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September 30, 2011

Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

Subject: Delta Plan Fifth Draft Comments

Dear Chairman Isenberg and Mr. Grindstaff:

Glenn-Colusa Irrigation District (GCID) appreciates your consideration of the following comments as the Council and staff continues to develop the Delta Plan (Plan) and attempt to meet the schedule mandated by the California Legislature. As the Council continues through its process, now with the Fifth Staff Draft, we recognize the continued improvement in how the Council intends to implement the Plan, especially as it pertains to agencies and regions situated in the delta watershed. While we, like others, tend to view issues from our own perspectives and regions, there is general consensus that the Delta is need of attention. This need precipitated the establishment of the Delta Stewardship Council and is the subject of the Plan. The critical question is how to complete a comprehensive Plan in the short timeframe prescribed by the Legislature and to ensure it can be effectively implemented. Successful implementation will be the measure of the Plan's success over time.

With that context in mind, we provide you with the following comments:

Chapter 2. Adaptive Management Framework

The principle underlying the Adaptive Management Framework for the Plan appears appropriate in linking Goals and Objectives to Proposed Actions, which is critical to insure that actions are tied to expected results and outcomes. The Plan contains various levels of policies and recommendations but there no discussion on how those actions would ultimately meet the coequal goals of water supply reliability and ecosystem restoration in real terms.

The Plan should continue to develop this type of analysis and identify how various results and/or outcomes of the actions and recommendations in Chapter 4 (water supply) and Chapter 5 (Ecosystem Restoration) further achieve the coequal goals. By describing expected real outcomes, later Councils will have the opportunity to determine whether actions have in fact resulted in expected outcomes, rather than hypotheticals.

The Delta Independent Science Board's (DISB) September 16, 2001 Memorandum to the DSC on Chapter 2 summarized the description of adaptive management as "abstract". We agree and would recommend that the Adaptive Management Framework provide a more detailed discussion of how adaptive management would actually occur in the context of the Plan and provide those examples within the Plan.

Chapter 3. Governance (Covered Actions)

While the Plan attempts to add clarity to the concept and coverage of "covered actions," the Plan remains unclear with regard to what may or may not be a covered action for activities that take place outside of the legal Delta. The potential for confusion and need for clarification was somewhat obvious at the DSC's September 15, 2011 workshop on covered actions and governance. A consistent understanding of covered actions will be critical to the successful implementation of the Plan.

The potential confusion and inconsistencies appear, for example, when comparing the Plan's covered action "Decision Tree" (Figure 3.2) with the regulations and recommendations for actions outside the boundaries of the Delta (page 56 lines 11-12). The Figure 3.2 decision tree shows that if an action is outside the boundaries of the Delta it is NOT a covered action, yet the text on page 56 suggests that diversions upstream, irrespective of whether the project is located in whole or part in the Delta, are within the purview of the Plan and could be considered a covered action. The DSC should provide more clarity as to the geographic scope of the application of the "covered action" provisions in the Plan. Perhaps a list of sample projects and locations would be helpful.

Chapter 4. Reliable Water Supply (Flows)

The Plan identifies, as a "problem statement" on page 86, the inability of the State to plan, finance, and construct new conveyance and storage facilities without having new/updated Bay Delta Water Quality Control Plan and flow requirements.

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The Plan identifies a proposed policy, Policy ER P1 to address this problem. Policy ER P1 provides timelines within which the State Water Resources Control Board (SWRCB) should update the Bay-Delta Water Quality Control Plan, adopt and implement updated flow objectives for the Delta, and develop flow criteria for high priority rivers in the Delta watershed necessary to achieve the coequal goals.

Policy ER P1 recognizes a significant issue and attempts to achieve a laudable goal. However, Policy ER P1 has the potential to conflict with the ongoing Bay Delta Conservation Plan (BDCP) and intrudes upon the SWRCB's jurisdiction.

As the Council is aware, the BDCP is currently underway. As part of the BDCP process, various local, state, and federal agencies will analyze various flow regimes for the Delta thought to be necessary to protect various beneficial uses in the Delta. The current schedule for the BDCP calls for a public draft HCP and environmental document by June 2012 with a final document and record of decision by early 2013.

The SWRCB has been in contact with the BDCP regarding the required environmental analysis and range of alternatives that must be considered as part of the environmental analysis for BDCP. The SWRCB's most recent communication on this issue, dated August 24, 2011 attached hereto, also identifies additional analysis the SWRCB will undertake as part of its CEQA obligations. With the significant work being undertaken as part of the BDCP, it makes little sense to require the SWRCB to proceed on a separate but parallel track to the BDCP to develop information to develop flows for the Delta. These processes could create divergent results, which would lead to further delays in implementing a Delta solution. The Delta Plan should recognize this work and not require the SWRCB to engage on a parallel track. Further, the SWRCB, pursuant to 85086(c)(2) cannot approve a change in point of diversion for the BDCP petitioners unless there has been appropriate flow criteria and analysis. Therefore, for the Plan to recommend timelines that are inconsistent with other processes seems inconsistent and inefficient.

Moreover, ER P1's recommendations should the SWRCB not meet the deadlines in Policy ER P1 have the potential to impede the beneficial use of water, including water for environmental uses, and impedes on the SWRCB's jurisdiction over the appropriation of water.¹ As the Plan recognizes, the SWRCB is the state agency with the statutory

¹ Existing statutes and regulations place significant restrictions and requirements on the SWRCB when it sets water quality standards. For example, the SWRCB is required to analyze, among other things, "reasonable alternatives" to proposed flow objectives and is required to consider under Porter-Cologne, the Clean Water Act, and EPA's regulations in developing binding water quality criteria. (See e.g. Cal. Code Regs., tit. 23, § 3777(a)(2); 33 U.S.C. § 1313(c); Wat. Code, § 13241; 40 C.F.R.

authority to administer state-issued water rights and is the state agency charged with enforcing the Constitutional limitations on the diversion and use of water. Any attempt, through the Delta Plan, to constrain the SWRCB's authority in the realm of water rights will likely be unlawful. Moreover, a "rule" that would impose a mandatory finding of inconsistency would likely bring water transfers to an abrupt halt, and prevent the lawful appropriation of water in the entire Delta watershed for any beneficial purpose.

A more appropriate approach is to recognize the SWRCB's authority in this regard and, to the extent new flow criteria are not developed, proposed projects can simply be measured against the Delta Plan and the coequal goals. Thus, in making discretionary decisions involving the diversion and use of water, the SWRCB would continue to consider the statutorily mandated criteria, competing uses, public trust issues, constitutional requirements, and, for covered actions, the coequal goals.

