



*To advance the economic, social and environmental sustainability of Northern California
by enhancing and preserving the water rights, supplies and water quality.*

September 30, 2011

Mr. Joe Grindstaff
Executive Officer
Delta Stewardship Council
980 9th St, Suite 1500
Sacramento, CA 95814

Re: Delta Plan – 5th Draft

Dear Mr. Grindstaff:

The Northern California Water Association (NCWA) and water resources managers in the Sacramento Valley have reviewed the Fifth Draft of the Delta Plan (Plan) and we have participated in numerous discussions with the Delta Stewardship Council (DSC), as well as the diverse parties interested in developing a meaningful Plan. In participating in these discussions and reviewing the draft Plan in detail, it has become fairly obvious that the draft Plan's approach to flows misses the mark and defies the co-equal goals at the heart of the Delta Reform Act. By establishing the policies in the way they are characterized in the draft Plan, the DSC has fallen prey to an old approach that pits competing demands for water against each other and simply perpetuates the litigation cycle that now pervades the Bay-Delta. We believe the DSC has an opportunity to help break out of this cycle, but to do so will require the DSC to consider a more thoughtful approach, such as the reconciliation approach articulated by the Public Policy Institute (PPIC) of California in "Managing California's Water: From Conflict to Resolution" (2011).

Approach. The draft Plan is pervasive with a flow concept that reveals a strong bias and pre-determined path for more flows in the Delta that does not provide a more thoughtful approach that will be necessary for a successful Delta Plan and achievement of the co-equal goals. Most notably, the policy discussion under "Creating a More Natural Flow Regime" reveals this focus on only one stressor in the Delta ecosystem, likely at the expense of other public trust values in both the Delta and in areas upstream of the Delta, as well as disregarding other stressors that may be truly impacting the Delta ecosystem. Restoring the natural hydrodynamic belies that we have a state with thirty-eight million people and our State has built a flood protection and water supply system to support these people, while furthering our collective desire to improve the ecosystem. It is also contradictory to propose a more natural hydrodynamic and yet make increased Fall X2 a central objective of the Delta Plan.

Instead, if the DSC is serious about the Delta ecosystem, the PPIC suggests we reconcile the various challenges in the Delta. "Reconciliation actions do not bring back pristine or even historical conditions; rather they create environments that support the long-term existence of native species, recovery of endangered species, and the provision of ecosystem services." (PPIC Managing Water Supplies, p. 219.) The same is true for the approach to flows. To follow this thinking, we previously provided language to the DSC on February 14, 2011 that articulates a similar approach to create better conditions for desirable

species. We call it optimization (not reconciliation), but the approach is similar. To be clear, Sacramento Valley water resources managers are committed to actions that will “create better conditions for desirable species” and we will continue to advance the Sacramento Valley sustainability initiative in this regard.

Science. The draft Plan does not reflect the state of science. In its zeal to discuss more flows, the draft Plan appears to disregard the science around the Delta that has shown there are many stressors that may be impacting the health of the Delta ecosystem. The draft Plan also considers the 2010 State Water Resources Control Board flow report without the context in which it was presented. The “Synthesis of Recommendations from the Delta Independent Science Board on the Fifth Staff Draft Delta Plan” articulated these concerns to the DSC and recent decisions from the United States District Court reveal the serious flaws in the approach to flows described in the draft Plan.

Disregards Delta Reform Act. The hallmark of the DSC is the co-equal goals and an opportunity to fashion a Delta Plan that can artfully advance solutions in the Delta that will help achieve these goals. Imbedded in the co-equal goals is a commitment to both the “Delta ecosystem” and “a more reliable water supply for California.” The latter provision requires a more reliable water supply—both in areas upstream of the Delta, in the Delta and in export areas. Furthermore, a more reliable water supply includes water supplies for the mosaic of fish, farms, the Pacific Flyway, recreation and the cities and rural communities in the Sacramento Valley. The flow policies, by the way they are articulated in the draft Plan, violate the co-equal goals by suggesting that water uses in the Bay-Delta are more important than the mosaic of water uses in the Sacramento Valley—a clear violation of both the spirit and the specific language embodied in the co-equal goals. The flow approach also appears to disregard the state policy for regional sustainability contained in Water Code §85021 and the important water rights protections in §85031.

Context. The conventional wisdom in the DSC and the various discussions surrounding the Delta suggests that there are currently no flow requirements in either the Bay-Delta or areas upstream of the Delta and thus we need to change this dynamic. This is simply not true. To provide better context, we have compiled the existing “Flow Requirements in the Sacramento River Hydrologic Region,” which we are attaching for review by the DSC and for use in developing the Environmental Impact Report (EIR). It is important that the DSC, before advancing a theory that simply more flows are needed, should understand the current requirements and whether they are meeting the co-equal goals—both in the Delta and elsewhere. This document should also be considered in the current baseline conditions for the DSC’s EIR.

Please call us if you have any questions.

Sincerely Yours,



David J. Guy
President

cc: Council Members

Proposed Revision to Fifth Staff Draft (August 2, 2011) – Delta Plan

Revise the section on page 112 entitled “Creating a More Natural Flow Regime” to read as follows:

Improve Management of Delta Flows to Optimize Public Trust Resources

The following strategies for restoring a healthy ecosystem shall be included in the Delta Plan: Restore Delta flows and channels to support a healthy estuary and other ecosystems. (Water Code §85302(e)(4).)

The Current Flow Regime Evolved to Meet Multiple Objectives Simultaneously. The current Delta flow regime has evolved to attempt to meet a variety of needs at once: the needs to control high flows and prevent flooding throughout the Central Valley; the needs of native species (aquatic, avian or terrestrial) that reside in or migrate through the Delta; the needs of species (aquatic avian or terrestrial) that reside in or migrate through areas upstream of the Delta; the needs of introduced species that support a substantial recreation/tourism industry; the needs of agriculture to provide food and fiber to much of the Nation and the world; the desire to maintain an artificially low level of salinity within the Central and South Delta during summer and fall months to provide more consistent quality water; and provide for the needs of urban water suppliers located in the Bay Area and in Southern California to provide water to two-thirds of California’s population and most of its industrial production.

