

## San Luis & Delta-Mendota Water Authority



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## State Water Contractors



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February 20, 2015

*Via Email: [THoward@WaterBoards.Ca.Gov](mailto:THoward@WaterBoards.Ca.Gov)*

State Water Resources Control Board  
Tom Howard, Executive Director  
1001 "I" Street  
Sacramento, CA 95814

**Subject: Order Approving In Part And Denying In Part A Petition For Temporary Urgency Changes And Conditions Requiring Compliance With Delta Water Quality Objectives In Response To Drought Conditions**

Dear Mr. Howard:

The State Water Contractors ("SWC") and San Luis & Delta-Mendota Water Authority ("Water Authority") renew their request that you immediately approve in full the temporary urgency change petition ("TUCP"), as requested by the U.S. Bureau of Reclamation ("Reclamation") and California Department of Water Resources ("DWR"), and as supported by the United States Fish and Wildlife Service ("FWS"), National Marine Fisheries Service ("NMFS"), and California Department of Fish and Wildlife ("DFW"). The TUCP, the statements by FWS, NMFS and DFW, along with the written objections filed and oral comments provided at this week's workshop provide you with sufficient bases to take that action. Nothing has been presented to you that identifies unreasonable risk to fish due to the intermediate pumping level of 3,500 cfs ("intermediate pumping level"), denied on February 3, 2015.

Specifically, the SWC and Water Authority write to respectfully request that you immediately amend the above-referenced order ("2015 TUCP Order") to:

- Authorize an intermediate pumping level for the interim period while the State Water Resources Control Board ("Water Board") reviews the 2015 TUCP Order and under those conditions specified in the TUCP.
- Exempt transfers of non-SWP or CVP water rights and between SWP and CVP contractors from the pumping limitations imposed by the 2015 TUCP Order.
- Delete the last sentence of Condition 3, which currently states: "The use of such water shall be determined by the Executive Director or his representative taking into consideration input from DWR, Reclamation, the fishery agencies, and other interested parties."

You reserved the authority to make these amendments pursuant to Condition 8 of the 2015 TUCP Order.

### **Authorize Intermediate Pumping For An Interim Period**

While the Water Board considers modification to the 2015 TUCP Order, the intermediate pumping level should be authorized. Additional information has been provided that supports a new decision. The 2015 TUCP Order denied the intermediate level of pumping based on perceived risk of entrainment. That risk was assessed using the status of the species and distribution. The 2015 TUCP Order found existing monitoring to have little, if any, effect on that risk.

The data relied upon in the 2015 TUCP Order are now outdated. They were from late December and early January. Current data show important changes in species distribution. The data indicate that Delta Smelt, Longfin Smelt, and each of the Chinook salmon runs are predominantly distributed throughout the northern and western Delta, and are therefore not within an area that presents a high risk of entrainment by the SWP and CVP facilities in the south Delta. See attached species distribution maps and figures, updated with the most current data publicly available as of February 19, 2015.

The updated Delta Smelt early monitoring data are attached. Those data, which were not previously considered, reflect that some Delta Smelt moved upstream after the storm earlier this month to locations approximately 15-20 miles from the CVP and SWP pumping facilities. It does not appear that those Delta Smelt are moving toward the pumping facilities, however. There has not been any Delta Smelt salvage since January 7. It should be further noted that Delta Smelt were observed at Jersey Point last year and those Delta Smelt did not move toward the pumping facilities, so an observation at Jersey Point, by itself, should not present significant concern. The FWS is using these data to predict and thus, if needed, further regulate operation of the SWP and CVP facilities in the south Delta to avoid entrainment/salvage. The FWS' early warning monitoring for Delta Smelt has been a collaborative process. This year, the process has led to, and will likely continue to lead to, a greater understanding of the environmental factors that influence salvage events at the SWP and CVP facilities in the south Delta.

