

NORTH DELTA WATER AGENCY

910 K Street, Suite 310, Sacramento, CA 95814
(916) 446-0197 Fax (916) 446-2404 melinda@northdw.com

Public Comment
Bay-Delta Strategic Workplan
Deadline: 7/9/08 by 12 p.m.

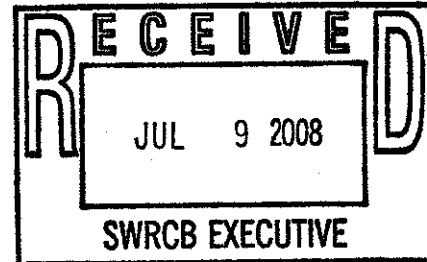
Melinda Terry, Manager

Board of Directors

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July 9, 2008

VIA EMAIL (DRIDDLE@WATERBOARDS.CA.GOV ;
COMMENTLETTERS@WATERBOARDS.CA.GOV) AND
HAND DELIVERY



Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
Cal/EPA Headquarters
1001 "I" Street
Sacramento, CA 95814

**Re: BAY-DELTA STRATEGIC WORKPLAN COMMENTS OF NORTH
DELTA WATER AGENCY**

Dear Ms. Townsend:

The North Delta Water Agency ("NDWA") respectfully submits these comments on the State Water Resources Control Board's Draft Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (June, 2008 Draft).

BACKGROUND

The North Delta Water Agency was formed by a special act of the Legislature in 1973. (North Delta Water Agency Act, Chapter 283, Statutes of 1973). Its boundaries encompass approximately 277,000 acres including all of that portion of the Sacramento-San Joaquin Delta, as defined in Water Code Section 12220, that is situated within Sacramento, Yolo and Solano Counties. Also included within NDWA's boundaries are certain lands in northeastern San Joaquin County comprising New Hope Tract, Canal Ranch and Staten Island.

Beginning approximately 160 years ago, farmers within area now comprising NDWA began reclaiming lands from flooding, appropriating water to beneficial use and establishing vibrant agricultural communities. The Bureau of Reclamation (Bureau) began constructing the Central Valley Project (CVP) began in the late 1930s, damming the major tributaries on the Sacramento

River and holding back substantial quantities of the Delta water supply. As it did with landowners along the Sacramento River, the United States conducted extensive studies and negotiations to ensure a sufficient supply for water right holders in the northern Delta. Discussions with Delta landowners were protracted, however, due to the complex issues of both water quantity and quality, and the issues only intensified with the construction of the State Water Project by the California Department of Water Resources (DWR).

Against this backdrop, NDWA was formed to represent northern Delta interests in negotiating a contract with both the Bureau and DWR in order to mitigate the water rights impacts of the Projects.¹ From 1974 to 1979, North Delta, the Bureau and DWR determined the outflow necessary to meet water quality standards for irrigated agriculture and generally reviewed the paramount water rights of landowners within North Delta's boundaries. The agencies also evaluated the Delta channels' historical function as natural seasonal storage. Before the Projects began withholding much of the Sacramento River system's high winter flows, the Delta channels stored sufficient fresh water to sustain water quality in the northern Delta throughout and often beyond the irrigation season. Since the Projects commenced, however, the Delta functions more like a flowing stream and, as a result, relatively minor decreases in outflow can have a serious impact on northern Delta water quality.

In 1981, DWR and NDWA executed a Contract for the Assurance of a Dependable Water Supply of Suitable Quality (1981 Contract), a copy of which is enclosed. The 1981 Contract embodies a guarantee by the State of California that, on an ongoing basis, it will ensure that suitable water will be available in the northern Delta for agriculture and other beneficial uses. The 1981 Contract requires DWR to operate the State Water Project to meet specified water quality criteria while providing enough water to satisfy all reasonable and beneficial uses of water within NDWA's boundaries. (1981 Contract, Art. 2) In return, North Delta makes an annual payment to DWR. (*Id.* Art. 10) Although the two signatories are public agencies, the 1981 Contract also extends to individual landowners who, under the terms of the Contract, have executed Subcontracts guaranteeing that their lands will receive all the benefits and protections of the 1981 Contract. (*Id.* Art. 18) Many of these Subcontracts have been signed and recorded, enabling the subcontractors to enforce the terms of the 1981 Contract.

In connection with the hearings that preceded the State Water Resources Control Board's adoption of Water Right Decision 1641, DWR and NDWA entered into a memorandum of understanding dated May 26, 1998 (MOU), which provides that DWR is responsible for any obligation imposed on NDWA to provide water to meet Bay-Delta flow objectives, so long as the 1981 Contract remains in effect. In Decision 1641, the State Water Board made the following findings and determinations: "Based on the agreement, the SWRCB finds that the DWR will provide the backstop for any water assigned to the parties within the NDWA as specified in the MOU. This decision assigns responsibility for any obligations of the NDWA to the DWR consistent with the MOU." (Decision 1641 at 66). The latter findings and determinations were upheld by the trial and appellate courts that subsequently reviewed Decision 1641.

¹ Section 4.1 of the Agency Act states: "The general purposes of the agency shall be to negotiate, enter into, executed, amend, administer, perform and enforce one or more agreements with the United States and with the State of California . . . To protect the water supply of the lands within the agency against intrusion of ocean salinity; and . . . To assure the lands within the agency of a dependable supply of water of suitable quality sufficient to meet present and future needs."

COMMENTS ON DRAFT BAY-DELTA STRATEGIC WORKPLAN

NDWA generally supports the June 2008 draft Bay-Delta Strategic Workplan (Workplan) and its comprehensive proposal for the State Water Board to take appropriate actions to (i) monitor and improve Bay/Delta water quality, (ii) control contaminants, (iii) review Bay-Delta water-quality and flow objectives, and (iv) prevent unauthorized diversions and wasteful uses of water. However, NDWA believes that the Workplan must be modified in the following respects.

First, the Workplan should specifically reference and describe the 1981 Contract between NDWA and DWR and the above-quoted findings and determinations made in Decision 1641. Further, the Workplan should make clear that the State Water Board does not intend to modify or otherwise affect, directly or indirectly, the contractual obligations embodied in the 1981 Contract or the 1998 MOU. It is important, from a public policy standpoint, that the State Water Board re-affirm its support for consensual agreements, such as the 1981 Contract, as important mechanisms for resolving water right disputes.

