

SOMACH SIMMONS & DUNN
A Professional Corporation

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6 Attorneys for Petitioner/Plaintiff BYRON-
7 BETHANY IRRIGATION DISTRICT

8
9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11 ENFORCEMENT ACTION ENF01949
12 DRAFT CEASE AND DESIST ORDER
REGARDING UNAUTHORIZED
13 DIVERSIONS OR THREATENED
UNAUTHORIZED DIVERSIONS OF WATER
14 FROM OLD RIVER IN SAN JOAQUIN
COUNTY
15 In the Matter of ENFORCEMENT ACTION
16 ENF01951 – ADMINISTRATIVE CIVIL
LIABILITY COMPLAINT REGARDING
17 UNAUTHORIZED DIVERSION OF WATER
FROM THE INTAKE CHANNEL TO THE
18 BANKS PUMPING PLANT (FORMERLY
ITALIAN SLOUGH) IN CONTRA COSTA
19 COUNTY

SWRCB Enforcement Action
ENF01951 and ENF01949
DECLARATION OF MICHAEL
VERGARA IN SUPPORT OF
BYRON-BETHANY IRRIGATION
DISTRICT'S OPPOSITION TO THE
DEPARTMENT OF WATER
RESOURCES' MOTION FOR
PROTECTIVE ORDER; RE: PAUL
MARSHALL

20 I, Michael Vergara, declare:

21 1. I am an attorney at law licensed to practice before the courts of the State of
22 California, and a shareholder with Somach Simmons & Dunn. I am the attorney with
23 primary responsibility for this matter in my firm, and am familiar with all pleadings, filings,
24 and correspondence related to it. The following matters are within my personal
25 knowledge and, if called as a witness, I can competently testify thereto.

26 2. A true and correct copy of the State Water Resources Control Board's
27 (SWRCB) Pre-Hearing Conference Order, dated August 19, 2015, is attached as
28 Exhibit A.

DECLARATION OF MICHAEL VERGARA IN SUPPORT OF BYRON-BETHANY IRRIGATION
DISTRICT'S OPPOSITION TO THE DEPARTMENT OF WATER RESOURCES' MOTION FOR
PROTECTIVE ORDER; RE: PAUL MARSHALL

EXHIBIT A

State Water Resources Control Board

NOTICE OF PUBLIC HEARING and PRE-HEARING CONFERENCE

The State Water Resources Control Board will hold a Public Hearing to determine whether to impose Administrative Civil Liability against

Byron-Bethany Irrigation District

**Intake Channel to the Banks Pumping Plant (formerly Italian Slough)
Contra Costa County**

The **Pre-Hearing Conference**
will commence on
Friday, September 25, 2015
at **9:00 a.m.**

in the Sierra Hearing Room
Joe Serna Jr.-CalEPA Building
1001 I Street, Second Floor
Sacramento, CA

The **Public Hearing** will commence on
Wednesday, October 28, 2015 and continue, if necessary,
on October 29 and 30, 2015
at **9:00 a.m.**

in the Coastal Hearing Room
Joe Serna Jr.-CalEPA Building
1001 I Street, Second Floor
Sacramento, CA

PURPOSE OF HEARING

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board) to receive evidence relevant to determining whether to impose administrative civil liability against the Bryon-Bethany Irrigation District (BBID) for alleged unauthorized diversion of water and, if so, whether in the amount of \$1,553,250 or some other amount.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

BACKGROUND

Water Code section section 1052, subdivision (a), which provides that the diversion or use of water subject to Division 2 of the Water Code other than as authorized in Division 2 is a trespass. The State Water Board may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs. (Wat. Code, § 1052, subd. (b).) Fines can go up to \$10,000 for each day a trespass occurs in certain critically dry years. (See Wat.Code § 1845, subd. (b)(1)(A).)

Water Code section 1052, subdivision (c), provides that any person or entity committing a trespass during a period for which the Governor has issued a proclamation of a state of drought emergency may be liable in an amount not to exceed the sum of one thousand dollars (\$1,000) for each day the trespass occurs plus two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in excess of that diverter's rights. A trespass is the unauthorized diversion or use of water, as defined in Water Code section 1052, subdivision (a).

Water Code section 1052, subdivision (d)(2), provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

On July 20, 2015, the Assistant Deputy Director of the Division of Water Rights (Assistant Deputy Director) issued an [administrative civil liability complaint \(complaint\)](#) alleging that BBID committed a trespass through the unauthorized diversion of water in violation of Water Code section 1052, subdivision (a). The complaint proposes that liability be imposed upon BBID in the amount of **\$1,553,250**.

By letter dated August 6, 2015, BBID [requested a hearing](#) on the complaint.

This notice, the complaint, and other material related to this hearing can be found on the Division's website at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/byron_bethany/index.shtml

KEY ISSUES

In determining the amount of civil liability, the Board must take into consideration all relevant circumstances (Wat. Code, § 1055.3) The hearing will address the following key issues:

- 1) Whether the State Water Board should impose administrative civil liability upon BBID for trespass and, if so, in what amount and on what basis;
 - a. What is the extent of harm caused by BBID's alleged unauthorized diversions?
 - b. What is the nature and persistence of the alleged violation?
 - c. What is the length of time over which the alleged violation occurred?
 - d. What corrective actions, if any, have been taken by BBID?
- 2) What other relevant circumstances should be considered by the State Water Board in determining the amount of any civil liability?

HEARING OFFICER AND HEARING TEAM

State Water Board Member Tam Doduc will preside as the hearing officer for this proceeding. A hearing team will assist the hearing officer by providing legal and technical advice. The hearing team members will be: Nicole Kuenzi, Staff Counsel; Jane Farwell-Jensen, Environmental Scientist; and Ernest Mona, Water Resource Engineer. The hearing team and their supervisors will assist the hearing officer and other members of the State Water Board throughout this proceeding.

SEPARATION OF FUNCTIONS

A staff prosecution team will be a party to this hearing. State Water Board prosecution team members will include: Andrew Tauriainen, Attorney III, Office of Enforcement and Kathy Mrowka, Manager, Enforcement Section.

The prosecution team is separated from the hearing team and is prohibited from having *ex parte* communications with any members of the State Water Board and any members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding. This separation of functions also applies to the supervisors of each team. (Gov. Code, §§ 11430.10-11430.80.)

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THIS HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, anyone wishing to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline listed below. **If BBID fails to submit a Notice of Intent to Appear by the deadline specified in this notice, the State Water Board will deem the request for a hearing regarding the imposition of administrative civil liability to be withdrawn, and the Board may impose administrative civil liability in the amount of \$1,553,250 without further notice. Similarly, if BBID withdraws its request, administrative civil liability may be imposed without further notice.**

Within one week after the deadline to submit Notices of Intent to Appear, the State Water Board will mail out a list of those who desire to participate in the hearing and a copy of all Notices of Intent to Appear that the Board timely received. The list is provided in order to facilitate exchange of written testimony, exhibits, and witness qualifications in advance of the hearing. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. Copies of witnesses' proposed **testimony, exhibits, lists of exhibits, qualifications, and statement of service** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.

12:00 noon, Wednesday, September 2, 2015

Deadline for receipt of Notice of Intent to Appear.

12:00 noon, Monday, October 12, 2015

Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, qualifications, and statement of service.

PRE-HEARING CONFERENCE

The hearing officer will conduct a pre-hearing conference to discuss the scope of the hearing and any other procedural issues on **Friday, September 25, 2015 at 9:00 a.m.** The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. The pre-hearing conference will not be used to hear arguments on, or determine the merits of, any hearing issues, other than procedural matters, unless the parties agree to resolve a hearing issue by stipulation. Following the pre-hearing conference, the hearing officer may, at her discretion, modify the hearing procedures or issues set forth in this notice in whole or in part. All parties to the hearing must attend the pre-hearing conference. Failure to attend the pre-hearing conference may result in exclusion from participation in the hearing.

SUBMITTALS TO THE STATE WATER BOARD

All documents, including Notices of Intent to Appear, written testimony, and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
Attention: Jane Farwell-Jensen

By Mail: P.O. Box 2000, Sacramento, CA 95812-2000
By Hand Delivery: Joe Serna Jr.-CalEPA Building
1001 I Street, 2nd Floor, Sacramento, CA 95814
By Fax: (916) 341-5400
By Email: wrrhearing@waterboards.ca.gov
With Subject of "**BBID ACL Hearing**"

ALL HAND DELIVERED SUBMITTALS should be Date and Time stamped by the Division of Water Rights' Records Unit on the second (2nd) floor of the Joe Serna Jr.-CalEPA Building at the above address prior to or at the submittal deadline. Persons delivering submittals must first check in with lobby security personnel on the first floor. Hand delivered submittals that do not have a timely Date and Time stamp by the Division of Water Rights' Records Unit will be considered late and may not be accepted by the hearing officer.

SETTLEMENTS

Please read the discussion of "Settlements" in the enclosure entitled "Information Concerning Appearance at Water Right Hearings." In this water rights enforcement hearing, the prosecution team is prosecuting BBID for an alleged violation. The prosecution team and BBID may, at their discretion, engage in private settlement discussions and may include any other persons in those discussions. Due to the separation of functions discussed above, **the hearing team cannot participate** in settlement discussions. Should the parties reach settlement, they must notify the hearing team as soon as possible.

IF YOU HAVE ANY QUESTIONS


During the pendency of this proceeding, there shall be no *ex parte* communications regarding substantive or controversial procedural matters within the scope of the proceeding between State Water Board members or hearing team members and any of the other participants, including members of the prosecution team. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters should be directed to Staff Counsel Nicole Kuenzi at (916) 322-4142 or by email to Nicole.Kuenzi@waterboards.ca.gov; or to Jane Farwell-Jensen at (916) 341-5349 or by email to Jane.Farwell-Jensen@waterboards.ca.gov. (Gov. Code, § 11430.20, subd. (b).)

PARKING, ACCESSIBILITY AND SECURITY

The Joe Serna Jr.-CalEPA Building (CalEPA Building) is accessible to people with disabilities. Individuals who require special accommodations at the CalEPA Building are requested to contact Tanya Cole, Equal Employment Opportunity Office, at (916) 341-5880.

Due to enhanced security precautions at the CalEPA Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in before being directed to the hearing.

August 19, 2015
Date



Jeanine Townsend
Clerk to the Board

Enclosures

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

- 1. HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/laws_regulations

Unless otherwise determined by the hearing officers, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officers, parties may also be afforded the opportunity to present closing statements or submit briefs. The State Water Board encourages parties with common interests to work together to make the hearing process more efficient. The hearing officers reserve the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Parties must file any requests for exceptions to procedural requirements in writing with the State Water Board and must serve such requests on the other parties. To provide time for parties to respond, the hearing officers will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

- 2. SETTLEMENTS:** In water right enforcement hearings, a State Water Board staff member or team prosecutes an alleged violation. In such enforcement cases, the prosecution and a party who is the subject of the proposed enforcement action may at their discretion engage in private settlement discussions, or may include any other persons in those discussions. Although other persons may be authorized to participate in the hearing as parties, such a designation does not constitute a ruling that those persons must be allowed to engage in any settlement discussions between the prosecution and the party against whom the agency action is directed. The consent of other parties is not required before the State Water Board, or the Executive Director under State Water Board [Resolution No. 2012-0061](#), can approve a proposed settlement agreement between the prosecution and a party subject to a proposed enforcement action. However, all parties will be given the opportunity to comment on any settlement submitted to the State Water Board or the Executive Director for approval.

In non-enforcement hearings involving an unresolved protest between a protestant and a water right applicant or petitioner, those persons will be designated as parties in the hearing. (Cal. Code Regs., tit. 23, § 648.1, subd. (b).) Other persons who file a Notice of Intent to Appear in the hearing, may also be designated as parties. In such cases, the parties whose dispute originates the action may at their discretion meet privately to engage in settlement discussions, or may include other persons. If the original parties resolve the dispute, the hearing officers will determine whether or not to continue the hearing, after allowing all remaining parties the opportunity to comment on any proposed settlement. The Executive Director or the State Water Board may approve a settlement in the absence of a hearing, notwithstanding the lack of consent of parties besides the protestant and the applicant or petitioner.

3. **PARTIES:** The current parties to the hearing are **Byron-Bethany Irrigation District; and the prosecution team for the State Water Board**. Additional parties may be designated in accordance with the procedures for this hearing. Except as may be decided by specific rulings of the hearing officers, any person or entity who timely files a Notice of Intent to Appear indicating the desire to participate beyond presenting a policy statement shall be designated as a party. The hearing officers may impose limitations on a party's participation. (Gov. Code, § 11440.50, subd. (c).) Persons or entities who do not file a timely Notice of Intent to Appear may be designated as parties at the discretion of the hearing officers, for good cause shown, and subject to appropriate conditions as determined by the hearing officers. Except as specifically provided in this notice or by ruling of the hearing officers, only parties will be allowed to present evidence.
4. **INTERESTED PERSONS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not designated as parties. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may access hearing documents at the website listed in the hearing notice.

Policy statements are subject to the following provisions in addition to the requirements outlined in regulation. (Cal. Code Regs., tit. 23, § 648.1, subd. (d).)

- a. Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons are requested to file a Notice of Intent to Appear, indicating clearly an intent to make a policy statement only.
 - b. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 7, for details regarding electronic submittal of policy statements.
5. **NOTICE OF INTENT TO APPEAR:** Persons and entities who seek to participate as parties in this hearing must file either an electronic copy or a paper copy of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear in a timely manner may be interpreted by the State Water Board as intent not to appear. **If BBID fails to submit a Notice of Intent to Appear by the deadline specified in this notice, the State Water Board will deem the request for a hearing regarding the administrative civil liability complaint to be withdrawn, and administrative civil liability may be imposed without further notice. Similarly, if BBID withdraws its request, administrative civil liability may be imposed without further notice.**

Any faxed or emailed Notices of Intent to Appear must be followed by a mailed or delivered hard copy with an original signature.

Interested persons who will not be participating as parties, but instead presenting only non-evidentiary policy statements should also file a Notice of Intent to Appear.

The Notice of Intent to Appear must state the name and address of the participant. Except for interested persons who will not be participating as parties, the Notice of Intent to Appear must also include: (1) the name of each witness who will testify on the party's behalf;

(2) a brief description of each witness' proposed testimony; and (3) an estimate of the time (not to exceed the total time limit for oral testimony described in section 9, below) that the witness will need to present a brief oral summary of his or her prior-submitted written testimony. (See section 6, below.) Parties who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear.¹ Parties who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other parties as soon as possible.

Parties who are not willing to accept electronic service of hearing documents should check the appropriate box on the Notice of Intent to Appear. (See section 7, below.)

The State Water Board will mail a service list of parties to each person who has submitted a Notice of Intent to Appear. The service list will indicate if any party is unwilling to accept electronic service. If there is any change in the hearing schedule, only those parties on the service list, and interested persons that have filed a Notice of Intent to Appear expressing their intent to present a policy statement only, will be informed of the change.

- 6. WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each party proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.² Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A party who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each party shall submit to the State Water Board **three (3) paper copies** and **one electronic copy** of each of its exhibits. With its exhibits, each party must submit a completed Exhibit Identification Index. Each party shall also serve a copy of each exhibit and the exhibit index on every party on the service list. A statement of service with manner of service indicated shall be filed with each party's exhibits.

The exhibits and indexes for this hearing, and a statement of service, must be **received by the State Water Board and served on the other parties no later than the deadline prescribed in the Hearing Notice**. The State Water Board may interpret failure to timely submit such documents as a waiver of party status.

All hearing documents that are timely received will be posted on the hearings program webpage identified in the hearing notice.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.

¹ A party is not required to present evidence as part of a case-in-chief. Parties not presenting evidence as part of a case-in-chief will be allowed to participate through opening statements, cross-examination, and rebuttal, and may also present closing statements or briefs, if the hearing officers allow these in the hearing.

² The hearing officers may make an exception to this rule if the witness is adverse to the party presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement.

- b. The hearing officers have discretion to receive into evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A party offering an exhibit by reference shall advise the other parties and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the party relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
- c. A party seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other parties prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a party waives the opportunity to obtain a copy of the exhibit, the party sponsoring the exhibit will not be required to provide a copy to the waiving party. Additionally, with the permission of the hearing officers, such exhibits may be submitted to the State Water Board solely in electronic form, using a file format readable by Microsoft Office 2003 software.
- d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
- e. Parties submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, parties may supply, for the hearing record, a reduced copy of a large format original if it is readable.

7. ELECTRONIC SUBMISSIONS: To expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing, participants are encouraged to submit hearing documents to the State Water Board in electronic form and parties are encouraged to agree to electronic service.

Any documents submitted or served electronically must be in Adobe Portable Document Format (PDF), except for Exhibit Identification Indexes, which may be in a format supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 11 megabytes in total size (incoming mail server attachment limitation) may be sent via electronic mail to: wrhearing@waterboards.ca.gov with a subject of "**BBID ACL Hearing**". Electronic submittals to the State Water Board of documents greater than 11 megabytes in total size should be submitted on a compact disc (CD). Each electronically submitted exhibit must be saved as a separate PDF file, with the name in lower case lettering.

8. PRE-HEARING CONFERENCE: At the hearing officers' discretion, a pre-hearing conference may be conducted before the proceeding to discuss the scope of the hearing, the status of any protests, and any other appropriate procedural issues.

9. ORDER OF PROCEEDING: Hearing officers will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officers, for good cause.

- a. **Policy Statements Within the Evidentiary Hearing:** Policy statements will be heard at the start of the hearing, before the presentation of cases-in-chief. Oral summaries of the policy statements will be limited to **five (5) minutes** or such other time as established by the hearing officers.
- b. **Presentation of Cases-In-Chief:** Each party who so indicates on a Notice of Intent to Appear may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement, oral testimony, introduction of exhibits, and cross-examination of the party's witnesses. The hearing officers may allow redirect examination and recross examination. The hearing officers will decide whether to accept the party's exhibits into evidence upon a motion of the party after completion of the case-in-chief.
 - i. **Opening Statements:** At the beginning of a case-in-chief, the party or the party's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to **(20) minutes** per party. A party may submit a written opening statement before the hearing or during the hearing, prior to their case-in-chief. Any policy-oriented statements by a party should be included in the opening statement.
 - ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to **(20) minutes** to summarize or emphasize their written testimony on direct examination. Each party will be allowed up to **one (1) hour total** to present all of its direct testimony.³
 - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officers will decide whether the party's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to **one (1) hour** per witness or panel of witnesses. The hearing officers have discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Ordinarily, only a party or the party's representative will be permitted to examine a witness, but the hearing officers may allow a party to designate a person technically qualified in the subject being considered to examine a witness.
 - iv. **Redirect and Recross Examination:** Redirect examination may be allowed at the discretion of the hearing officers. Any redirect examination and recross examination permitted will be limited to the scope of the cross-examination and the redirect examination, respectively. The hearing officers may establish time limits for any permitted redirect and recross examination.

