facilities, the Construction or Operation of Which Would Have Significant Environmental Effects:

The Proposed Project does not exempt stormwater drainage facilities from covered actions. Stormwater drainage facilities, using gravity for water movement to the greatest extent possible, are, for the City of Stockton, primarily located within the Secondary Zone. The statement that new stormwater drainage facilities are prompted by increased impervious surfaces ignores the historic record of increasingly strict water quality regulations. Any decision that necessary stormwater drainage facilities are not consistent with the Delta Plan would put the City of Stockton in the untenable position of not being able to discharge stormwater from the City or not meeting imposed water quality requirements. It is difficult to imagine the potential environmental impacts of trying to move stormwater from within the Delta to outside of the Delta for discharge or treatment, particularly if

pumping plants are not exempt from covered actions. The EIR clearly does not address these potential impacts which could be significant.

42. Pages 22-2 - 22-20 Cumulative Impacts of the Proposed Project and Pages 22-20 – 22-22 Cumulative Impacts of the Project Alternatives:

The Cumulative Impacts section of the Draft EIR fails to address the potential cumulative effects of the proposed project and/or project alternatives related to environmental justice issues that may result from the implementation of the Delta Plan's policies and/or recommendations. California law (Government Code § 65040.12) defines Environmental Justice as: "The fair treatment of people of all races, cultures and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations and policies." The Draft EIR fails to acknowledge and address the fact that the City of Stockton, the surrounding metropolitan area, and San Joaquin County as a whole have been disproportionately severely impacted by the on-going economic recession and housing foreclosure crisis. For example, the potential loss of agricultural-related jobs due to conversion of agricultural land by ecosystem restoration and flood control projects associated with the proposed project will severely and disproportionately impact the existing low-income, minority population within the City and adjacent County areas within the Primary and Secondary Zones of the Delta. Specifically, the proposed project will further disproportionately impact that low-income, minority population by leading to a loss of jobs and the corresponding loss of income and resulting increase in foreclosures.

In 2007, approximately 55 percent of the City of Stockton's population was non-white, compared to 45 percent non-white in San Joaquin County or 40 percent for the state. Household incomes in Stockton are lower than incomes in the state. For example, approximately 36 percent of the Stockton households earned less than \$30,000 in 2007, compared to 29 percent of state households. Households earning \$75,000 or greater consisted of only 29 percent of Stockton households, but accounted for almost 40 percent of all California households.

In 1970 the residents of Stockton, the state of California and the nation as a whole had about the same average personal income. However, by the early 1980s, Stockton's average per capita income had decreased compared to California and national averages. From 1984 to 2006 the personal income gap between Stockton and the rest of California was four times greater (\$12,354) than it was in 1984 (\$3,091).

In 2010, the overall poverty rate for Stockton was 16.4 percent compared to 15.1 percent nationally. The change in median household income from 2007-2010 was a negative 9.4 percent. Stockton's poor population increased 56.4 percent from 2000 to 2010. According to the U.S. Census Bureau, in 2010 Stockton had the tenth highest poverty rate of all suburban areas in the nation.

At the end of 2011, Stockton had the highest foreclosure of any city in the U.S. One out every 120 homes got hit with a foreclosure filing in November, up 20% from October and 9% from November 2010. On average, foreclosures were filed on one out of every 579 homes in the U.S.

The Cumulative Impacts section of the Draft EIR should provide a programmatic environmental justice analysis of potentially disproportionately high and adverse human health or environmental effects to low-income or minority populations within the City of Stockton and surrounding County areas, consistent with the environmental justice provisions in California Government Code, Section 65040.12 and with the environmental justice guidelines for NEPA in the federal document, Environmental Justice: Guidance Under the National Environmental Policy Act (Council on Environmental Quality 1997).

43. P. 23-24, Table 23-1:

Alternative 4A increases Delta outflow up to 1.5 million acre-feet/year. All the alternatives, including the existing, should have this information.

44. P. 23-25, Sec. 23.4.1 Proposed Project, line 1:

Define “non-habitat restoration”.

45. P. 23-29, Sec. 23.6.1 Water Resources, lines 36-38:

The Proposed Project will degrade water quality at the intake for Stockton’s Delta Water Supply Project.

46. P. 23-31, Sec. 23.6.5 Agriculture and Forestry Resources, lines 39-41:

How can conveyance facilities not have a permanent impact to agriculture?

47. P. 23-34, Sec. 23.6.14 Population and Housing, line 42:

Displaced residents are to be “accommodated within the Delta area.” How can this be done if development is not allowed or severely restricted in the Delta?