Chapter 5. Restore the Delta Ecosystem

Chapter 5 places much significance on creating "a more natural flow regime" and makes reference to information contained in the Ecosystem Restoration Program Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Regions (ERP) report, which is still in draft. As discussed in the comments on Chapter 4, above, the Plan's reliance on the SWRCB setting new flow objectives in accordance with ER P1 is problematic. In addition to that discussion, the Plan recognizes that the 2010 Flow Criteria Report protected fisheries but failed to address all other public trust resources. Even with this significant omission in the 2010 Flow Criteria Report, the Plan proceeds to rely on some of the recommendations from the Report. Recommending the adoption of criteria that lacked any public trust balancing and ignored other public trust resources is not productive and does not pass the co-equal goals test. Not only does the ERP Report fail to recommend implementing the criteria – it does not even consider any of Report's findings. (see attached letter from GCID to DWR on the ERP report raising this issue)

Another concern is that the Plan recommends a change in flow regime, identifies required timelines for the SWRCB to develop new objectives, with the assumption that the new flow objectives will be consistent with the Delta Plan, without providing any guidance to the SWRCB on, for example, how public trust balancing occurs in the context of meeting the coequal goals. The Plan will fail if it doesn't identify the balancing the Plan must do itself which is essence meeting the co-equal goals.

(§§ 131.10-131.11.) With the time that will likely be required to amend the Water Quality Control Plan and hold a water right proceeding, it is almost certain that the SWRCB will not meet the deadlines set forth in the Plan.

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Conclusion

GCID appreciates the changes within the Fifth Draft and believes the Plan is continuing to improve. We look forward to continuing to work with the DSC to develop a workable and meaningful Delta Plan that makes progress towards achieving the coequal goals.

Sincerely,

A handwritten signature in black ink, appearing to read "Thaddeus L. Bettner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Thaddeus L. Bettner
General Manager



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

August 24, 2011

Gerald H. Meral, Ph.D.
Deputy Secretary
Bay Delta Conservation Plan
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Dear Dr. Meral:

ENVIRONMENTAL ANALYSES IN SUPPORT OF THE BAY DELTA CONSERVATION PLAN

This letter is a follow-up to the April 19, 2011 letter I sent you regarding environmental analyses conducted in support of the Bay Delta Conservation Plan (BDCP). Subsequent to that letter, State Water Resources Control Board (State Water Board) and Department of Water Resources (DWR) staff have had constructive discussions and developed preliminary model runs to explore what could be a useful additional alternative that achieves increased Delta outflows. The goal of these discussions and model runs has been to model an increase in Delta outflow, above that achieved in alternative four (per the September 1, 2010 BDCP "Modified Array of Alternatives"), that would result in:

- no negative effects on cold water pool storage;
- not drawing down Sacramento Valley groundwater levels;
- no decreased water supplies other than south-of-Delta Central Valley Project (CVP) and State Water Project (SWP) deliveries.
- no failure to deliver San Joaquin River exchange water rights; and
- no failure to deliver refuge water.

Our staff has identified a modified alternative four that achieves these goals. Additional model iterations are needed to determine the precise constraints and results, including the effect on Delta outflow. Staff expects the modified alternative will result in an average increase of Delta outflow, relative to alternative four, of between 0.8 and 1.2 million-acre-feet per year, with an associated westward shift in X2. Staff expects to confirm the results by September 2, 2011. Consideration of this modified alternative four would satisfy the State Water Board's suggestion for BDCP to consider a reasonable range of alternatives.

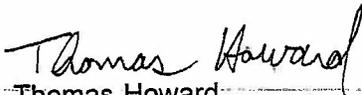
The State Water Board, however, will still need additional analyses to support changes to the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta Plan). These additional analyses do not need to be part of the California

August 24, 2011

Environmental Quality Act (CEQA) analysis for the BDCP. The State Water Board's environmental documentation will evaluate a reasonable range of interim and long-term alternatives, which will need to consider measures beyond the scope of the BDCP. These alternatives may include the evaluation of additional flow from upstream water sources for the purpose of meeting outflow or other objectives. The State Water Board is required to develop and evaluate such alternatives to meet our obligations under CEQA to evaluate a reasonable range of alternatives.

Thank you for the modeling support you have already provided. We appreciate your offer to continue to assist with modeling and analyses. Please contact me at (916) 341-5615, or Mr. Les Grober at (916) 341-5428 or lgrober@waterboards.ca.gov to discuss this matter further.

Sincerely,



Thomas Howard
Executive Director

cc: Mr. Mark Cowin, Director
California Department of Water Resources
P.O. Box 942836, Room 1115-1
Sacramento, CA 94236-0001

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AUG 25 2011

RESOURCES AGENCY OF CALIFORNIA

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& Dunn

September 6, 2011

Mr. Chad Dibble
Department of Fish and Game
830 S Street
Sacramento, CA 95811
Via Email: cdibble@dfg.ca.gov

SUBJECT: Draft Ecosystem Restoration Program Conservation Strategy

Dear Mr. Dibble:

Glenn-Colusa Irrigation District (GCID) appreciates the Department of Fish and Game (DFG) seeking comments on the subject Draft Ecosystem Restoration Program Conservation Strategy report (ERP). GCID's comments are related to how the report should fulfill DFG's statement of "coordination between all resource management, conservation, and regulatory actions", which is part of the following statement on page 2 of the Introduction:

The Conservation Strategy serves as an update to the ERP Strategic Plan and follows the principle of a single-blueprint for ecosystem restoration and species recovery in accordance with the principles of ecosystem-based management. Having a single-blueprint is a key ingredient for a successful and effective restoration program. This single-blueprint is the vehicle for ensuring coordination between all resource management, conservation, and regulatory actions affecting the Bay-Delta ecosystem, and it facilitates consistent adaptive management of all restoration activities in the Bay-Delta ecosystem and of the ERP plans themselves.

Background

GCID is located in the heart of the Sacramento Valley and is the largest and one of the oldest diverters of water from the Sacramento River. GCID diverts water from the Sacramento River through its fish screen and pump station into a 65-mile long irrigation canal into a complex system of nearly 1,100 miles of laterals and drains irrigating approximately 141,000 acres of valuable, productive agricultural land. Additionally, GCID delivers water to three wildlife refuges – the Sacramento, Delevan and Colusa National Wildlife Refuges that comprise an additional 20,000 acres of critical wildlife habitat. Farmers within GCID grow such

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diverse crops as rice, wheat, tomatoes, cotton, corn, walnuts, almonds and pistachios, which are shipped across the nation and the world. GCID also delivers water in the fall and winter to over 30,000 acres of private farmland which is used for wintering habitat and food for migrating waterfowl and other aquatic and terrestrial species. In an on-going process, GCID performs the "*coordination between all resource management, conservation, and regulatory actions*" within its own boundaries based on both complimentary and sometimes competing resources needs. We appreciate the complex role DFG must assume to essentially balance this coordination effort.

