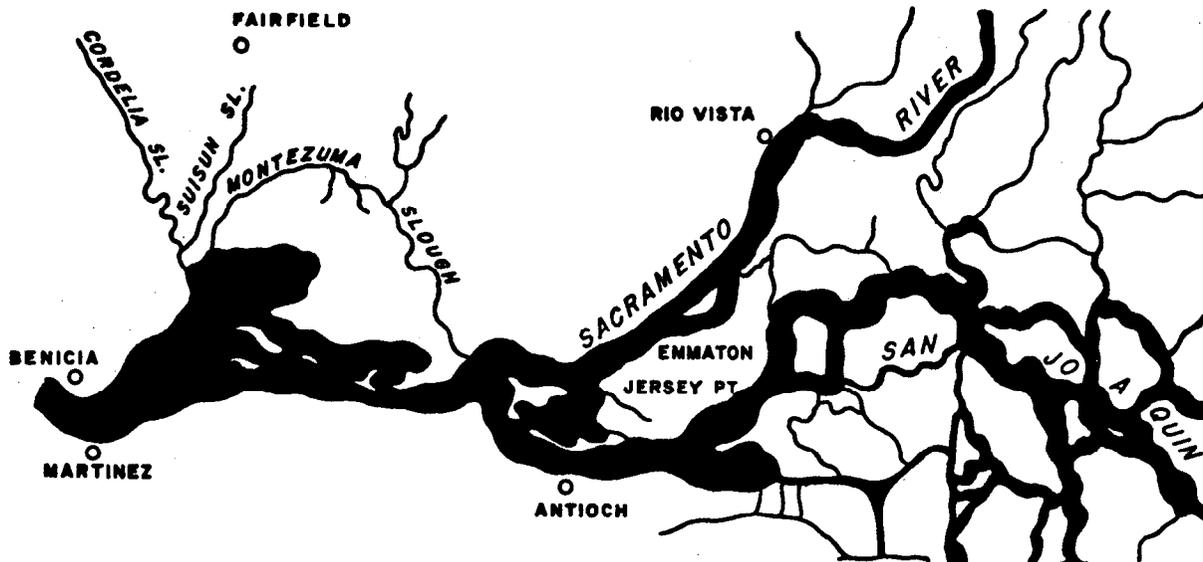


ORDER WR 78-17 denying reconsideration of water right decision 1485

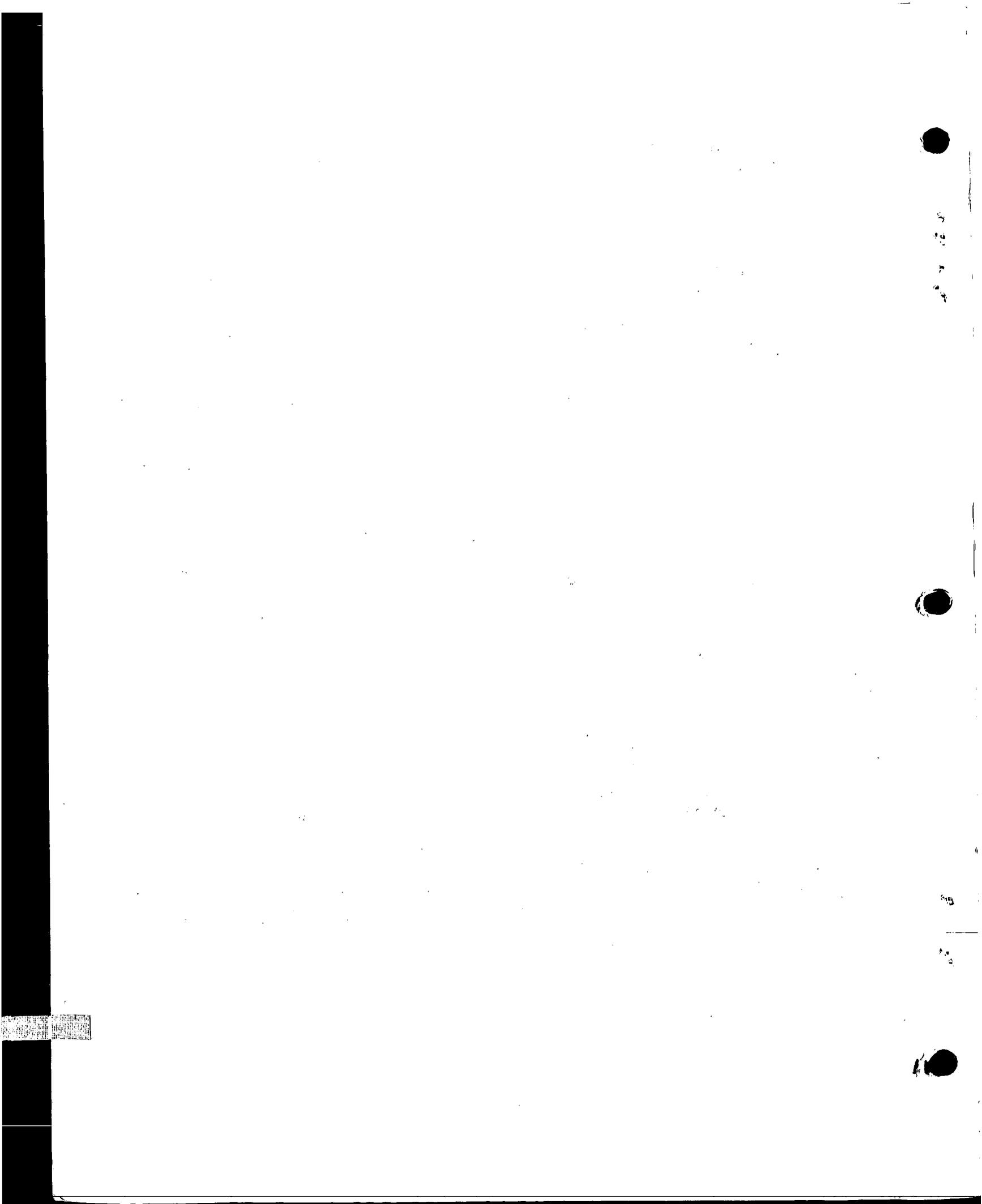
In the Matter of Permit 12720 (Application 5625) and Other Permits of United States Bureau of Reclamation for the Federal Central Valley Project and of California Department of Water Resources for the State Water Project.

Sacramento-San Joaquin Delta and Suisun Marsh



October 1978

STATE WATER RESOURCES CONTROL BOARD



STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of

Permit 12720 (Application 5625))
and Other Permits of U. S. Bureau)
of Reclamation for the Federal)
Central Valley Project and of)
California Department of Water)
Resources for the State Water)
Project.)