Second, on pages 80-83, the Workplan appears to assume that no diversions of water in the Bay-Delta watershed under valid appropriative rights should occur when such water is needed to implement any Bay-Delta water-quality objectives. Specifically, on page 81, the Workplan states:

Many water right holders in the Central Valley continue to divert under their appropriative water rights when water is not available, taking into consideration the amount of water needed to meet water quality and flow objectives and senior in-basin demands. As a result of diversions under these conditions, the SWP and CVP need to release additional stored water to meet objectives in the Bay-Delta.

The Workplan should acknowledge that water right settlement agreements such as the 1981 Contract may modify the circumstances in which water is "available" for diversion under appropriative and riparian rights, in accordance with the provisions of the contract.

Moreover, the State Water Board's November 1999 Final EIR for Implementation of the 1995 Bay/Delta Water Quality Control Plan considered seven different alternative methods to implement the Bay/Delta water quality objectives. One of these alternatives was Flow Alternative 3, which would have implemented the flow and water quality objectives in the 1995 Bay/Delta Plan by requiring all appropriative water-right holders in the Bay/Delta watershed to curtail diversions, in reverse order of priority, to the extent necessary to implement the objectives. A fundamental problem with this flow alternative is that it did not contain any provisions requiring the State Water Project or the Central Valley Project to mitigate the impacts of their South Delta pumping on the Bay/Delta. (See Nov. 1999 Final EIR, pp. II-16 to II-27.) Instead, it inappropriately would have shifted major portions of this burden to the holders of other water rights in the Bay-Delta watershed.

The text on pages 80-83 of the Workplan appears to assume that the State Water Board already has adopted, or in the future will adopt, this Flow Alternative 3. However, because the major interested parties were able to reach a proposed settlement of the Phase 8 issues, the State Water Board never held Phase 8 of its Bay/Delta water-right proceeding, and the State Water Board certainly never adopted Flow Alternative 3. Moreover, it is uncertain whether or not the State

Water Board ever will adopt Flow Alternative 3. There are several complex water-right issues associated with the question of the proper flow alternative for implementing Bay/Delta flow and water quality objectives, and any State Water Board decision on these issues probably would result in something besides Flow Alternative 3.

For these reasons, it would not be appropriate for the State Water Board's new Bay/Delta Strategic Workplan to contain text that assumes that the State Water Board will adopt Flow Alternative 3 in the future. Instead, the workplan should make it clear that the State Water Board has not yet made any final decision on the complex issues associated with implementation of Bay/Delta flow and water-quality objectives.

For similar reasons, the Workplan's statements that natural and abandoned flows "continue to be unavailable" and are "inadequate" and "insufficient" to meet water quality and flow objectives (see pp. 6-7, 14, 81-82) should be modified. Like the statements discussed above, these statements also incorrectly assume that (i) no settlement agreements such as the 1981 Contract are currently in place; and (ii) no diversions in the Bay-Delta watershed under valid appropriative rights should be allowed when such water is needed to implement any Bay-Delta water-quality objectives.

These proposed changes do not change the Workplan's important provisions regarding the need to take actions to prevent future unauthorized diversions of water in the Bay-Delta watershed or the important point that future assignments of state filings could affect DWR's and Reclamation's ability to meet the Bay-Delta water-quality and flow objectives.

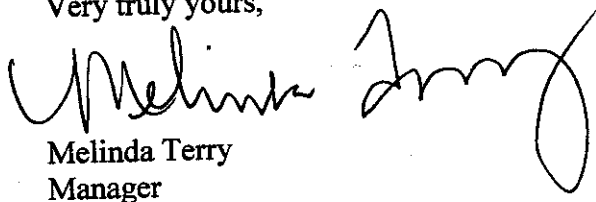
Third, on pages 91-92, the Workplan proposes the development of in-stream flow standards for various "priority California streams," including at least one Delta tributary. Such a process should not be part of a Bay-Delta Strategic Workplan. Rather, to the extent that the development of in-stream flow standards for streams tributary to the Delta becomes necessary or appropriate, such action should be undertaken in a separate proceeding that is focused on the unique characteristics of the subject stream(s). The involvement of Bay-Delta issues in such a proceeding would unnecessarily complicate the development of in-stream standards.

Finally, the Workplan establishes a goal "to promote the efficient use of water supplies and the protection of beneficial uses of water from the Bay-Delta and areas throughout the State." It also establishes an objective of "encouraging more efficient agricultural water use." (Workplan at 84). NDWA generally supports these goals and objectives, so long as issues of agricultural water use efficiency are considered in the context of local farm economies and local custom. The Workplan, however, goes on to identify near-term and long-term water use efficiency activities that are being considered by the State Water Board, including the following: "The State Water Board could conduct adjudicative proceedings where urban or agricultural water use is higher than similar uses in similar locations or circumstances. An investigation would be performed to determine the reasonableness of water use and an order issued to prevent the waste, unreasonable use of water, unreasonable method of use, and unreasonable method of diversion of water." (Workplan at 86). The Workplan further states that the State Water Board is considering (i) a requirement that all agricultural water suppliers file reports every five years to address water management and conservation practices; and (ii) "better" water use measurement and reporting that documents both surface and groundwater agricultural water use.

NDWA believes that adjudicative proceedings of the type described in the Workplan and inflexible measurement and reporting requirements would be extremely counter-productive from the standpoint of achieving increased water use efficiency. Past history demonstrates that a "one size fits all" approach to agricultural water conservation simply does not work. Where, as in the Sacramento Valley, the water delivery system is interconnected so that one water user's return flows are another user's water supply, there is little if any benefit to be achieved by mandatory water measurement or water management programs. The State Water Board should continue to encourage innovation in the area of water use efficiency but it should not do so by regulatory mandate. California agriculture has demonstrated a willingness and ability to implement water use efficiency measures when such measures make sense from an economic and operational standpoint.

Thank you for the opportunity to comment on the Workplan.