### **C. CONCLUDING COMMENTS**

Based on the substantive comments provided above and those of the other Delta Initiative stakeholders, the City believes that the current Draft EIR is technically and legally inadequate, as it does not comply with the provisions of CEQA and the CEQA Guidelines. In accordance with CEQA Guidelines Section 15088.5, the City respectfully requests that the Draft EIR be redrafted to adequately address our concerns and recirculated for another 90-day noticed public review and comment period.

The City appreciates the opportunity to review and comment on the first Draft EIR for the current (Fifth) Draft Delta Plan and looks forward to the opportunity to review a subsequently revised and recirculated Draft EIR that adequately addresses a modified (Sixth) Draft Delta Plan that acknowledges and addresses the City's concerns. City staff is committed to working closely with the DSC and DSC staff in ensuring that the Delta Plan is successful in achieving the coequal goals in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

Should you have any questions or wish to discuss these comments, please contact Community Development Program Specialist Michael M. Niblock at (209) 937-8090 or City Attorney John Luebberke at (209) 937-8934.



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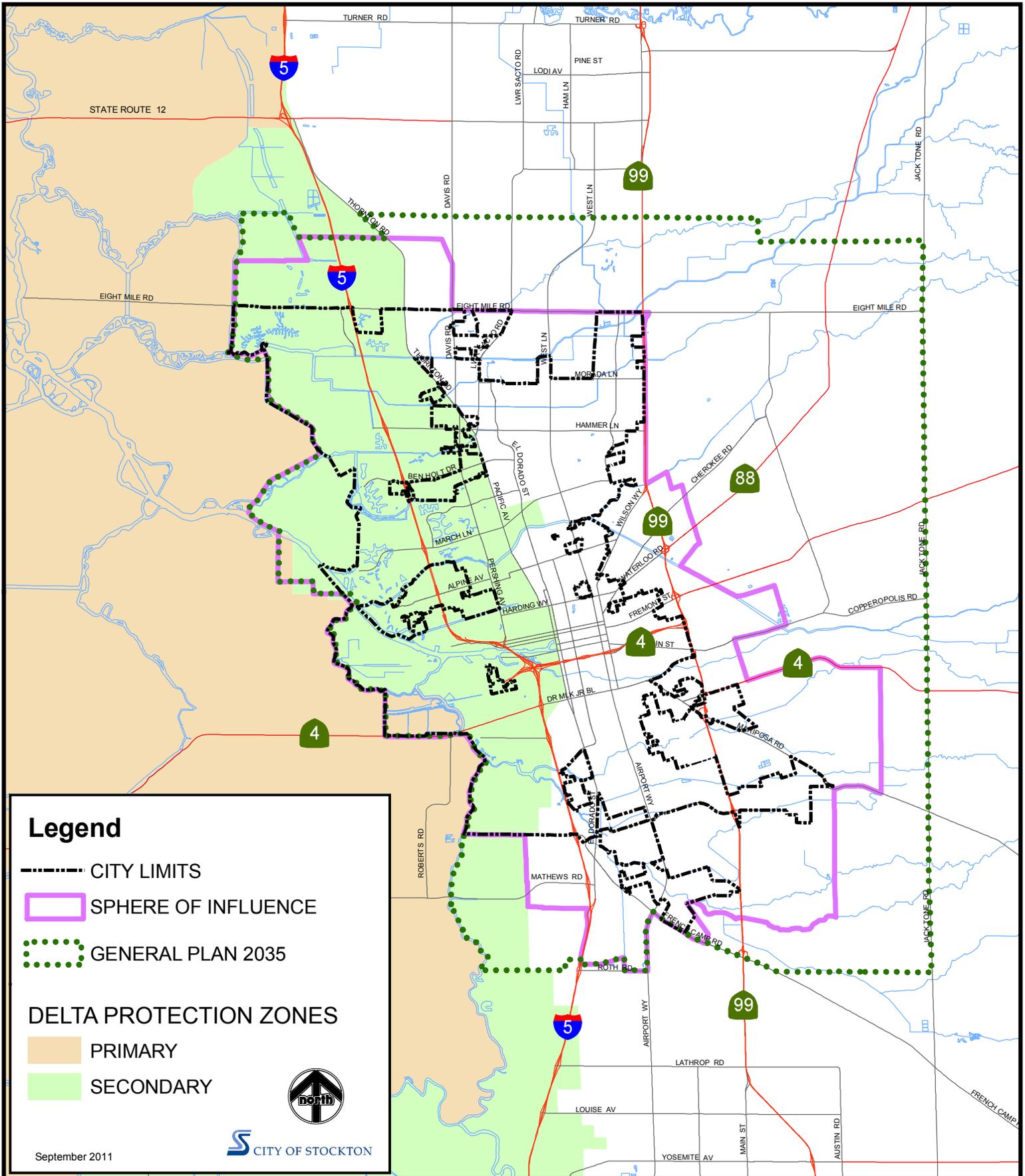
ANN JOHNSTON  
MAYOR