ORDER WR 78-17

ORDER DENYING RECONSIDERATION OF DECISION 1485

Fifteen petitions for reconsideration of Decision 1485 have been filed. These petitions are on behalf of the following:

1. Contra Costa County Water Agency, et al (CCCWA)
2. Contra Costa County Water District (CCCWD)
3. San Joaquin County Flood Control and Water Conservation District, Central Delta Water Agency, Delta Farms Reclamation District No. 2030, Reclamation District No. 536, and Conrad Silva (CEWA)
4. Central Valley East Side Project Association, Friant Water Users Association, Westlands Water District and County of Tulare (CVESPA)
5. Crown Zellerbach Corporation (CZ)
6. California Department of Water Resources (Department)
7. East Contra Costa Irrigation District (ECCID)
8. Environmental Defense Fund (EDF)
9. Fibreboard Corporation (Fibreboard)
10. The Metropolitan Water District of Southern California, Kern County Water Agency, Tulare Lake Basin Water Storage District and Santa Clara Valley Water District (MWD)

11. South Delta Water Agency and San Joaquin County
Flood Control and Water Conservation District (SDWA)
12. United States of America (Bureau)
13. Friends of the Earth (FOE)
14. Sierra Club
15. California Water Resources Association

After careful consideration, the Board has decided to deny each of the petitions. As acknowledged by many of the petitioners in the hearing leading to this decision, establishing proper levels of salinity control in the Delta is one of the most complex as well as most important water resources determinations in California. As more becomes known through the monitoring program set forth in the decision, adjustments may be warranted. However, in the petitions here considered, the Board was presented with nothing fundamentally new which would cause it to amend or reopen the decision reached on August 16, 1978.

Prior to responding to the issues raised in the petitions, some preliminary observations must be made. The Board does not respond in detail herein to every item for which reconsideration has been requested. Many of the issues raised by petitioners are directed specifically to the Water Quality Control Plan for the Sacramento-San Joaquin Delta and Suisun Marsh (Delta Plan) and the Environmental Impact Report (EIR) on both the plan and Decision 1485. Even though the Delta Plan and the EIR are incorporated into the decision by reference (page 7), questions

regarding the adequacy and correctness of the plan or EIR as separate documents, are more appropriately raised pursuant to the procedures applicable to those specific actions.

The Delta Plan was adopted by the Board pursuant to Water Code Sections 13170 and 13240-13244, inclusive. The Delta Plan and the decision are the culmination of 32 days of evidentiary hearing at which the parties had the right to cross-examine witnesses and to offer rebuttal evidence. Also, in accordance with Section 13244, a public hearing was held on May 30, 1978 to receive comments on the draft plan. Thus, the Board acted on the Delta Plan only after extensive public review and after consideration of a voluminous evidentiary record. The Water Code does not provide for reconsideration of an adopted water quality control plan, except that Section 13240 requires that such plans be periodically reviewed. The Board will conduct such a review within the next three years.

Similarly, the Board does not address the EIR in this order. The EIR was prepared and adopted by the Board pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.). In accordance with Public Resources Code Section 21092, the Board provided public notice that an EIR was being prepared with regard to the Delta Plan and corresponding water right decision, and a draft EIR was circulated for public comment. The draft EIR was a subject of a public hearing.

In addition, the Board filed with the Secretary for Resources its notice of determination to adopt the Delta Plan and Decision 1485, in accordance with Public Resources Code Section 21108. The only provision in the law for challenging an EIR after public comment has been received on the draft EIR and a Final EIR has been adopted, is found in Public Resources Code Sections 21167-21168.7, inclusive. Litigation has been commenced by several parties pursuant to these statutes.

More fundamentally, it is unnecessary to reconsider them now for the Board has already considered and reconsidered them. As stated above, both documents were circulated in draft form and a hearing was held prior to adoption. The Board has carefully considered the public comments, and has digested and responded to them in an appendix entitled Summary of Public Comments on the Draft Plan and EIR, which was published concurrently with the plan and Final EIR.

Three petitions for reconsideration were submitted after the expiration of the statutory 30-day time limit. These petitions are on behalf of Friends of the Earth, Sierra Club and California Water Resources Association. Water Code Section 1357 provides that "Any such petition [for reconsideration] must be filed within 30 days after adopted by the board of a decision or order". This statute establishes a jurisdictional limitation on filing of petitions and we therefore do not accept

the late-filed petitions. Irrespective of this, the late petitions do not establish cause for reconsideration of Decision 1485. However, where these petitions raise substantive issues which were not addressed in the appendix to the Delta Plan and EIR (Appendix), they will be responded to herein.

Petitioners for reconsideration of Decision 1485 generally failed to submit petitions meeting the requirements specified in the Board's regulations pertaining thereto (Art. 14.5, Title 23, California Administrative Code). Section 737.1 of the regulations provides four grounds for reconsideration:

- "(a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- (b) The decision or order is not supported by substantial evidence;
- (c) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing;
- (d) Error in law."

It is difficult to discern from many of the petitions if any of these grounds are being asserted.

Section 737.2(a) enumerates information which must be included in petitions:

- "(1) Name and address of the petitioner.
- (2) The specific action of the board of which petitioner requests reconsideration.
- (3) The date on which the order or decision was made by the board.

- (4) The reason the action was inappropriate or improper.
- (5) The specific action which petitioner requests.
- (6) A statement that copies of the petition and any accompanying materials have been sent to all interested parties."

Many of the petitions are vague as to the specific action asserted to be inappropriate or improper, or the specific action that should be reconsidered. Almost all petitioners failed to include a statement that copies of the petitions and accompanying materials have been sent to all interested parties. Only three petitioners complied with Section 737.2(c), which requires that a supporting statement of points and authorities accompany petitions raising legal issues. Most petitions merely state a legal conclusion without citing any authority or presenting reasoned argument.

We do not raise this inattention to Board procedures as grounds for denial of the petitions, although we believe it would constitute such grounds in many cases. Denial of the petitions for this reason would serve merely to delay the proceeding until petitioners correct the deficiencies, or to provoke litigation over the issue of compliance with procedural regulations. In such litigation, the court might feel compelled to address the merits of the petitions without benefit of the Board's responses. This result would not serve the objective of orderly process which has characterized this proceeding throughout, and we accordingly do not deny the petitions on the ground of

non-compliance with Article 14.5 of the Board's regulations. However, we do wish to reaffirm that the regulations should be followed and that parties failing to do so act at their own peril.

Legal Issues

1. The Board exceeded its reservation of jurisdiction in imposing certain terms and conditions in the subject permits. By its own previous decisions, the Board has limited the time for exercise of its reserved jurisdiction, and such time has expired. (Bureau, CVESPA)

The petitioners assert, without explanation, that the Board's reservation of jurisdiction for the Folsom Unit of the CVP has expired. We disagree.

Decision D 893 (adopted March, 1958) dealt with applications for the Folsom Project and non-federal projects on the American River. The decision approved the Bureau's applications subject to the following condition, among others:

"These permits shall be subject to an agreement to be entered into between the United States of America and the water users of the Sacramento River and Sacramento-San Joaquin Delta with respect to releases from Folsom and Nimbus Reservoirs in coordination with other units of the Central Valley Project for consumptive use and salinity control in the Sacramento-San Joaquin Delta, provided such an agreement is entered into within

1 year from date of issuance of a decision by the State Water Rights Board in connection with and after hearing on Applications 5625, 5626, 9363, 9364, 9365, 9366, 9367, 9368 and 10688 of permittee [Bureau's Shasta and Delta applications] and is approved by the State Water Rights Board or in the event of failure to reach an agreement by that date, these permits shall be subject to further order of the Board, which order shall be preceded by further hearings." (Emphasis added)

This condition recognized that the Board would subsequently act upon additional Bureau applications, then pending, to appropriate water at Lake Shasta and from the Delta. Further, the condition recognized the need for coordinating, for purposes of Delta consumptive use and salinity control, the Bureau's Folsom Project entitlements with the entitlements to be issued to the Bureau for appropriation from Lake Shasta and the Delta. The condition offered the opportunity for coordinated operation to satisfy Delta consumptive uses and salinity control needs, through agreement between the United States and interested parties. Failing consumation of such agreement within one year of the contemplated decision on the Bureau's Shasta and Delta applications, however, the condition subjected the Bureau's Folsom Project entitlements to further order of the Board with respect to coordinated operation to satisfy Delta needs.