Instream Flow Criteria Report vs. ERP Implementation

As stated on Page 4 of the ERP, the Delta Reform Act of 2009 required the State Water Resources Control Board (SWRCB) to develop flow criteria for the Delta by 2010 and for DFG to develop flow criteria and quantifiable biological objectives for aquatic and terrestrial species of concern in the Delta, also by 2010. In response, DFG prepared its "Quantifiable Biological Objectives and flow criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta."

Aside from the Introduction, the SWRCB and DFG flow criteria reports, or the flows prescribed therein, are not referenced anywhere within the subject ERP. Table 1 states that the Flow Criteria would meet Goals 1-4; however, this ERP would meet all goals identified in the Table. The question must be asked then of what role, if it all, does the Flow Criteria report serve to meet goal of "*coordination between all resource management, conservation, and regulatory actions*".

To understand what actions DFG will recommend in the future, the ERP should clearly articulate how it intends to utilize the flow reports or how DFG would make recommendations to other agencies, such as the SWRCB. Will DFG be advocating implementation of the ERP or the flow criteria reports, or both?

Based on GCID's in-depth review of the ERP, it is in-fact an effort to address the "*coordination between all resource management, conservation, and regulatory actions*" while looking at the delta and watershed as a whole and at aquatic and terrestrial species that rely upon these regions as well. As stated by the SWRCB, the flow reports assumed there was no balancing or "coordination" among public trust resources and that the delta and its fisheries would be "restored" at the potential expense and eradication of resources in regions outside the delta. The ERP should clearly articulate this difference and DFG should adopt a policy that states how it intends to proceed with implementation of restoration activities.

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Section 2: Sacramento Valley Region

Since GCID is located within the Sacramento Valley region, we have limited our comments to this section of the ERP as follows:

1. Some of the information in this section appears dated and does not reflect the current operations or status of species in the Valley. The Northern California Water Association is submitting comments prepared by biologist David Vogel which provides a list of corrections and deficiencies the Report should address.
2. In Section VII, Stage 2 Actions, the ERP provides flow, hydrodynamic, floodplain and habitat recommendations. As stated in the above section, the ERP does not mention or reference the Flow Criteria reports or the flow recommendations included therein. Certainly, the flows recommended in Section 2 of the ERP are significantly less than those within the Flow Criteria and appear to provide for the coordination of resources. The attached charts show that if the Flow Criteria report were implemented Shasta Reservoir storage in September would reach dead pool in close to 60% of all years. Even in years when storage is above minimum, it would be impossible to satisfy upper Sacramento River temperature objectives in almost every year as recommended in the ERP. It may be possible to meet temperature objectives in less than 10% of years; however, reductions in Keswick release from June through November will cause increased warming making it more difficult to meet objectives.
3. In Section VII, Stage 2 Actions, the ERP states that agricultural lands should be managed to provide wildlife values. Similar to above, the Flow Criteria report recommendations would result in catastrophic impacts to water supply availability to keep ag lands in production. The attached charts show that if the Flow Criteria report were implemented the impact to Sacramento valley water supply would be approximately 1.7 million acre-feet annually and groundwater pumping would be significant in order to replace lost supply, or alternatively, wide scale land fallowing would occur in the valley. The ERP should provide some context to this issue.

GCID appreciates the opportunity to provide comments. If you have further questions or would like to meet to discuss our comments in more detail, please contact me at (530) 934-8881.

Sincerely,



Thaddeus L. Bettner, PE
General Manager

These changes are due to SWRCB / DFG Delta flow criteria.

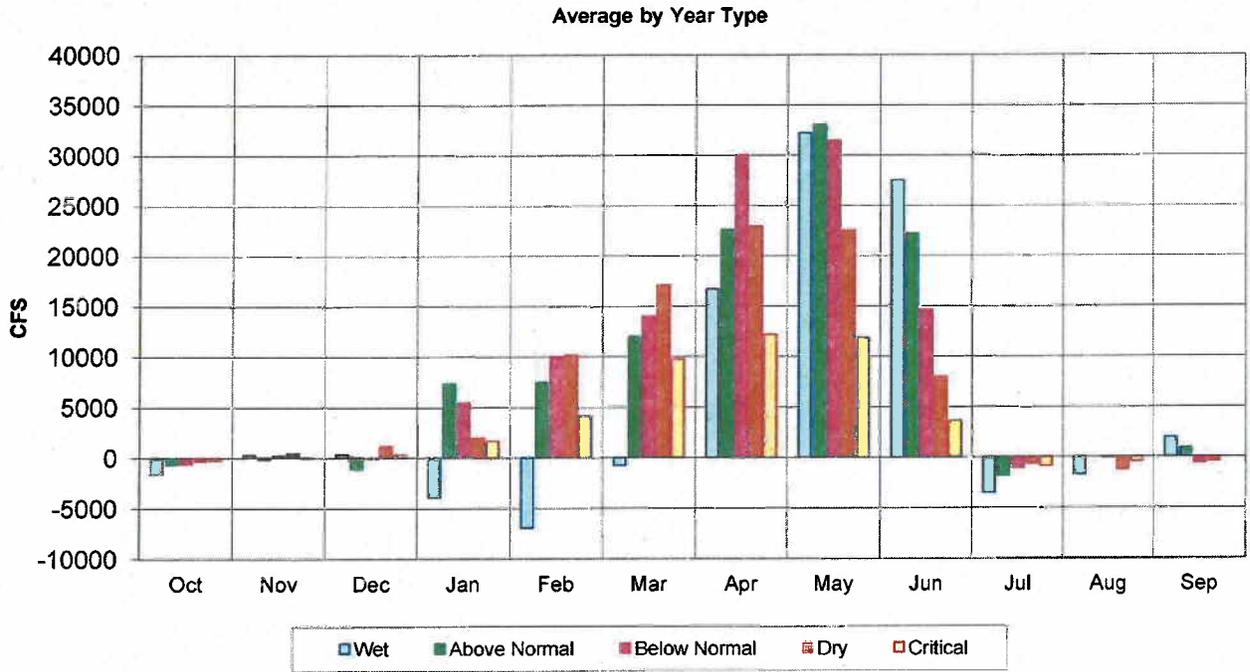
Vernalis - 60% of unimpaired from February through June