AJ/ML/JL/MMN:ss

Attachments

emc: Stockton City Council w/attachment  
Bob Deis, City Manager w/attachment  
Michael E. Locke, Deputy City Manager w/attachment  
John Luebberke, City Attorney w/attachment  
Jeff Willett, Acting Municipal Utilities Director w/attachment  
Michael Niblock, Community Development Program Specialist w/attachment  
David Stagnaro, AICP, Planning Manager, CDD/Planning and Engineering Services Division w/attachment  
Stockton Planning Commission w/attachment  
Stockton Development Oversight Commission w/attachment  
San Joaquin County Board of Supervisors w/attachment  
Manuel Lopez, San Joaquin County Administrator w/attachment  
David Wooten, San Joaquin County Counsel w/attachment  
Terry Dermody, San Joaquin County Special Water Counsel w/attachment  
Elena Reyes, San Joaquin County Deputy County Administrator w/attachment  
Tom Gau, San Joaquin County Public Works Director w/attachment  
Kerry Sullivan, San Joaquin County Community Development Director w/attachment  
Mel Lytle, San Joaquin County Water Resources Coordinator w/attachment  
Richard Aschieris, Director, Port of Stockton w/attachment  
Steven Herum, Legal Counsel, Port of Stockton w/attachment  
Daniel Kelly, Attorney, Somach Simmons & Dunn w/attachment  
Mike Machado, Delta Protection Commission w/attachment  
Delta Coalition w/attachment  
Dante Nomellini, Nomellini, Grilli & McDaniel PLCs w/attachment  
Tom Zuckerman, Central Delta Water Agency w/attachment  
[eircomments@deltacouncil.ca.gov](mailto:eircomments@deltacouncil.ca.gov) w/attachment





# DELTA PROTECTION ZONES / CITY BOUNDARIES

11-0334

Resolution No.

## STOCKTON CITY COUNCIL

-- A Delta Initiative of Cities and Agencies of San Joaquin County --

### RESOLUTION ON LAND USE, WATER, AND OTHER DELTA RELATED ISSUES

This Resolution is effective upon passage by the CITIES, the COUNTY AND OTHER STAKEHOLDERS WITHIN SAN JOAQUIN COUNTY, which include political subdivisions of the State of California and other interested parties, both public and private, hereinafter collectively referred to as "the MEMBERS."

#### RECITALS

**WHEREAS**, the Sacramento-San Joaquin River Delta is at risk from many factors, and in addressing these threats the State is proposing large-scale changes to the Delta ecosystem, land use authority within the Delta, water conveyance through and around the Delta, water rights, statewide management, and many other aspects related to the Delta; and

**WHEREAS**, the CITIES, COUNTY and OTHER STAKEHOLDERS as Members believe there is value in developing an initiative on issues concerning the Sacramento-San Joaquin River Delta, its watershed, and greater Bay/Delta estuary; and

**WHEREAS**, the MEMBERS wish to collectively articulate the issues and interests from the perspective of the Delta region itself, from the people who call the Delta home and best understand the tremendous resource the Delta represents; and

**WHEREAS**, the MEMBERS have identified a need for joint action, advocacy, and mutual interests on Delta-related issues.

**NOW THEREFORE**, the MEMBERS adopt this Resolution for the purpose of articulating mutual interests on Delta issues. Furthermore, the MEMBERS resolve to work together to defend Delta-related interests at a regional perspective and to use their unified voice to advocate on behalf of local government in available forums at all levels. Our principles of mutual interests are as follows:

1. Recognition of the authority and responsibility given to local government related to land use, water resource development, flood management, public health and safety, economic development and sustainable growth, agricultural stability, recreation, and environmental protection.

City Atty  
Review   
Date December 7, 2011

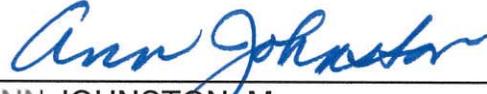
2. Protect the economic viability of agriculture, industry, recreation, and the ongoing vitality of communities throughout the Delta.
3. Represent and include local government in any new governance structures for the Delta.
4. Funding and implementation of urban and non-urban flood protection through rehabilitation, improvement, and maintenance of flood control levees and structures.
5. Protection and restoration of the Delta ecosystem including adequate water supply, quality, and outflow to support fisheries, wildlife, and habitat in perpetuity while supporting immediate improvements to the existing Through-Delta Conveyance as part of a complete strategy for the State's water management.
6. Incorporation of sustainable approaches for improved water supply, quality, and reliability through the overarching principle of regional self-sufficiency to reduce future reliance on exports from the Delta.