To meet the co-equal objectives of ecosystem restoration and water supply reliability, particularly in supporting a healthy ecosystem, it is not sufficient to attempt to restore “natural” flow regimes that may have unintended consequences given the current physical configuration of the Delta. As the Public Policy Institute of California has recently noted, “the Delta cannot be restored” and it thus proposes a different approach of “conservation by reconciliation.” Moreover, a “natural” flow regime may inadvertently create conditions that are optimal for the predation of migrating salmon smolts or juvenile delta smelt.

Instead, the focus of the ecosystem restoration co-equal goal should be on improving management of the Delta flow regime so as to **optimize conditions for all public trust resources** (e.g., resident fish, migratory fish, migratory waterfowl, recreational fishing, navigation and commerce) “whenever feasible” considering all other beneficial uses of the relevant water. This should be addressed in “before” and “after” settings with improved conveyance of water to export users. Consistent with the constitutional reasonable use doctrine and the application of that doctrine to public trust uses of water under the California Supreme Court’s *National Audubon* decision,¹ efforts to achieve the ecosystem restoration goal also should identify where the relevant biological objectives can be achieved through physical solutions, rather than flow measures. For example, given the potentially high water cost of increasing flows to address in-Delta predation, physical and management solutions to predation issues should be considered.

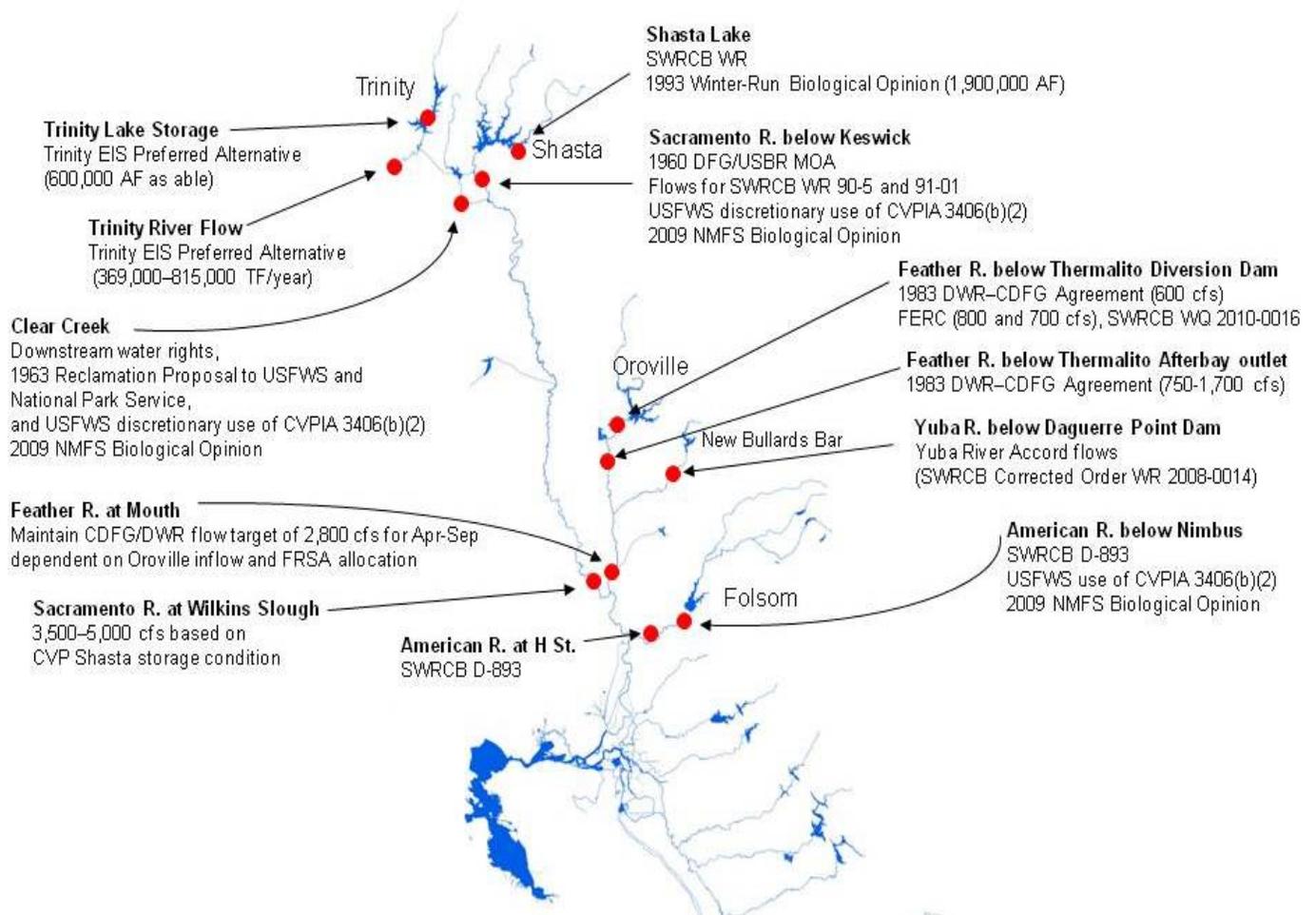
This approach will require active adaptive management of the measures necessary to achieve the relevant biological objectives, as well as many of the other actions discussed in the Delta Plan, for the purpose of sustaining a healthy ecosystem composed of native species and a host of species from around the world. Such active adaptive management for a newly emerging ecosystem is the best way for the Bay-Delta Estuary to adapt to the many changes anticipated to occur due to climate change and to measure the effect/success of the various actions

¹ *Nat’l Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 443.

Instream Flow Requirements in the Sacramento River Hydrologic Region September 2011

This briefing paper demonstrates the existing instream flow requirements for the major rivers and streams in the Sacramento River hydrologic region. This includes requirements in State Water Resources Control Board (SWRCB) decisions, biological opinions, streamflow agreements, and other processes. New processes to develop different flow requirements should be aware of, and take into account, these existing flow requirements.