The attached distribution data indicate Chinook salmon and hatchery steelhead are coming into the Delta, but their current distribution is centered in the north and west. The non-clipped figures show the distribution of natural Chinook salmon, and the clipped figures show the distribution of hatchery Chinook salmon and steelhead. Neither set of distribution figures suggest that there is a salvage/entrainment risk. This is further supported by the fact that the very low levels of Chinook salmon and steelhead salvage seen through January have not increased.

Approval of the intermediate level of pumping is further supported by the limited nature of this request. At the February 18 workshop, the Water Board members and staff discussed the preparation of a proposed order reconsidering the 2015 TUCP Order that would be considered as soon as the March 17 Water Board meeting. The SWC and Water Authority seek authorization of the intermediate pumping level until the day on which the State Water Board acts on the proposed order.

For these reasons, the best available data support a finding that the intermediate level of pumping until the Water Board decides whether to modify the 2015 TUCP Order will not cause unreasonable impact to fish and wildlife and is in the public interest.

**Exempt From The 2015 TUCP Order Pumping Limitations Transfers Pursuant To Non-SWP Or CVP Water Rights And Between SWP And CVP Contractors**

An amendment to Condition 1.e is necessary now, as not to infringe upon the Governor's Drought Proclamation and state/federal policies that encourage water transfers. Condition 1.e provides: "These export limitations do not apply to water transfers under non-SWP or non-CVP permitted or licensed water rights." It does not address if transfers of SWP or CVP water are constrained by the export limitations. It also does not explain if the condition is intended to have effect during the months when transfer water could move south of the Delta. These ambiguities are adversely impacting transfer discussions. If transfers of SWP and CVP water are subject to the pumping limitations in the 2015 TUCP Order, there will likely be inadequate capacity to move transfer water to those areas in need. That has potential buyers very concerned. Due to the high cost for transfer water, particularly when compounded with the devastating effects of the last 3+ years of water shortages, buyers may not be willing to assume the risk of purchasing water they may not be able to use. These adverse impacts to transfers are unnecessary. It would be eliminated by making the requested amendment and clarifying that the pumping limitations do not apply to transfers either: (1) under non-SWP or CVP water rights or (2) between SWP and CVP contractors. For the reasons explain herein and previously by the SWC, Water Authority and their member agencies, this amendment is time sensitive.

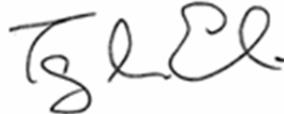
**Exclude From Condition 3 The Provision That Was Intended To Vest With The Executive Director Or His Representative The Authority To Determine Use Of SWP And CVP Water**

Given the representation at the workshop that the last sentence of Condition 3 was inadvertently included in the 2015 TUCP Order and for the reasons the SWC and Water Authority presented in their written objections, deletion of the last sentence of Condition 3 is appropriate.

Thank you in advance for your immediate consideration of our request.