PASSED, APPROVED, and ADOPTED December 13, 2011.

ATTEST:

  
BONNIE PAIGE  
City Clerk of the City of Stockton



  
ANN JOHNSTON, Mayor  
of the City of Stockton

## Delta Coalition

### GOVERNMENT AGENCIES

Assemblymember 26th District	Assemblymember Bill Berryhill
Senator Lois Wolk's office	Max Vargas, Field Representative
Senator Lois Wolk's office	Dillon Delvo, Field Representative
Senator Lois Wolk's office	Mindy Simmons
Congressman McNerney's office	Gary Prost, Field Representative
Assemblymember Berryhill's office	Jennifer Bond, District Director
Assemblymember Galgiani's office	Robin Adam, District Director
Assemblymember Galgiani's office	Chanel Murray, Field Representative
San Joaquin County Board of Supervisors	Supervisor Larry Ruhstaller, District 2
San Joaquin County Board of Supervisors	Supervisor Ken Vogel, District 4
San Joaquin County	Tom Gau, Director of Public Works
San Joaquin County	Mel Lytle, Water Resources Coordinator, Public Works
San Joaquin County	John Macquire, Engineering Services Manager, Flood Management
San Joaquin County	Elena Reyes, Deputy County Administrator/Legislative Coordinator
San Joaquin County	David Wooten, San Joaquin County Counsel
San Joaquin County	Fritz Buchman
City of Escalon	Mayor Danny Fox
City of Lathrop	Mayor J. "Chaka" Santos
City of Lathrop	Glenn Gebhardt, Engineering Manager
City of Lodi	Mayor Bob Johnson
City of Lodi	Charlie Swimley, Deputy Public Works Director
City of Manteca	Steve DeBrum, Councilmember
City of Manteca	Mayor Willie Weatherford
City of Ripon	Mayor Elden "Red" Nutt
City of Stockton	Mayor Ann Johnston
City of Stockton	Vice Mayor Kathy Miller
City of Stockton	Susan Eggman, Councilmember
City of Stockton	John Luebberke, City Attorney
City of Stockton	Mike Locke, Deputy City Manager
City of Stockton	Mike Niblock, Interim Program Specialist, Community Development
City of Stockton	Jeff Willett, Interim Director of Municipal Utilities
City of Stockton	David Stagnaro
City of Tracy	Bill Dean, Development & Engineering Services
City of Tracy	Mayor Brent Ives
City of Tracy	Andrew Malik, Development & Engineering Services Director
City of Tracy	Dan Sodergren, Tracy City Attorney

## Delta Coalition

### PUBLIC AGENCIES

Business Council of San Joaquin County	Ron Addington, President/CEO
Central Delta Water Agency	Tom Zuckerman, Attorney
Greater Stockton Chamber of Commerce	Doug Wilhoit, CEO
Port of Stockton	Richard Aschieris, Director
Port of Stockton	Jeff Wingfield, Environmental & Regulatory Affairs Manager
San Joaquin Area Flood Control Agency	Jim Giottonini, Executive Director
San Joaquin Area Flood Control Agency	Juan Neira, Associate Civil Engineer
San Joaquin Council of Governments	Andrew Chesley, Executive Director
San Joaquin Council of Governments	Steve Dial, Deputy Executive Director/CFO
San Joaquin Council of Governments	Steve Mayo, Senior Habitat Planner
San Joaquin Council of Governments	Michael Swearingen
San Joaquin Council of Governments	Laura Brunn
San Joaquin Farm Bureau	Katie Patterson, Program Director
San Joaquin County Hispanic Chamber of Commerce	Mark Martinez, CEO
South San Joaquin Irrigation District	Jeff Shields
Stockton East Water Dist.	Anthony Barkett, Steering Committee Member
Stockton East Water Dist.	Karna Harrigfeld, Attorney

### PRIVATE COMPANIES

AG Spanos Companies	Natalia Orfanos, Director, Communications/Special Projects
AG Spanos Companies	David Nelson, Attorney
Building Industry Association	John Beckman, CEO
Grupe Company	Nelson Bahler, Attorney
Herum Crabtree	Steve Herum, Attorney
Neumiller & Beardslee	Rod Attebery, Attorney
Nomellini, Grilli & McDaniel	Dante Nomellini, Attorney
River Islands at Lathrop	Susan Dell'sso, Project Director
River Islands at Lathrop	Ramon Batista

### ENVIRONMENTAL GROUPS

CA Sportsfishing Protection Alliance (CSPA)	Bill Jennings, Executive Director
Restore the Delta	Barbara Barrigan-Parilla, Campaign Director