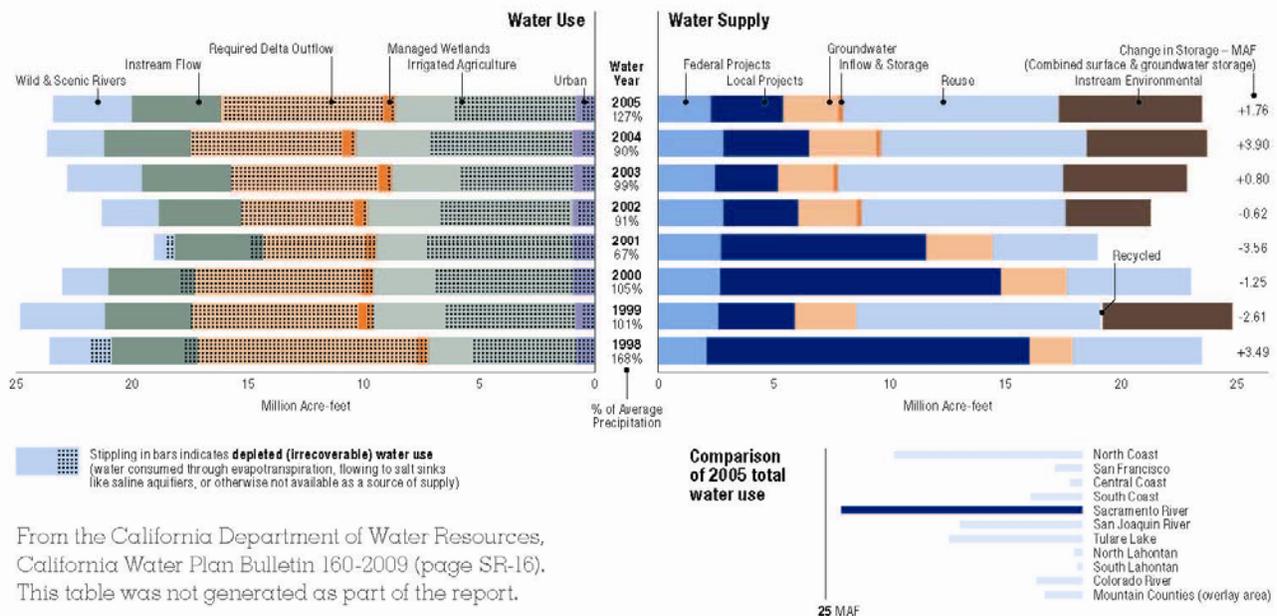
Existing Flow Requirements - Sacramento Valley Hydrologic Region



Regional Water Balance

The following water balance, prepared by the Department of Water Resources as part of the California Water Plan (Bulletin 160-2009), shows a significant part of water in this region is dedicated to instream flows and required Delta outflow.

Sacramento River Hydrologic Region Water Balance Summary, 1998-2005



Upper Sacramento River

1. 1960 MOA between Reclamation and DFG

An April 5, 1960, Memorandum of Agreement (MOA) between Reclamation and the DFG originally established flow objectives in the Sacramento River for the protection and preservation of fish and wildlife resources. The agreement provided for minimum releases into the natural channel of the Sacramento River at Keswick Dam for normal and critically dry years (Table 1, below). Since October 1981, Keswick Dam has operated based on a minimum release of 3,250 cfs for normal years from September 1 through the end of February, in accordance with the MOA. This release schedule was included in Order 90-05 (described below), which maintains a minimum release of 3,250 cfs at Keswick Dam and Red Bluff Diversion Dam (RBDD) from September through the end of February in all water years, except critically dry years.

The 1960 MOA provides that releases from Keswick Dam (from September 1 through December 31) are made with minimum water level fluctuation or change to protect salmon to the extent compatible with other operations requirements. Releases from Shasta and Keswick Dams are gradually reduced in September and early October during the transition from meeting Delta export and water quality demands to operating the system for flood control and fishery concerns from October through December.

2. *SWRCB Water Rights Order 90-05 and Water Rights Order 91-01*

In 1990 and 1991, the SWRCB issued Water Rights Orders 90-05 and 91-01 modifying Reclamation's water rights for the Sacramento River. The orders stated Reclamation shall operate Keswick and Shasta Dams and the Spring Creek Powerplant to meet a daily average water temperature of 56°F as far downstream in the Sacramento River as practicable during periods when higher temperature would be harmful to fisheries. The optimal control point is the RBDD.

Under the orders, the water temperature compliance point may be modified when the objective cannot be met at RBDD. In addition, Order 90-05 modified the minimum flow requirements initially established in the 1960 MOA for the Sacramento River below Keswick Dam. The water right orders also recommended the construction of a Shasta Temperature Control Device (TCD) to improve the management of the limited cold water resources.

Pursuant to SWRCB Orders 90-05 and 91-01, Reclamation configured and implemented the Sacramento-Trinity Water Quality Monitoring Network to monitor temperature and other parameters at key locations in the Sacramento and Trinity Rivers. The SWRCB orders also required Reclamation to establish the Sacramento River Temperature Task Group (SRTTG) to formulate, monitor, and coordinate temperature control plans for the upper Sacramento and Trinity Rivers. This group consists of representatives from Reclamation, SWRCB, NMFS, the Service, DFG, Western, DWR, and the Hoopa Valley Indian Tribe.

Each year, with finite cold water resources and competing demands usually an issue, the SRTTG devises operation plans with the flexibility to provide the best protection consistent with the CVP's temperature control capabilities and considering the annual needs and seasonal spawning distribution monitoring information for winter-run and fall-run Chinook salmon. In every year since the SWRCB issued the orders, those plans have included modifying the RBDD compliance point to make best use of the cold water resources based on the location of spawning Chinook salmon. Reports are submitted periodically to the SWRCB over the temperature control season defining the temperature operation plans. The SWRCB has overall authority to determine if the plan is sufficient to meet water right permit requirements.

3. *June 4, 2009 NMFS Biological Opinion*

The National Marine Fisheries Service's (NMFS) June 4, 2009, Biological Opinion and Conference Opinion on the Long-Term Operations of the Central Valley Project and State Water Project (NMFS BiOp) contains numerous terms and conditions addressing instream flows on the Upper Sacramento River.