In February 1961 the Bureau's Shasta and Delta applications were approved by Decision D 990. However,

the agreement contemplated by the D 893 condition quoted above was not entered into. Therefore, under the proviso of the condition, the Bureau's Folsom permits were subject to further order of the Board. The Board's retained jurisdiction, then, has not expired, and Decision 1485 is consistent with the intent of D 893.

Allegations that jurisdiction reserved by the Board in the Bureau's Trinity permits has expired are also made. The Board's position is that it has not. The Bureau's Trinity applications were not protested, and although a short hearing was held, a formal decision was not required. Permit Order No. 124 (adopted on September 10, 1959) approved these applications subject to the following condition:

"The Board retains continuing jurisdiction for the purpose of coordinating terms and conditions with other applications of the United States in furtherance of the Central Valley Project including but not limited to Applications 5625, 5626, 9363, 9364, 9365, 9366, 9367, 9368 and 10588 [Bureau's Shasta and Delta pplications] when acted upon, and for a period of 2 years thereafter, which period may be extended upon hearing and further order of the Board." (Emphasis added)

Thus, jurisdiction was retained for two years or more after action on the Bureau's Sacramento River and Delta applications. Decision D 990, however, also included a condition retaining jurisdiction by the Board over Bureau permits issued pursuant to that decision.

Although D 990 does not expressly abrogate the time limitation in the condition quoted from Permit Order No. 124, there can be no question that the reservation of jurisdiction in D 990 was intended to and does continue to reserve jurisdiction over the Trinity permits.

Decision D 990 retains jurisdiction over the permits issued on the same applications referenced in the previously quoted condition from Permit Order 124. The purpose of this retained jurisdiction is to facilitate coordination of terms and conditions imposed on Trinity River and Sacramento River basin appropriations of the Bureau and Department which contribute to the Delta water supply. Logically, the Board's jurisdiction specifically retained to coordinate terms and conditions in one decision must apply to the other in order to preserve the same flexibility in both. Otherwise, such coordination would be impossible. The very term "coordination" contemplates adjustment of both sets of permits to ensure consistency with Board policy. A coherent policy of water quality protection for the Delta would be impracticable if different permit conditions were to exist for different appropriations by the Bureau and Department which supply the Delta. (See page 6, paragraph 1 of Decision 1485)

2. The Board failed to allow cross-examination of evidence accepted subsequent to close of the hearing on the decision, specifically the evidence presented at the May 30 hearing and written submittals. The Board appears to have relied upon this evidence in making changes in the decision and the plan.
(CDWA)

At the beginning of the May 30 hearing, Board Chairman Bryson stated:

"No further evidentiary information under these procedures will be received today. However, we would like to have your comments on the draft plan and draft Environmental Impact Report and the analysis of the evidentiary record to assist us in determining what revisions to the plan and the Environmental Impact Report should be made prior to its final adoption." (RT May 30, 1978, p. 1)

Some of this information showed the need for further staff analysis of existing evidence contained in the hearing record. Revisions to the draft plan and EIR were made as a result of this additional staff analysis. The matter of cross-examination of submitted arguments and material is discussed on page XII-1 of the Appendix.

3. Evidence has been developed relevant to both the water supply and quality in the southern Delta that would have existed in the absence of the SWP and CVP, and to determination of adverse impacts on the southern Delta of CVP operations. This

evidence did not exist at the close of the hearing, and in the exercise of reasonable diligence could not have been produced at the hearing. The SDWA should be permitted to present this relevant information to the Board prior to a final decision in this proceeding. (SDWA)

The Board is aware that additional analysis of historical data has been made since the hearing. Whether the data on which this analysis is based is actually new cannot be determined from the petition. In accordance with Section 737.2(b), Title 23, of the California Administrative Code, a petition requesting reconsideration on the basis of new evidence must contain a general statement of the nature of the evidence as well as the facts to be proved and must be made on affidavit. This was not done.

Even if this additional analysis is "new" but is based on data available during the hearing, its development cannot be accepted as cause for reconsideration since the information on which it is based could have been obtained at the time of the hearing. "New" analyses are continually being made on Delta matters. To grant the SDWA petition on the grounds offered would create a precedent that could result in a never-ending series of "new" analyses by many of the petitioning parties.

4. The Board has both the authority and obligation to prepare and adopt a water right decision setting standards which conform as closely as possible to ideal conditions in the basin, assuming no diversions, project or non-project. Decision 1485 does not exercise the full scope of the Board's authority over upstream diversions other than those of the CVP and SWP, and abrogates the Board's responsibility to protect the Delta fully within the reasonable constraints provided in the law. (FOE)

If the Board were required to resolve every question which might have an effect on Delta supplies at one time in one proceeding, it would have to examine every aspect of water management throughout the state. Because of the impracticability of such an effort, the scope of the Board's action was specifically limited in the notices of the action and in the draft documents circulated for public review prior to the August 16, 1978 action by the Board. The scope of Board action is a matter of Board discretion. This proceeding generally is to provide that level of water quality in the Delta that would exist but for the operations of the CVP and SWP. There are several reasons for so limiting the issues.

First, the Board has reserved jurisdiction in CVP and SWP permits for the purpose of coordinating permit

conditions for salinity control in the Delta. Second, under the provisions of Water Code Section 11460 et seq. (watershed protection laws), permittees who use their water within the watershed of origin have first call to the water ahead of exports by the projects. Third, the projects' export pumping operations in the Delta, in conjunction with their Sacramento Valley storage programs, produce a more significant impact on Delta water quality than do other diversions.

The Board declined to expand the scope of these proceedings for the additional reason that expansion would require a much longer time for resolution of complex legal and technical issues. Practical problems related to enforcement of terms and conditions imposed on other upstream permittees would also have to be resolved. The Board determined that the limitation of scope in Decision 1485 best ensures timely protection of the Delta. Therefore, the Board has correctly discharged its duties.

5. The Board has no authority to allocate the burdens of a drought between paramount vested right holders and junior appropriators, i.e., the Bureau and the Department. (CCCWA)

Decision 1485 seeks to protect vested rights in the Delta against infringement by the CVP and SWP.