³ The hearing officers may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. The hearing officers may allow additional time for the oral direct testimony of the witness if the witness is adverse to the party presenting the testimony and the hearing officers are satisfied that the party could not produce written direct testimony for the witness.

v. **Questions by State Water Board and Staff:** State Water Board members and staff may ask questions at any time and may cross-examine any witness.

c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officers will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented by another party.

Rebuttal testimony and exhibits need not be submitted prior to the hearing, although the hearing officers may require submittal of rebuttal testimony and exhibits before they are presented in order to improve hearing efficiency. Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.

d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times, if appropriate, the hearing officers may allow oral closing statements or legal arguments or set a schedule for filing legal briefs or written closing statements. If the hearing officers authorize the parties to file briefs, three copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A party shall not attach a document of an evidentiary nature to a brief unless the document is already in the evidentiary hearing record or is the subject of an offer into evidence made at the hearing.

10. EX PARTE CONTACTS: During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications with State Water Board members or State Water Board hearing team staff and supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.** Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from our website at:
http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

11. RULES OF EVIDENCE: Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing regarding
(name of party or participant)

Administrative Civil Liability
against
Byron-Bethany Irrigation District

**scheduled to commence
Wednesday, October 28, 2015 and continue, if necessary,
on October 29 and 30, 2015
at 9:00 a.m.**

1) Check only one (1) of the following:

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:

Name (Print): _____

Mailing Address: _____

Phone Number: () _____ . Fax Number: () _____

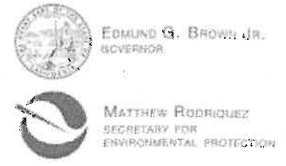
E-mail: _____

Optional:

- I/we decline electronic service of hearing-related materials.

Signature: _____ Dated: _____

EXHIBIT B



State Water Resources Control Board

February 18, 2016

VIA ELECTRONIC MAIL

TO: ENCLOSED REVISED SERVICE LIST OF PARTICIPANTS

SECOND PRE-HEARING CONFERENCE RELATED TO BYRON BETHANY IRRIGATION DISTRICT ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND THE WEST SIDE IRRIGATION DISTRICT DRAFT CEASE AND DESIST ORDER HEARINGS

This letter addresses the procedural issues that were raised during the State Water Resources Control Board's (State Water Board) February 8, 2016 second pre-hearing conference and several additional procedural issues.

ORDER AND TIMING OF PROCEEDING

We will conduct the hearings in the following order:

Policy Statements: Before the commencement of Phase 1 of the consolidated hearings, we will hear from any speakers who did not submit a Notice of Intent to Appear but wish to make a non-evidentiary policy statement. (See Hearing Notice Attachment, Sec. 9a, Policy Statements.) We will limit policy statements to 5 minutes, or less as is appropriate based on the number of persons wishing to make a policy statement.

Opening Statements: We will allow one written opening statement to be submitted by each party in each proceeding. Each written opening statement shall not exceed 10 pages in length, double-spaced, in 12 point font (preferably Arial). Alternately, parties may file a joint opening statement of up to 20 pages in length. Written rebuttal of written opening statements will not be accepted. The opportunity to respond in writing to opening statements is in a party's closing brief.

After presentation of any policy statements and before we proceed to summaries of direct testimony in Phase 1, we will allow all of the parties to either proceeding to make a single oral opening statement. We will not allow time for additional opening statements prior to Phase 2 of either hearing.

Oral opening statements made by parties presenting a case-in-chief should briefly summarize the parties' objectives in the case, the major points they intend to establish, and the relationship between the major points and the Key Issues. Oral opening statements may include policy-oriented statements and should briefly summarize the party's interest and extent of participation.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

We will hear oral opening statements in the following order according to the stated time limits. Parties may choose to combine their allowed time with that of other parties. However, parties will need to inform us of these changes, by Noon, March 14, 2016:

1. Division of Water Rights Prosecution Team (Prosecution Team) (20 minutes)
2. Byron Bethany Irrigation District (BBID) (20 minutes)
3. The West Side Irrigation District (WSID) (20 minutes)
4. Mr. Morat (5 minutes)
5. South Delta Water Agency (SDWA) (5 minutes)
6. Central Delta Water Agency (CDWA) (5 minutes)
7. City and County of San Francisco (CCSF) (5 minutes)
8. San Joaquin Tributaries Authority (SJTA) (5 minutes)
9. California Department of Water Resources (DWR) (5 minutes)
10. State Water Contractors (5 minutes)
11. Patterson Irrigation District (5 minutes)
12. Banta-Carbona Irrigation District (5 minutes)
13. Westlands Water District (5 minutes)

Cases-in-Chief – Phase 1 (Water Availability): We will allow the parties to present their oral summaries of direct testimony in the following order, according to the stated time limits. We may, upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony, approve a party's request for additional time to present direct testimony during the party's case-in-chief:

Order of Presentation for Direct Testimony:

1. Prosecution Team (1.5 hours)
2. BBID (1.5 hours)
3. WSID (1.5 hours)
4. SDWA (30 minutes)

Order of Cross-Examination:

Cross-examination is not limited to the scope of direct testimony. Cross-examination must, however, be limited to the factual issues in dispute. The parties may choose to combine their allowed time for cross-examination with that of other parties. However, parties will need to inform us of these changes, by Noon, March 14, 2016.

In Phase 1, cross-examination will be conducted in the following order, according to the stated time limits per witness, or in the case of multiple witnesses, per panel of witnesses:

1. Prosecution Team (1 hour)
2. BBID (1 hour)
3. WSID (1 hour)
4. SDWA (10 minutes)
5. CDWA (10 minutes)
6. CCSF (10 minutes)
7. SJTA (10 minutes)
8. DWR (10 minutes)
9. State Water Contractors (10 minutes)
10. Patterson Irrigation District (10 minutes)
11. Banta-Carbona Irrigation District (10 minutes)
12. Westlands Water District (10 minutes)

During the second pre-hearing conference, some of the parties expressed concern that the time allowed for cross-examination is too limited, and that cross-examination of witnesses by panel will lead to confusion. At this time, we intend to proceed within the time limits provided here and allow cross-examination by panel of witnesses if a party has presented its direct testimony in that manner rather than by individual witness. However, the cross-examiners may direct their questions to particular witnesses on the panel.

We note that the parties have already had the opportunity to depose the Prosecution Team's witnesses, so cross-examination during the hearing will not be the parties' first and only opportunity to elicit testimony from these individuals. The parties also have the option of coordinating and combining their allotted time. We conclude that the time limits are appropriate to avoid repetitive testimony and promote efficiency of the hearing procedure. We will consider requests for additional time during the hearing, and will allow additional time if further cross-examination appears likely to produce relevant and material evidence.

Redirect Testimony and Recross-Examination: At our discretion during the hearing, we may allow redirect examination upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony. Recross-examination, if any, shall be limited to the scope of the redirect testimony. We are likely to establish time limits for any redirect and recross-examination.

If allowed, redirect testimony and recross-examination will be conducted in the same order established for direct testimony and cross-examination.

Exhibits offered into Evidence: After completion of direct testimony, cross-examination, and if allowed, redirect testimony and recross-examination, the party presenting its case-in-chief may offer its exhibits into evidence.

Presentation of Rebuttal: After completion of direct testimony and cross-examination, and any allowed redirect testimony and recross-examination, the parties may present rebuttal evidence.

Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. Rebuttal evidence may not be repetitive of evidence already submitted. Cross-examination of rebuttal evidence shall be limited to the scope of the rebuttal evidence.

We will allow parties to present a summary of submitted written rebuttal testimony. Parties may also offer rebuttal testimony that is in response to new evidence and could not have been previously submitted in writing. The parties may choose to combine their allowed time for rebuttal with that of other parties. However, parties will need to inform us of these changes, by Noon, March 14, 2016.

Rebuttal testimony will be presented in the following order, according to the stated time limits. The Prosecution Team, BBID, and WSID will each be allowed 30 minutes. All other parties will be limited to 10 minutes per party for rebuttal.

1. Prosecution Team (30 minutes)
2. BBID (30 minutes)
3. WSID (30 minutes)
4. SDWA (10 minutes)

5. CDWA (10 minutes)
6. CCSF (10 minutes)
7. SJTA (10 minutes)
8. DWR (10 minutes)
9. State Water Contractors (10 minutes)
10. Patterson Irrigation District (10 minutes)
11. Banta-Carbona Irrigation District (10 minutes)
12. Westlands Water District (10 minutes)

We may allow additional time for rebuttal upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony.

Cross-examination of rebuttal evidence will follow the same order as presentation of rebuttal, and will be limited to the scope of the rebuttal evidence. Time limits for cross-examination of rebuttal testimony will be specified at a later time.

After completion of presentation of rebuttal evidence and rebuttal cross-examination by all the parties, each party may offer any rebuttal exhibits into evidence.

Cases-in-Chief – Phase 2 (BBID ACL Complaint):

We will allow the parties to present their cases-in-chief and conduct cross-examination in the following order, according to the stated time limits. We may, upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony, approve a party's request for additional time to present direct testimony during the party's case-in-chief:

Order of Presentation for Direct Testimony:

1. Prosecution Team (1 hour)
2. BBID (1 hour)
3. SDWA (20 minutes)
4. Richard Morat (10 minutes)

Order of Cross-Examination:

1. Prosecution Team (1 hour)
2. BBID (1 hour)
3. WSID (10 minutes)
4. SDWA (10 minutes)
5. CDWA (10 minutes)
6. CCSF (10 minutes)
7. SJTA (10 minutes)
8. DWR (10 minutes)
9. State Water Contractors (10 minutes)
10. Patterson Irrigation District (10 minutes)
11. Banta-Carbona Irrigation District (10 minutes)

The parties may choose to combine their allowed time for cross-examination with that of other parties. However, parties will need to inform us of these changes, by Noon, March 14, 2016.

We may allow additional time for cross-examination, if we determine that the examination is likely to produce relevant and material testimony.

Redirect Testimony and Recross-Examination: At our discretion during the hearing, we may allow redirect examination upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony. Recross-examination, if any, shall be limited to the scope of the redirect testimony. We are likely to establish time limits for any redirect and recross-examination.

If allowed, redirect testimony and recross-examination will be conducted in the same order established for direct testimony and cross-examination.

Exhibits offered into Evidence: After completion of direct testimony, cross-examination, and if allowed, redirect testimony and recross-examination, the party presenting its case-in-chief may offer its exhibits into evidence.

Presentation of Rebuttal: After completion of direct testimony and cross-examination, and any allowed redirect testimony and recross-examination, the parties may present rebuttal evidence.

Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. Rebuttal evidence may not be repetitive of evidence already submitted. Cross-examination of rebuttal evidence shall be limited to the scope of the rebuttal evidence.

We will allow parties to present a summary of submitted written rebuttal testimony. Parties may also offer rebuttal testimony that is in response to new evidence and could not have been previously submitted in writing. The parties may choose to combine their allowed time for rebuttal with that of other parties. However, parties will need to inform us of these changes, by Noon, March 14, 2016.

The order of presentation of rebuttal evidence will be the same as the order for cross-examination. The Prosecution Team and BBID will each be allowed 30 minutes. All other parties will be limited to 10 minutes per party for rebuttal.

We may allow additional time for rebuttal upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony.

Cross-examination of rebuttal evidence will follow the same order as presentation of rebuttal, and will be limited to the scope of the rebuttal evidence. Time limits for cross-examination of rebuttal testimony will be specified at a later time.

After completion of presentation of rebuttal evidence and rebuttal cross-examination by all the parties, each party may offer any rebuttal exhibits into evidence.

Cases-in-Chief – Phase 2 (WSID Draft CDO):

We will allow the parties to present their cases-in-chief and conduct cross-examination in the following order, according to the stated time limits. We may, upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony, approve a party's request for additional time to present direct testimony during the party's case-in-chief:

Order of Presentation for Direct Testimony:

1. Prosecution Team (1 hour)
2. WSID (1 hour)
3. SDWA (20 minutes)

Order of Cross-Examination:

1. Prosecution Team (1 hour)
2. WSID (1 hour)
3. BBID (10 minutes)
4. SDWA (10 minutes)
5. CDWA (10 minutes)
6. CCSF (10 minutes)
7. SJTA (10 minutes)
8. DWR (10 minutes)
9. State Water Contractors (10 minutes)
10. Westlands Water District (10 minutes)

The parties may choose to combine their allowed time for cross-examination with that of other parties. However, parties will need to inform us of these changes, by Noon, March 14, 2016.

We may allow additional time for cross-examination if we determine that the examination is likely to produce relevant and material testimony.

Redirect Testimony and Recross-Examination: At our discretion during the hearing, we may allow redirect examination upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony. Recross-examination, if any, shall be limited to the scope of the redirect testimony. We are likely to establish time limits for any redirect and recross-examination.

If allowed, redirect testimony and recross-examination will be conducted in the same order established for direct testimony and cross-examination.

Exhibits offered into Evidence: After completion of direct testimony, cross-examination, and if allowed, redirect testimony and recross-examination, the party presenting its case-in-chief may offer its exhibits into evidence.

Presentation of Rebuttal: After completion of direct testimony and cross-examination, and any allowed redirect testimony and recross-examination, the parties may present rebuttal evidence.

Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. Rebuttal evidence may not be repetitive of evidence already submitted. Cross-examination of rebuttal evidence shall be limited to the scope of the rebuttal evidence.

We will allow parties to present a summary of submitted written rebuttal testimony. Parties may also offer rebuttal testimony that is in response to new evidence and could not have been previously submitted in writing. The parties may choose to combine their allowed time for rebuttal with that of other parties. However, parties will need to inform us of these changes, by Noon, March 14, 2016.

WSID Revised Notice of Intent to Appear

On January 19, 2016, WSID submitted an amended Notice of Intent to Appear that added Ms. Karna Harrigfeld and Mr. Greg Young as witnesses. The Prosecution Team objected to these revisions to WSID's witness list. In our ruling of February 1, 2016, we allowed the revision to include Mr. Young, who had previously been identified by BBID as a witness in the BBID ACL Complaint hearing. We sustained the Prosecution Team's objection with respect to Ms. Harrigfeld, and excluded her testimony from the record.

On February 3, 2016, WSID again revised their witness list to include Mr. Jack Alvarez. We find that the same reasoning applicable to our exclusion of the testimony of Ms. Harrigfeld is applicable to Mr. Alvarez. In our prior ruling, we permitted WSID to submit the testimony of an alternate witness solely for the purpose of authenticating the referenced exhibits. Because the Prosecution Team is willing to stipulate to exhibits WSID 0001 through 0026, and absent the objection of any other party, testimony for this purpose is now unnecessary. Therefore, we will not include any of Mr. Alvarez's testimony in the record at this time.

Ex Parte Communications

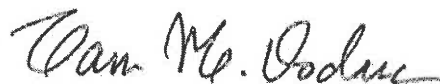
We would like to take this opportunity to remind the parties that ex parte communications concerning substantive or controversial procedural issues relevant to this hearing are prohibited. Please be sure to copy the service list on any correspondence to us, the other Board Members, or the hearing team.

Thank you for your continued cooperation. Questions regarding non-controversial procedural matters should be directed to Staff Counsel Nicole Kuenzi at (916) 322-4142 or by email to Nicole.Kuenzi@waterboards.ca.gov; or Ernie Mona at (916) 341-5359 or by email to Ernie.Mona@waterboards.ca.gov or to Jane Farwell-Jensen at (916) 341-5349 or by email to Jane.Farwell-Jensen@waterboards.ca.gov (Gov. Code, § 11430.20, subd. (b).)

Sincerely,



Frances Spivy-Weber, Vice-Chair
WSID Hearing Officer



Tam M. Doduc, Board Member
BBID Hearing Officer

Enclosures: Revised Service Lists

**SERVICE LIST OF PARTICIPANTS
THE WEST SIDE IRRIGATION DISTRICT
CEASE AND DESIST ORDER HEARING
(October 8, 2015, Revised 12/18/15)**

Parties THE FOLLOWING <u>MUST BE SERVED</u> WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (All have AGREED TO ACCEPT electronic service, pursuant to the rules specified in the hearing notice.)	
<p>DIVISION OF WATER RIGHTS Prosecution Team Andrew Tauriainen, Attorney III SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 Andrew.Tauriainen@waterboards.ca.gov</p>	<p>THE WEST SIDE IRRIGATION DISTRICT Jeanne M. Zolezzi Karna Harrigfeld Janelle Krattiger Herum\Crabtree\Suntag 5757 Pacific Ave., Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com kharrigfeld@herumcrabtree.com jkrattiger@herumcrabtree.com</p>
<p>STATE WATER CONTRACTORS Stephanie Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>	<p>WESTLANDS WATER DISTRICT Daniel O'Hanlon Rebecca Akroyd Kronick Moskowitz Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 dohanlon@kmtg.com rakroyd@kmtg.com</p> <p>Philip Williams of Westlands Water District pwilliams@westlandswater.org</p>
<p>SOUTH DELTA WATER AGENCY John Herrick, Esq. Dean Ruiz 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com dean@hprlaw.net</p>	<p>CENTRAL DELTA WATER AGENCY Jennifer Spaletta Spaletta Law PC PO Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante Nomellini and Dante Nomellini, Jr. Nomellini, Grilli & McDaniel ngmplcs@pacbell.net dantejr@pacbell.net</p>
<p>CITY AND COUNTY OF SAN FRANCISCO Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p>	<p>SAN JOAQUIN TRIBUTARIES AUTHORITY Valerie Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkinaid@olaughlinparis.com towater@olaughlinparis.com</p> <p>(revised 12/18/15)</p>

<p>CALIFORNIA DEPARTMENT OF WATER RESOURCES Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcgininis@water.ca.gov</p>	<p>BYRON BETHANY IRRIGATION DISTRICT Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000, Sacramento, CA 95814 dkelly@somachlaw.com</p>
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**SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING**

(09/02/15; Revised: 09/10/15; Revised 10/06/15; Revised 10/22/15, 12/18/15)

PARTIES	
<p>THE FOLLOWING <u>MUST BE SERVED</u> WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (All have AGREED TO ACCEPT electronic service, pursuant to the rules specified in the hearing notice.)</p>	
<p>Division of Water Rights Prosecution Team Andrew Tauriainen, Attorney III SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 andrew.tauriainen@waterboards.ca.gov</p>	<p>Byron Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000, Sacramento, CA 95814 dkelly@somachlaw.com</p>
<p>Patterson Irrigation District Banta-Carbona Irrigation District The West Side Irrigation District Jeanne M. Zolezzi Herum\Crabtree\Suntag 5757 Pacific Ave., Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com</p>	<p>City and County of San Francisco Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p> <p>Robert E. Donlan Ellison, Schneider & Harris L.L.P. 2600 Capitol Avenue, Suite 400 Sacramento, CA 95816 (916) 447-2166 red@eslawfirm.com</p>
<p>Central Delta Water Agency Jennifer Spaletta Spaletta Law PC PO Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p>	<p>California Department of Water Resources Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcgininis@water.ca.gov</p>

<p>Dante Nomellini and Dante Nomellini, Jr. Nomellini, Grilli & McDaniel ngmpics@pacbell.net dantejr@pacbell.net</p>	
<p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rjmorat@gmail.com</p>	<p>San Joaquin Tributaries Authority Valerie Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkincaid@olaughlinparis.com towater@olaughlinparis.com lwood@olaughlinparis.com</p> <p>(revised 12/18/15)</p>
<p>South Delta Water Agency John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 iherrlaw@aol.com</p> <p>Dean Ruiz, Esq. Harris, Perisho & Ruiz, Attorneys at Law 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hprlaw.net</p>	<p>State Water Contractors Stefani Morris, Attorney 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>

EXHIBIT C

NOTICE OF INTENT TO APPEAR

Department of Water Resources plans to participate in the water right hearing regarding
(name of party or participant)

Administrative Civil Liability
against
Byron-Bethany Irrigation District

scheduled to commence
**Wednesday, October 28, 2015 and continue, if necessary,
on October 29 and 30, 2015
at 9:00 a.m.**

1) Check only one (1) of the following:

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)
Paul Marshall	Effects of Delta Diversions	One hour	Yes

(If more space is required, please add additional pages or use reverse side.)