Table 1 below, as excerpted from the NMFS BiOp (at page 254), identifies the aforementioned MOA and SWRCB order requirements, and Reclamation's proposed flow objectives below Keswick that were analyzed in the NMFS BiOp.

Table 1: Minimum flow requirements and objectives (cfs) on the Sacramento River below Keswick Dam

| Water year type | MOA | WR 90-5 | MOA and WR 90-5 | Proposed Flow Objectives below Keswick |
|-----------------------------|--------|---------|-----------------|--|
| Period | Normal | Normal | Critically dry | All |
| January 1 - February 28(29) | 2600 | 3250 | 2000 | 3250 |
| March 1 - March 31 | 2300 | 2300 | 2300 | 3250 |
| April 1 - April 30 | 2300 | 2300 | 2300 | ---* |
| May 1 - August 31 | 2300 | 2300 | 2300 | ---* |
| September 1 - September 30 | 3900 | 3250 | 2800 | ---* |
| October 1 - November 30 | 3900 | 3250 | 2800 | 3250 |
| December 1 - December 31 | 2600 | 3250 | 2000 | 3250 |
| Note: * No regulation. | | | | |

The flow related components of the NMFS BiOp related to the Sacramento River Basin are detailed in the Reasonable and Prudent Alternatives (RPA) section of BiOp at pages 587 through 611. The RPA Actions include flow requirements on Clear Creek; release requirements from Whiskeytown Dam for temperature management; cold water pool management of Shasta Reservoir; development of recommended minimum flows at Wilkins Slough; and restoration of floodplain habitat in the lower Sacramento River basin for protection of certain listed species. A selection of the more specific flow-related requirements are described below.

Clear Creek Operations

RPA Action I.1.1 - Clear Creek Spring Attraction Flows

Reclamation shall annually conduct at least two pulse flows in Clear Creek in May and June of at least 600 cfs for at least three days for each pulse, to attract adult spring-run holding in the Sacramento River main stem. This may be done in conjunction with channel-maintenance flows (Action I.1.2).

RPA Action I.1.2. – Clear Creek Channel Maintenance Flows

Reclamation shall re-operate Whiskeytown Glory Hole spills during the winter and spring to produce channel maintenance flows of a minimum of 3,250 cfs mean daily spill from Whiskeytown for one day, to occur seven times in a ten-year period, unless flood control

operations provide similar releases. Re-operation of Whiskeytown Dam should be implemented with other project facilities as described in the EWP Pilot Program (Reclamation 2008d).

RPA Action I.1.5. – Clear Creek Thermal Stress Reduction

Reclamation shall manage Whiskeytown releases to meet a daily water temperature of:

- (1) 60 deg. F at the Igo gage from June 1 through September 15; and
- (2) 56 deg. F at the Igo gage from September 15 to October 31.

Reclamation, in coordination with NMFS, will assess improvements to modeling water temperatures in Clear Creek and identify a schedule for making improvements.

RPA Action I.1.6. - Adaptively Manage to Habitat Suitability/IFIM Study Results on Clear Creek

Reclamation shall operate Whiskeytown Reservoir as described in the Project Description with the modifications described in Action I.1 until September 30, 2012, or until 6 months after current Clear Creek salmonids habitat suitability (*e.g.*, IFIM) studies are completed, whichever occurs later.

When the salmonid habitat suitability studies are completed, Reclamation will, in conjunction with the Clear Creek Technical Working Group (CCTWG), assess whether Clear Creek flows shall be further adapted to reduce adverse impacts on spring-run and CV steelhead, and report their findings and proposed operational flows to NMFS within 6 months of completion of the studies. NMFS will review this report and determine whether the proposed operational flows are sufficient to avoid jeopardizing spring-run and CV steelhead or adversely modifying their critical habitat.

Reclamation shall implement the flows on receipt of NMFS' written concurrence. If NMFS does not concur, NMFS will provide notice of the insufficiencies and alternative flow recommendations. Within 30 days of receipt of non-concurrence by NMFS, Reclamation shall convene the CCTWG to address NMFS' concerns. Reclamation shall implement flows deemed sufficient by NMFS in the next calendar year.

Shasta Operations

RPA Action Suite I.2 – Shasta Operations

This suite of actions is designed to ensure that Reclamation uses maximum discretion to reduce adverse impacts of the projects to winter-run and spring-run in the Sacramento River by maintaining sufficient carryover storage and optimizing use of the cold water pool.

RPA Action I.2.1 – Performance Measures

The following long-term performance measures shall be attained. Reclamation shall track performance and report to NMFS at least every 5 years. If there is significant deviation from

these performance measures over a 10-year period, measured as a running average, which is not explained by hydrological cycle factors (*e.g.*, extended drought), then Reclamation shall reinitiate consultation with NMFS.

Performance measures for end-of-season (“EOS”) carryover storage at Shasta Reservoir:

- 87 percent of years: Minimum EOS storage of 2.2 MAF
- 82 percent of years: Minimum EOS storage of 2.2 MAF and end-of-April storage of 3.8 MAF in following year (to maintain potential to meet Balls Ferry compliance point)
- 40 percent of years: Minimum EOS storage 3.2 MAF (to maintain potential to meet Jelly’s Ferry compliance point in following year)

Measured as a 10-year running average, performance measures for temperature compliance points during summer season shall be:

- Meet Clear Creek Compliance point 95 percent of time
- Meet Balls Ferry Compliance point 85 percent of time
- Meet Jelly’s Ferry Compliance point 40 percent of time
- Meet Bend Bridge Compliance point 15 percent of time

RPA Actions I.2.2 through I.2.4 – Keswick Release Schedules

Depending on EOS carryover storage and hydrology, Reclamation is mandated to develop and implement Keswick release schedules, and reduce deliveries and exports, as detailed in RPA Actions I.2.2.A through I.2.2.C, I.2.3.A through I.2.3.C, and I.2.4. (See NMFS BiOp at pp. 593-603.)