Very truly yours,

A handwritten signature in black ink, appearing to read "Melinda Terry". The signature is fluid and cursive, with a large loop at the end of the last name.

Melinda Terry
Manager

CONTRACT
BETWEEN
STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
AND
NORTH DELTA WATER AGENCY

FOR THE ASSURANCE
OF A DEPENDABLE WATER SUPPLY OF SUITABLE QUALITY

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**CONTRACT BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES
AND THE NORTH DELTA WATER AGENCY
FOR THE ASSURANCE OF A DEPENDABLE WATER SUPPLY OF SUITABLE QUALITY**

THIS CONTRACT, made this 28 day of Jan., 1981, between the STATE OF CALIFORNIA, acting by and through its DEPARTMENT OF WATER RESOURCES (State), and the NORTH DELTA WATER AGENCY (Agency), a political subdivision of the State of California, duly organized and existing pursuant to the laws thereof, with its principal place of business in Sacramento, California.

RECITALS

(a) The purpose of this contract is to assure that the State will maintain within the Agency a dependable water supply of adequate quantity and quality for agricultural uses and, consistent with the water quality standards of Attachment A, for municipal and industrial uses, that the State will recognize the right to the use of water for agricultural, municipal, and industrial uses within the Agency, and that the Agency will pay compensation for any reimbursable benefits allocated to water users within the Agency resulting from the Federal Central Valley Project and the State Water Project, and offset by any detriments caused thereby.

(b) The United States, acting through its Department of the Interior, has under construction and is operating the Federal Central Valley Project (FCVP).

(c) The State has under construction and is operating the State Water Project (SWP).

(d) The construction and operation of the FCVP and SWP at times have changed and will further change the regimen of rivers tributary to the Sacramento-San Joaquin Delta (Delta) and the regimen of the Delta channels from unregulated flow to regulated flow. This regulation at times improves the quality of water in the Delta and at times diminishes the quality from that which would exist in the absence of the FCVP and SWP. The regulation at times also alters the elevation of water in some Delta channels.

(e) Water problems within the Delta are unique within the State of California. As a result of the geographical location of the lands of the Delta and tidal influences, there is no physical shortage of water. Intrusion of saline ocean water and municipal, industrial and agricultural discharges and return flows, tend, however, to deteriorate the quality.

(f) The general welfare, as well as the rights and requirements of the water users in the Delta, require that there be maintained in the Delta an adequate supply of good quality water for agricultural, municipal and industrial uses.

(g) The law of the State of California requires protection of the areas within which water originates and the watersheds in which water is developed. The Delta is such an area and within such a watershed. Part 4.5 of Division 6 of the California Water Code affords a first priority to provision of salinity control and maintenance of an adequate water supply in the Delta for reasonable and beneficial uses of water and relegates to lesser priority all exports of water from the Delta to other areas for any purpose.

(h) The Agency asserts that water users within the Agency have the right to divert, are diverting, and will continue to divert, for reasonable beneficial use, water from the Delta that would have been available therein if the FCVP and SWP were not in existence, together with the right to enjoy or acquire such benefits to which the water users may be entitled as a result of the FCVP and SWP.

(i) Section 4.4 of the North Delta Water Agency Act, Chapter 283, Statutes of 1973, as amended, provides that the Agency has no authority or power to affect, bind, prejudice, impair, restrict, or limit vested water rights within the Agency.

(j) The State asserts that it has the right to divert, is diverting, and will continue to divert water from the Delta in connection with the operation of the SWP.

(k) Operation of SWP to provide the water quality and quantity described in this contract constitutes a reasonable and beneficial use of water.

(l) The Delta has an existing gradient or relationship in quality between the westerly portion most seriously affected by ocean salinity intrusion and the interior portions of the Delta where the effect of ocean salinity intrusion is diminished. The water quality criteria set forth in this contract establishes minimum water qualities at various monitoring locations. Although the water quality criteria at upstream locations is shown as equal in some periods of some years to the water quality at the downstream locations, a better quality will in fact exist at the upstream locations at almost all times. Similarly, a better water quality than that shown for any given monitoring location will also exist at interior points upstream from that location at almost all times.

(m) It is not the intention of the State to acquire by purchase or by proceeding in eminent domain or by any other manner the water rights of water users within the Agency, including rights acquired under this contract.

(n) The parties desire that the United States become an additional party to this contract.

AGREEMENTS

1. **Definitions.** When used herein, the term:

(a) "Agency" shall mean the North Delta Water Agency and shall include all of the lands within the boundaries at the time the contract is executed as described in Section 9.1 of the North Delta Water Agency Act, Chapter 283, Statutes of 1973, as amended.

(b) "Calendar year" shall mean the period January 1 through December 31.

(c) "Delta" shall mean the Sacramento-San Joaquin Delta as defined in Section 12220 of the California Water Code as of the date of the execution of the contract.

(d) "Electrical Conductivity" (EC) shall mean the electrical conductivity of a water sample measured in millimhos per centimeter per square centimeter corrected to a standard temperature of 25° Celsius determined in accordance with procedures set forth in the publication entitled "Standard Methods of Examination of Water and Waste Water", published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation, 13th Edition, 1971, including such revisions thereof as may be made subsequent to the date of this contract which are approved in writing by the State and the Agency.

(e) "Federal Central Valley Project" (FCVP) shall mean the Central Valley Project of the United States.

(f) "Four-River Basin Index" shall mean the most current forecast of Sacramento Valley unimpaired runoff as presently published in the California Department of Water Resources Bulletin 120 for the sum of the flows of the following: Sacramento River above Bend Bridge near Red Bluff; Feather River, total inflow to Oroville Reservoir; Yuba River at Smartville; American River, total inflow to Folsom Reservoir. The May 1 forecast shall continue in effect until the February 1 forecast of the next succeeding year.

(g) "State Water Project" (SWP) shall mean the State Water Resources Development System as defined in Section 12931 of the Water Code of the State of California.

(h) "SWRCB" shall mean the State Water Resources Control Board.

(i) "Water year" shall mean the period October 1 of any year

through September 30 of the following year.