2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:

Name (Print): Robin McGinnis, Attorney

Mailing
Address: P.O. Box 942836, Sacramento, CA 94236-0001

Phone Number: (916) 657-5400 . Fax Number: ()

E-mail: robin.mcginis@water.ca.gov

Optional:

- I/we decline electronic service of hearing-related materials.

Signature:  Dated: 9/2/15

EXHIBIT D

From: **McGinnis, Robin C.@DWR** Robin.McGinnis@water.ca.gov 
Subject: RE: Deposition Scheduling for Paul Marshall
Date: January 28, 2016 at 4:17 PM
To: Jeanne Zolezzi JZOLEZZI@herumcrabtree.com, Dan Kelly dkelly@somachlaw.com, S. Dean Ruiz dean@hprlaw.net,
Jennifer Spaletta jennifer@spalettalaw.com



Thanks all!

Robin McGinnis
Attorney
Office of the Chief Counsel
Department of Water Resources
Direct: (916) 657-5400
robin.mcginnis@water.ca.gov

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From: Jeanne Zolezzi [<mailto:JZOLEZZI@herumcrabtree.com>]
Sent: Thursday, January 28, 2016 3:10 PM
To: McGinnis, Robin C.@DWR; Dan Kelly; S. Dean Ruiz; Jennifer Spaletta
Subject: RE: Deposition Scheduling for Paul Marshall

Yes – I agree.

Jeanne M. Zolezzi
HERUM CRABTREE SUNTAG

Jeanne M. Zolezzi
Attorney-at-Law

T: 209.472.7700 \ F: 209.472.7986
5757 PACIFIC AVENUE, SUITE 222 STOCKTON, CA 95207
www.herumcrabtree.com \ jzolezzi@herumcrabtree.com

Connect to Us:  

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From: McGinnis, Robin C.@DWR [<mailto:Robin.McGinnis@water.ca.gov>]
Sent: Thursday, January 28, 2016 3:02 PM
To: Dan Kelly; S. Dean Ruiz; Jennifer Spaletta; Jeanne Zolezzi
Subject: RE: Deposition Scheduling for Paul Marshall

Thanks Dan, Dean, and Jen. That just leaves Jeanne. Would you also like to cancel Paul's deposition, Jeanne?

Robin McGinnis
Attorney

Office of the Chief Counsel
Department of Water Resources
Direct: (916) 657-5400
robin.mcginnis@water.ca.gov

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From: Dan Kelly [<mailto:dkelly@somachlaw.com>]
Sent: Thursday, January 28, 2016 6:18 AM
To: S. Dean Ruiz
Cc: Jennifer Spaletta; McGinnis, Robin C.@DWR; Jeanne Zolezzi
Subject: Re: Deposition Scheduling for Paul Marshall

Same for BBID.

Regards,
Dan

On Jan 27, 2016, at 10:58 PM, S. Dean Ruiz <dean@hprlaw.net> wrote:

I agree on behalf of SDWA.

S. Dean Ruiz, Esq.
HARRIS, PERISHO & RUIZ
ATTORNEYS AT LAW
Telephone: (209) 957-4254
Facsimile: (209) 957-5338
www.harrisperishoruiz.com

From: Jennifer Spaletta [<mailto:jennifer@spalettalaw.com>]
Sent: Wednesday, January 27, 2016 6:05 PM
To: McGinnis, Robin C.@DWR
Cc: Jeanne Zolezzi; dkelly@somachlaw.com; S. Dean Ruiz
Subject: Re: Deposition Scheduling for Paul Marshall

Hi Robin: I do not see a need to depose Paul at this point. I will let the others speak for their clients. If Paul submits rebuttal testimony, we may seek a deposition then.

Thanks, Jen

Jennifer L. Spaletta
SPALETTA LAW PC
Jennifer@spalettalaw.com

Sent from iPhone, please excuse typos

On Jan 25, 2016, at 11:02 AM, McGinnis, Robin C.@DWR
<Robin.McGinnis@water.ca.gov> wrote:

Jen,

Thanks for talking to me last week about Paul's deposition. You mentioned that you and the other parties that noticed the deposition were thinking about cancelling it, because DWR is no longer submitting a case-in-chief. Do you have an update?

Robin

Robin McGinnis
Attorney
Office of the Chief Counsel
Department of Water Resources
Direct: (916) 657-5400
robin.mcginnis@water.ca.gov

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From: Jennifer Spaletta [<mailto:jennifer@spalettalaw.com>]
Sent: Saturday, January 16, 2016 4:14 PM
To: McGinnis, Robin C.@DWR
Cc: Jeanne Zolezzi; dkelly@somachlaw.com; dean@hprlaw.net
Subject: RE: Deposition Scheduling for Paul Marshall

Robin – We will be sending out an updated notice for Feb. 2nd. Thanks, Jen

JENNIFER L. SPALETTA
Attorney-at-Law
Jennifer@spalettalaw.com

SPALETTA LAW PC
T: 209-224-5568
F: 209-224-5589
C: 209-481-9795
Mailing: PO Box 2660 Lodi CA 95241
Office: 225 W. Oak Lodi, CA 95240

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From: McGinnis, Robin C.@DWR [<mailto:Robin.McGinnis@water.ca.gov>]
Sent: Wednesday, December 09, 2015 1:46 PM
To: Jennifer Spaletta
Cc: Jeanne Zolezzi; dkelly@somachlaw.com
Subject: RE: Deposition Scheduling for Paul Marshall

Jen,

He's available any day during those two weeks.

Robin

Robin McGinnis
Attorney
Office of the Chief Counsel
Department of Water Resources
Direct: (916) 657-5400
robin.mcginnis@water.ca.gov

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From: Jennifer Spaletta [<mailto:jennifer@spalettalaw.com>]
Sent: Wednesday, December 09, 2015 11:23 AM
To: McGinnis, Robin C.@DWR
Cc: Jeanne Zolezzi; dkelly@somachlaw.com
Subject: RE: Deposition Scheduling for Paul Marshall

Robin – Let's see what other dates are options. What is Paul's availability the last week in January or first week in February? Thanks, Jen

JENNIFER L. SPALETTA
Attorney-at-Law
Jennifer@spalettalaw.com

SPALETTA LAW PC
T: 209-224-5568
F: 209-224-5589
C: 209-481-9795
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From: McGinnis, Robin C.@DWR [<mailto:Robin.McGinnis@water.ca.gov>]

From: McGinnis, Robin C. [mailto:robin.mcgininis@water.ca.gov]

Sent: Wednesday, December 09, 2015 11:16 AM

To: Jennifer Spaletta

Cc: Jeanne Zolezzi; dkelly@somachlaw.com

Subject: RE: Deposition Scheduling for Paul Marshall

Jen,

Paul Marshall is no longer available to be deposed on December 30. Do you want to reschedule now, or do you want to wait until after the hearing teams finalize the new hearing schedules? I remember we rescheduled so that the deposition would take place after the cases-in-chief were due, and now it appears they will be due on January 19, but this is not a set deadline yet.

Robin

Robin McGinnis

Attorney

Office of the Chief Counsel

Department of Water Resources

Direct: (916) 657-5400

robin.mcgininis@water.ca.gov

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From: Jennifer Spaletta [mailto:jennifer@spalettalaw.com]

Sent: Monday, November 23, 2015 3:06 PM

To: McGinnis, Robin C. [mailto:R.C.@DWR]; Jeanne Zolezzi; dkelly@somachlaw.com

Cc: Tauriainen, Andrew [mailto:Andrew@Waterboards]; dantejr@pacbell.net; dean@hprlaw.net;

dohanlon@kmtg.com; ernie.mona@waterboards.ca.gov; [Frances.Spivy-](mailto:Frances.Spivy-Weber@waterboards.ca.gov)

Weber@waterboards.ca.gov; Jherriaw@aol.com;

jonathan.knapp@sfgov.org; kharrigfeld@herumcrabtree.com;

ngmplcs@pacbell.net; pwilliams@westlandswater.org; rakroyd@kmtg.com;

robin.mcgininis@water.ca.gov; smorris@swc.org; vkincaid@olaughlinparis.com;

Unit, Wr_Hearing@Waterboards

Subject: RE: Deposition Scheduling for Paul Marshall

Robin – This will confirm that Mr. Marshall's deposition will be at 9:30am on December 30th at the Somach office. The deadline for production will also be extended to that same time. However, if you can produce some or all of the documents in advance, it would be greatly appreciated and will make the deposition go much faster. Thank you for your cooperation regarding this matter, it is greatly appreciated.

Jen

JENNIFER L. SPALETTA

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From: McGinnis, Robin [C.@DWR \[mailto:Robin.McGinnis@water.ca.gov\]](mailto:Robin.McGinnis@water.ca.gov)

Sent: Monday, November 23, 2015 2:40 PM

To: Jennifer Spaletta; Jeanne Zolezzi; dkelly@somachlaw.com

Cc: Tauriainen, Andrew@Waterboards; dantejr@pacbell.net; dean@hprlaw.net; dohanlon@kmtg.com; ernie.mona@waterboards.ca.gov; Frances.Spivy-Weber@waterboards.ca.gov; Jherrylaw@aol.com; jonathan.knapp@sfgov.org; kharrigfeld@herumcrabtree.com; ngmplcs@pacbell.net; pwilliams@westlandswater.org; rakroyd@kmtg.com; robin.mcginnis@water.ca.gov; smorris@swc.org; vkincaid@olaughlinparis.com; Unit, Wr_Hearing@Waterboards

Subject: RE: Deposition Scheduling for Paul Marshall

Dan, Jeanne, and Jennifer,

DWR does not need amended deposition notices, but please confirm the starting time, location, and that DWR's deadline for producing documents is also extended to December 30. We plan to make documents available before then.

Robin

Robin McGinnis

Attorney

Office of the Chief Counsel

Department of Water Resources

Direct: (916) 657-5400

robin.mcginnis@water.ca.gov

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From: Jennifer Spaletta [<mailto:jennifer@spalettalaw.com>]

Sent: Monday, November 23, 2015 2:09 PM

To: McGinnis, Robin C.@DWR

Cc: Jeanne Zolezzi; Tauriainen, Andrew@Waterboards; dantejr@pacbell.net;

dean@hprlaw.net; dkelly@somachlaw.com; dohanlon@kmtg.com;
ernie.mona@waterboards.ca.gov; Frances.Spivy-Weber@waterboards.ca.gov;
Janelle Krattiger; Jherrlaw@aol.com; jonathan.knapp@sfgov.org;
kharrigfeld@herumcrabtree.com; ngmplcs@pacbell.net;
pwilliams@westlandswater.org; rakroyd@kmtg.com;
robin.mcginnis@water.ca.gov; smorris@swc.org; vkincaid@olaughlinparis.com;
Unit, Wr_Hearing@Waterboards

Subject: Re: Deposition Scheduling for Paul Marshall

All:

WSID, BBID and the Delta Agencies have decided to reset the Marshall deposition for December 30th. Please be advised there will not be a deposition tomorrow. We are still scheduled for the continuation of Mr. Howard on Wednesday at 8am.

Thank you,

Jennifer L. Spaletta
SPALETTA LAW PC
Jennifer@spalettalaw.com

Sent from iPhone, please excuse typos

On Oct 30, 2015, at 11:48 AM, McGinnis, Robin C.@DWR
<Robin.McGinnis@water.ca.gov> wrote:

<image002.gif>

Jeanne,

Paul Marshall is available November 23, 24, and 30.

Robin

Robin McGinnis
Attorney
Office of the Chief Counsel
Department of Water Resources
Direct: (916) 657-5400
robin.mcginnis@water.ca.gov

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From: Jeanne Zolezzi [<mailto:JZOLEZZI@herumcrabtree.com>]

Sent: Thursday, October 29, 2015 5:58 PM

To: McGinnis, Robin C.@DWR

CC: Ernie.Mona@waterboards.ca.gov; dean@hprlaw.net;

CC: tauriamen, Andrew@waterboards.ca.gov; janiej1@pacbell.net;
dean@hprlaw.net; dkelly@somachlaw.com; 'dohanlon@kmtg.com';
'ernie.mona@waterboards.ca.gov'; 'Frances.Spivy-Weber@waterboards.ca.gov'; Janelle Krattiger;
jennifer@spalettalaw.com; 'Jherriaw@aol.com';
'jonathan.knapp@sfgov.org'; kharrigfeld@herumcrabtree.com;
ngmplcs@pacbell.net; 'pwilliams@westlandswater.org';
'rakroyd@kmtg.com'; 'robin.mcginnis@water.ca.gov';
'smorris@swc.org'; vkincaid@olaughlinparis.com; Unit,
Wr_Hearing@Waterboards

Subject: Deposition Scheduling for Paul Marshall

Importance: High

Robin,

Can you please provide possible dates when Paul Marshall would be available for deposition? The following dates in November are unavailable: 5, 9, 12, 13, 16, 18, 19, 20 and 25. I look forward to hearing from you at your earliest convenience.

Jeanne M. Zolezzi

<image003.jpg>

Jeanne M. Zolezzi
Attorney-at-Law

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Connect to Us: <image004.jpg><image005.jpg>

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EXHIBIT E

**AMENDED
NOTICE OF INTENT TO APPEAR**

California Department of Water Resources plans to participate in the water right hearing regarding
(name of party or participant)

Draft Cease and Desist Order
Against
West Side Irrigation District

1) Check only one (1) of the following:

- I/we intend to present a policy statement only.
 I/we intend to participate by cross-examination or rebuttal only.
 I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:

Name (Print): Robin McGinnis, Attorney

Mailing

Address: PO Box 942836, Sacramento, CA 94236-0001

Phone Number: (916) 657-5400 Fax Number: ()

E-mail: robin.mcginis@water.ca.gov

Optional:

- I/we decline electronic service of hearing-related materials.

Signature:  Date: 1/19/16

From: **McGinnis, Robin C.@DWR** Robin.McGinnis@water.ca.gov

Subject: BBID/WSID Hearings

Date: January 19, 2016 at 11:07 AM

To: Unit, Wr_Hearing@Waterboards Wr_Hearing.Unit@waterboards.ca.gov

Cc: Tauriainen, Andrew@Waterboards Andrew.Tauriainen@waterboards.ca.gov, jzolezzi@herumcrabtree.com, kharrigfeld@herumcrabtree.com, jkrattiger@herumcrabtree.com, **Stefanie Morris** SMorris@swc.org, dohanlon@kmtg.com, Akroyd, Rebecca@KMTG rakroyd@kmtg.com, pwilliams@westlandswater.org, Herrick, John @aol.com jherriaw@aol.com, S. Dean Ruiz dean@hprlaw.net, **Jennifer Spaletta** jennifer@spalettalaw.com, ngmpics@pacbell.net, dantejr@pacbell.net, jonathan.knapp@sfgov.org 'jonathan.knapp@sfgov.org', vkincaid@olaughlinparis.com, dkelly@somachlaw.com, red@eslawfirm.com, rjmorat@gmail.com, lwood@olaughlinparis.com, **Kuenzi, Nicole@Waterboards** Nicole.Kuenzi@waterboards.ca.gov, **ernie.mona@waterboards.ca.gov** 'ernie.mona@waterboards.ca.gov', Farwell Jensen, Jane Jane.Farwell-Jensen@waterboards.ca.gov



Hello,

Attached please find California Department of Water Resources' (DWR's) Amended Notices of Intent to Appear (NOI) in the BBID and WSID hearings. The NOIs that DWR filed previously indicated that it would submit a case-in-chief at each hearing. DWR now intends to participate by cross-examination and/or rebuttal only. Thank you.

Robin

Robin McGinnis

Attorney

Office of the Chief Counsel

Department of Water Resources

Direct: (916) 657-5400

robin.mcginnis@water.ca.gov

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**AMENDED
NOTICE OF INTENT TO APPEAR**

California Department of Water Resources plans to participate in the water right hearing regarding
(name of party or participant)

Administrative Civil Liability
against
Byron-Bethany Irrigation District

1) Check only one (1) of the following:

I/we intend to present a policy statement only.

I/we intend to participate by cross-examination or rebuttal only.