Required Technical Teams for Adaptive Management

The NMFS BiOp requires actions by various Fisheries and Operations Technical Teams whose function is to make recommendations for adjusting operations to meet contractual obligations for water delivery and minimize adverse effects on listed anadromous fish species. The two teams on the Upper Sacramento River are the SRTTG and the CCTWG. Each group must gather and analyze information, and make recommendations, regarding adjustments to water operations within the range of flexibility prescribed in the implementation procedures for a specific action in their particular geographic area.

4. Wilkins Slough Navigation Flow Requirements Under Federal Law

The NMFS BiOp requires the development of certain recommendations regarding the Wilkins Slough navigation flow requirements. Reclamation’s compliance with the Wilkins Slough 5,000 cfs navigation flow standard, however, is not discretionary.

In this regard, Congress initially authorized the construction of certain facilities for the Central Valley Project (“CVP”) under the Rivers and Harbors Act of 1935 (the “1935 Act”). (49 Stat. 1028, 1038). The 1935 Act mandated in relevant part that “the following works of improvement of rivers . . . are hereby adopted and authorized . . . in accordance with the plans recommended in

the respective reports hereinafter designated and subject to the conditions set forth in such documents . . . Sacramento River, California; Rivers and Harbors Committee Document Numbered 35, Seventy-third Congress . . .” (50 Stat. 1028, 1038.) As such, the 1935 Act incorporates by reference, and expressly requires the implementation of, the recommendations of the Rivers and Harbors Committee Document Number 35. This document is a 1934 report from the Corps’ Chief Engineer recommending to Congress that Kennett Dam (predecessor to Shasta Dam) “shall be operated so as to provide a minimum flow of 5,000 cubic feet per second between Chico Landing and Sacramento.” (See Central Valley Project Documents, Part I, 544, 548 [Committee Doc. 35, 73rd Cong.])

Congress re-authorized the CVP under the Rivers and Harbors Act of 1937 (the “1937 Act”). (50 Stat. 844, 850.)¹ This re-authorization mandated in relevant part that “the \$12,000,000 recommended for expenditure for a part of the Central Valley project, California, in accordance with the plans set forth in Rivers and Harbors Committee Document Numbered 35, Seventy-third Congress, and adopted and authorized by the provisions of section 1 of the Act of August 30, 1935 (49 Stat. 1028, at 1038) . . . shall, when appropriated, be available for expenditure in accordance with the said plans of the Secretary of Interior instead of the Secretary of War.” (50 Stat. 844, 850.) As such, the 1937 Act also incorporates by reference, and expressly requires the implementation of, the recommended minimum flow of 5,000 cfs between Chico Landing and Sacramento. There has been no subsequent action by Congress that has “discontinued” or otherwise changed this minimum navigation flow requirement.

The 1937 Act also mandates that CVP “dams and reservoirs *shall* be used, *first*, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses; and, third, for power.” (50 Stat. 844, 850, emphasis added; *see also United States v. SWRCB* (1986) 182 Cal.App.3d 82, 135.) In 1992, Congress explicitly amended this hierarchy of use by enacting sections 3406(a) and (b) of the Central Valley Project Improvement Act (Pub. L. No. 102-575 (1992)), which make protection of non-ESA listed fish and wildlife co-equal priorities with irrigation. Even with this amendment, however, Reclamation’s first priority remains river regulation, navigation and flood control.

On the Sacramento River, all major diversions have positive barrier flat-plate fish screens installed that provide protection to listed fishery species. These screens have been designed with an approach velocity of 0.33 ft/s as required by NMFS and the Department of Fish and Game. During design, the screens, velocities, and diversion rates were based upon the Wilkins Slough Navigational Flow requirement of 5,000 cfs since this requirement under federal law was controlling.

The NMFS BiOp states that flows could be reduced to 3,250 cfs, which is lower than the Wilkins Slough flow requirement. If the Bureau of Reclamation reduced flows below the Wilkins Slough control point requirement and depending on the diversion rate, some screens may not meet the velocity criteria as designed. The agencies should coordinate with the Sacramento River diverters to develop contingency plans and wells as a coordinated operations plan that would benefit the Sacramento River system for fisheries and water users.

¹ See also *Stockton East Water District, et al. v. United States*, 583 F.3d 1344, 1349 (Fed. Cir. 2009) [citing to the 1935 and 1937 Acts as Congress’ initial authorization and reauthorization of the CVP].

Lower American River

The American River provides important fish and wildlife habitat, a high-quality water source, a critical floodway, and a spectacular regional recreational parkway. The Bureau of Reclamation (Reclamation) operates Folsom and Nimbus dams to provide flood control and water for irrigation, municipal and industrial uses, hydroelectric power, recreation, water quality, and the protection of aquatic resources.

In April of 2000, a diverse group of over 40 local business and agricultural leaders, citizen groups, environmentalists, water managers and local governments ended decades of conflict by signing the Water Forum Agreement (WFA). The foundational elements of the WFA are two coequal objectives: to provide a reliable safe water supply for the region and to preserve fishery, wildlife, recreational, and aesthetic values of the lower American River.

Working in cooperation with Reclamation, California Department of Fish and Game, National Marine Fisheries Service, Fish and Wildlife Service, the Water Forum developed the Flow Management Standard (FMS) as an alternative to D-893 (the current instream flow requirements on the lower American River). The FMS is intended to improve the condition of aquatic resources in the lower American River, particularly fall-run Chinook salmon and steelhead. In addition, the FMS benefits other fish species, the aquatic environment and the riparian ecosystem of the lower American River Corridor. Designed to achieve these benefits over a wide range of hydrologic conditions, the FMS provides a forum through which biologic and ecologic factors are considered in the river management process, and provides for the analysis of hydrologic and biologic information collected through the monitoring and evaluation component.

The lower American River FMS is designed to allocate flow releases from Folsom and Nimbus dams in consideration of variable hydrology and coldwater pool availability in Folsom Reservoir. The FMS includes: (1) minimum flow requirements; (2) water temperature objectives; (3) implementation criteria; (4) an agency group to address river management and operational actions (the American River Group); and (5) a monitoring and evaluation component.