Delta Outflow - 75% of unimpaired from January through June

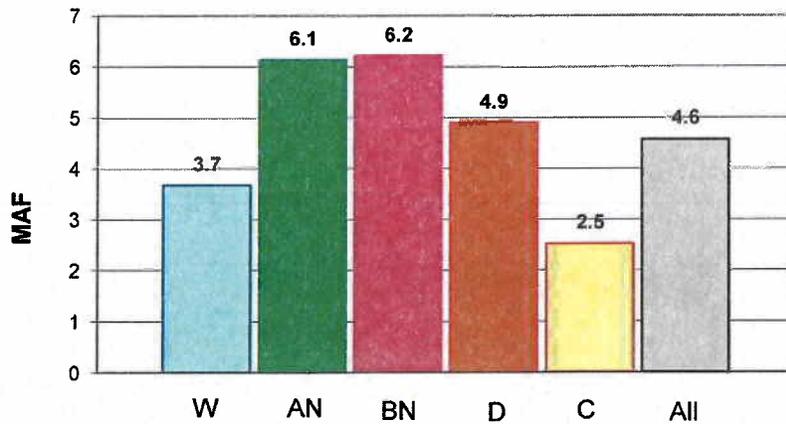
Sac. River at Rio Vista - 75% of unimpaired from November through June – this requirement was modeled as 75% of unimpaired Sacramento River at Hood plus Yolo Bypass flow into the Delta. This is a more conservative (less water cost) than is modeled at Rio Vista.

Total Sac Basin water supply impact is $900+800 = 1.7$ MAF
 Change in Export = 2.8 MAF
 Change in Vernalis flow = 0.8 MAF
 Total = 5.3 MAF

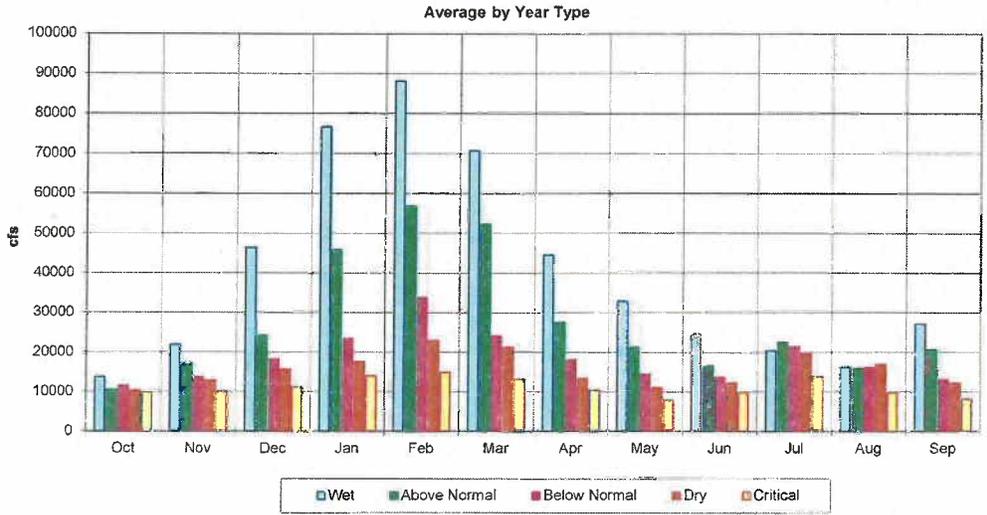
Change in Delta outflow



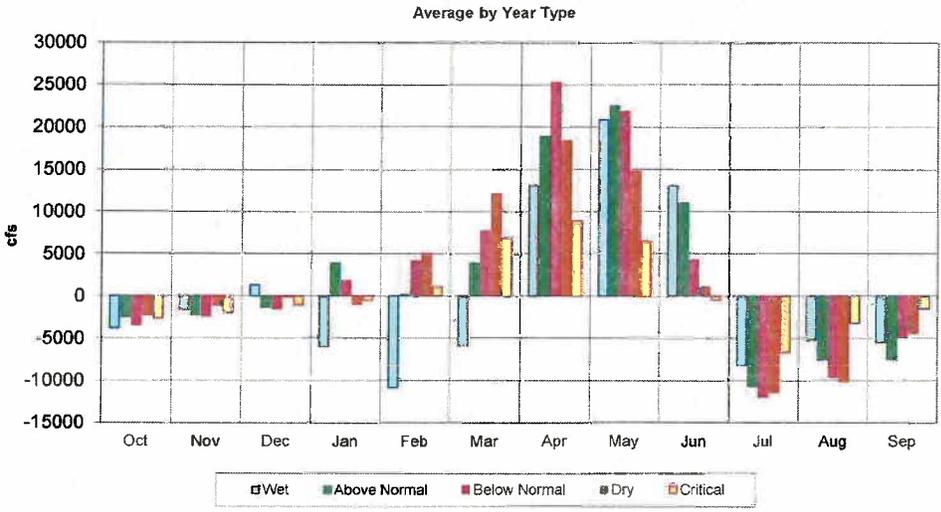
Annual change in Delta outflow



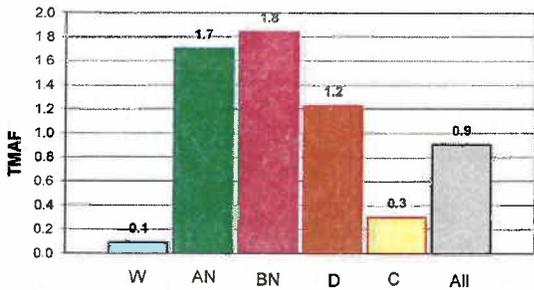
Sac R plus Yolo BYPS inflow to Delta



Change in Sac R plus Yolo BYPS inflow to Delta



Annual Change in Sac R plus Yolo BYPS inflow to Delta (MAF)