I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:

Name (Print): Robin McGinnis, Attorney

Mailing Address: PO Box 942836, Sacramento, CA 94236-0001

Phone Number: (916) 657-5400, Fax Number: ()

E-mail: robin.mcginis@water.ca.gov

Optional:

I/we decline electronic service of hearing-related materials.

Signature:  Dated: 1/19/16

**AMENDED
NOTICE OF INTENT TO APPEAR**

California Department of Water Resources plans to participate in the water right hearing regarding (name of party or participant)

Draft Cease and Desist Order
Against
West Side Irrigation District

1) Check only one (1) of the following:

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:

Name (Print) Robin McGinnis, Attorney

Mailing

Address: PO Box 942836, Sacramento, CA 94236-0001

Phone Number: (916) 657-5400 Fax Number: ()

E-mail: robin.mcginis@water.ca.gov

Optional:

I/we decline electronic service of hearing-related materials.

Signature:  Date: 1/19/16

EXHIBIT F

**California Department of Water Resources
Paul Marshall’s Testimony Regarding
Enforcement Actions ENF01949 and ENF01951.**

My name is Paul A. Marshall, and I am Chief of the Bay-Delta Office for the California Department of Water Resources (DWR). This testimony is provided in regard to the Draft Cease and Desist Order issued to The West Side Irrigation District (WSID), Enforcement Action ENF01949; and the Administrative Civil Liability Complaint issued to Byron-Bethany Irrigation District (BBID), Enforcement Action ENF01951. The purpose of my testimony is to rebut written testimony and exhibits submitted by WSID and BBID. A copy of my statement of qualifications has been submitted as Exhibit DWR-1. I am testifying as an expert based on my special knowledge, skill, experience, training, and education.

Contents

- I. California Hydrology and Delta Hydrodynamics 1
- II. Regulatory Objectives..... 3
- III. Agricultural Diversions Affect the Ability of DWR and Reclamation to meet D-1641 Objectives – Especially during a Drought..... 5
- IV. Effects of Unauthorized Diversions 11
- V. Sources of Water at WSID’s Intake Channel..... 11
- VI. Effects of BBID’s diversions in 1931..... 13
- VII. Water Was Not “Fresh” in the Summer of 1931 16
- VIII. BBID Diverted Less Water in 1931 Than It Did in 1930..... 18
- IX. Delta Diversions Influenced Salinity Intrusion in 1931 20
- X. Salinity Intrusion Impacts of Zero Net Delta Outflow Index..... 22

I. California Hydrology and Delta Hydrodynamics

California experiences a high annual variability in precipitation stemming from the role of a relatively small number of storms making up the state water supply. The practice of the State Water Resources Control Board (Board) is to employ a water year classification system to categorize annual precipitation and account for this variability. The Sacramento Valley 40-30-30 Index and the San Joaquin Valley 60-20-20 Index were developed by the Board for the Sacramento and San Joaquin River hydrologic basins as part of Board’s Bay-Delta Plan and the Board’s Water Right Decision D-1641 (D-1641). Figure 1 shows the number of years that the various water year hydrologic classifications occurred for water years 1967 through 2015 for the Sacramento and San Joaquin Valley hydrologic basins.

Water Year Classification	Wet	Above Normal	Below Normal	Dry	Critical
Number of Years (San Joaquin Valley Runoff)	17	7	3	8	14
Number of Years (Sacramento Valley Runoff)	17	7	6	9	10

Figure 1, Total Number of Years of Various Water Year Hydrologic Classifications, WY1967 through WY2015

Cumulatively, water years 2012-2015 stand as California’s driest period since construction of the State Water Project (SWP) and Central Valley Project (CVP). Prior to construction of the SWP and CVP, California’s most significant historical statewide drought was the six-year drought of 1929-34. The 1929-34 event occurred within the climatic context of a decades-plus dry period in the 1920s and 1930s whose hydrology rivaled that of the most severe dry periods in more than a millennium of reconstructed Central Valley paleoclimate data. That drought’s impacts, however, were small by present-day standards, however, because the state’s urban and agricultural development was far less than that of current times.

Generally, Delta hydrodynamics are defined by complex interactions between tributary inflows, tides, in-Delta diversions, and SWP and CVP operations. The degree to which a single variable impacts the overall hydrology of the Delta varies depending on its magnitude as compared to the other variables. Changes in any of the variables affect water quality in the Delta, particularly with regard to salinity. Each day two high and two low tides of differing magnitudes cause large fluctuations (flood and ebb tides) in flow in the various parts of the Delta estuary. Also, the strength of the tides varies within the month depending on the position of the Sun and the Moon (Spring-Neap cycle) and is also influenced by atmospheric conditions. Each flood tide has the potential to bring a large volume of high salinity ocean water into the Delta. Keeping saltwater from reaching the central Delta is crucial to protecting freshwater supplies for in-Delta and SWP/CVP water users.

To prevent saltwater from intruding deeper into the Delta during dry periods, SWP/CVP operators repel it with the tools available to them: either by reducing the exports of water from the south Delta; or by increasing the amount of water flowing into the Delta from releases of stored water from upstream reservoirs.

By far, the most important of the variables affecting salinity in the Delta is Delta outflow. Delta outflow refers to the flow leaving the Delta at Martinez. Net Delta Outflow (NDO) represents an average value over a tidal cycle and is an estimate of the water flowing through the system that can be used to push out the incoming tidal force.

Since the tidally driven flow at Martinez can vary to a great degree,¹ the magnitude of the tide has a strong ability to subsume direct measurements of the other variables at that location and a more manageable approach of a calculated index is used, known as the “Net Delta Outflow Index” (NDOI), in place of NDO. NDOI is an arithmetic summation of river inflows, precipitation, assumed agricultural consumptive demand, and project exports. It is an estimate of the net difference between ebbing and flooding tidal flows at Chipps Island converted to a daily average.² NDOI was introduced in the 1995 Bay-Delta Plan and is now part of D-1641, which sets specific minimum monthly NDOI objectives for the protection of fish and wildlife based on water year type.

The magnitude of NDOI determines how much it will impact water quality. Under high flow events (high NDOI), the Delta is flushed out and filled with fresh water, and there are only very small traces of ocean water. During such conditions, small changes in flows cause only negligible effects on water quality in the Delta. On the other hand, under very dry conditions (low NDOI), small changes in flows can have a noticeable effect on water quality in the Delta. This makes water quality management during drought conditions a much bigger challenge. Due to general lack of freshwater supplies within the Delta watershed in 2015, flows into the Delta were lower than are typically experienced, which resulted in salinity intrusion into the north Delta.

II. Regulatory Objectives

Water quality is measured through monitoring of objectives in D-1641, which are categorized by the beneficial uses they are intended to protect, including municipal, industrial, agricultural, and fish and wildlife. Figure 2 shows a map of the Delta with the various objective locations.

D-1641 contains agricultural salinity objectives that vary by location. The salinity objectives are based on both water year type and a 14-day running average during the irrigation season, from April to mid-August, at Andreas in the West and in the central Delta. The agricultural salinity objectives at these Delta locations become less stringent under dryer conditions. In the south Delta, the salinity objectives are based on a 30-day running average and measured by electrical conductivity (EC). The SWP and CVP are jointly required by D-1641 to meet EC objectives.

The estuarine habitat protection objectives incorporate modified X2 criteria (geographic isohaline) first established in the 1994 USFWS Delta Smelt Biological Opinion. The upstream movement of 2 ppt isohaline (2 parts per thousand of salt in the water), measured as 2.64 mS/cm at the surface, is maintained within a certain range of positions in the estuary by adequate Delta outflow. These positions (Collinsville, Chipps Island, Port Chicago, and Martinez) are associated with an abundance of fish and biota.

¹ DSM2 historical modeling indicates that the tidally driven flow at Martinez varies by 500,000 cfs.

² DSM2 historical modeling indicates that the tidally driven flow at Chipps Island varies by 400,000 cfs.

D-1641 BAY-DELTA OBJECTIVES LOCATIONS

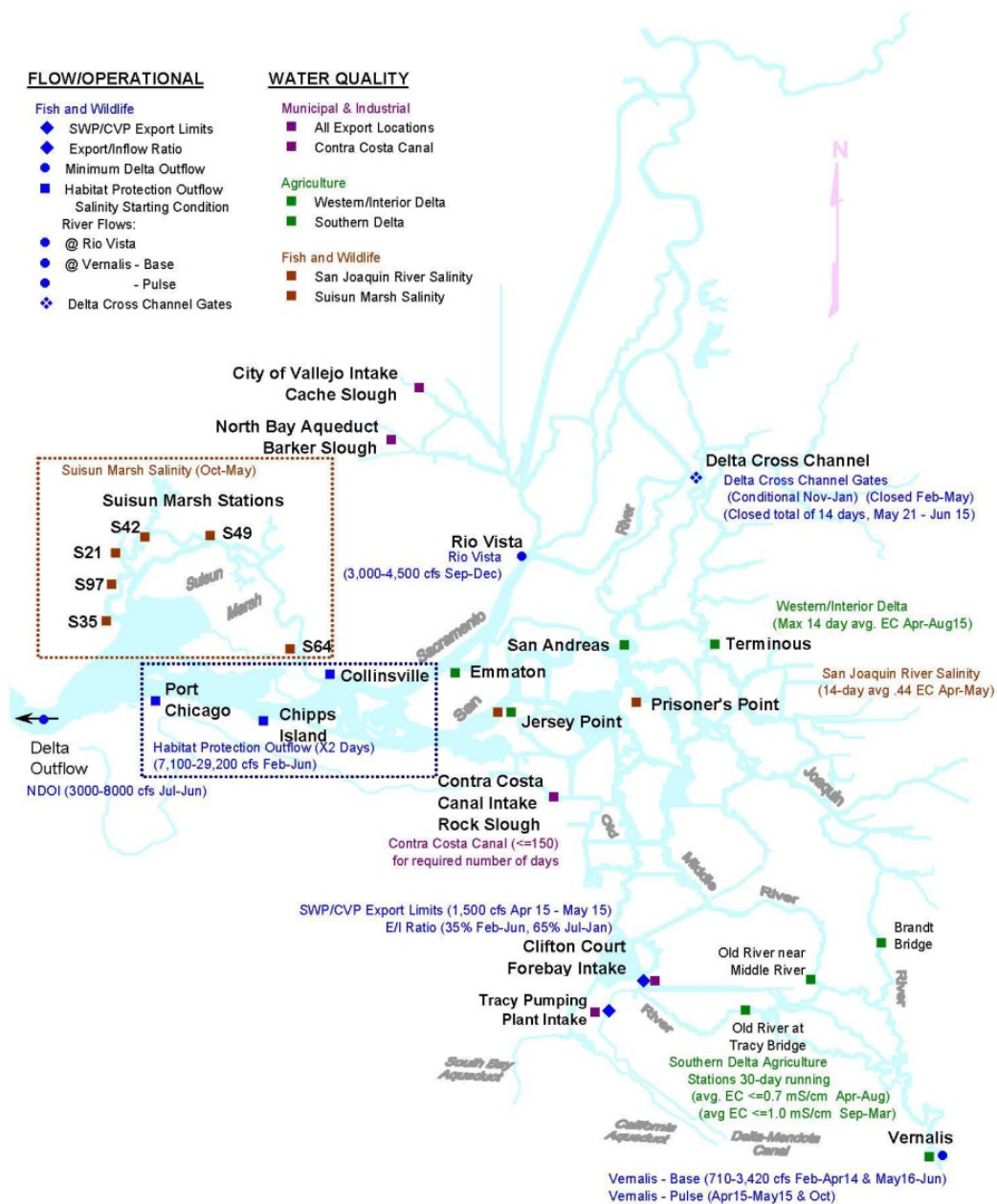


Figure 2, D-1641 Bay-Delta Objectives Locations

The Bay Delta Standards provide for less stringent flow and salinity objectives under dry and critically dry years. However, because of the exceptionally dry conditions existing

over the past three years, there was insufficient supply to meet these requirements and to also meet all beneficial uses of water in the Sacramento-San Joaquin River basin.

In 2014 and 2015, due to serious drought conditions, DWR and the U.S. Bureau of Reclamation (Reclamation) petitioned the Board for temporary modifications to their water rights permits, requesting changes in the D-1641 objectives. In both years, after receiving a petition, an order was issued that allowed a reduced level of Delta outflow and/or a modified salinity objective, conditioned upon a reduction in SWP/CVP exports. The orders also required that stored water in the SWP and CVP reservoirs be used for ecosystem protection and health and safety needs and the order provided flexibility in operation of the Delta Cross-Channel gates in order to help manage interior Delta water quality. Project exports were restricted to serving health and safety purposes only, storage in reservoirs was at critically low levels, and releases were constrained to protect against the drought's continuation. Protections for public interest fish and wildlife values were cut back and urban water use was curtailed by 25% across the state in response to the drought emergency.

Term 91 conditions were in effect for much of the summer and fall of 2015. When the Board finds that Term 91 applies, this indicates a dry hydrologic scenario in which the SWP and CVP are making storage withdrawals of project water to meet some of the in-basin needs of the Delta's watershed. These needs include flow and water quality standards contained in D-1641, as necessary conditions of the Projects' water rights. Under Term 91 conditions, when project water is diverted without authorization, the amount of water releases that are available to meet authorized in-basin needs is reduced by a corresponding amount. This water must then be "made up" later by the projects with additional storage withdrawals.

III. Agricultural Diversions Affect the Ability of DWR and Reclamation to meet D-1641 Objectives – Especially during a Drought

To understand the impacts of unauthorized diversions, one must understand how the Delta is balanced for salinity. There are five basic factors that influence salinity in the Delta:

1. Delta Inflows;
2. Net Delta Outflow;
3. Exports;
4. Net Channel Depletions to meet Delta Consumptive Use; and
5. Tidal Flux.

Project operators have no control over most of these factors. Project operators are only able to control: (1) releases from water project reservoirs upstream of the Delta, which are a portion of Delta inflows; and (2) exports. When there are no excess flows and the projects are operating in balanced conditions to control salinity, either for a near term or seasonal objectives, operators adjust reservoir releases and export rates to meet the objectives. Operators must consider in advance how the other factors might influence the system in order to attempt to maintain balanced conditions to control salinity. This is

further complicated because of the amount of time it takes for Project reservoir releases to reach the Delta.

NDO is a key index of the physical, chemical, biological state of the Delta.³ It includes daily river inflows, water exports, rainfall, and estimates of Delta agriculture depletions to estimate the “net” flow at the confluence of the Sacramento and San Joaquin Rivers, nominally at Chipps Island. There are also flow gauges at Freeport, Vernalis, and on the Mokelumne and Calaveras Rivers. After water is released from Project reservoirs, water users upstream of and in the Delta divert various amounts of water as it makes its way to the Delta and through it. Agricultural diversions are generally not scheduled in advance, as irrigation needs depend on local weather and soil conditions. Warmer conditions can increase the need for irrigation or cause it to occur earlier. With each diversion, less water is available to contribute to Net Delta Outflow. In other words, there is less water to flush and dilute ocean and land-derived salts out of the Delta. Project operators adjust the exports scheduled at the SWP and CVP pumping plants to further prevent salinity incursion into the Delta.

Project operators forecast how temperature, humidity, wind conditions, and barometric pressure will affect the tides and the projected use patterns days in advance. On a typical summer day, the exports average about 9,000 cfs, because summer demands south of the Delta are usually high. When operators see salinity increasing at the various Delta EC measurement stations, they reduce or stop exports. If having already slowed Project exports to well below the capabilities of Delta Islands to take water, Project operators lose the ability to control salinity by reducing exports. For instance, in 2015, SWP and CVP exports were jointly limited to 1,500 cfs, and Project operators were also required to meet an NDOI of 3,000 cfs. (Exports were often less than 1,500 cfs and to meet the modified salinity objectives, the Net Delta Outflow Index was often higher than 3,000 cfs).

In 2015, tides and in-Delta diversions played a far larger role in determining the salinity of the Delta than exports. The remaining tools available to DWR for water quality control are reservoir releases, which may be constrained by regulatory agencies, and in extreme circumstances, the installation of physical barriers within the Delta. DWR and Reclamation cannot control the use of water by in-Delta diverters and these in-Delta uses will continue to impact delta water quality despite the tools available to Project operators.

Figure 3 below shows observed export and diversion data taken from the DAYFLOW⁴ database in June for years 2009 and 2015. Year 2009 is classified as a below normal

³ See California Department of Water Resources, Dayflow, an Estimate of Daily Average Delta Outflow (accessed Nov. 1, 2015), available at <http://www.water.ca.gov/dayflow/>.

⁴ DAYFLOW is a model that DWR uses to estimate Delta channel depletions. The Delta channel depletions in DAYFLOW are derived from a 1965 DWR study that was based on land use surveys from the late 1950s and early 1960s. In the 1960s, many of the crops grown in the Delta were row crops and not permanent crops. At that time, sugar beets were grown in many places and supplied the Clarksburg Sugar Mill.

year hydrologically, and 2015 is classified as a critical year. The graphics show that exports made up a small percentage of water removed from Delta channels in 2015.