2. Water Quality.

(a) (i) The State will operate the SWP to provide water qualities at least equal to the better of: (1) the standards adopted by the SWRCB as they may be established from time to time; or (2) the criteria established in this contract as identified on the graphs included as Attachment A.

(ii) The 14-day running average of the mean daily EC at the identified location shall not exceed the values determined from the Attachment A graphs using the Four-River Basin Index except for the period February through March of each year at the location in the Sacramento River at Emmaton for which the lower value of the 80 percent probability range shall be used.

(iii) The quality criteria described herein shall be met at all times except for a transition period beginning one week before and extending one week after the date of change in periods as shown on the graphs of Attachment A. During this transition period, the SWP will be operated to provide as uniform a transition as possible over the two-week period from one set of criteria to the next so as to arrive at the new criteria one week after the date of change in period as shown on the graphs of Attachment A.

(b) While not committed affirmatively to achieving a better water quality at interior points upstream from Emmaton than those set forth on Attachment A, the State agrees not to alter the Delta hydraulics in such manner as to cause a measurable adverse change in the ocean salinity gradient or relationship among the various monitoring locations shown on Attachment B and interior points upstream from those locations, with any particular flow past Emmaton.

(c) Whenever the recorded 14-day running average of mean daily EC of water in the Sacramento River at Sacramento exceeds 0.25 mmhos, the quality criteria indicated on the graphs of Attachment A may be adjusted by adding to the value taken therefrom the product of 1.5 times the amount that the recorded EC of the Sacramento River at Sacramento exceeds 0.25 mmhos.

3. **Monitoring.** The quality of water shall be measured by the State as needed to monitor performance pursuant to Article 2 hereof with equipment installed, operated, and maintained by the State, at locations indicated on "Attachment B". Records of such measurements shall at regular intervals be furnished to the Agency. All monitoring costs at North Fork Mokelumne River near Walnut Grove, Sacramento River at Walnut Grove, and Steamboat Slough at Sutter Slough incurred by the State solely for this contract shall be shared equally by the Agency and the State. All monitoring costs to be borne by the Agency for monitoring at the above locations are included in the payment under Article 10.

4. Emergency Provisions.

(a) If a structural emergency occurs such as a levee failure or a failure of an SWP facility, which results in the State's failure to meet the water quality criteria, the State shall not be in breach of this contract if it makes all reasonable efforts to operate SWP facilities so that the water quality criteria will be met again as soon as possible. For any period in which SWP failure results in failure of the State to meet the water quality criteria, the State shall waive payment under Article 10, prorated for that period, and the amount shall be deducted from the next payment due.

(b) (i) A drought emergency shall exist when all of the following occur:

(1) The Four-River Basin Index is less than an average of 9,000,000 acre feet in two consecutive years (which occurred in 1933-4 and 1976-7); and

(2) An SWRCB emergency regulation is in effect providing for the operation of the SWP to maintain water quality different from that provided in this contract; and

(3) The water supplied to meet annual entitlements of

SWP agricultural contractors in the San Joaquin Valley is being reduced by at least 50 percent of these agricultural entitlements (it being the objective of the SWP to avoid agricultural deficiencies in excess of 25 percent) or the total of water supplied to meet annual entitlements of all SWP contractors is being reduced by at least 15 percent of all entitlements, whichever results in the greater reduction in acre feet delivered.

(ii) A drought emergency shall terminate if any of the conditions in (b) (i) of this Article ceases to exist or if the flow past Sacramento after October 1 exceeds 20,000 cubic feet per second each day for a period of 30 days.

(iii) Notwithstanding the provisions of Article 2 (a), when a drought emergency exists, the emergency water quality criteria of the SWRCB shall supersede the water quality requirements of this contract to the extent of any inconsistency; provided, however, that the State shall use all reasonable efforts to preserve Delta water quality, taking into consideration both the limited water supply available for that purpose and recognizing the priority established for Delta protection referred to in Recital (g).

(iv) When a drought emergency exists, and an overland supply is not available to an individual water user comparable in quality and quantity to the water which would have been available to the user under Attachment A, the State shall compensate the user for loss of net income for each acre either (A) planted to a more salt-tolerant crop in the current year, (B) not planted to any crop in the current year provided such determination not to plant was reasonable based on the drought emergency, or (C) which had a reduced yield due to the drought emergency, calculated on the basis of the user's average net income for any three of the prior five years for each such acre. A special contract claims procedure shall be established by the State to expedite and facilitate the payment of such compensation.

5. Overland Water Supply Facilities.

(a) Within the general objectives of protecting the western Delta areas against the destruction of agricultural productivity as a result of the increased salinity of waters in the Delta channels resulting in part from SWP operation, the State may provide diversion and overland facilities to supply and distribute water to Sherman Island as described in the report entitled "Overland Agricultural Water Facilities Sherman Island" dated January 1980. Final design and operating specifications shall be subject to approval of the Agency and Reclamation District No. 341. The Agency or its transferee will assume full ownership, operation, and maintenance responsibility for such facilities after successful operation as specified. After the facilities are constructed and operating, the water quality criteria for the Sacramento River at Emmaton shall apply at the intake of the facilities in Three Mile Slough.

(b) The State and the Agency may agree to the construction and operation of additional overland water supply facilities within the Agency, so long as each landowner served by the overland facilities receives a quality of water not less than that specified in Attachment A for the upstream location nearest to his original point of diversion. The design and operation of such facilities and the cost sharing thereof are subject to approval of any reclamation district which includes within its boundaries the area to be served. The ownership, operation, and maintenance of diversion works and overland facilities shall be the subject of a separate agreement between the Agency or its transferees and the State.

6. **Flow Impact.** The State shall not convey SWP water so as to cause a decrease or increase in the natural flow, or reversal of the natural flow direction, or to cause the water surface elevation in Delta channels to be altered, to the detriment of Delta channels or water users within the Agency. If lands, levees, embankments, or revetments adjacent to Delta channels within the Agency incur seepage or erosion damage or if diversion facilities must be modi-

fied as a result of altered water surface elevations as a result of the conveyance of water from the SWP to lands outside the Agency after the date of this contract, the State shall repair or alleviate the damage, shall improve the channels as necessary, and shall be responsible for all diversion facility modifications required.