Daniel G. Nelson  
Executive Director  
San Luis & Delta-Mendota Water Authority

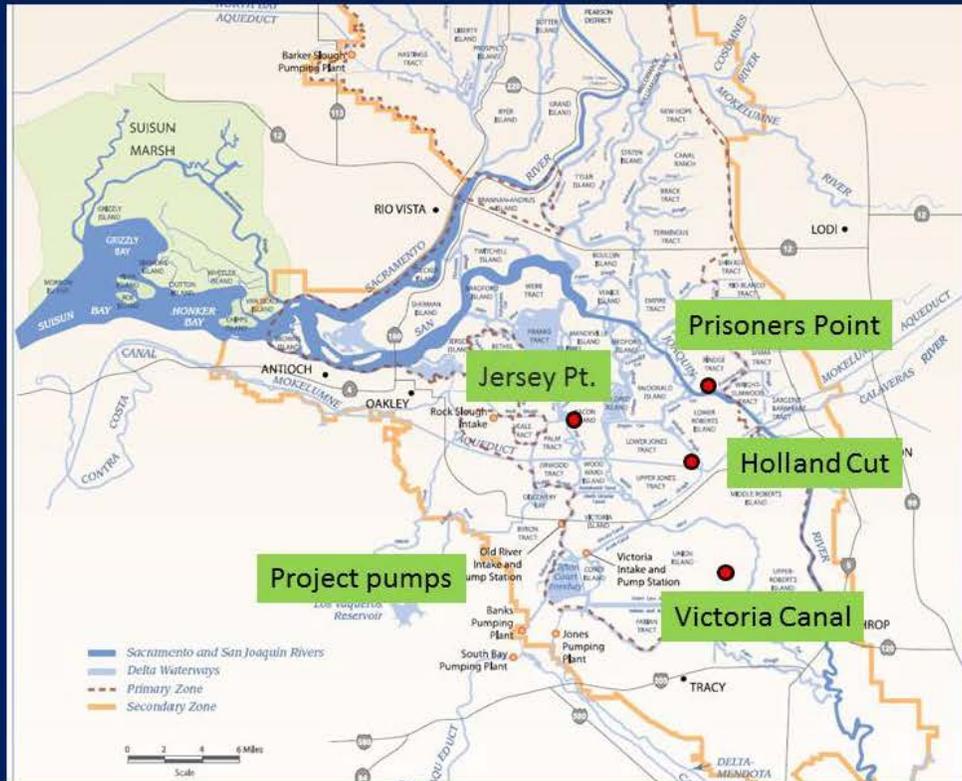


Terry L. Erlewine  
General Manager  
State Water Contractors

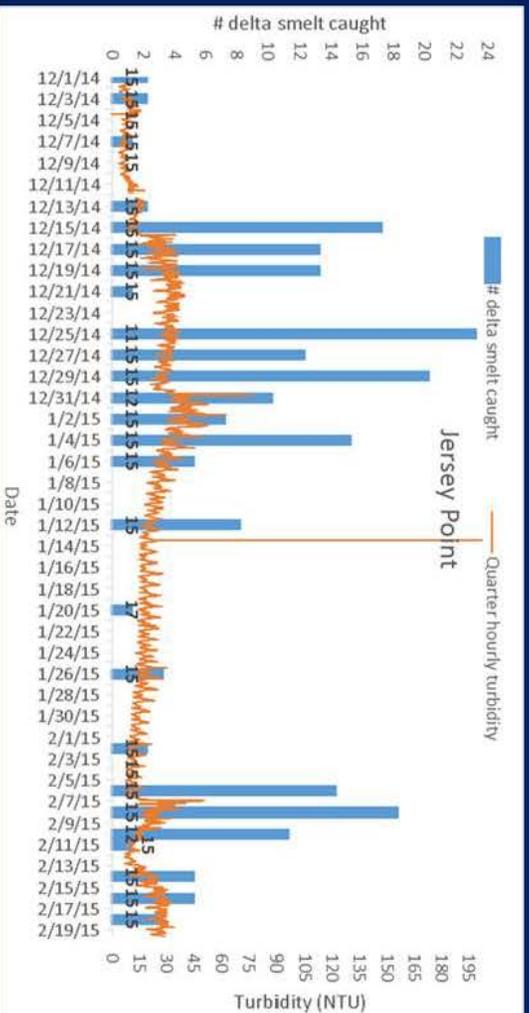
cc: Members of the State Water Resources Control Board  
Department of Water Resources, c/o James Mizell  
Bureau of Reclamation, Regional Solicitor's Office, c/o Amy Aufdemberge