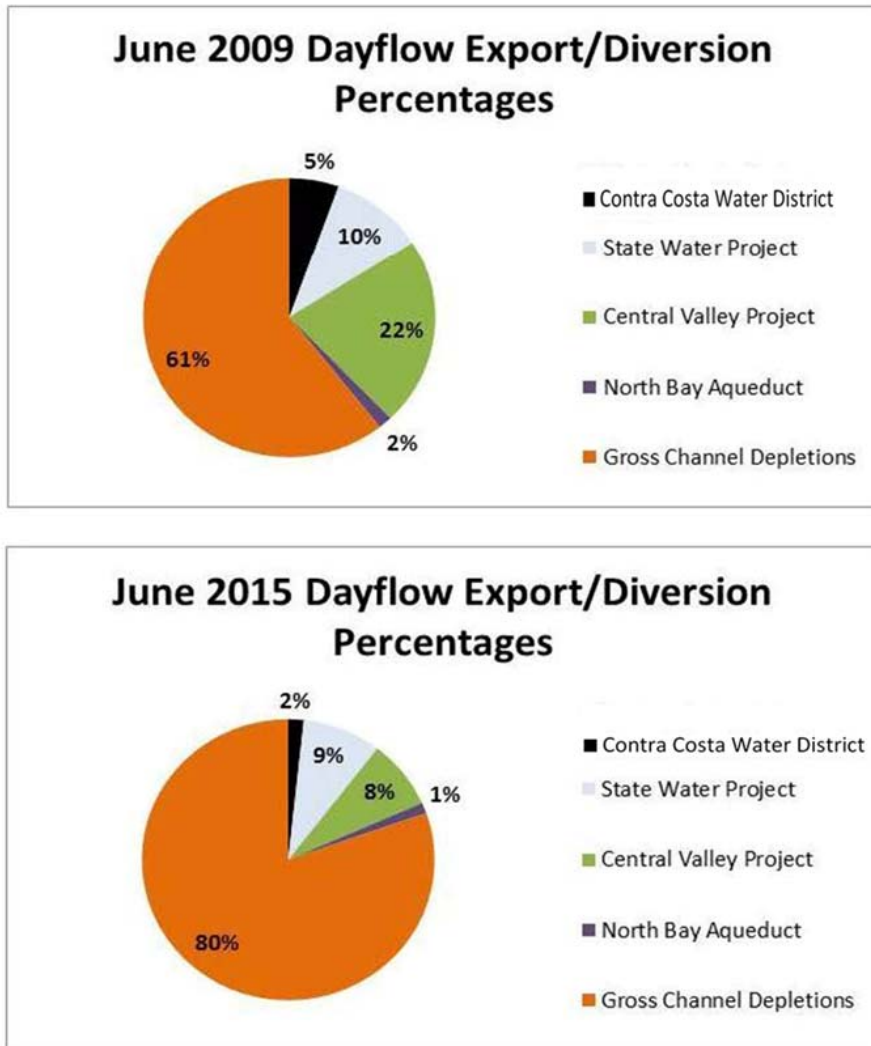


Figure 3, Export and Diversion Percentages for 2009 and 2015 Using DAYFLOW Data

Few diverters of water within the Delta use flow meters to monitor and report the amount of water that is diverted from or returned to the system. Non-project diversions are not coordinated with project releases or project exports. The channel depletions are estimated by first estimating Delta crop water use demands and then accounting for sources of water to meet these demands. Generating meaningful estimates of Delta channel depletion requires having accurate and timely land use surveys, an accurate estimate of seasonal variations in crop water use, and an accurate representation of relevant meteorological information. Each of these factors affects modeling Delta consumptive use and channel depletions.

Delta channel depletions are a significant factor considered in computer modeling of Delta salinity. Figure 4 below shows the results of several different methods of estimating net channel depletions in the Delta. Flow in cfs is shown on the left margin and each month is shown with its respective study along the horizontal axis. The one thing they have in common is that they are level for each month. Regardless of the temperature or moisture in any month, these consumptive uses remain level throughout the month. July is shown as the peak month in each study, topping out at nearly 5,000 cfs with one set of assumptions. June is the second most consumptive month with averages around 4,000 cfs, and August is the next highest month with a little over 3,000 cfs. Actual consumptive uses vary radically with weather and crop conditions, making it a major controlling factor for Delta salinity.

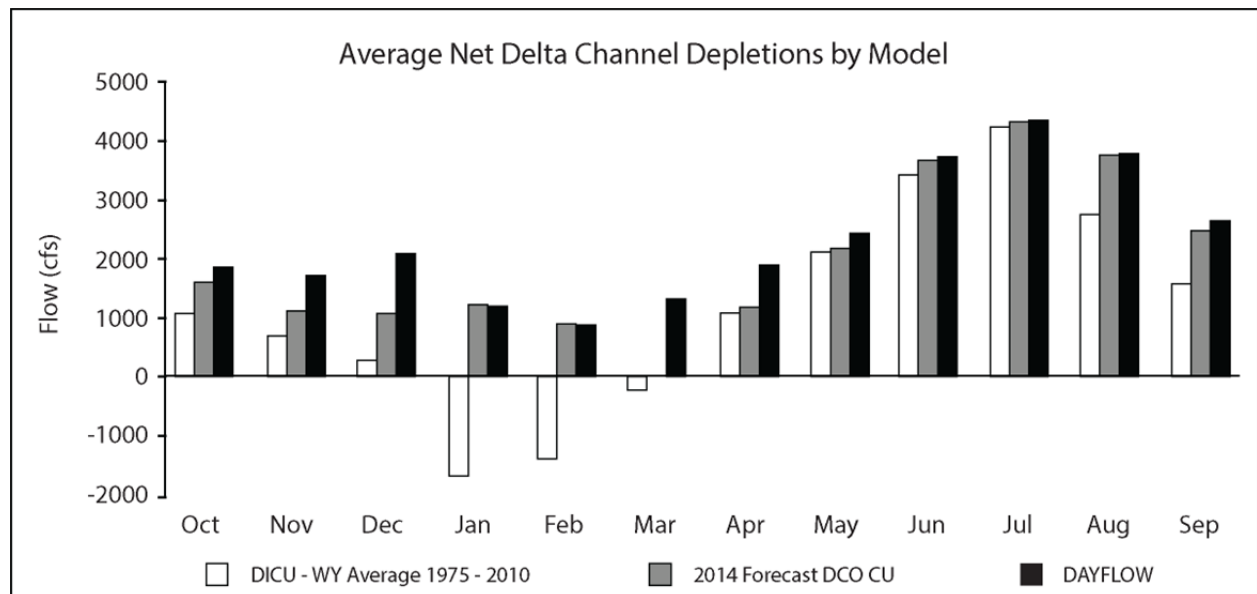


Figure 4, Graph of Estimated Net Channel Depletions, DWR 2015

Net Channel Depletions can be thought of as the water diverted from the channels and returned to the channels to help meet the consumptive use needs. Channel Depletions is the water diverted from the channels but does not include the return flow.

Figures 5 and 6 each show a pie chart of exports and channel diversions from the Delta in cfs and by percentage. The BBID diversions were separated out from the rest of the

channel depletions to show their relative significance. As can be seen, agricultural diversions made up the largest portion of water taken from the Delta in June 2015.

Two additional notes for these figures: channel depletions were plotted rather than net channel depletions because of not knowing the return flows of BBID; and SWP exports, in addition to water exported to meet health and safety needs, reflect water exported as water transfers.

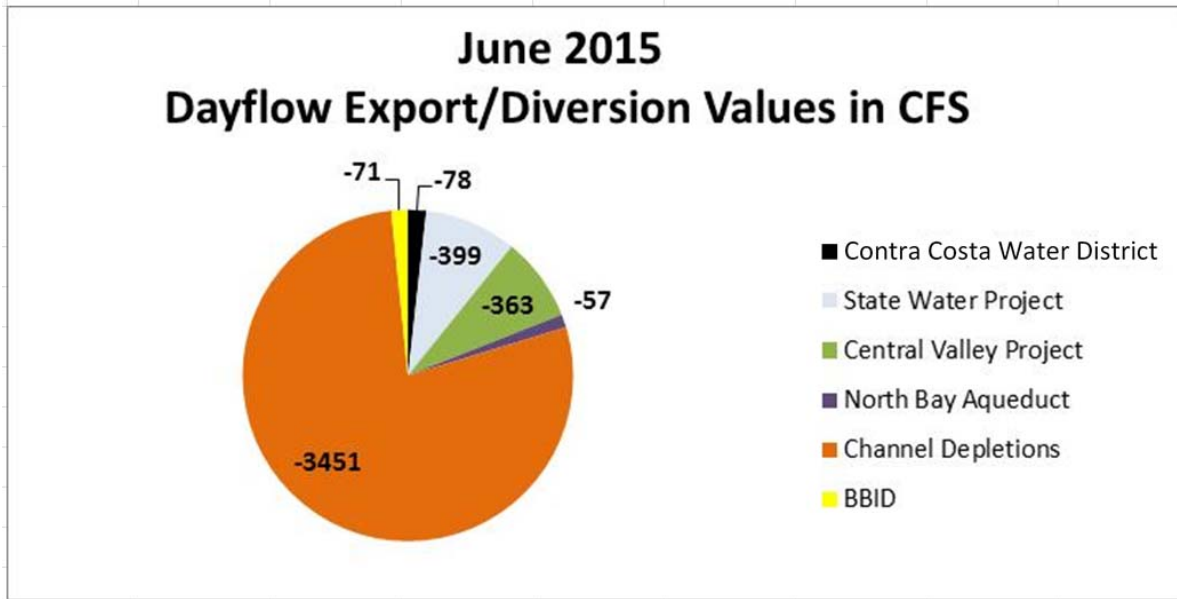


Figure 5, Exports and Diversions for June 2015 in cfs

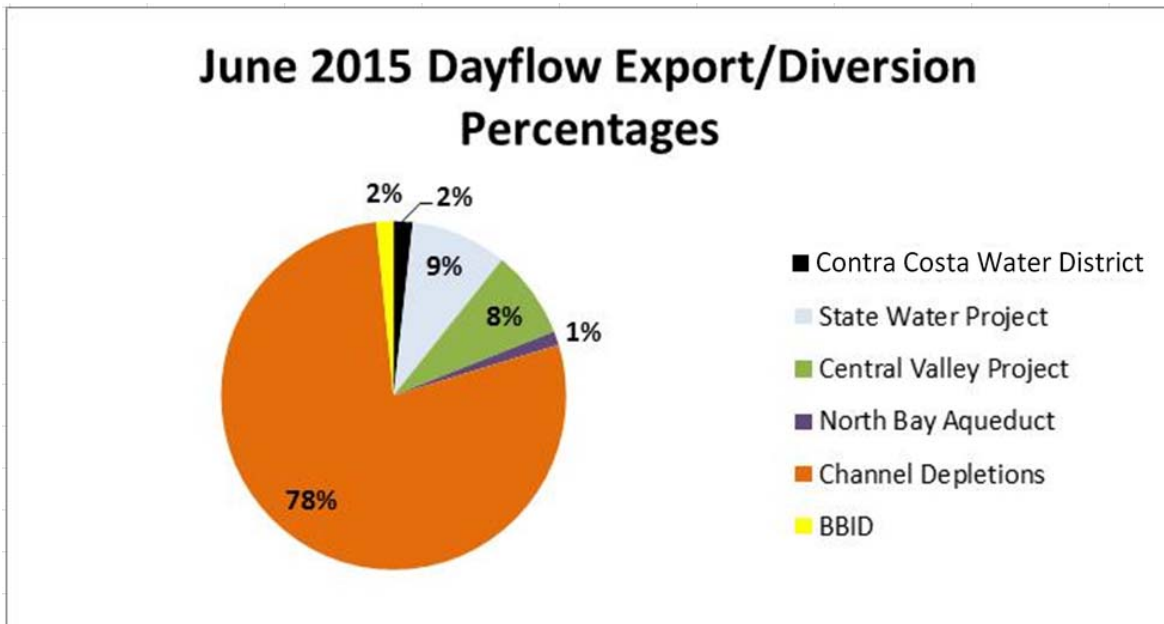


Figure 6, Exports and Diversions for June 2015 by percentage

Figures 7 and 8 are also graphs of values taken from DAYFLOW 2015 data. Figure 27 shows the additional monthly volume of water needed for net channel depletions to meet D-1641 objectives. The blue box chart bars represent the inflows minus the water needed for exports and diversions (Contra Costa, North Bay Aqueduct). The graph shows from 100 TAF to 260 TAF of additional upstream water was needed to flow into the Delta to meet agricultural demands. Figure 28 shows the same information but in cfs on a daily basis.

In 1931, the D-1641 objectives were not in place. Neither were there additional flow and storage requirements necessary to comply with the Endangered Species Act. This includes flows needed to meet X2 requirements for Delta Smelt and reservoir storage needed for temperature releases for Salmon. Especially during a series of drought years, these water quality and endangered species needs play a big part in water management.

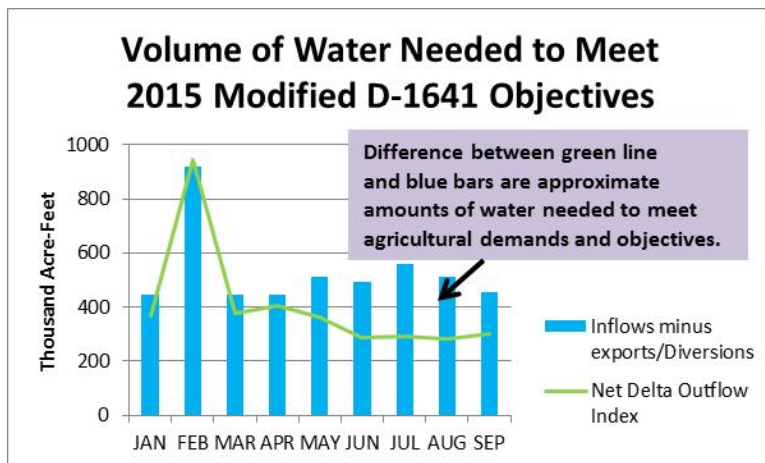


Figure 7, Volume of Water Needed to Meet 2015 D-1641 Objectives

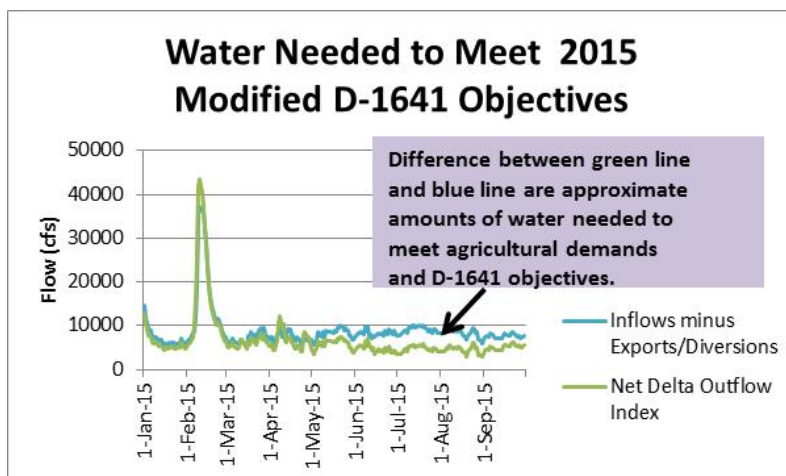


Figure 8, Amount of Water in CFS Needed to Meet 2015 D-1641 Objectives

IV. Effects of Unauthorized Diversions

Any water that is released from SWP/CVP storage for the purpose of meeting regulatory objectives will be negatively influenced by unfavorable tides and weather (such as high temperatures), which increases the difficulty for the Projects to maintain Delta water quality. This is particularly true during very dry periods where little additional buffer water is released due to the tension between competing demands for stored water. These circumstances are complex as salinity intrusion is not a one time event, but is recurring. Episodes of unfavorable tides and weather stretch for days and sometimes weeks, which can prolong and worsen salinity conditions by continually accumulating salts in the interior Delta.

Unauthorized diversions reduce outflow, reducing NDO. Combined with higher demands from authorized diversions, *un*authorized diversions can contribute to reductions of extra water that was added as a buffer that was released by Project operators to meet permit conditions. With each unauthorized diversion, less water is available than projected by Project operators to flush salt from the Delta and dilute salt within it.

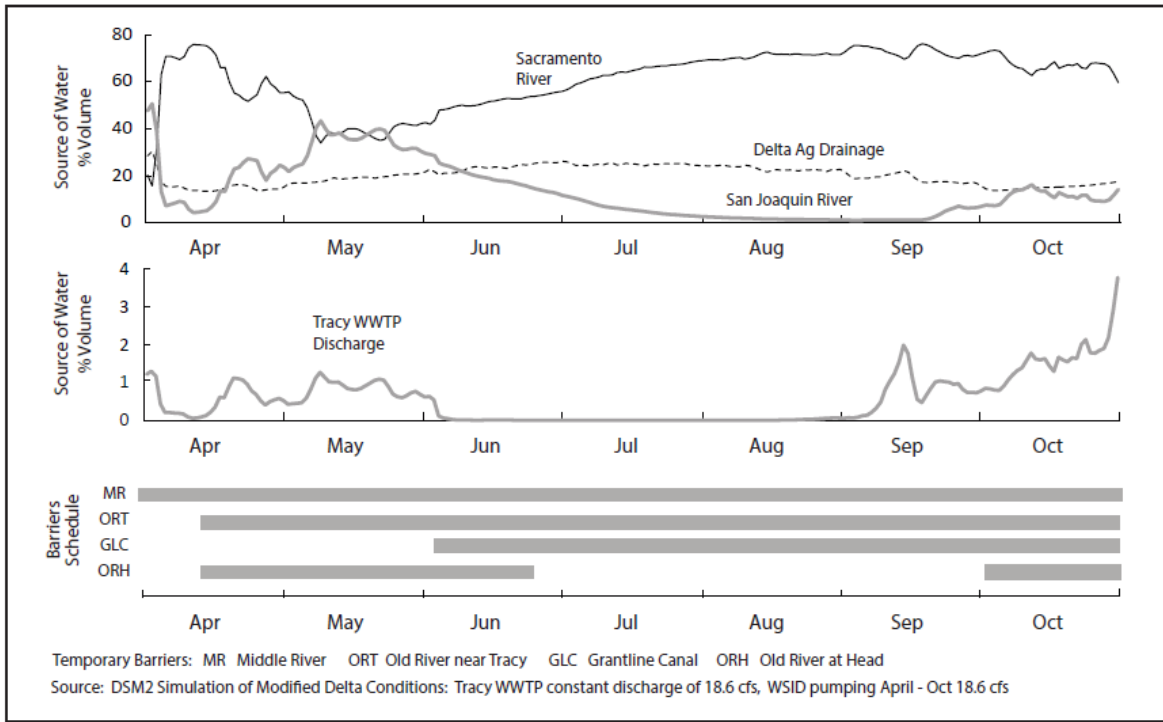
Operators adjust project reservoir releases and exports to maintain water quality for both near-term and seasonal goals. When unauthorized diversions occur, the amount of water available to transport salts out of the Delta or dilute it is reduced, causing incrementally worse salinity conditions. Project operators must therefore increase reservoir releases or decrease exports to improve salinity conditions. These adjustments come from existing Project supplies, reducing them by a corresponding amount.

V. Sources of Water at WSID's Intake Channel

Figures 9 and 10 show the DSM2⁵ (Delta Simulation Model 2) simulation of source of water in Old River at the WSID intake channel during April through October of 2014 and 2015 assuming 14 cfs for both City of Tracy Wastewater Treatment Plant (WWTP) discharge and WSID diversion. The City of Tracy WWTP discharge contributes about 1 to 2% of the water by volume in Old River at the WSID intake channel when the temporary barrier at the head of Old River is installed. At other times, the simulations indicate essentially no WWTP water is present at the intake channel.