6. The Board erred in failing to consider the relative priorities of water right permits. The Bureau's permits are senior in time to those of the Department and the City of Vallejo. Therefore, those entities should assume a larger responsibility for protecting Delta water quality than the Bureau. (Bureau, CVESPA)

As the Board made clear throughout, we at no time intended within the scope of the present proceeding to establish the relative priorities of the CVP and the SWP. Establishment of such priorities would be very difficult and would not in itself result in specific allocations of water for Delta salinity control. Since the Bureau is in the process of negotiating a general operating agreement with the Department which will include salinity control operations, it appeared the Bureau supported such a negotiated approach. Had the Bureau seriously wished to have the Board undertake such a major effort, the Bureau should have so indicated at the outset and should further have provided a detailed analysis for the other affected parties and the Board to analyze. This was not done. Thus, the board considers it proper and fair to stand by its initial decision as to the proper scope of these proceedings.

This does not mean that the Board would never seek to make a determination of the relative priorities of the SWP and CVP. Rather, we have decided that the tail-end of a two-year proceeding on Delta water quality is not the occasion to undertake such an effort. Should the Bureau or any proper party in a separate proceeding request such a determination, the Board would consider the request and make a determination of whether the public interest supported such an investigation.

It may be useful to expand on the Board's initial decision not to scope the present proceeding in such a manner as to include the setting of relative priorities between the two projects. Maximum utilization of the yields of the SWP and CVP is a highly complex matter requiring close coordination of project operations. Coordinated operation involves several interrelated facets including contractual deliveries, power demands, upstream diversions, riparian and appropriative uses in the Delta, and Delta water quality standards. The project operators have recognized for some time the need to reach agreement as to their respective responsibilities in order to ensure essential coordination of project operations. On May 16, 1960, an agreement was executed by the Department and Bureau

which provides a basis for future agreement on coordinated operations for allocation of water shortages between the projects, when necessary, and for resolution of water right priorities of both agencies. In view of this background, we believe that our decision to leave the details of complying with Decision 1485 to arrangements between the project operators is sound.

With respect to the priority of the City of Vallejo, curtailment of diversion by that City will be necessary when water under its priority is not available, taking into consideration relative responsibilities for protection of the Delta.

7. Decision 1485 is invalid because it contravenes and fails to implement and effectuate the Delta Protection Act in the following instances: 1) The decision fails to provide salinity control in the Delta; 2) it fails to recognize, enforce and implement the obligation of the CVP to provide salinity control in the

Delta; and 3) it fails to include terms and conditions to implement and enforce said salinity control obligations. CCCWA incorporates by reference certain briefs filed in the lawsuit entitled CCCWA, et al v. SWRCB, et al (Contra Costa County Superior Court No. 172975) and other documents in support of its contentions herein. (CCCWA)

CCCWA's reliance on argument presented in the above-mentioned lawsuit is inappropriate. That action challenged the Interim Water Quality Control Plan for the Delta adopted by the Board during the drought of 1977. That plan bears little resemblance to either the Delta Plan or Decision 1485. Therefore, CCCWA's position is difficult to apply here. However, to the extent that the argument in CCCWA's past briefs may be generalized to apply to the current proceeding, and to the extent the petition is clear on its face, we may respond.

CCCWA's assertion that Decision 1485 does not provide salinity control or protection of beneficial uses is without merit. The very purpose of this proceeding is to provide that degree of salinity control consistent

with the demands of vested water rights and the public interest. Perhaps petitioner's intent is to attack the salinity control and protection of beneficial uses provided for in Decision 1485 as being inadequate. However, nowhere does petitioner specifically suggest in what respect the level of protection is deficient or how it should be improved.

CCCWA's contentions that Decision 1485 failed to recognize the CVP's salinity control obligations or enforce them with permit terms and conditions are equally unfounded. The decision clearly asserts the Board's authority over CVP operations. In discussing the Supreme Court's ruling in California v. United States (___ U.S. ___, 57 L.Ed.2d 1018, 98 S.Ct. 2985, 46 U.S.L.W. 4997 (1978)), the Board stated: "The decision thus affirms the Board's authority to impose terms and conditions herein" (p. 5). The Board further states that protection of Delta beneficial uses requires coordination of CVP and SWP operations and concludes: "Therefore, terms and conditions related to the Delta, including those for protection of fish and wildlife, must be the same in all of these permits" (p. 6). Finally, the Order, paragraph 2, of Decision 1485 (p. 22) specifically provides for adherence to the water quality standards

which are included in the decision. The Bureau's permits will be amended to include as terms and conditions the provisions of said Order.

8. The Board has misinterpreted and misapplied California water law, including the Delta Protection Act, in that it failed to provide an adequate water supply for Delta water users. The Board wrongly balanced the need to protect Delta beneficial uses against the demands of SWP and CVP contractors, thereby providing only partial protection to such beneficial uses on the basis of reasonableness. In so doing, the Board is adjudicating vested rights which exceeds the Board's authority and announced purposes. Further, stating that Delta users may purchase additional benefits from the projects under the Delta Protection Act implies that what is constitutionally unreasonable without payment can be constitutionally reasonable if paid for. There is no basis in law for this. (CDWA, CCCWA)

The issue raised by CDWA indicates a basic misunderstanding of the approach taken in Decision 1485. The development of water quality standards for the protection of Delta vested rights involved a determination of two things - the needs of Delta vested right holders and without project conditions in the Delta. This was done

not for the purpose of adjudicating individual vested rights, but rather to determine the reasonable level of protection to which vested right holders as a group are legally entitled as against the CVP and SWP. All water rights in California are limited by the constitutional prescription against waste or unreasonable use, method of use or method of diversion of water (California Constitution, Art. X, Sec. 2). To state it another way, the right extends only to its reasonable exercise - it does not include unreasonable use (Joslin v. Marin Municipal Water Dist., 67 Cal. 2d 132, 60 Cal. Rptr. 377, 429 P.2d 889 (1967)).

The reasonable protection to which Delta water users are entitled does not extend to providing project water to satisfy all needs at all times, regardless of without project conditions, to the full storage capability of the projects. Neither vested rights nor the Delta Protection Act requires such protection. In determining the needs of Delta vested right holders, the Board did not balance in-basin beneficial uses against those of SWP and CVP contractors. Rather, it considered several factors related to the reasonableness of in-basin beneficial uses. In the case of Delta agricultural uses, these include consideration of crop types, irrigation

practices and soil types. The Board did carefully consider both in-basin and export uses in its final selection of a plan for the Delta. It did so pursuant to its responsibility to consider beneficial uses and economic factors when formulating basin plans (Water Code Section 13241), and in accordance with the legislative finding in the Delta Protection Act that maintenance of Delta water quality for export purposes is necessary to the general welfare of the people of the state (Water Code Section 12201). Thus, the water quality standards contained in Decision 1485 protect both in-basin and export uses. However, providing protection for all uses of Delta water supplies cannot properly be characterized as a balancing of in-basin and export uses under the reasonableness standard.

The Board's determination of without project conditions was a purely technical matter; concepts of reasonableness are not involved. The water quality standards contained in Decision 1485 were developed by determining the extent to which the reasonable needs of the Delta would be satisfied by without project conditions. The underlying principle of these standards is that water quality in the Delta should be at least as good as those levels which would have been available had the State and Federal projects not been constructed, as limited by the

constitutional mandate of reasonable use. The Board has determined that this is the highest level of protection which may be afforded as a matter of right against the CVP and SWP.