7. Place of Use of Water.

(a) Any subcontract entered into pursuant to Article 18 shall provide that water diverted under this contract for use within the Agency shall not be used or otherwise disposed of outside the boundaries of the Agency by the subcontractor.

(b) Any subcontract shall provide that all return flow water from water diverted within the Agency under this contract shall be returned to the Delta channels. Subject to the provisions of this contract concerning the quality and quantity of water to be made available to water users within the Agency, and to any reuse or recapture by water users within the Agency, the subcontractor relinquishes any right to such return flow, and as to any portion thereof which may be attributable to the SWP, the subcontractor recognizes that the State has not abandoned such water.

(c) If water is attempted to be used or otherwise disposed of outside the boundaries of the Agency so that the State's rights to return flow are interfered with, the State may seek appropriate administrative or judicial action against such use or disposal.

(d) This article shall not relieve any water user of the responsibility to meet discharge regulations legally imposed.

8. Scope of Contract.

(a) During the term of this contract:

(i) This contract shall constitute the full and sole agreement between the State and the Agency as to (1) the quality of water which shall be in the Delta channels, and (2) the payment for the assurance given that water of such quality shall be in the Delta channels for reasonable and beneficial uses on lands within the Agency, and said diversions and uses shall not be disturbed or challenged by the State so long as this contract is in full force and effect.

(ii) The State recognizes the right of the water users of the Agency to divert from the Delta channels for reasonable and beneficial uses for agricultural, municipal and industrial purposes on lands within the Agency, and said diversions and uses shall not be disturbed or challenged by the State so long as this contract is in full force and effect, and the State shall furnish such water as may be required within the Agency to the extent not otherwise available under the water rights of water users.

(iii) The Agency shall not claim any right against the State in conflict with the provisions hereof so long as this contract remains in full force and effect.

(b) Nothing herein contained is intended to or does limit rights of the Agency against others than the State, or the State against any person other than the Agency and water users within the Agency.

(c) This contract shall not affect, bind, prejudice, impair, restrict, or limit vested water rights within the Agency.

(d) The Agency agrees to defend affirmatively as reasonable and beneficial the water qualities established in this contract. The State agrees to defend affirmatively as reasonable and beneficial the use of water required to provide and sustain the qualities established in this contract. The State agrees that such use should be examined only after determination by a court of competent jurisdiction that all uses of water exported from the Delta by the State and by the United States, for agricultural, municipal, and industrial purposes are reasonable and beneficial, and that irrigation practices, conservation efforts, and groundwater management within areas served by such exported water should be examined in particular.

(e) The Agency consents to the State's export of water from

the Delta so long as this contract remains in full force and effect and the State is in compliance herewith.

9. Term of Contract.

(a) This contract shall continue in full force and effect until such time as it may be terminated by the written consent and agreement of the parties hereto, provided that 40 years after execution of this contract and every 40 years thereafter, there shall be a six-month period of adjustment during which any party to this contract can negotiate with the other parties to revise the contract as to the provisions set out in Article 10. If, during this period, agreement as to a requested revision cannot be achieved, the parties shall petition a court of competent jurisdiction to resolve the issue as to the appropriate payment to be made under Article 10. In revising Article 10, the court shall review water quality and supply conditions within the Agency under operation of the FCVP and SWP, and identify any reimbursable benefits allocated to water users within the Agency resulting from operation of the FCVP and SWP, offset by any detriments caused thereby. Until such time as any revision is final, including appeal from any ruling of the court, the contract shall remain in effect as without such revision.

(b) In the event this contract terminates, the parties' water rights to quality and quantity shall exist as if this contract had not been entered into.

10. Amount and Method of Payment for Water.

(a) The Agency shall pay each year as consideration for the assurance that an adequate water supply and the specific water quality set forth in this contract will be maintained and monitored, the sum of one hundred seventy thousand dollars (\$170,000.00). The annual payments shall be made to the State one-half on or before January 1 and one-half on or before July 1 of each year commencing with January 1, 1982.

(b) The payment established in (a) above shall be subject to adjustment as of January 1, 1987, and every fifth year thereafter. The adjusted payment shall bear the same relation to the payment specified in (a) above that the mean of the State's latest projected Delta Water Rate for the five years beginning with the year of adjustment bears to \$10.00 per acre foot; provided that, no adjusted payment shall exceed the previous payment by more than 25 percent.

(c) The payments provided for in this article shall be deposited by the State in trust in the California Water Resources Development System Revenue Account in the California Water Resources Development Bond Fund. The trust shall continue for five years (or such longer period as the State may determine) but shall be terminated when the United States executes a contract as provided in Article 11 with the State and the Agency at which time the proportion of the trust fund that reflects the degree to which the operation of the FCVP has contributed to meeting the water quality standard under this contract as determined solely by the State shall be paid to the United States (with a pro rata share of interest). In the event that the United States has not entered into such a contract before the termination of the trust, the trust fund shall become the sole property of the State.

11. **Participation of the United States.** The Agency will exercise its best efforts to secure United States joinder and concurrence with the terms of this contract and the State will diligently attempt to obtain the joinder and concurrence of the United States with the terms of this contract and its participation as a party hereto. Such concurrence and participation by the United States in this contract shall include a recognition ratified by the Congress that the excess land provisions of Federal reclamation law shall not apply to this contract.

12. Remedies.

(a) The Agency shall be entitled to obtain specific perfor-

mance of the provisions of this contract by a decree of the Superior Court in Sacramento County requiring the State to meet the standards set forth in this contract. If the water quality in Delta channels falls below that provided in this contract, then, at the request of the Agency, the State shall cease all diversions to storage in SWP reservoirs or release stored water from SWP reservoirs or cease all export by the SWP from Delta channels, or any combination of these, to the extent that such action will further State compliance with the water quality standards set forth in this contract, except that the State may continue to export from Delta channels to the extent required to meet water quality requirements in contracts with the Delta agencies specified in Section 11456 of the California Water code.

(b) To the extent permitted by law, the State agrees to forego the use of eminent domain proceedings to acquire water rights of water users within the Agency or any rights acquired under this contract for water or water quality maintenance for the purpose of exporting such water from the Delta. This provision shall not be construed to prohibit the utilization of eminent domain proceedings for the purpose of acquiring land or any other rights necessary for the construction of water facilities.