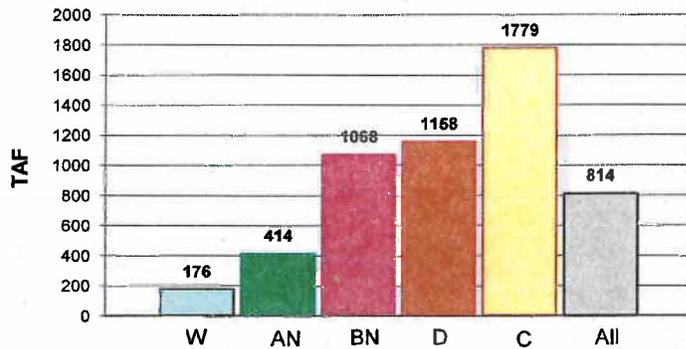
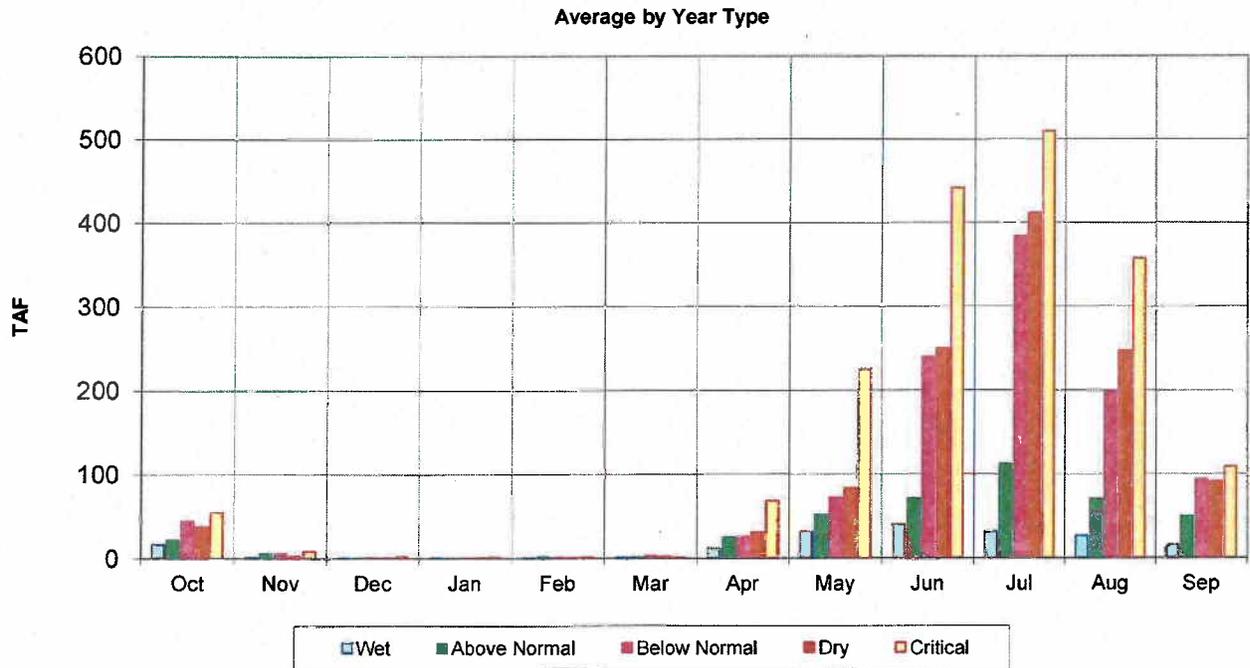


Change in GW pumping in Sac V

Existing pumping according to CalSim (very rough) = 2.385 MAF

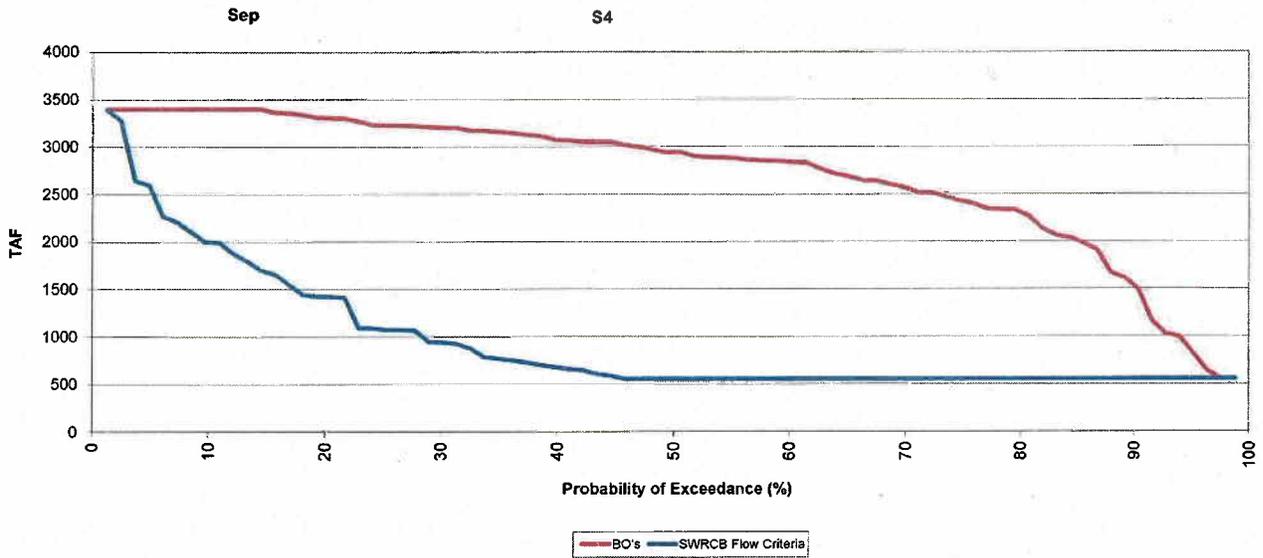
Pumping with SWRCB flow criteria = 3.198 MAF

This level of increased pumping is not physically possible. Although the model will increase groundwater pumping to satisfy all demands, there would most likely be a reduction in crop acreage and refuge water supply.