Decision 1485 states that Delta users may purchase additional water from the CVP and SWP which enhances the level of protection provided by the decision (page 16). This is in accordance with the Delta Protection Act, and is not related to notions of vested rights. Thus, the Board's position is not that Delta users can make an unreasonable use of water reasonable by paying for it. Rather, Delta users may purchase additional water only to the extent that they have reasonable need for it.

9. Decision 1485 is invalid because it improperly declared that Delta water users must enter into water service contracts and pay for any benefits under the Delta Protection Act which they may reasonably require that are beyond without project conditions. This is a legal issue properly decided by the courts, and not the Board. (CCCWA)

Against the CVP and SWP, Delta vested right holders are entitled to no more than without project flows and the resulting salinity conditions. Any additional benefit which might accrue from the Delta Protection Act is not

a part of the vested right, but is a separate statutorily conferred benefit. The Delta Protection Act (Water Code Section 12202) expressly provides that delivery of substitute water supplies to Delta users is subject to the provisions of the watershed of origin statutes (Water Code Section 11460-11463, inclusive). Water Code Section 11462 states that the Department "shall not be required to furnish water to anyone without adequate compensation therefor". Further, the bond issue legislation which financed the SWP, the Burns-Porter Act (Water Code Section 12930 et seq.), provides that payment of the principal and interest on the bonds is to be made from revenue derived from the sale of project water, and such revenue is to serve as additional security for bondholders (Water Code Section 12937(b)(4)).

Principles of statutory construction dictate that statutes should be construed so as to harmonize with each other, and to give each statute meaning. Taken together, the Burns-Porter Act, the watershed of origin statutes and the Delta Protection Act reveal a statutory scheme in which statutorily conferred benefits are to be paid for. None of these statutes establish a vested right to additional water.

CCCWA contends that the Board has exceeded its authority by passing upon this "basic legal issue". However, it is hard to see how the Board could have avoided it. One of the major purposes of this entire proceeding is to protect vested rights in the Delta by imposing amended terms and conditions on CVP and SWP permits. The fundamental precept of the decision is to give Delta users at least that level of protection they would have were it not for the projects. The passage from page 16 of the decision which petitioner cites is merely a declaration of this primary policy.

10. The decision fails to satisfy its purpose and the Board's statutory mandates to the detriment of the southern Delta. The Board must consider the effect on the Delta of the total coordinated operations of the CVP and SWP in the Sacramento and San Joaquin River systems. The Board has been unable to determine to what extent the operations of the project facilities have encroached upon vested right holders in the southern Delta. This is an error in law. (SDWA)

The hearing evidence related to project effects on southern Delta vested rights was not sufficient to determine appropriate conditions for the SWP and CVP permits presently before the Board. The Board has

continued to reserve jurisdiction in these permits for salinity control and to coordinate permit terms and conditions, and will be involved in detailed evaluations of the sources of the San Joaquin water quality problems. The inability to establish appropriate standards because of insufficient information is the basis for reserved jurisdiction, and does not constitute an error in law.

11. The Board exceeded its authority under federal and state law by requiring releases of Bureau-stored water. The Board's reliance on Water Code Section 1394 in exercising its asserted retained jurisdiction has expired by operation of Decision D 893 and Permit Order No. 124. Water Code Section 100 has never been invoked by the Board to declare Bureau practices wasteful or unreasonable. Releases of stored water ordered pursuant to Section 763.5, Title 23, California Administrative Code, are inappropriate where jurisdiction is not retained to so order at the time the permit is issued. Such jurisdiction was not retained in Bureau permits. Further, Section 763.5 was adopted several years after issuance of those permits. Finally, promulgation of Section 763.5 was not within the power conferred by Water Code Section 1058, for that statute only authorizes the Board to make reasonable rules and regulations. Section 763.5 is not reasonable because it requires

releases of stored water already earmarked for beneficial uses, so that other beneficial uses selected by the Board could be served. (Bureau, CVESPA)

The question of the alleged expiration of the Board's reserved jurisdiction in Decision D 893 and Permit Order No. 124 is discussed elsewhere in this Order. The Board's position is that its retained jurisdiction has not expired and the exercise thereof is consistent with law and with the applicable permit conditions.

The relevance of the contention of the Bureau and CVESPA that the Board has never utilized Water Code Section 100 to declare Bureau practices wasteful or unreasonable is not clear. Since this issue is raised in the context of their argument concerning Section 763.5 of the Board's regulations, the Bureau and CVESPA apparently have concluded that the Board is acting pursuant to that portion of Section 763.5(b) which states that subsection (b) does not apply to the continuing authority of the Board to prevent waste or unreasonable use, method of use or method of diversion of water, as provided for in Section 761 of the regulations. However, this is not the case. The Board's reliance on Section 763.5 is based on the retention of jurisdiction in the Bureau's permits and other provisions of subsection (b).

Assuming that releases are made pursuant to Decision 1485, the Board's action is consistent with the requirements of Section 763.5. Subsection (b) of that regulation provides, among other things, that releases may be required in the public interest for constructed projects where permittee agrees to make such releases or "the board at the time the permit was issued expressly reserved jurisdiction to require such bypass or release". The Board has reserved jurisdiction for salinity control in the Delta and coordination of terms and conditions for that purpose in the Bureau's permits. Further, subsection (b) exempts actions required to implement the watershed protection laws (Water Code Section 11460 et seq.) and the Delta Protection Act (Water Code Section 12200 et seq.). Decision 1485 is such an action. Therefore, the Board may properly invoke Section 763.5 as a basis of authority for adopting Decision 1485.

The Bureau and CVESPA observe that 763.5 was promulgated several years after the Bureau's permits were issued. This observation apparently was made to challenge the regulation on the grounds that the Board is improperly applying it retroactively, although the petition does not expressly say so. However, there is no issue of improper retroactive application; Section 763.5 applies

to the Bureau by its terms in that jurisdiction was retained by earlier decisions and because Decision 1485 is an action necessary to carry out Delta and watershed protection, as provided for in the Water Code.

The implication raised by the Bureau and CVESPA is that Section 763.5 represents a substantial change in Board policy after the Board had already acted on the Bureau's applications. Such is not the case. The Board's authority to impose continuing jurisdiction conditions upon appropriations fundamentally rests upon Water Code Section 1253 and its predecessor statutes, dating back to 1921, which command the Board to allow appropriations "under such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated." (Compare Water Code Section 1253 with Stats. 1921, Ch. 329, p. 443.) Thus, the Board effectively continued jurisdiction in numerous permits issued prior to the effective date of regulation Section 763.5 (May 26, 1975). Surely petitioners cannot contend that the effect of Section 763.5 was to rescind all of these pre-existing conditions; such a contention is directly controverted by the terms of the regulation. Therefore, although Section 763.5 was promulgated several years after issuance of the Bureau's permits, the

substance of the regulation should have come as no surprise to the Bureau and CVESPA. This is especially true since the Bureau and CVESPA were notified of and given the opportunity to participate at a hearing and comment on Section 763.5 before it was adopted. They did not do so.