(c) Except as provided in the water quality assurances in Article 2 and the provisions of Article 6 and Article 8, neither the State nor its officers, agents, or employees shall be liable for or on account of:

(i) The control, carriage, handling, use, disposal, or distribution of any water outside the facilities constructed, operated and maintained by the State.

(ii) Claims of damage of any nature whatsoever, including but not limited to property loss or damage, personal injury or death arising out of or connected with the control, carriage, handling, use, disposal or distribution of any water outside of the facilities constructed, operated and maintained by the State.

(d) The use by the Agency or the State of any remedy specified herein for the enforcement of this contract is not exclusive and shall not deprive either from using any other remedy provided by law.

13. **Comparable Treatment.** In the event that the State gives on the whole substantially more favorable treatment to any other Delta entity under similar circumstances than that accorded under this contract to the Agency, the State agrees to renegotiate this contract to provide comparable treatment to the Agency under this contract.

GENERAL PROVISIONS

14. **Amendments.** This contract may be amended or terminated at any time by mutual agreement of the State and the Agency.

15. **Reservation With Respect to State Laws.** Nothing herein contained shall be construed as estopping or otherwise preventing the Agency, or any person, firm, association, corporation, or public body claiming by, through, or under the Agency, from contesting by litigation or other lawful means, the validity, constitutionality, construction or application of any law of the State of California.

16. **Opinions and Determinations.** Where the terms of this contract provide for action to be based upon the opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

17. **Successors and Assigns Obligated.** This contract and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

18. **Assignment and Subcontract.** The Agency may enter into subcontracts with water users within the Agency boundaries in which the assurances and obligations provided in this contract as

to such water user or users are assigned to the area covered by the subcontract. The Agency shall remain primarily liable and shall make all payments required under this contract. No assignment or transfer of this contract, or any part hereof, rights hereunder, or interest herein by the Agency, other than a subcontract containing the same terms and conditions, shall be valid unless and until it is approved by the State and made subject to such reasonable terms and conditions as the State may impose. No assignment or transfer of this contract or any part hereof, rights hereunder, or interest herein by the State shall be valid except as such assignment or transfer is made pursuant to and in conformity with applicable law.

19. **Books, Records, Reports, and Inspections Thereof.** Subject to applicable State laws and regulations, the Agency shall have full and free access at all reasonable times to the SWP account books and official records of the State insofar as the same pertain to the matters and things provided for in this contract, with the right at any time during office hours to make copies thereof, and the proper representatives of the State shall have similar rights with respect to the account books and records of the Agency.

20. **Waiver of Rights.** Any waiver at any time by either party hereto of its rights with respect to a default, or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other default or matter.

21. **Assurance Relating to Validity of Contract.** This contract shall be effective after its execution by the Agency and the State. Promptly after the execution and delivery of this contract, the Agency shall file and prosecute to a final decree, including any appeal therefrom to the highest court of the State of California, in a court of competent jurisdiction a special proceeding for the judicial examination, approval, and confirmation of the proceedings of the Agency's Board of Directors and of the Agency leading up to and including the making of this contract and the validity of the provisions thereof as a binding and enforceable obligation upon the State and the Agency. If, in this proceeding or other proceeding before a court of competent jurisdiction, any portion of this contract should be determined to be constitutionally invalid, then the remaining portions of this contract shall remain in full force and effect unless modified by mutual consent of the parties.

22. **Notices.** All notices that are required either expressly or by implication to be given by one party to the other shall be deemed to have been given if delivered personally or if enclosed in a properly addressed, postage prepaid, envelope and deposited in a United States Post Office. Unless or until formally notified otherwise, the Agency shall address all notices to the State as follows:

Director, Department of Water Resources
P.O. Box 388
Sacramento, California 95802

and the State shall address all notices to the Agency as follows:
North Delta Water Agency
333 Forum Building, 1107 - 9th Street
Sacramento, California 95814

IN WITNESS WHEREOF, the parties hereto have executed this contract on the date first above written.

Approved as to legal form
and sufficiency:

STATE OF CALIFORNIA

By /s/ P. A. TOWNER
Chief Counsel
Dept. of Water Resources

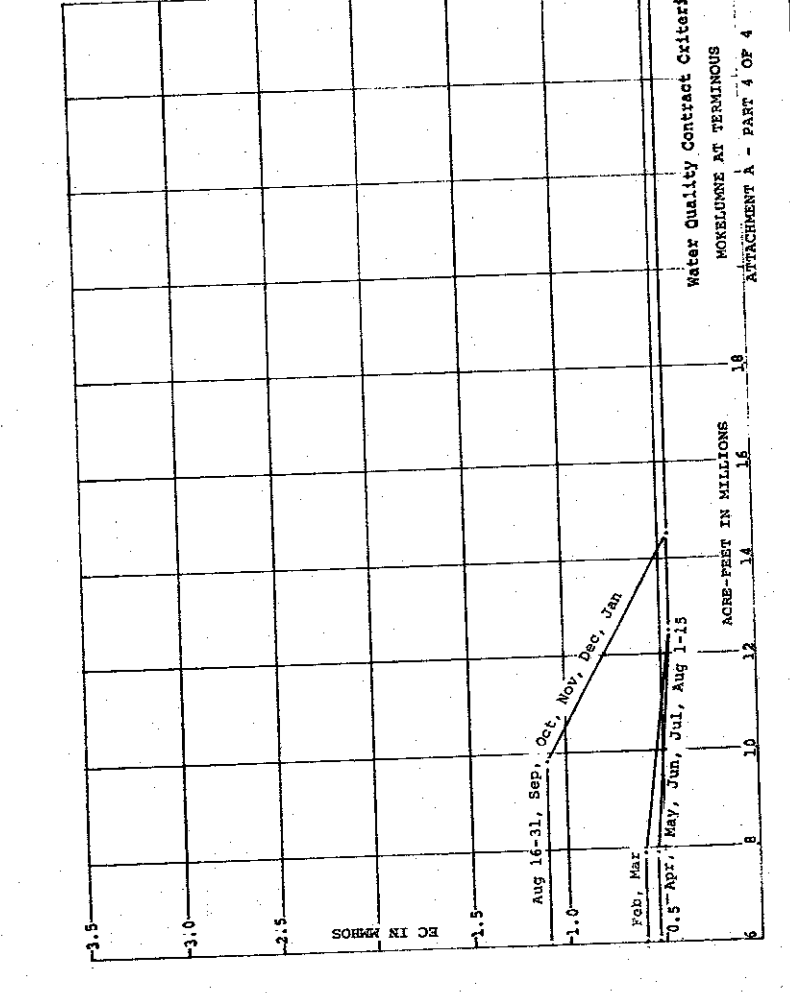
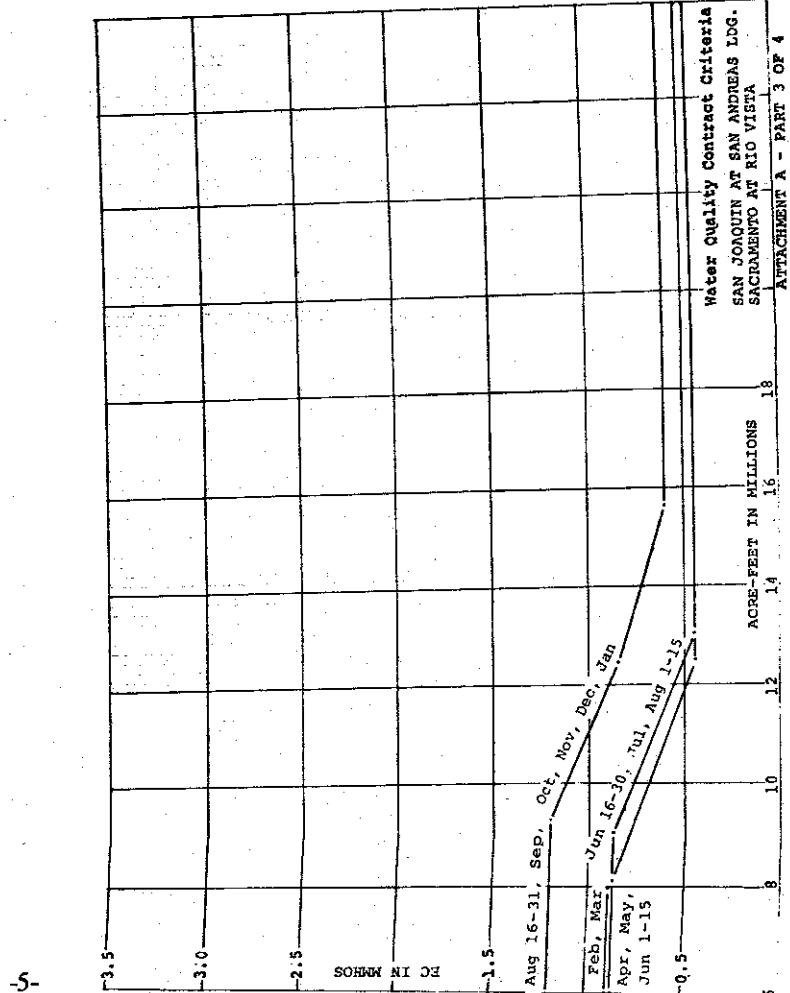
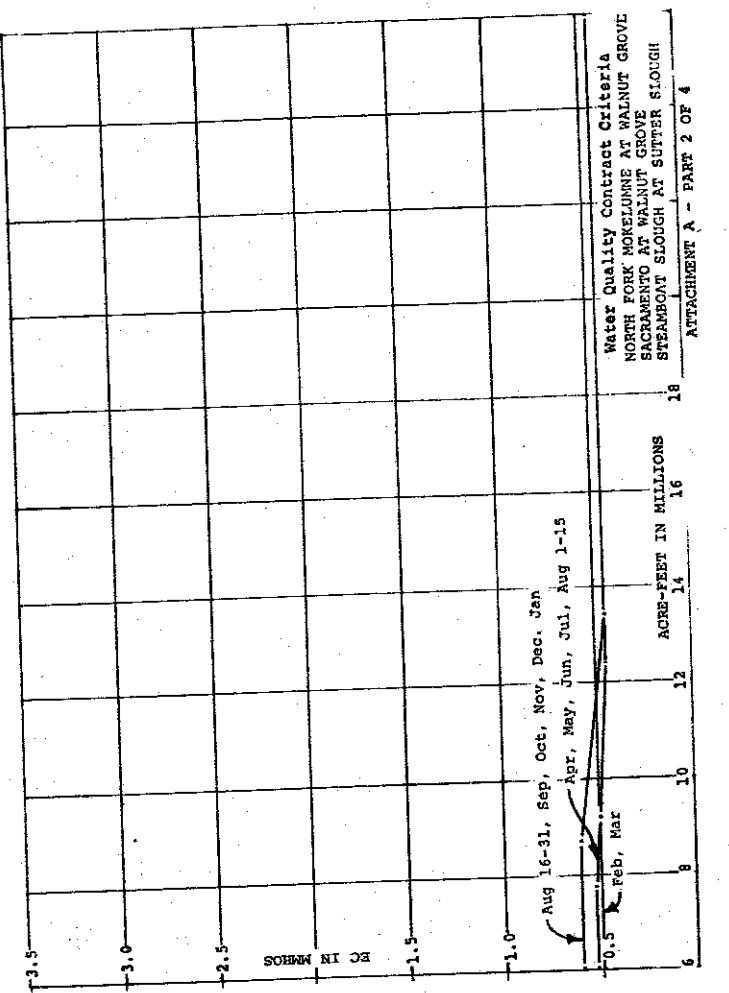
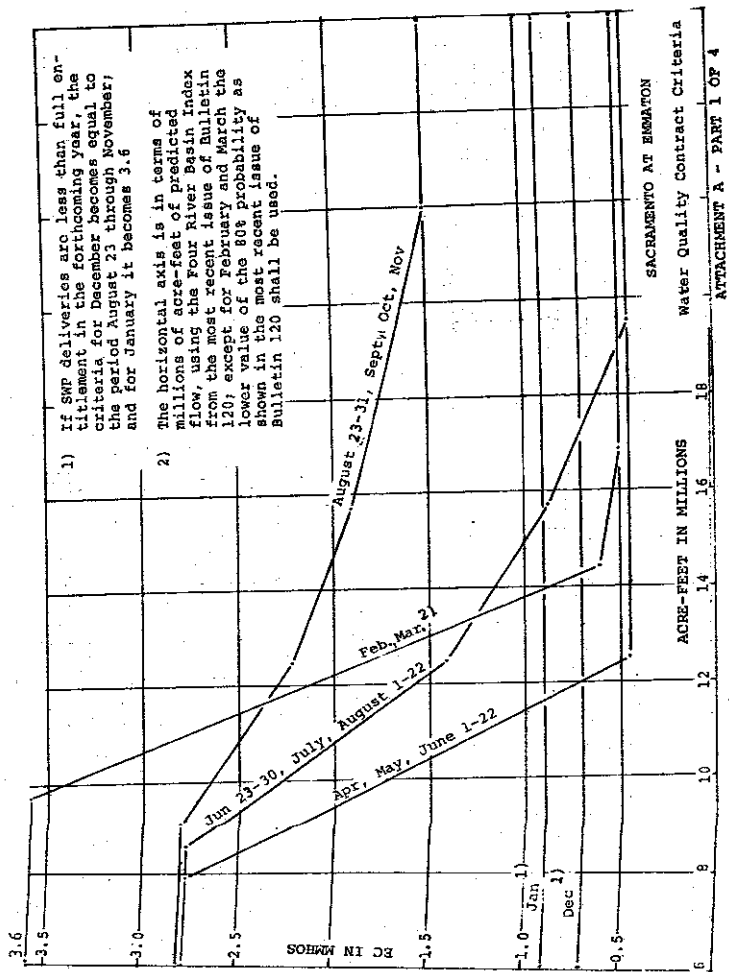
By /s/ RONALD B. ROBE
Dept. of Water Resources