1. Minimum Flow Requirements

The minimum flow requirements prescribe the flows in the lower American River water to meet fishery needs throughout the entire water year. These minimum flow requirements include minimum release requirements (MRR) measured downstream of Nimbus Dam, and downstream flow requirements (250 cfs from January through mid-September and 500 cfs from mid-September through December) between Nimbus Dam and the mouth of the lower American River. The prescribed flows are minimums only and do not preclude Reclamation from making higher releases.

The MRR varies from 800 to 2,000 cfs throughout the year in response to the hydrology of the Sacramento and American River basins and a set of prescriptive and discretionary adjustments. As such, the specified MRR is higher in wet years and lower in dry years. These adjustments are made in response to specific conditions related to the need for spawning flow progressions, fish protection, and reservoir water conservation. The resultant MRR varies throughout the season as shown in Table 1.

Table 1. Seasonal Variation in the Minimum Release Requirement

| Time Period | MRR Range (cfs) | Index | Relevance of Index |
|----------------------------------|------------------------|------------------------------|---|
| October | 800 to 1,500 | Four Reservoir Index (FRI) | Indicates the amount of upstream storage available during the fall and winter months |
| November and December | 800 to 2,000 | FRI | |
| January and February | 800 to 1,750 | Sacramento River Index (SRI) | Indicates current multi-basin water availability |
| March through Labor Day | 800 to 1,750 | Folsom Inflow Index (IFII) | Forecasts water availability for the American River Basin for the remainder of the current water year |
| Post-Labor Day through September | 800 to 1,500 | IFII | |

The FMS also includes exceptions to the MRR during extreme dry conditions, including:

- ❑ **Conference Years:** Occur when the projected March through November unimpaired inflow to Folsom Reservoir is less than 400,000 AF. A minimum flow of 190 cfs is required downstream of the H Street Bridge.
- ❑ **Off-ramp Criteria:** Triggered if Folsom Reservoir storage is forecasted to fall below 200,000 AF in the succeeding 12 months. In this case, downstream flow requirements rather than MRR become the minimum flow requirement throughout the lower American River.

2. *Water Temperature Objectives*

The water temperature objectives of the FMS have been developed to allocate the available lower American River cold water resources for juvenile steelhead rearing in summer, and fall-run Chinook salmon spawning in fall. These objectives are met through use of an Annual Operations Forecast (Operations Forecast) and Annual Water Temperature Management Plan (Temperature Plan).

The Operations Forecast will be prepared by May 1 of each year to describe forecasted American River operations, including flows and water temperatures for the next 12 months, with implementation of the Minimum Flow Requirements and Water Temperature Objectives.

The Temperature Plan will be developed by May 1 of each year to describe how Reclamation will meet the following water temperature objectives for the lower American River:

- ❑ 65°F or less from May 15 through October at Watt Avenue for steelhead juvenile rearing. This objective may be relaxed to 68°F if Temperature Plan analysis indicates that lower temperature targets will prematurely exhaust the available cold water.

- ❑ 60°F or less as early in October as possible at Hazel Avenue for Chinook salmon spawning and egg incubation.

3. *Implementation Criteria*

Implementation criteria serve as a tool to determine the conditions by which the FMS Minimum Flow Requirements may be implemented, and to define the method of measuring compliance with the FMS Minimum Flow Requirements. The implementation criteria that are applied for decision-making purposes regarding operational adjustments affecting lower American River flows and water temperatures address the following: (1) end-of-month Folsom Reservoir storage, particularly during May and September; (2) Nimbus Dam releases and flows at the mouth of the lower American River measured over a 5-day averaging period; (3) water conservation adjustments; (4) fish protection adjustments; and (5) other considerations.

4. *Lower American River Group*

The Lower American River Group (ARG) is an advisory group consisting of agency representatives convened regularly by Reclamation. Through the regularly scheduled ARG meetings, which are open to the public, the ARG provides information to the public and formulates CVP operational recommendations for the protection of fisheries and other in-stream resources consistent with the FMS.

5. *Monitoring and Evaluation*

Monitoring and evaluation of physical and biological factors are included in the FMS to provide information to support operational decisions and to evaluate operational effects on the aquatic resources of the lower American River including river hydrology, water temperature, salmonid population and downstream movement.

Current Status

Sacramento County recently adopted a revised American River Parkway Plan which includes specific policies related to implementing water flows protective of the lower American River ecosystem. The Parkway Plan serves as a guide for other local, state and federal agencies with authority within the American River Parkway under the Wild and Scenic Rivers Act and the Urban American River Parkway Preservation Act. Sacramento County, through the Water Forum, is in the process of preparing a draft environmental impact report to institute the FMS consistent with the American River Parkway Plan and the coequal goals of the Water Forum Agreement by entering into an operations agreement with Reclamation or by seeking to modify Reclamation's Folsom Dam water right permit through a petition to the SWRCB, or both.

Reclamation has been operating the Folsom dam in accordance with the minimum release requirements of the FMS since 2006. In 2009, the National Marine Fisheries Service (NMFS) included the FMS flow, operational criteria, American River Group, and monitoring requirements in the Reasonable and Prudent Alternatives of the Biological Opinion (BO) for operating the CVP. The NMFS BO also called for an iterative temperature management planning process that is consistent with the water temperature objectives of the FMS.

Yuba River

In 2008, the State Water Resources Control Board (the SWRCB) adopted streamflow requirements and related measures proposed by Yuba County Water Agency (YCWA) that implemented the Yuba River Accord Fisheries Agreement that YCWA developed with the Department of Fish and Game (DFG), the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS) and several conservation groups. The Accord and the SWRCB's related order – Corrected Order WR 2008-14 – resolved 20 years of disputes concerning the Yuba River's streamflows. The Accord streamflow requirements, as implemented by the SWRCB, are depicted on Exhibit A. The SWRCB adopted Corrected Order WR 2008-14 based on a \$6 million environmental impact report that YCWA certified and that was not challenged in court. The Yuba River Accord is summarized below and additional information is available on YCWA's Web site at <http://www.ycwa.com/projects/detail/8>.

Disputes concerning the Yuba River's streamflows began in 1988 and continued through a 14-day SWRCB hearing in 1992, a 13-day SWRCB hearing in 2000 and a three-day SWRCB hearing in 2003. In 2003, the SWRCB adopted Revised Water Right Decision 1644 (RD-1644) and many lawsuits, including one by YCWA, were filed to challenge RD-1644.