The Bureau and CVESPA contend that the Board exceeded its rule-making authority under Water Code Section 1058 by adopting Section 763.5, on the ground that this section is not a reasonable regulation. They argue that the Board may only require bypass flows for beneficial uses at the time a permit is issued, but may not require an appropriator to release stored water to serve other beneficial uses unless the appropriator's permitted uses are declared unreasonable.

However, as discussed above, the applicable law has authorized since 1921 permit conditions enabling the Board subsequently to modify permit requirements where the Board deems this necessary to conserve the public interest or to protect vested rights. There is no requirement in any provision of the Water Code that the Board must first determine that permittee's uses are unreasonable as a condition precedent to exercising that authority.

Finally, it is contended that Section 763.5 facilitates the Board's allocation of water stored by projects such as the CVP to serve beneficial uses selected by the Board, at the expense of the beneficial uses for which such water is already earmarked. This contention implies an arbitrary substitution of the Board's preferences for certain beneficial uses for the purposes for which the project is authorized. The contention shows a failure to grasp the Board's responsibilities under the law. First, and most fundamentally, the Board may permit appropriation only of unappropriated water. (Water Code Section 1252.) This means that the Board cannot permit appropriations which invade prior vested rights. With respect to export appropriations of the magnitude of the SWP and CVP, which impact upon a system of the complexity of the Delta and its tributaries, the Board's conditioning of such appropriations upon specific standards to assure protection of prior rights (a power clearly given the Board by Water Code Section 1253) is a proper and reasonable exercise of the Board's responsibility.

Second, Water Code Section 1243 mandates the Board to take into account, when in the public interest, the amounts of water required for preservation and enhancement of fish and wildlife resources in determining the amount of water available for appropriation for other beneficial uses. Where as here,

the Board imposes conditions for protection of such beneficial uses (Water Code Section 1253), it is fulfilling this mandate. Petitioners characterization of the Board's use of Section 763.5 as an arbitrary substitution of preferences for beneficial uses ignores legislative commands binding upon the Board. Water cannot be earmarked for uses - although beneficial - which diminish either prior rights or the amount of water necessary in the public interest to protect fish and wildlife resources.

The Bureau and CVESPA allege that the Board exceeded its authority under federal law with regard to stored water. However, the petitions do not state how the Board did so. There is not sufficient information presented upon which to base a response, and the Board therefore does not address this issue.

12. The Board erred and abused its discretion in failing to reopen the record to receive the Bureau's comments submitted June 15, 1978. (Bureau)

Responses to the specific technical recommendations are contained in the Appendix on pages II-18, 19; III-11, 12

and VII-2, 3. The Board may, of course, in its discretion reopen a hearing after submission of the matter for decision (California Administrative Code, Title 23, Section 733(k)). However, the Board believes, as stated in the Appendix, that these technical refinements can be addressed more appropriately in future proceedings.

13. The Board did not balance the public interest and was arbitrary and capricious in taking water from those areas wherein Congress intended it to be used and requiring that it be utilized in the Delta. The Board placed undue importance on the Delta Protection Act and in so doing failed to give proper consideration to the federal reclamation laws. The vested interests of the United States and its contractors have not been protected. By allocating CVP water to Delta agriculture, the Board has acted contrary to the 160-acre limitation of the reclamation laws. (CVESPA)

This comment misconstrues the purpose and effect of Decision 1485. The decision does not reallocate water or water rights in any sense. Rather, it seeks to ensure that vested rights in the Delta are protected and that the public interest is conserved by maintaining a reasonable level of water quality there. The suggestion that the Board gave too great consideration

to the Delta Protection Act is unfounded. The Delta Protection Act was an important statutory constraint in formulating Decision 1485. Failure of the Board to consider this act would be contrary to the direct command of the Legislature.

Regarding protection of the vested interests of the United States and its contractors, the law is clear that the Bureau's appropriative rights are subordinate to prior vested rights in the Delta. The only question is the extent to which the Bureau must satisfy prior vested rights in the Delta, as limited by the constitutional standard of reasonableness. The Bureau and its contractors have always been on notice that CVP water rights are subject to prior vested rights; each Bureau permit expressly states this as a condition. However, the Board is mindful that Delta vested rights do not include the right to waste or unreasonable use of water (California Constitution, Art. X, Sec. 2). Decision 1485 upholds these vested rights with recognition and protection of the beneficial uses served by CVP and SWP water.

The 160-acre rule has no bearing on Decision 1485. This decision does not allocate CVP water to Delta agricultural users, and such users do not become CVP

contractors by operation of the decision. Benefits to the Delta from CVP water are consistent with the Bureau's responsibility to abide by permit terms and conditions which protect vested rights and the public interest. The application of the 160-acre rule is a question to be resolved between the Bureau and Delta water users at such time as these users seek to purchase Bureau water.

Finally, there was nothing "arbitrary or capricious" about the Board's action in developing the water quality standards in Decision 1485. This action was taken after the most careful analysis of an enormous body of testimony and written evidence compiled after 32 days of evidentiary hearing. The decision is designed to protect vested rights in a manner consistent with the broad public interest and the Constitution.

14. Decision 1485 is contrary to federal law because it requires the Bureau to expend federal funds not authorized by Congress. Specifically, paragraph 7 of the Order requires the Bureau to develop a plan for Suisun Marsh including physical facilities and to fully implement the plan by October 1, 1984. (Bureau)

The federal reclamation laws require the Bureau to develop its water projects in a manner consistent

with state law. The U. S. Supreme Court, in California v. United States, supra, has affirmed that the Board may impose conditions on federal water permits that are not in contravention of a Congressional directive. We are aware of no Congressional directive which prohibits the Bureau from meeting water quality standards contained in this decision. On the contrary, the authorization for the CVP lists Delta salinity control as a project purpose. Further, federal law requires that the Bureau mitigate the adverse environmental impacts of its projects. See, e.g., Fish and Wildlife Coordination Act (16 U.S.C. Section 661 et seq.) and National Environmental Policy Act of 1969 (42 U.S.C. Section 4321 et seq.).

In concurrent with the Board's viewpoint, the present Administration is committed to carrying out both the letter and the spirit of federal environmental protection statutes. On page 1 of a memorandum to the chairman and members of the Water Resources Council, and others, dated July 12, 1978, President Carter states that:

"My [Water Resources Policy Reform Message of June 6, 1978] stresses the need to ensure consistent application and effective enforcement of environmental protection statutes if their objectives are to be realized. More careful attention to meeting the requirements of these statutes must be an important element of all water-related planning and management decisions."

To accomplish this objective, the President directs that federal agencies, including the Department of the Interior, revise their regulations to ensure timely and effective compliance with the statutes. The agencies are to include reports which demonstrate compliance with the statutes as part of their annual budget submissions.