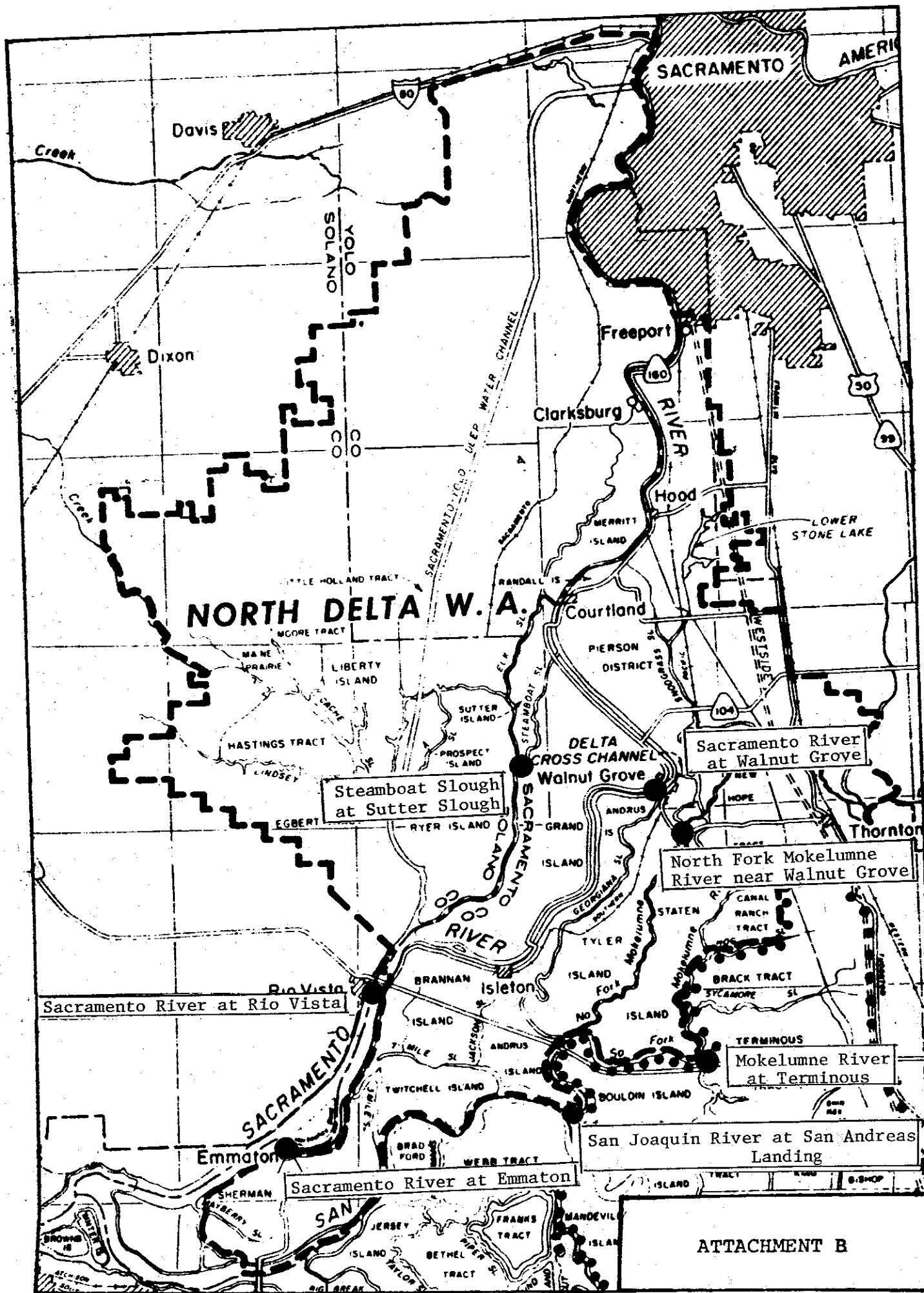
Approved as to legal form
and sufficiency:

NORTH DELTA WATER
AGENCY

By /s/ GEORGE BASYE
General Counsel
North Delta Water Agency

By /s/ W. R. DARSIE
Chairman
Board of Directors





ATTACHMENT B