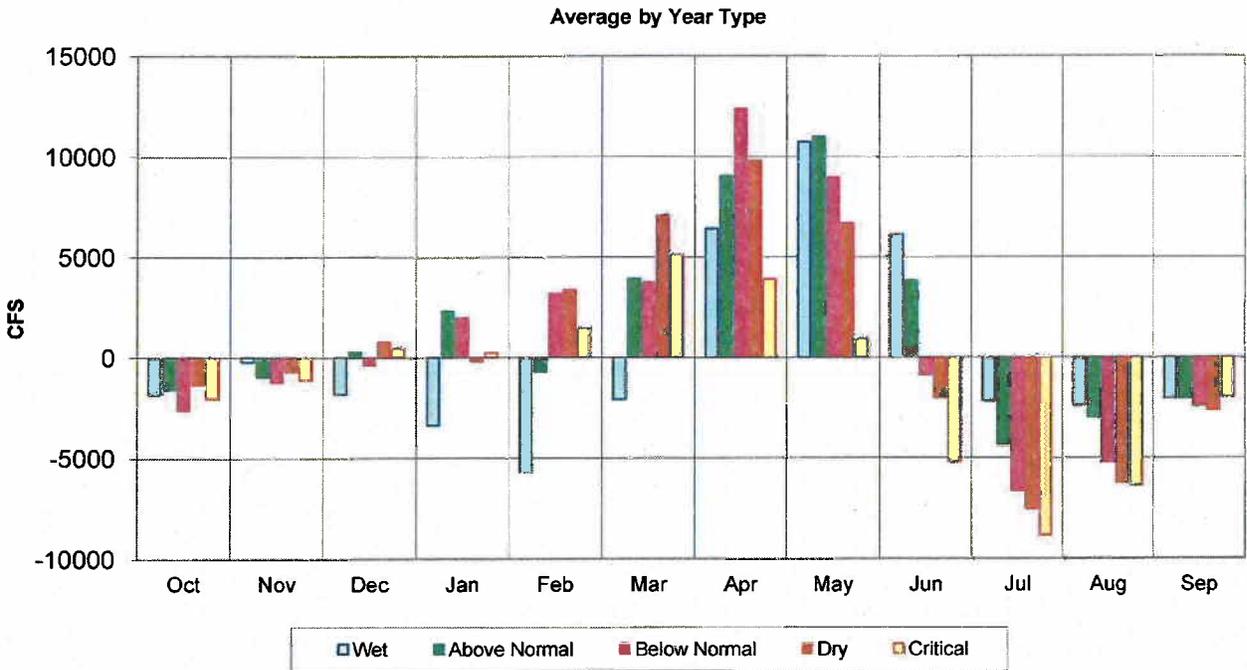


End of September Shasta Storage

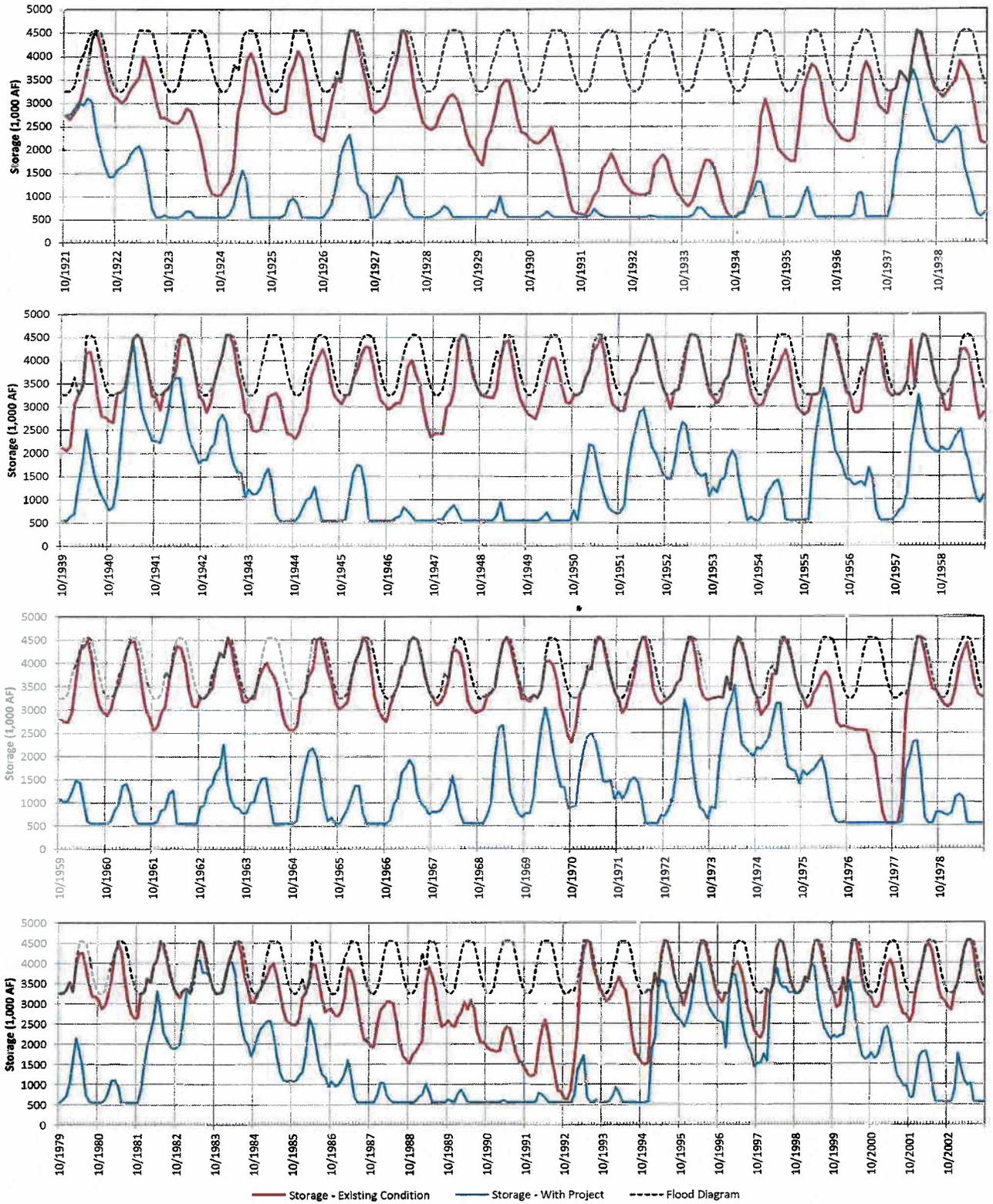
Shasta storage would be dead pool in close to 60% of all years. Even in years when storage is above minimum it would be impossible to satisfy upper Sacramento River temperature objectives in almost every year. It may be possible to meet temperature objectives in less than 10% of years; however reductions in Keswick release from June through November will cause increased warming making it more difficult to meet objectives.