Furthermore, the Bureau has been a principal participant in negotiations leading to the draft Four-Agency Agreement^{1/} and has been primarily responsible for the plan to protect the valuable wetlands in Suisun Marsh. Thus, the Bureau appears itself to have recognized a duty to protect water quality in the Delta and Suisun Marsh. If the Bureau does not have sufficient funds allocated for this purpose, it should request additional appropriations from Congress. Such a request would certainly be in keeping with the

^{1/} Since 1970 California Department of Fish and Game, the Department, U.S. Fish and Wildlife Service (USFWS), and the Bureau have participated in coordinated ecological studies of the estuary. Currently, these parties are negotiating a memorandum of understanding which would provide for maintenance of fish and wildlife resources on the average at levels which have occurred in the recent past, as well as providing for realization of water projects' potential for enhancement of these resources. The April 1977 draft of this memorandum of understanding, or Four-Agency Agreement, was presented as an exhibit in the Delta hearing (Fish and Game Exhibit 11).

policy underlying the federal statutes and the policy of the President.

15. Sections 4 and 10 of the Order impose broad monitoring and study obligations on the Department and Bureau. We urge the Board to add in each of these sections specific recognition that SWP costs for monitoring and studies must bear a reasonable relationship to impacts of SWP operations, under the continuing jurisdiction reserved in the water right permits. (MWD)

The SWP and CVP have a joint responsibility for meeting standards and complying with the monitoring program. Therefore, sharing of monitoring costs should be resolved between the Department and Bureau. We have no reason to believe that an equitable agreement cannot be achieved.

16. An essential component of the Board's public interest obligation is protection of the State Water Project, as a coordinated statewide plan of development approved by Decision D 1275. The failure of Decision 1485 to describe this obligation may, in future proceedings, be considered a precedent for subordinating SWP delivery responsibilities to more intangible and illusive considerations. Therefore, specific language should be included recognizing this component of the Board's public interest responsibility. (MWD)

There is no question that the water right entitlements heretofore issued to authorize appropriation of water by the SWP reflect a finding by this Board that such appropriation is in the public interest (Water Code Section 1255). The same may of course be said of appropriations made by units of the CVP heretofore authorized. Unquestionably the rights acquired by issuance of permits for these appropriations deserve the Board's fullest protection consistent with other public interest responsibilities which the Board is required by law to discharge. Chief among the latter is the responsibility to allow appropriations "...under such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated" (Water Code Section 1253).

The instant proceeding further develops conditions recognized in Decision D 1275 as necessary to conserve the public interest in protecting prior rights and preserving fish and wildlife resources. The Board's task in this proceeding, as in all proceedings involving actions on water right applications, is to balance all public interest considerations in formulating our orders. We do not minimize the public interest in protecting authorized appropriations for

the SWP; we do balance this public interest against other public interests which we are by law obliged to recognize and protect.

17. The Decision does not impose requirements on the CVP or SWP regarding groundwater overdrafting, water conservation, conjunctive use, meeting existing deficiencies prior to new needs, or energy conservation. (CDWA)

While restrictions on SWP and CVP operations resulting from the imposition of the suggested requirements could potentially provide additional indirect benefits to Delta users, there are limits to the Board's authority to consider such matters. To impose requirements outside the scope of the jurisdiction reserved in the permits would exceed those limits.

In previous decisions of the Board and its predecessor agency, the uses of water proposed in the SWP and CVP service areas were a paramount issue. These uses were found to be beneficial and in the public interest when subjected to the limitations and conditions expressed in the decisions. The jurisdiction reserved in the permits covering such uses does not allow the Board to consider these matters at this time.

However, in its consideration of applications for additional appropriations by the SWP and CVP, or proposed transfers of water through CVP and SWP facilities involving water rights, the Board will assess conservation and wastewater reclamation programs in the proposed service areas to ensure that these additional water resources will be used in the most efficient manner consistent with the public interest. Also, the Board will continue to encourage and fund studies toward increased conservation and reclamation through its non-point source programs and funding of public wastewater treatment facilities.

Technical Issues

18. The agricultural standards should be adjusted for the latter portion of the irrigation season to balance actual salinities during the earlier portion of the irrigation season. Actual seasonal average EC would still be equivalent or better (lower) than seasonal average without project conditions, but the potential for enhancement provided in the current standards would be reduced. Greater project flexibility would result and combined dry period exportable project yield would be increased by about 25,000 acre-feet, while vested rights would still be protected from encroachment by the projects. (Department, MWD)

These adjustments involve a degree of precision not consistent with knowledge of Delta agricultural needs.

Also present standards have the advantage of providing Delta farmers early knowledge of maximum water quality conditions to be expected in the latter portion of the irrigation season. The suggested adjustments can be considered along with more refined knowledge of Delta agricultural needs in the Board's periodic review of standards.

19. Water quality standards are not provided at sufficient locations in the interior Delta to ensure adequate water quality and stream flow conditions throughout the interior Delta channels from which water is diverted. This defect is aggravated by elimination of standards which had been included in the draft water quality control plan for Old River opposite Rancho Del Rio and Victoria Canal at Middle River. This defect is especially important in view of the allegations in 1976 and 1977 by the CVP and SWP of rights to change diversion points within the Delta, and in view of the absence of terms and conditions in the decision and plan allowing such changes only after appropriate public hearing and Board approval (CDWA). The decision should be amended to include the Old River station with the criteria contained in the draft plan (ECCID).

Water quality standards established at key locations such as Jersey Point and San Andreas Landing will protect agricultural uses in the interior Delta, given the Delta's present flow patterns and physical

configuration. The reasons for deletion of the Rancho Del Rio and Victoria Canal stations are discussed in the Appendix beginning on page III-1, as well as the protection provided by other stations. Standards necessary to provide further specific protection for the interior Delta will be developed in the Board's periodic review of standards.

20. The decision should include the "Year After Critical Year" classification for western Delta agricultural standards, as set forth in the draft plan. In omitting this classification on the basis of consistency with vested rights of Delta water users, the Board abandoned the overriding principle of reasonableness. Only slight benefits to a few acres in the extreme western Delta result from elimination of the "Year After Critical Year" classification, while it reduces combined firm exportable dry-period project yield by 12,000 acre-feet. We estimate these benefits require more than 40 acre-feet of outflow per acre of Delta land influenced. (MWD)

MWD does not identify the western Delta area it assumes will benefit. In actuality, as pointed out in the discussion pertaining to elimination of standards at Rancho Del Rio and Victoria Canal, the western Delta standards are relied on to protect the interior Delta as well as the western Delta. Furthermore, reference

to a 12,000 acre-foot reduction in project yield is a theoretical amount based on specific assumptions that probably will never recur. The presumption that 12,000 acre-feet is discernible in the multiple millions of acre-feet of Delta inflow, pumpage, and outflow is not realistic. Finally, the omission of the "Year After Critical Year" classification for the agricultural standards provides benefits to a much greater area than alleged by MWD. In view of this, the 40 acre-foot figure is misleading.

The decision finds Delta agricultural uses to be beneficial, and provides for protection consistent with reasonable use under vested rights. Imposition of the "Year After Critical Year" classification on agricultural standards is not consistent with protection of vested rights. If the SWP and CVP elect to provide a substitute supply or if contracts are negotiated with water users in the western Delta, changes to the standards, including alternate protection for the interior Delta, will be considered at that time.