⁵ DSM2 is one of the main models used for modeling hydrodynamics and water quality in the Delta. DSM2 has three different modes of application: historical simulations, forecasts, and longer term planning simulations. In order to simulate historical or forecasted hydrodynamic conditions, DSM2 requires input data such as historical conditions, project conditions in the near future, and hypothetical Delta changes.

Source of Water in Old River at West Side Irrigation Intake Channel
 Assuming 14 cfs Tracy Wastewater Treatment Plant Discharge and West Side Irrigation District Diversion
 2014

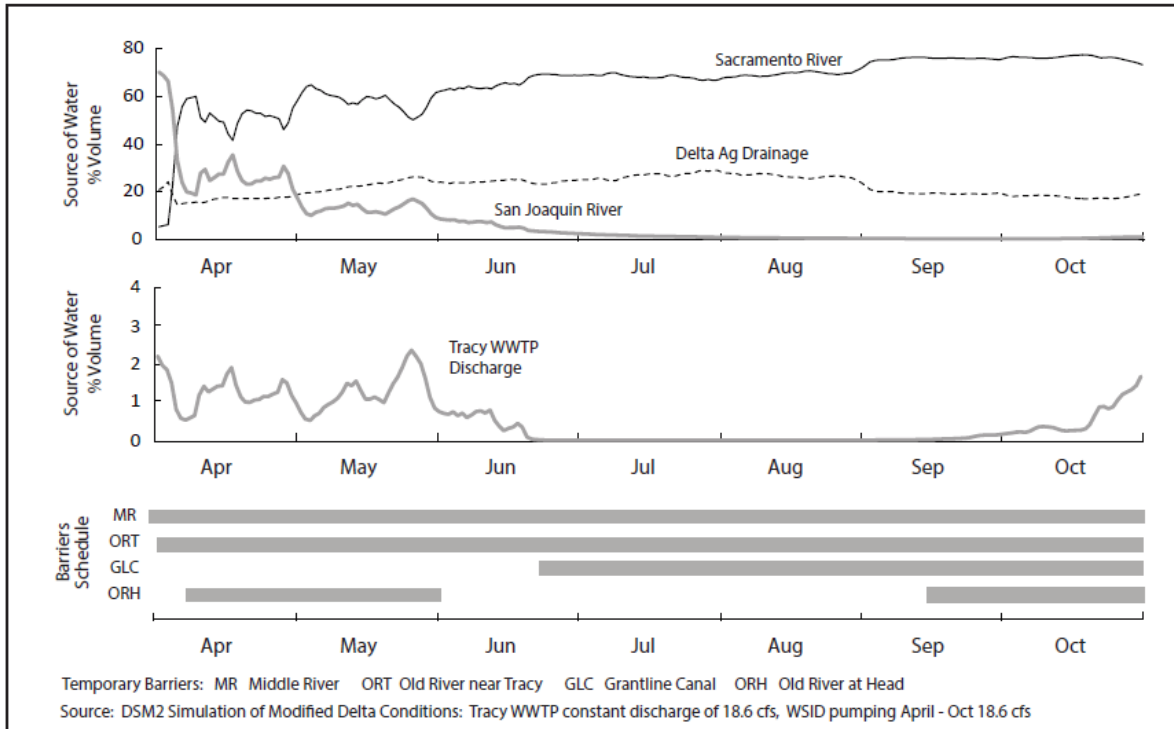


DWR Delta Modeling Section

February 1, 2016

Figure 9, Source of Water in Old River at West Side Irrigation Intake Channel, 2014

Source of Water in Old River at West Side Irrigation Intake Channel
 Assuming 14 cfs Tracy Wastewater Treatment Plant Discharge and West Side Irrigation District Diversion
 2015



DWR Delta Modeling Section

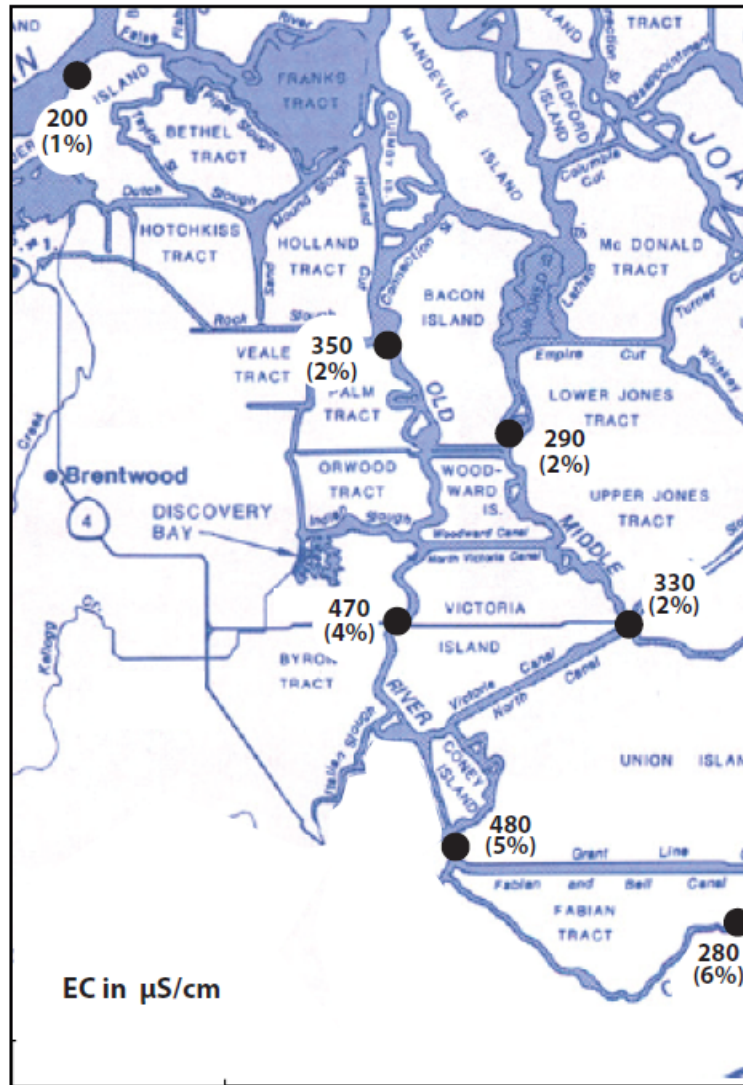
February 1, 2016

Figure 10, Source of Water in Old River at West Side Irrigation Intake Channel, 2015

VI. Effects of BBID’s diversions in 1931

Figures 11 and 12, based on DSM2 simulations of historical and modified historical conditions, show the impact on peak daily average EC in Old and Middle Rivers in 1931 due to BBID’s diversions that year. Peak EC in Old River upstream and downstream of Italian Slough increased 470 to 480 $\mu\text{S}/\text{cm}$. As shown in Figure 11, this increase was due to more of the water in Old River coming from Martinez where the salinity was high in 1931. These two graphs demonstrate that the diversion of water by BBID in 1931 influenced the salinity intrusion into the Delta.

Increase in Peak Daily Average EC for 1931 due to BBID Pumping
 (Peak EC Occurs on Different Days for Different Locations: Sep 1 - Oct 4, 1931)

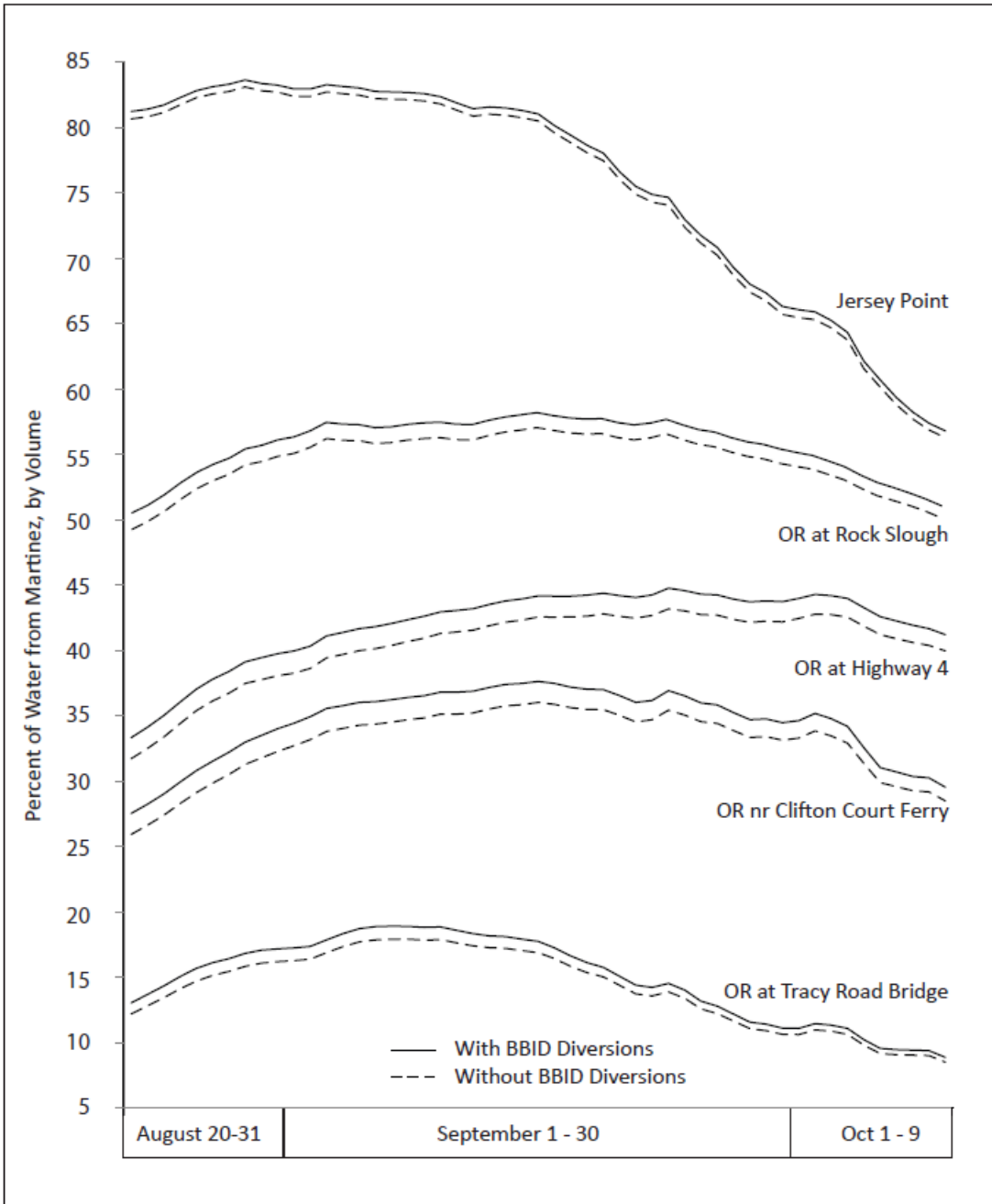


Source: DSM2 simulation of historical 1931 conditions with and without including BBID diversions as reported in DWR Bulletin 23.

February 2, 2016
 Delta Modeling Section

Figure 11, Increase in Peak Daily Average EC for 1931 due to BBID Pumping

**Volumetric Portion of Water Originating from Martinez
DSM2 Fingerprint Simulation of Historical 1931 with and without BBID Diversions**



DWR Delta Modeling Section

February 5, 2016

Figure 12, Volumetric Portion of Water Originating from Martinez

VII. Water Was Not “Fresh” in the Summer of 1931

Susan Paulsen’s testimony (Exhibit BBID388, at 10:14-10:28) states that the peak Chloride concentration in 1931 reached 1,300 mg/L Chloride. Thomas Burke’s testimony states that the salinity levels did not rise until later in year at the end of the prime growing season (Exhibit WSID123, at p. 6). Using the conversion equations for Clifton Court Forebay from the May 29, 2001 memorandum from Bob Suits (Exhibit DWR-5) and the 1986 memorandum from Kamyar Guivetchi (Exhibit DWR-6), the following equivalent EC values were obtained and are shown in Figure 13.

Peak Chloride (mg/L)	Equivalent EC (mmhos/cm) ⁶	Equivalent EC (mmhos/cm) ⁶
	Bob Suits Memorandum	Kamyar Guivetchi Memorandum
1,000	3.8	4.0
1,300	4.9	5.1

Figure 13, Equivalent EC for Peak 1931 Salinity

Figure 3 on page 4 shows the D-1641 objectives and locations. The peak salinity values reached in 1931 are four to five times greater than the current agricultural objectives in the south Delta. So even if salinity rose after “the prime growing season,” the agricultural objectives extend throughout the year. Dr. Paulsen’s and Mr. Burke’s testimony implies that higher EC water is acceptable to agricultural users, which contradicts the current objectives.

In a January 2010 report to the Board’s Division of Water Rights, Dr. Glenn J. Hoffman investigated the impacts of Sodium Chloride on various crops. (Exhibit DWR-7.) As Table 3.8 (Page 39 of the report) shows, the foliar injury from saline sprinkling water for various crops would range between 5 and 20 mol/m³ for Sodium or Chloride concentration (Figure 14). To change mol/m³ to mg/l, the table suggests dividing the concentration by 0.02821. Therefore, chloride concentrations of between 177 and 710 mg/l would cause foliar injury to sample crops shown on the table below. In contrast to Dr. Paulsen’s statement that water with chloride levels at 1,000 mg/L chloride is relatively fresh, Dr. Hoffman’s report shows how potentially detrimental this might have been to crops in 1931.

Figure 15 is an excerpt from DWR Bulletin 23 for 1931 regarding the crop losses experienced in the Delta that year. This excerpt shows that Delta crops were negatively impacted by the salinity levels in the Delta, which also contradicts Dr. Paulsen’s and Mr. Burke’s testimony.

⁶ The units of mS/cm are equivalent to mmhos/cm.

Table 3.8. Relative susceptibility of crops to foliar injury from saline sprinkling waters (Maas and Grattan, 1999).

Na or Cl concentration causing foliar injury, mol/m ³ *			
<5	5-10	10-20	>20
Almond	Grape	Alfalfa	Cauliflower
Apricot	Pepper	Barley	Cotton
Citrus	Potato	Corn	Sugar beet
Plum	Tomato	Cucumber	Sunflower
		Safflower	
		Sesame	
		Sorghum	

*To convert mol/m³ to mg/l or ppm divide Cl concentration by 0.02821 and Na concentration by 0.04350. The conversion from mg/l to EC is EC = mg/l / 640.

Note: These data are to be used as general guidelines for daytime sprinkling. Foliar injury is also influenced by cultural and environmental conditions.

Figure 14, Relative Susceptibility of Crops to Foliar Injury, Hoffman Report, 2010

Tangible Crop Losses

To arrive at the tangible losses as outlined, all of the data of the field forms were thoroughly reviewed, summarized by islands and crops and compiled as shown in Table 92. Under the three classifications of tangible crop losses, this table shows, segregated by crops, the total losses, in production and money. It is to be noted that the estimates of loss in money represent the market value of the lost production and as such might be termed the gross loss as distinguished from net loss represented by the net profit which the grower might have realized had he been able to market the crops lost. As shown by Table 92, the market value of the Delta crops estimated to have been lost because of salinity in 1931 totals \$1,263,716. Of this amount, \$890,906, or 70 per cent of the total, is the loss estimated to have resulted from curtailment of irrigation, \$357,640 or 29 per cent, the loss due to actual application and use of water of too high salinity and \$15,170 or one per cent, the loss due to destruction of permanent plantings and to abandonment of crops or plans therefor because of high salinity.

Figure 15, Crop Losses in 1931 due to Salinity Intrusion, Bulletin 23, 1931

Dr. Paulsen’s testimony (Exhibit BBID388, at 11:1-11: 12) emphasizes that water was of “suitable quality” during June 1931, but does not discuss the quality of the water in later summer months even though Bulletin 23 for 1931 shows that BBID diverted water into October at the much higher salinity levels mentioned previously (Figure 16, see Exhibit DWR-8, at. p. 85). The availability of water in terms of quality and quantity is questioned due to the poor water quality later in the summer.

TABLE 39
DELTA UPLANDS DIVERSIONS FROM OLD SAN JOAQUIN RIVER

WATER USER	MILE AND BANK	NUMBER AND SIZE OF PUMP	MONTHLY DIVERSIONS IN ACRE-FEET								TOTAL DIVERSION: APRIL TO OCTOBER ACRE-FEET	** ACREAGE IRRIGATED
			MAR.	APR.	MAY	JUN.	JUL.	AUG.	SEP.	OCT.		
EAST CONTRA COSTA IRRIGATION DISTRICT	36.5 L (1)	2-30" 1-24" 1-18"	2717	6387	5423	3224	5383	3596	227	17	26974	13357
STYRUPES PLANT IRRIGATION DISTRICT (2)	40.9 L	1-20" 1-30"	1176	3485	1888	2469	2847	2652	1139	140	15796	7853
JOE P. COSTA	13.44-6 L	1-7"					58				58	20
Ed. H. STEVENSON (RAY SPOS.)	(4) 45.3 L	1-12"		80			39		63		182	111
H. LINDEMAN	47.2 L	1-12"										

Figure 16, Bulletin 23 - 1931 BBID Diversions

VIII. BBID Diverted Less Water in 1931 Than It Did in 1930

Dr. Paulsen’s testimony (Exhibit BBID388, starting at 10:14) indicates that the peak Chloride concentration reached 1,300 mg/L Chloride and implies that BBID diverted as much water as it desired. Mr. Burke, in his testimony (Exhibit WSID123, at p. 7), says:

Based on the fact that during the 1931 and 1939 drought years measured salinity levels did not rise until late in the year (at the end of the prime growing season), and there was no noticeable decline in irrigation diversions or irrigated acreage at BBID or WSID (when compared to normal or wet years) it is my opinion that the water quality during these two drought years did not hinder irrigation diversions.

Bulletin 23 for 1930 indicates that BBID diverted more water from May to October 1930 compared to from May to October 1931. (Exhibit DWR-9, at p. 58.) The decreases in diversions from 1930 to 1931 could have been due to conservation methods done earlier in 1931 (Exhibit DWR-9, at pp. 5-19.), a change in the “freshness” of the water from 1930 to 1931, or some other reason. Figure 17 shows the 1930 diversions. Figure 18 shows both the 1930 and 1931 diversions in the same table with percentage of reduction in diversions in 1931. July was the only month that could possibly be considered close in terms of the amount of the diversions between the two years. Otherwise, in 1931, diversions were 17% to 97% lower than they were in 1930. That BBID diverted less in 1931 than it did in 1930 indicates that it did not divert as much as it could have desired. Figure 19 is an excerpt from Bulletin 23 for 1931 that describes how the Delta farmers were made aware of the salinity encroachment. (Exhibit DWR-9, at p. 150.)