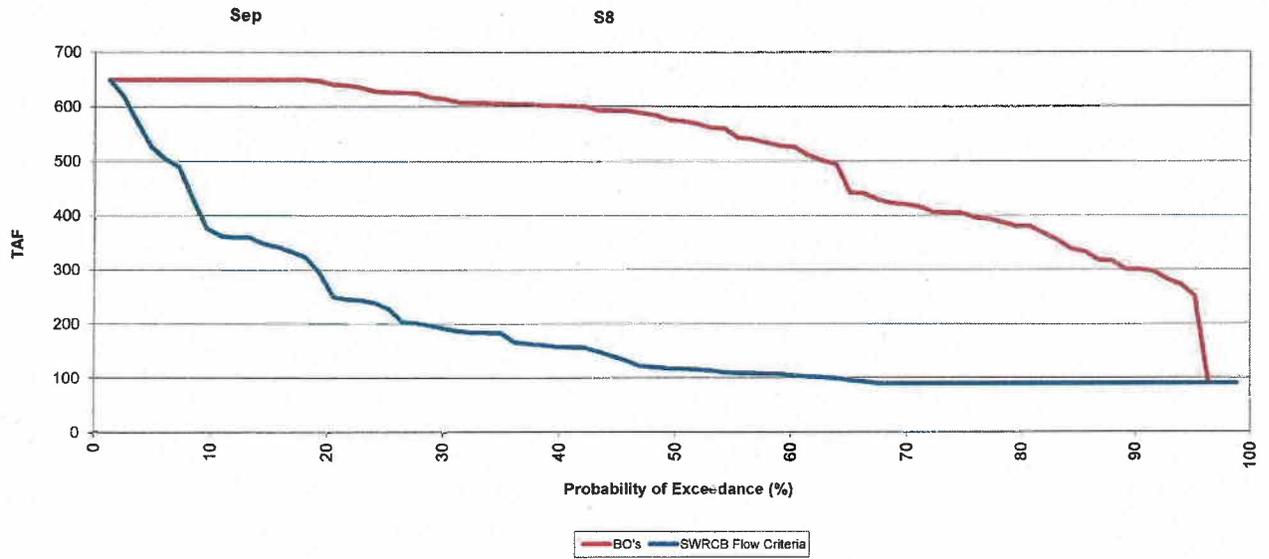
Change in Keswick Release



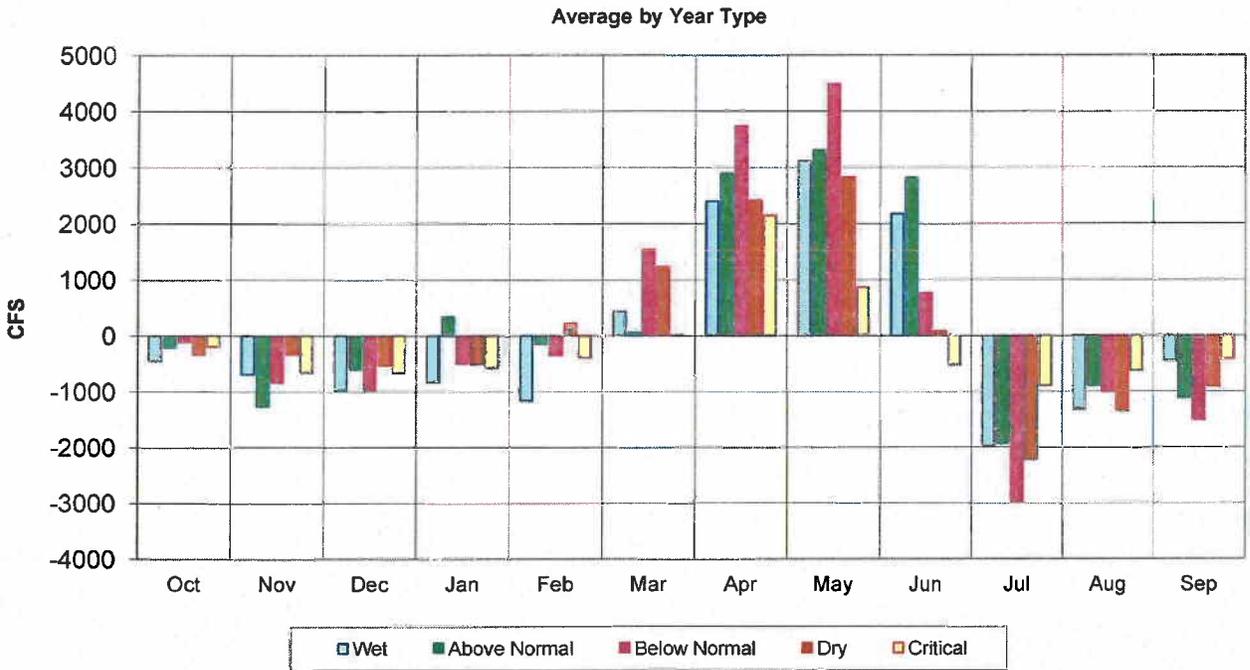
Shasta Storage



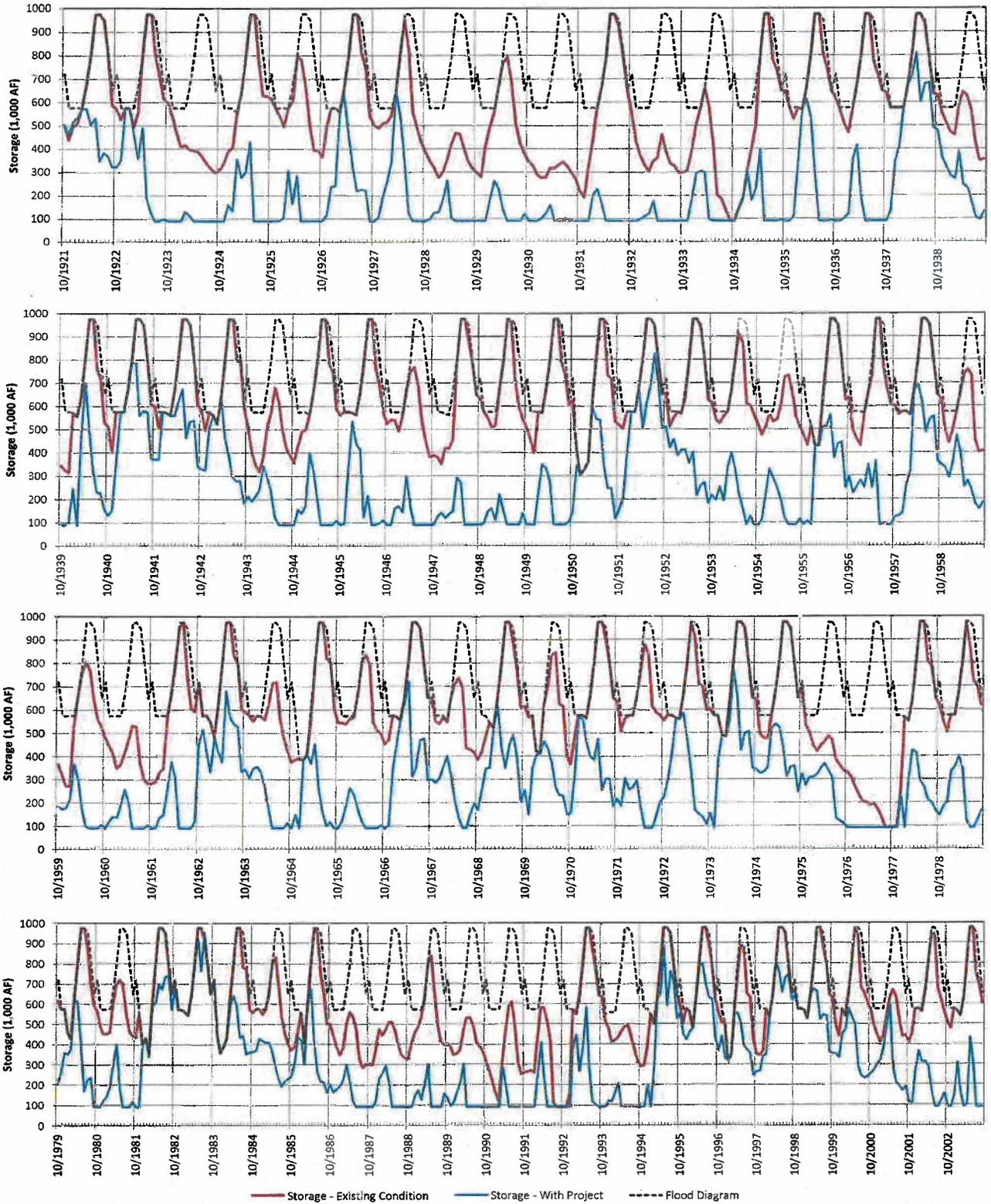
Folsom Storage



Change in American River flow below Nimbus