21. The 250 mg/l chloride standard at the Contra Costa Canal Intake is not reasonable protection of Contra Costa County beneficial uses of Delta waters through the Contra Costa Canal. The decision should incorporate the Contra Costa Canal Intake standards proposed by the District in its Exhibit 27. (CCCWD)

The Board considered alternate sets of water quality standards that were realistic in terms of the Board's authority and the scope of this proceeding. CCCWD Exhibit 27 proposes water quality standards which would require the CVP and SWP to provide enhancement to Contra Costa Canal users without compensation to the projects. This is not consistent with either the Delta Protection Act, or the Board's approach to public interest and the projects' responsibilities for mitigation of their impacts. The public interest basis for the 250 mg/l chloride standard is discussed on pages IV-2 and 3 of the Appendix.

22. Decision 1485 should be revised to include two provisions in the draft Four-Agency Agreement that were omitted. One is a decrease in Suisun Marsh interim protection through a salinity relaxation to 15.6 mmhos EC at Chipps Island during the first five months of critical years. The other is the suspension of May, June and July SWP export pumping limitations when Delta outflow exceeds 10,000 cfs. Deletion of the 10,000 cfs provision will reduce SWP reservoir carryover storage at the end of most years, and severely limit the viability of a groundwater storage program. During a recurrence of the 50-year 1922-71 hydrology, there would be 25 Mays and 11 Junes when the SWP would forego 180,000 acre-feet per month of exports, and an additional 4 Mays, 12 Junes and 3 Julys when some lesser but substantial exports would be foregone. The proposed groundwater storage program now appears to be the only way

the SWP yield can be increased to meet its commitments in the next ten years if a drought should occur prior to completion of the Peripheral Canal. (Department) These variations from the draft Four-Agency Agreement would undermine the policy of encouraging the parties to negotiate Delta salinity levels and are not supported by substantial evidence. (MWD)

Increased interim Marsh protection provided in the standards is appropriate as an adjunct to extension of the compliance date for full mitigation of project impacts on the Marsh from January 1982 to October 1984. The extension to October 1984, a change requested by the Department, is in itself a departure from the January 1982 compliance date in the draft Four-Agency Agreement. If the draft Agreement had been revised to include the October 1984 date, interim protection of the Marsh provided by the agreement might also have been upgraded. This increased protection precludes potentially significant adverse impacts on productivity of aquatic life in the Delta as compared to the "no action" alternative discussed in the EIR. This standard and the justification for it are discussed on pages V-11, 12, 13, X-12 and X-19 of the Appendix.

Restricting SWP exports in May, June and July regardless of outflow is necessary in order that fishery standards approach the responsibilities of the projects to mitigate

impacts on striped bass. Fish and Game testimony detailing the damaging effects of exports on striped bass during May, June and July, indicates that high export rates are damaging even during high Delta outflows. The dry-period impacts of the revised export limitation are accounted for in the EIR. Foregone exports occur generally in wetter years when the SWP would be likely pumping at full capacity January through April. Even with increased contractual demands, south-of-Delta storage in those years should be filled by early to mid-March, with substantial quantities of water (up to 500,000 acre-feet) available for groundwater storage through April. Regardless, reduction of young striped bass survival and other Delta fishery benefits below the minimum mitigation responsibility in order to achieve increases in export potential is not in the public interest at this time.

23. The Board erred in its utilization of material furnished by the Bureau relative to conversion of chlorides to EC. Some of the values supplied by the Bureau were applicable only to restricted ranges in salinity. Revised values in the Bureau's June 15, 1978 comments should be used. (CVESPA, Bureau)

The ranges of the EC to chloride relationships previously provided by the Bureau cover all year types for the municipal and industrial standards and generally cover the April 1 to August 15 salinity ranges in all years for

which agricultural standards were developed, except critical years. During critical years the agricultural standards are not likely to control Delta outflow under the scope of the decision (Figure V-1[g] and Table V-3 in the EIR).

If agricultural standards were to control in a critical year, standards in the western Delta (Jersey Point and Emmaton) would control Delta outflow. For western Delta stations the relationship between mean tidal cycle (MTC) EC and MTC chloride for either the revised conversions or the previously furnished conversions are comparable except at very high EC values (above 4.0 EC). Because the most recent conversions give lower EC values for the same chloride concentration, and given the methods used by the Board staff in developing critical year standards, recalculation of the western Delta standards based on EC to chloride conversions alone would result in standards slightly more restrictive on the projects (lower EC standards). Recalculation of the non-controlling interior Delta standards would likely result in less restrictive (higher EC) standards.

The methods used to develop Delta agricultural, municipal and industrial standards need to be refined. The Board will be actively involved in studies in the near future to evaluate various suggested refinements. Modification of the methods now would not appreciably alter the Bureau's responsibility for outflow to the Delta.

24. In protection of the Delta fishery and the Bay, the Board assumes that "no additional project facilities are expected to be completed for at least 10 years", ignoring the prospects of San Felipe, more pumps at the SWP Delta Pumping Plant, Auburn Reservoir, Folsom-South Canal, and the Tehama-Colusa Canal. (EDF, Sierra Club) The Bureau plans to convert 350,000 to 550,000 acre-feet/year of San Luis Unit interim supply to permanent contractual commitments. Additionally, the Bureau plans a 650,000 acre-feet/year commitment to the Mid-Valley Canal service area, and delivery of 200,000 acre-feet/year to the San Felipe Project. The Department also anticipates conversion of surplus deliveries to permanent contractual commitments. With the water quality standards set forth in this decision and the buildup in export commitments outlined above, the case for new project facilities to protect the Delta will be strengthened. However, the Board's decision reserves no water for unregulated flows for the Suisun Marsh and San Francisco Bay. The Board owes it to the people of this state not to foreclose the Delta's options now. (FOE) The decision is fundamentally defective and invalid because it does not even attempt to protect San Francisco Bay and its extensive ecological and environmental resources. (CCCWA)

The Board is fully aware of these concerns for San Francisco Bay and supports reasonable protection of beneficial uses of the Bay. Understanding now of outflow effects on the Bay is related to salinity changes that occur, but the ecological

significance of these salinity changes is not yet clearly understood. Specific outflow needs in terms of either magnitude or frequency of occurrence are not determinable now. Until information concerning these needs is developed, the setting of outflow requirements for the Bay is premature. This matter is discussed more completely in Chapter VII of the plan.

The conversion of CVP interim export supplies to contractual commitments will not alter substantially export rates from the Delta. For the last few years, the CVP has been pumping virtually at capacity. Buildup in permanent commitments for the San Luis Unit and San Felipe Unit will result in corresponding reduction in interim supplies. The prospects for the Mid-Valley Canal are still uncertain. Its lead time is at least 15 years considering the time required for planning, environmental review, construction and testing. Auburn Reservoir operation was considered in a 1990 operation study submitted during the hearing, as were Folsom-South Canal extension, Tehama-Colusa Canal extension and increased SWP Delta Pumping Plant capacity. It is not likely that there will be significant effects from operation of these features prior to 1990. Even if some changes do occur in the next ten years, the Board believes the plan, including requirements for intensive Bay studies, does not foreclose options for protection of the Bay. In fact, the Board has

taken specific actions in the plan which address Bay protection as a legitimate concern that must be considered as any new projects are contemplated.

Dated: October 13, 1978



John E. Bryson, Chairman



W. Don Maughan, Vice Chairman



W. W. Adams, Member



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