TABLE 23

DELTA UPLANDS DIVERSIONS FROM OLD SAN JOAQUIN RIVER

Water User	*Mile and Bank	:Number: and : size : of : pump :	Monthly Diversions in Acre-feet							Total : Diversion: Acreage : Irrigated :	
			Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	April to October	Acreage
East Contra Costa Irrigation District	36.5 (1)	L 2-30" 1-24" 1-18"	1520	7070	5783	5481	5019	2613	1314	28800	13929
Sycamore Bottom Irrigation District	40.0 (2)	L 1-26" 1-30" 1-7"	273	3198	3387	3276	3071	2787	569	16561	9200

SACRAMENTO-SAN JOAQUIN

Figure 17, Bulletin 23 - 1930 BBID Diversions

	May	June	July	August	September	October
1930 BBID	3198	3387	3276	3071	2787	569
1931 BBID	1888	2459	2947	2552	1139	17
Difference in Diversion	1210	928	329	519	1648	552
Percent Reduction in 1931 Diversions	41%	27%	10%	17%	59%	97%

Figure 18, BBID Diversions 1931 and 1930 (from Bulletin 23)

Salinity Bulletins

With the unusually early encroachment of salinity in the 1931 season, water users throughout the Delta were anxious to obtain the results of the tests in order that their irrigation operations might be governed to prevent the use of water of injurious salinity content. In the period from May 1st to November 15th therefore, bulletins reporting the salinity at the various stations were mailed to a large list of Delta water users at weekly or ten-day intervals. This service as well as that in testing many samples taken at points other than the regular stations, was in great demand and was probably instrumental to a considerable extent in reducing or preventing damage from the use of water of too high salinity.

Figure 19, Bulletin 23, 1931 – Delta Users informed of salinity encroachment

IX. Delta Diversions Influenced Salinity Intrusion in 1931

Dr. Paulsen's testimony (Exhibit BBID388, at 12:14-12:20) discusses that the 1931 modeling indicated that some of the Sacramento River water found at BBID entered the Delta during February to May. Building upon the idea that water movement in the Delta has a memory or is influenced by previous hydrodynamic circumstances, a similar case can be made that increased net channel depletions in the earlier summer months significantly contributed to the higher levels of chloride later in the season. Figure 20 shows the volumetric fingerprint for Old River at Highway 4 (Exhibit BBID384, Figure 4-11, at p. 49). Page 85 of the exhibit shows volumetric fingerprint broken out by months for the Sacramento source but neglects to show it for Martinez. Even without that information, it is easy to see from that figure that the percent by volume of Martinez salinity increases overtime. Under D-1641, Martinez EC by volume would be closer to 2% or 3% (see Exhibit BBID384, Figure 4-11, at p. 49). DWR also modeled 1931 using the Bulletin 23 data. Figure 21 below shows the difference between NDOI and the inflows to the Delta. The difference between these two lines reflects the agricultural net channel depletions. Inflows into the Delta drop, but it is the net channel depletions that cause a negative NDOI, close to -5,000 cfs, and this inflow to the Delta from the ocean starts in June 1931. This inward movement of salt is also reflected in Figure 22. (See Exhibit BBID384, Figure 6-4, at p. 81.) The graphs show the movement of the peaks of salinity over time from the western Delta into the southern Delta. Net Channel Depletions in the summer cause the strong salinity intrusion through the summer and fall months.

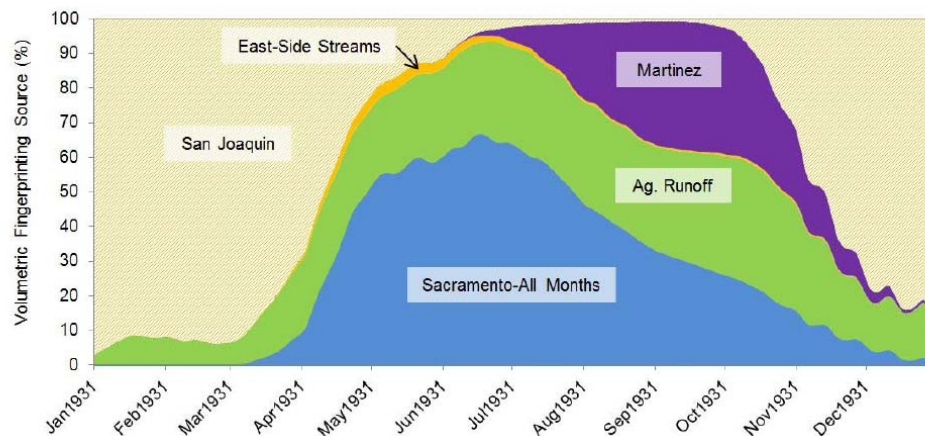


Figure 20, Exhibit BBID-384, Figure 4-11, at page 49

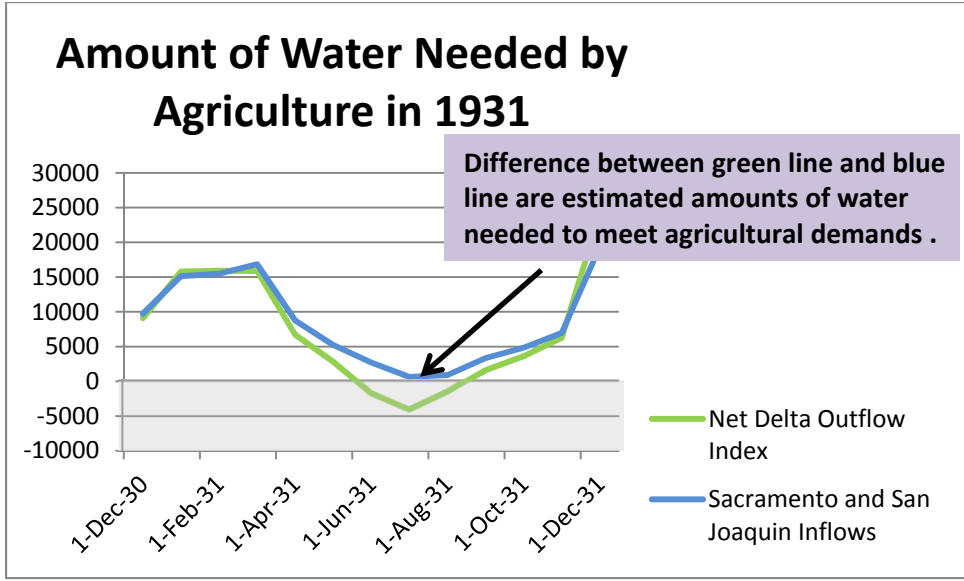


Figure 21, Amount of Water Needed by Agriculture in 1931

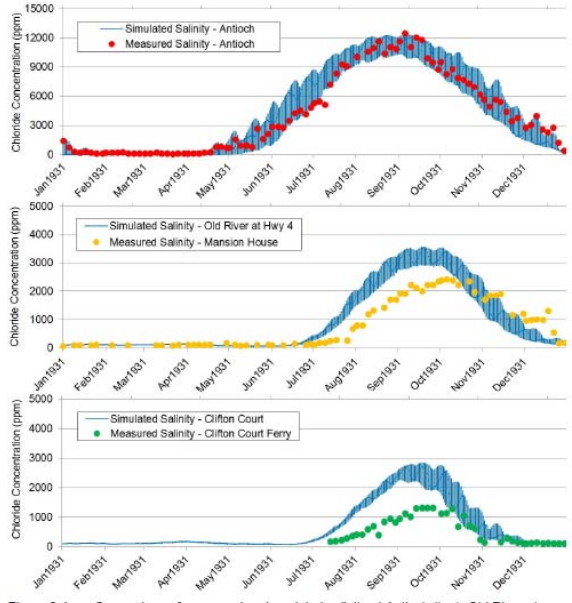


Figure 22, Exhibit BBID-384, Figure 6-4, at page 81

X. Salinity Intrusion Impacts of Zero Net Delta Outflow Index

Below are plots (Figures 23-28) from DSM2 simulations showing EC contours of progression of salinity intrusion under initial conditions of June 1, 2015 and then 30, 60, 90, 120, and 150 days of no Delta inflow and no Delta diversions or exports. This reflects a zero NDOI over a five month time period. The salinity intrusion over time shows the impact of not having enough outflow to push back salinity. It also shows that after five months, salinity did not reach the higher peak salinities of 1931, which had negative net Delta Outflow (Figure 21) due to low inflows and agricultural net channel diversions.

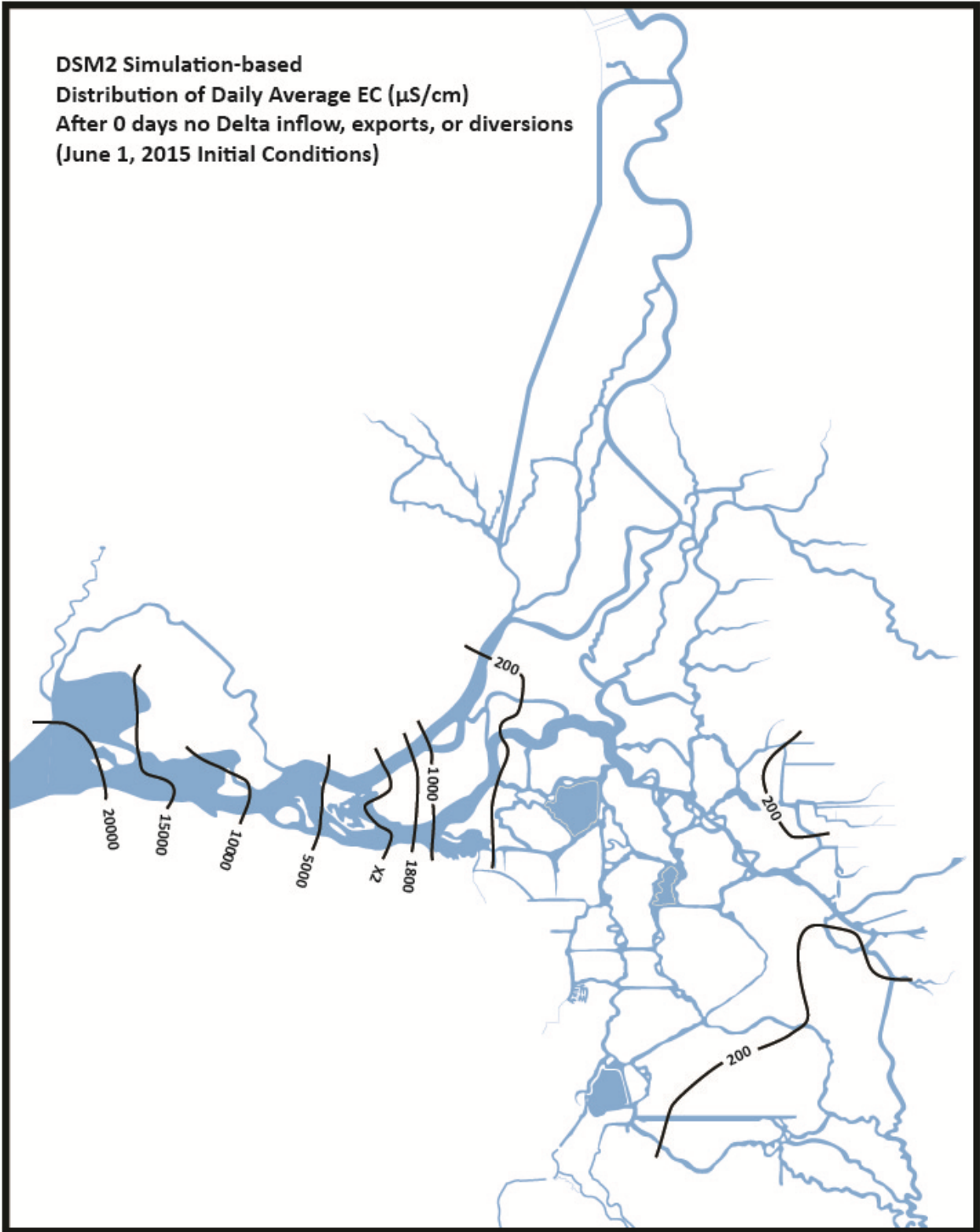


Figure 23, DSM2 Simulation, Distribution of Daily Average EC with NDOI =0, Initial Condition June 1, 2015

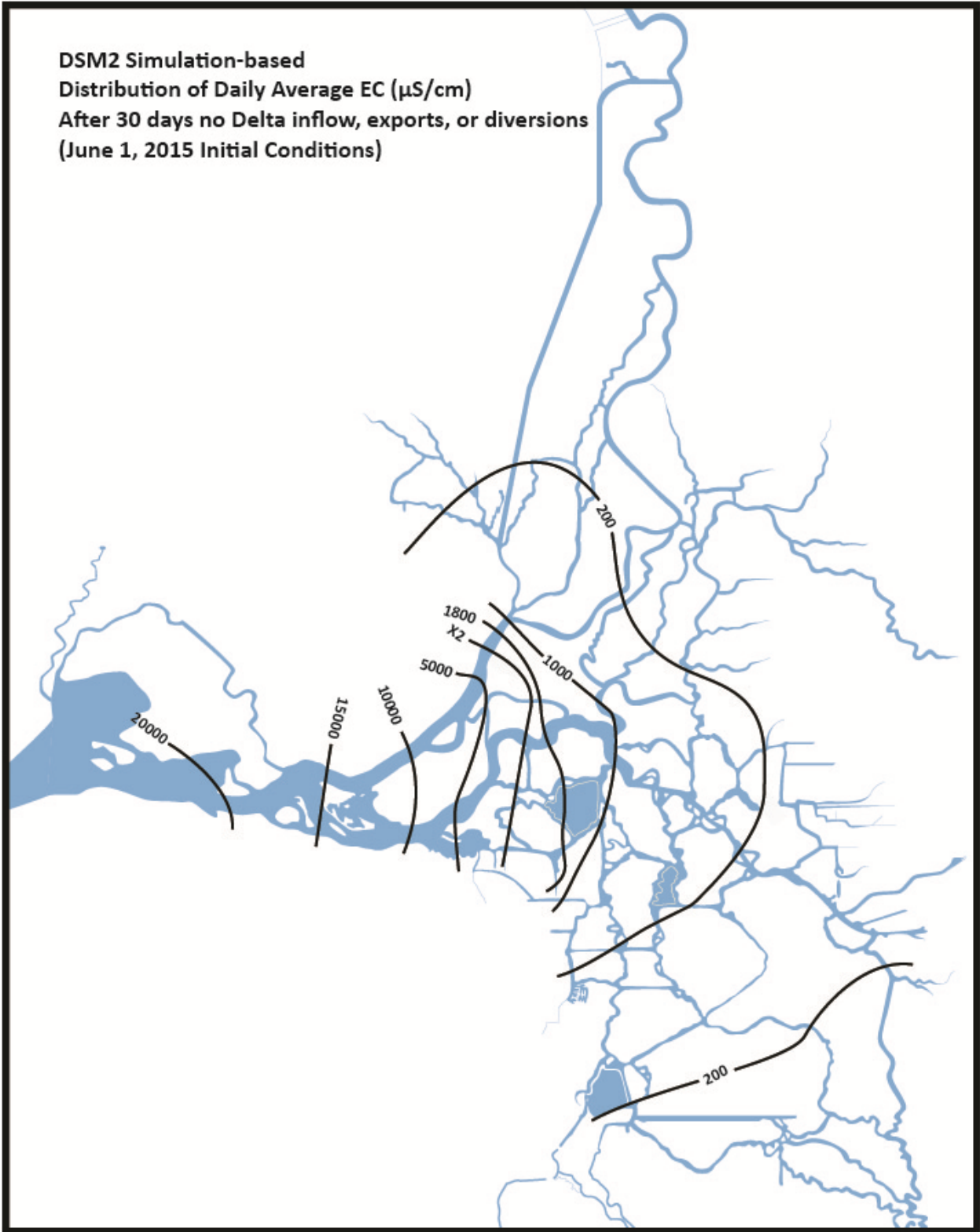


Figure 24, DSM2 Simulation, Distribution of Daily Average EC with NDOI =0, Day 30

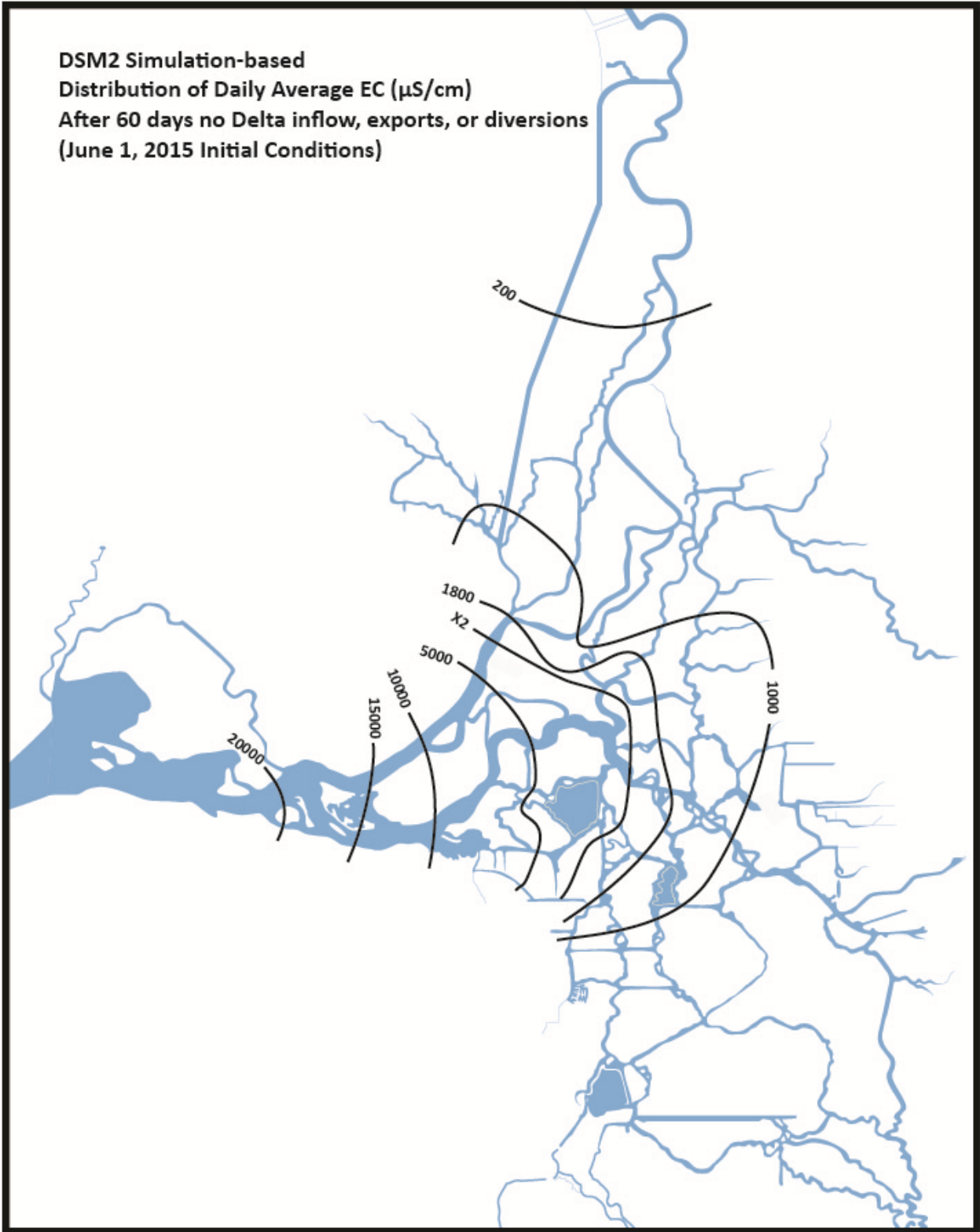


Figure 25, DSM2 Simulation, Distribution of Daily Average EC with NDOI =0, Day 60