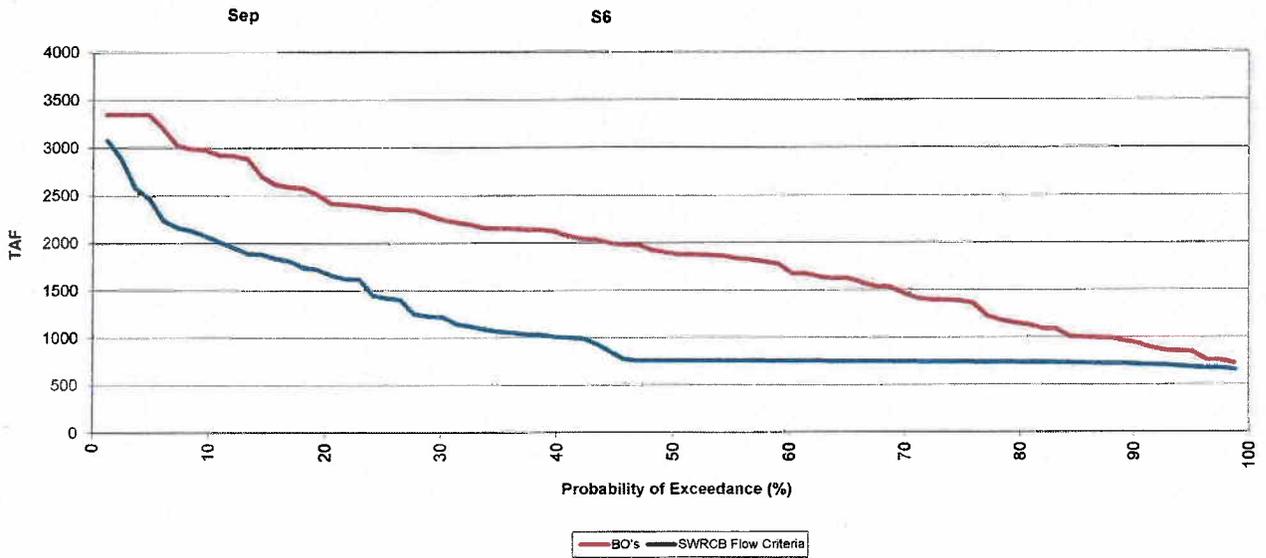


Folsom Storage

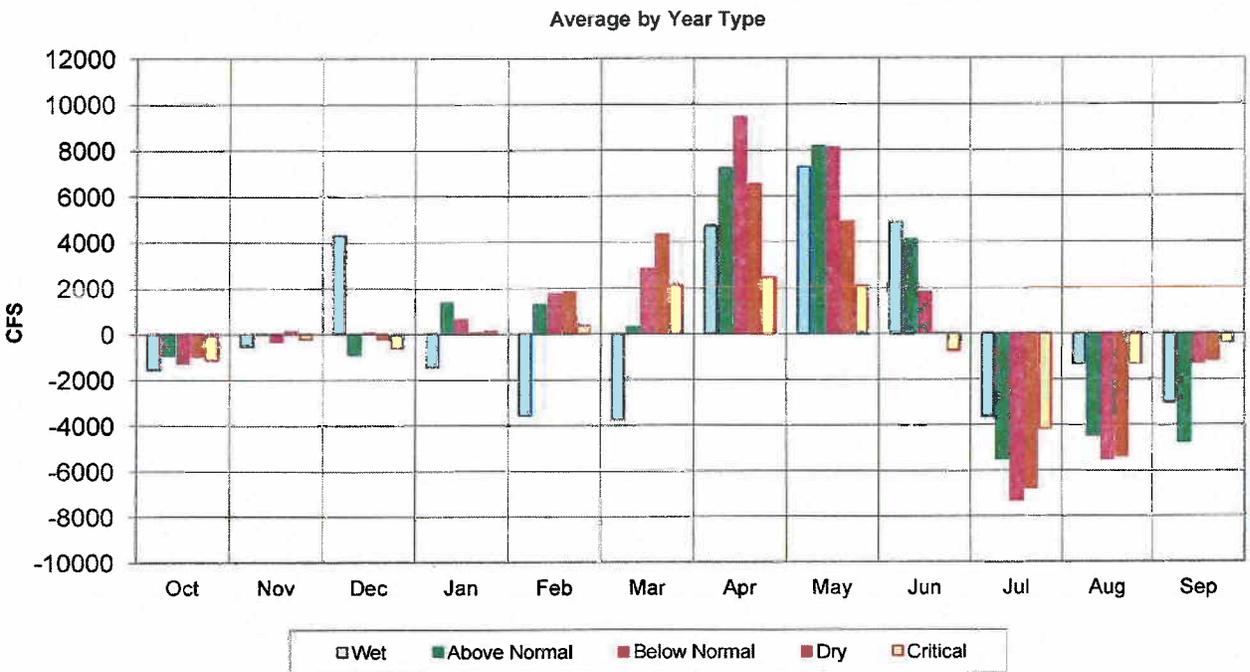


— Storage - Existing Condition — Storage - With Project - - - Flood Diagram

Oroville storage



Feather River below Therm return



Oroville storage