As an alternative to litigating these disputes to a conclusion, YCWA, DFG, NMFS, USFWS and environmental groups engaged in a collaborative, science-based process to identify and prioritize the key stressors on salmon and steelhead in the lower Yuba River and then develop streamflow requirements that would address these stressors. The resulting Yuba Accord Fisheries Agreement sets new, substantially-higher streamflow requirements that allocate more water to fishery benefits than RD-1644 would have required. Specifically, the Fisheries Agreement's streamflow schedules include up to more than 174,000 acre-feet of water annually, and more than 100,000 acre-feet in the springtime of about 60% of all years, to fishery benefits than RD-1644 would have committed. The Fisheries Agreement allocates these fishery streamflows in a manner that enables YCWA to deliver approximately 350,000 acre-feet or more of water a year for consumptive use in Yuba County and to transfer water to downstream water users, including Delta-export agencies, for irrigation, municipal and environmental uses.

The Fisheries Agreement is only one of four agreements that make up the Yuba River Accord. The other agreements are: (1) a Conjunctive Use Agreement with local Yuba County water suppliers; (2) a Water Transfer Agreement with the state Department of Water Resources (DWR); and (3) an agreement with PG&E to allow modified operations at YCWA's New Bullards Bar Reservoir. Under the Conjunctive Use Agreement, Yuba County water suppliers agreed to pump up to 30,000 acre-feet of groundwater to substitute for surface water deliveries in certain dry years to provide water allocated by the Fisheries Agreement for fishery benefits. Also under the Conjunctive Use Agreement, YCWA agreed to provide funding from its Accord transfer proceeds to assist water suppliers in pumping the necessary groundwater and to monitor local groundwater conditions to ensure that pumping under the Accord does not cause overdraft. Under the Water Transfer Agreement, YCWA agreed to transfer at least 60,000 acre-feet per year of water to the Environmental Water Account (and successor programs) and potentially 140,000 acre-feet of water in drier years to DWR. In addition to assisting local Yuba County water suppliers in implementing conjunctive use, YCWA has used Accord transfer proceeds as contributions to setback-levee projects and other flood risk management projects.

The Accord Fisheries Agreement contains several unique elements in addition to the new streamflow requirements depicted in Exhibit A. That Agreement establishes a River Management Team (RMT), which includes representatives of YCWA, DFG, NMFS, USFWS, PG&E and conservation groups. The RMT has the ability to modify flows at certain times for fishery benefits. The RMT also is responsible for allocating 50% of the volume of any supplemental surface water transfer by YCWA and up to 20% of the streamflows enabled by implementation of the Accord Conjunctive Use Agreement. The RMT oversees a monitoring and evaluation program that is tasked with determining the efficacy of the Fisheries Agreement's streamflows. That Agreement also establishes a cap on irrigation diversions in extremely dry (1-in-100) "conference years" at about 70% of annual irrigation demands.

Consistent with the Accord agreements, the SWRCB's Corrected Order WR 2008-14 approved water-right permit terms under which, in conference years, YCWA would operate its project to maintain the minimum streamflows required by a 1965 streamflow agreement between YCWA and DFG, but without certain reductions authorized by that agreement and subject to supplemental flow release requirements developed by the RMT's Planning Group under the Fisheries Agreement and approved by the SWRCB's Deputy Director for Water Rights. Under Corrected Order WR 2008-14, if the Planning Group does not make any streamflow recommendations in a conference year by April 1 or if no streamflow requirements are in place by April 11 of such a year, then YCWA must comply with streamflow requirements ordered by the SWRCB after a hearing.

Finally, in operating its facilities, YCWA must comply with the requirements of its existing license no. 2246 from the Federal Energy Regulatory Commission (FERC). Those FERC license requirements, however, typically are dwarfed by the Accord Fisheries Agreement's streamflow requirements.

The Yuba River Accord has been recognized as a landmark achievement in collaborative water management to achieve water supply reliability and habitat protection. For example, the Accord received the 2008 ACWA Theodore Roosevelt Environmental Award for Excellence in Conservation and Natural Resources Management, the 2009 National Hydropower Association Award for Outstanding Stewards of America's Waters and the 2009 Governor's Environmental and Economic Leadership Award.

Feather River

On December 15, 2010, the SWRCB adopted, as Order WQ 2010-0016, a water quality certification for the Oroville Facilities, FERC # 2100, for the relicensing of the Oroville project by DWR. The water quality certification contains instream-flow and temperature-control requirements for the Feather River's reaches downstream of DWR's Oroville Dam.

In general, the streamflow requirements adopted by the SWRCB in the certification are as follows.

For the Low Flow Channel – which is the reach between DWR's Fish Barrier Dam and the outlet of the Thermalito afterbay – the certification requires that DWR release into that Channel 800 cfs from September 9 to March 31 of each water year to accommodate spawning anadromous fish and 700 cfs the remainder of the time, with both standards subject to possible revision as

recommended by resource agencies under a settlement agreement signed by parties to DWR’s relicensing proceeding. The SWRCB’s Deputy Director for Water Rights would have to approve changes from the indicated streamflows for the Low Flow Channel.

For the High Flow Channel – which is the reach between the Thermalito Afterbay’s outlet and the Feather River’s confluence with the Sacramento River – the certification applies the following instream-flow requirements, provided that they, along with project operations, are not projected to cause Oroville Reservoir to be drawn below elevation 733 feet (approximately 1,500,000 acre-feet of storage):

| Preceding April through July unimpaired runoff | Minimum Flow in HFC October-February | Minimum Flow in HFC March | Minimum Flow in HFC April-September |
|--|--------------------------------------|---------------------------|-------------------------------------|
| Percent of Normal | | | |
| 55% or greater | 1,700 cfs | 1,700 cfs | 1,000 cfs |
| Less than 55% | 1,200 cfs | 1,000 cfs | 1,000 cfs |

Under the certification, if applying these requirements would be projected to cause Oroville Reservoir to be drawn below elevation 733 feet, then the minimum streamflows in the High Flow Channel could be reduced by the same percentage as State Water Project deliveries for agricultural use, provided that streamflows would not ever be reduced more than 25 percent below the requirements. In addition, if the highest one-hour streamflow between October 15 and November 30 were to exceed 2,500 cfs because of project operations and not a flood flow, then DWR is required to maintain a minimum flow within 500 cfs of the peak flow.