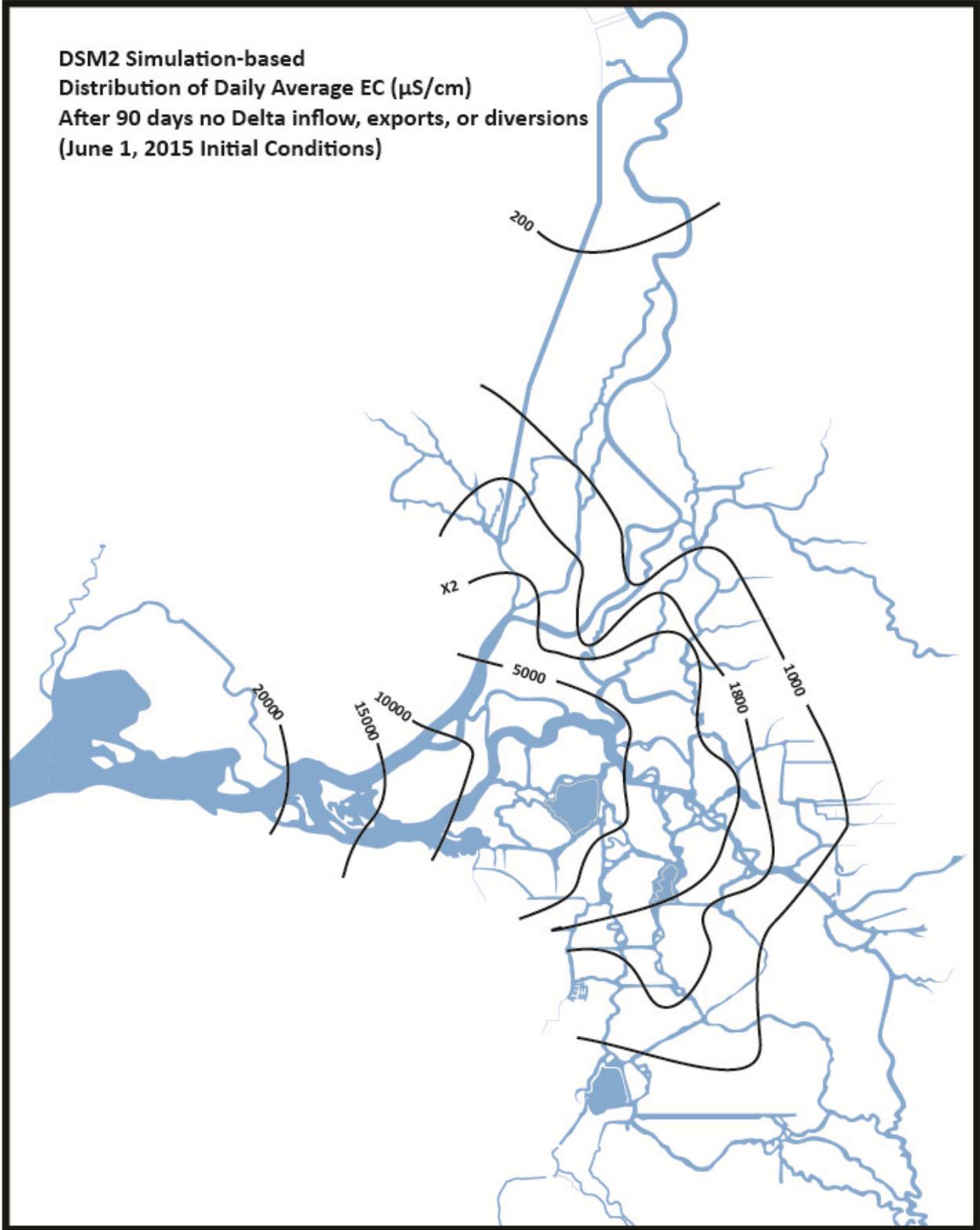


Figure 26, DSM2 Simulation, Distribution of Daily Average EC with NDOI =0, Day 90

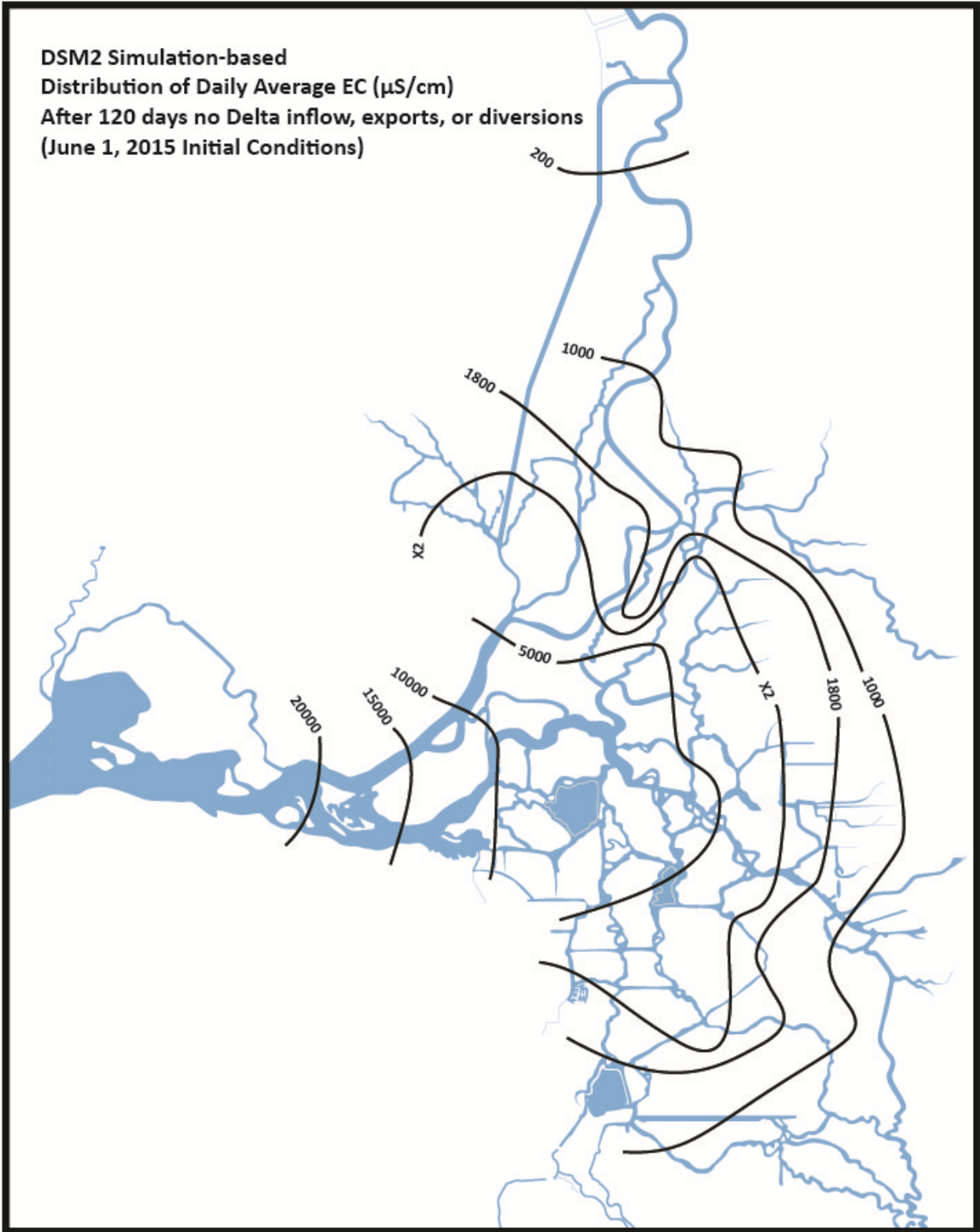


Figure 27, DSM2 Simulation, Distribution of Daily Average EC with NDOI =0, Day 120

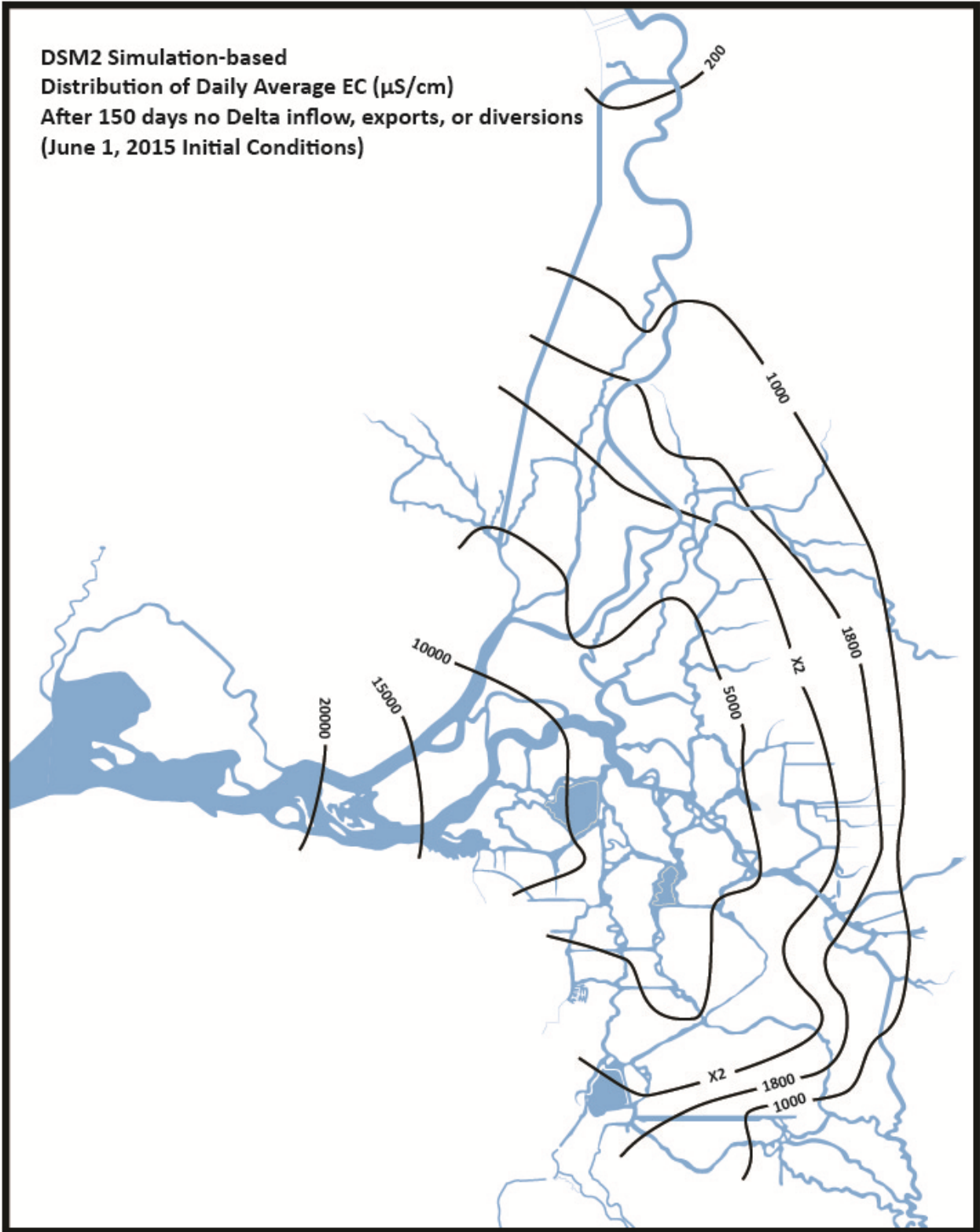


Figure 28, DSM2 Simulation, Distribution of Daily Average EC with NDOI =0, Day 150

EXHIBIT G

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 DANIEL KELLY, ESQ. (SBN 215051)
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6 Attorneys for Petitioner/Plaintiff BYRON-
BETHANY IRRIGATION DISTRICT
7

8 BEFORE THE
9 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

10 ENFORCEMENT ACTION ENF01949
11 DRAFT CEASE AND DESIST ORDER
REGARDING UNAUTHORIZED
12 DIVERSIONS OR THREATENED
UNAUTHORIZED DIVERSIONS OF WATER
13 FROM OLD RIVER IN SAN JOAQUIN
COUNTY

SWRCB Enforcement Action
ENF01951 and ENF01949

**AMENDED NOTICE OF DEPOSITION
OF PAUL MARSHALL AND REQUEST
FOR PRODUCTION OF DOCUMENTS
(Wat. Code, § 1100)**

14 In the Matter of ENFORCEMENT ACTION
15 ENF01951 – ADMINISTRATIVE CIVIL
LIABILITY COMPLAINT REGARDING
16 UNAUTHORIZED DIVERSION OF WATER
FROM THE INTAKE CHANNEL TO THE
17 BANKS PUMPING PLANT (FORMERLY
ITALIAN SLOUGH) IN CONTRA COSTA
18 COUNTY

19
20 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE THAT, under to Water Code section 1100 and Code of
22 Civil Procedure section 2025.210 et seq., YOU ARE HEREBY NOTIFIED that attorneys
23 for Byron Bethany Irrigation District (BBID) will take the deposition of **Paul Marshall on**
24 **March 3, 2016 at 9:30 a.m.** Said deposition will take place at the offices of **Somach**
25 **Simmons & Dunn, 500 Capitol Mall, Suite 1000, Sacramento, California 95814.**

26 The deposition of Paul Marshall is in regards to the following:

27 1. Any and all facts, opinions and/or documents referring or relating to the
28 Deponent's testimony filed in the subject proceedings.


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YOU ARE FURTHER NOTIFIED THAT:

The Deponent, Paul Marshall is required to produce at said deposition the documents, records or other materials as set forth in Attachment A to this deposition notice.

Dated: February 24, 2016

SOMACH SIMMONS & DUNN
A Professional Corporation

By: 
Daniel Kelly
Attorneys for Petitioner/Plaintiff BYRON-
BETHANY IRRIGATION DISTRICT

ATTACHMENT A

DOCUMENTS TO BE PRODUCED

1. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the California Department of Water Resources, concerning or relating to the State Water Resources Control Board's determination of water availability in the Sacramento and San Joaquin River Watersheds and the Delta for 2015.

2. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the California Department of Water Resources, concerning or relating to water right curtailments in 2015.

3. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the California Department of Water Resources, concerning or relating to the diversion(s) (current and/or historical) of water by Byron-Bethany Irrigation District.

4. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the California Department of Water Resources, concerning or relating to the Deponent's testimony filed in the subject proceedings.

5. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the California Department of Water Resources, relied upon by the Deponent in preparing any and all testimony filed in the subject proceedings.

If any document is withheld under a claim of privilege or other protection, please provide a privilege log containing the following information with respect to such documents: (a) an identification of the document with reasonable specificity and particularity, including its nature (memorandum, letter, etc.), title, and date; (b) the parties, individuals, and entities that the communication is between or references; (c) the exact nature of the privilege asserted; and (d) all of the facts upon which your claim of privilege is based or which supports said claim of privilege.

1 **PROOF OF SERVICE**

2 I am employed in the County of Sacramento; my business address is 500 Capitol Mall,
3 Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the
4 foregoing action.

5 On February 24, 2016, I served the following document(s):

6 **AMENDED NOTICE OF DEPOSITION OF PAUL MARSHALL
7 AND REQUEST FOR PRODUCTION OF DOCUMENTS**

8 X (via electronic mail) by causing to be delivered a true copy thereof to the person(s) and at
9 the email addresses set forth below:

10 **SEE ATTACHED SERVICE LIST**

11 I declare under penalty of perjury that the foregoing is true and correct. Executed on
12 February 24, 2016 at Sacramento, California.

13 
14 _____
15 Yolanda De La Cruz

SOMACH SIMMONS & DUNN
A Professional Corporation

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**SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING
(Revised 9/2/15; Revised: 9/11/15)**

SOMACH SIMMONS & DUNN
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**SERVICE LIST
WEST SIDE IRRIGATION DISTRICT
CEASE AND DESIST ORDER HEARING**

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PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.


On March 4, 2016, I served the following document(s):

DECLARATION OF MICHAEL VERGARA IN SUPPORT OF BYRON-BETHANY IRRIGATION DISTRICT'S OPPOSITION TO THE DEPARTMENT OF WATER RESOURCES' MOTION FOR PROTECTIVE ORDER; RE: PAUL MARSHALL

X (via electronic mail) by causing to be delivered a true copy thereof to the person(s) and at the email addresses set forth below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 4, 2016, at Sacramento, California.



Yolanda De La Cruz

**SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING
(Revised 9/2/15; Revised: 9/11/15)**

SOMACH SIMMONS & DUNN
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