The certification also contains complex terms that require DWR to operate the Oroville project to meet temperature standards in the Low Flow Channel and the High Flow Channel.

For the Low Flow Channel at the Robinson Riffle, the certification sets the following temperature standards: (1) October 1-April 30, 56 degrees F; (2) May 1-15, 56-63 degrees F (as a transition); (3) May 16-August 31, 63 degrees F; (4) September 1-8, 63-58 degrees F (as a transition); and (5) September 9-30, 58 degrees F. If DWR were to demonstrate that it cannot meet these requirements with its current facilities, then the certification would require DWR to submit an interim operations plan to the SWRCB and, within three years of the renewed FERC license’s issuance, submit a long-term facility-modification and operations plan to the SWRCB. If after implementing the facility modifications, DWR were to demonstrate that it still cannot meet the above temperature standards, then DWR would be required to propose alternate temperature standards that would provide “reasonable protection of the COLD beneficial use.” Upon the approval of the SWRCB’s Deputy Director for Water Rights, DWR would be required to operate to the alternate standards.

For the High Flow Channel, DWR is required to operate the project “to protect the COLD beneficial use in [that Channel], as measured in the Feather River at the downstream Project Boundary, to the extent reasonably achievable.” Within one year of the renewed FERC license’s issuance, DWR would be required to submit an operations plan for the period before facility modifications, which plan would be required to include proposed interim temperature standards and interim measures to reduce temperatures. Within three years of the renewed FERC license’s issuance, DWR would be required to submit a long-term facility modification

and operations plan, which plan would have to include proposed temperature standards to take effect within 10 years of the renewed license's issuance.

Bay-Delta Standards

The following map shows the existing Bay-Delta standards in SWRCB Decision 1641. Water supplies in the Sacramento Valley are operated to meet these standards.

In 2002, the USBR, DWR, USFWS, DFG, various export water users, and various Sacramento Valley water users approved the Sacramento Valley Water Management Agreement (SVWMA), which established a framework to meet water supply, water quality, and environmental needs in the areas of origin, the Delta, and in export areas. The SVWMA provides that, pursuant to specified terms and conditions being met, certain upstream Sacramento Valley water users will take actions to make available up to 185,000 acre-feet of water that would otherwise not be available in the Sacramento River during the period June 1 through October 31 of each year.

Notably, the SWRCB facilitated the SVWMA parties' negotiation and execution of the SVWMA, by issuing its Orders WR 2001-05 and WR 2002-12, which stayed and ultimately dismissed Phase 8 of the Bay-Delta Water Rights Hearing related to SWRCB Decision 1641.

D-1641 Bay-Delta Standards Stations



EXHIBIT A
Yuba Accord Streamflows, Approved by SWRCB in Corrected Order WR 2008-14

| MARYSVILLE GAGE (CFS) | | | | | | | | | | | | | | | | | |
|-----------------------|------|-------|------|------|------|------|------|------|-------|------|-------|------|-------|------|------|------|--------------------------|
| Schedule | OCT | | NOV | DEC | JAN | FEB | MAR | APR | | MAY | | JUN | | JUL | AUG | SEP | Total Annual Volume (AF) |
| | 1-15 | 16-31 | 1-30 | 1-31 | 1-31 | 1-29 | 1-31 | 1-15 | 16-30 | 1-15 | 16-31 | 1-15 | 16-30 | 1-31 | 1-31 | 1-30 | |
| 1 | 500 | 500 | 500 | 500 | 500 | 500 | 700 | 1000 | 1000 | 2000 | 2000 | 1500 | 1500 | 700 | 600 | 500 | 574,200 |
| 2 | 500 | 500 | 500 | 500 | 500 | 500 | 700 | 700 | 800 | 1000 | 1000 | 800 | 500 | 500 | 500 | 500 | 429,066 |
| 3 | 500 | 500 | 500 | 500 | 500 | 500 | 500 | 700 | 700 | 900 | 900 | 500 | 500 | 500 | 500 | 500 | 398,722 |
| 4 | 400 | 400 | 500 | 500 | 500 | 500 | 500 | 600 | 900 | 900 | 600 | 400 | 400 | 400 | 400 | 400 | 361,944 |
| 5 | 400 | 400 | 500 | 500 | 500 | 500 | 500 | 500 | 600 | 600 | 400 | 400 | 400 | 400 | 400 | 400 | 334,818 |
| 6 | 350 | 350 | 350 | 350 | 350 | 350 | 350 | 350 | 500 | 500 | 400 | 300 | 150 | 150 | 150 | 350 | 232,155 |

* Indicated flows represent average volumes for the specified time period. Actual flows may vary from the indicated flows according to established criteria.
* Indicated Schedule 6 flows do not include an additional 30 TAF available from groundwater substitution to be allocated according to established criteria

| SMARTVILLE GAGE (CFS) | | | | | | | | | | | | | | | | | |
|-----------------------|------|-------|------|------|------|------|------|------|-------|------|-------|------|-------|------|------|------|--------------------------|
| Schedule | OCT | | NOV | DEC | JAN | FEB | MAR | APR | | MAY | | JUN | | JUL | AUG | SEP | Total Annual Volume (AF) |
| | 1-15 | 16-31 | 1-30 | 1-31 | 1-31 | 1-29 | 1-31 | 1-15 | 16-30 | 1-15 | 16-31 | 1-15 | 16-30 | 1-31 | 1-31 | 1-30 | |
| A | 700 | 700 | 700 | 700 | 700 | 700 | 700 | 700 | - | - | - | - | - | - | - | 700 | - |
| B | 600 | 600 | 600 | 550 | 550 | 550 | 550 | 600 | - | - | - | - | - | - | - | 500 | - |

* Schedule A used with Schedules 1, 2, 3 and 4 at Marysville.
* Schedule B used with Schedules 5 and 6 at Marysville.