Attachment

## FWS Delta Smelt Early Monitoring Locations

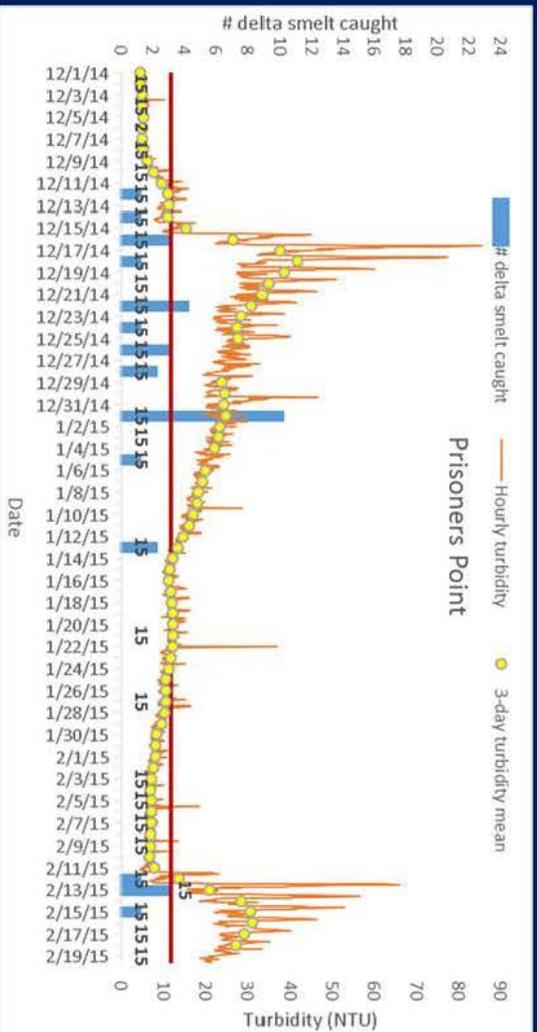


## Delta Smelt Distribution and Turbidity at Early Monitoring Location (February 19, 2015)



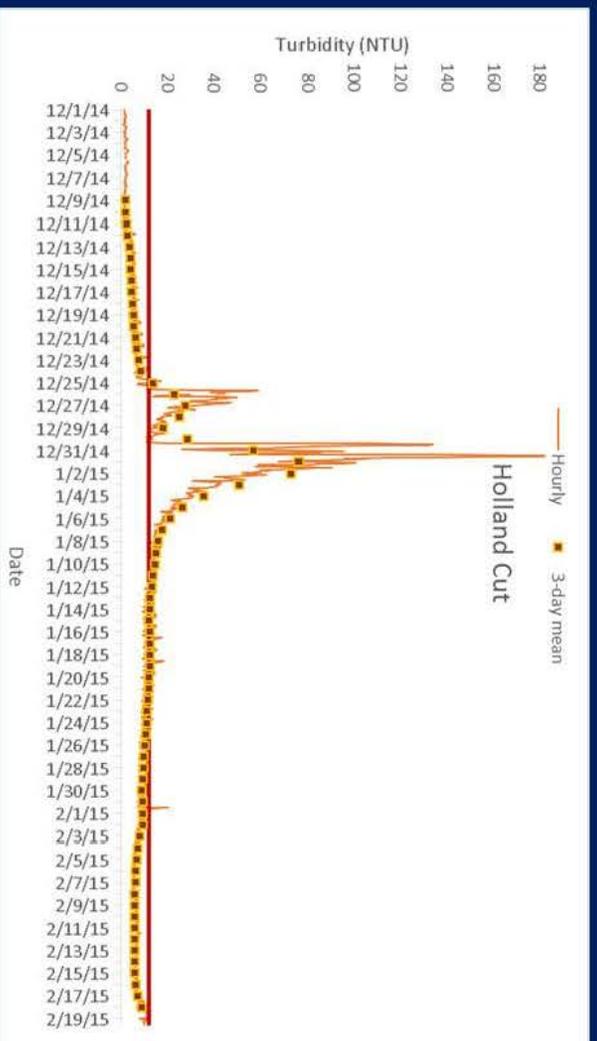
Some Delta Smelt catch at Jersey Point (approximately 25 miles from SWP-CVP). Turbidity under 30 NTU (12 NTU minimum for species per literature). Sacramento outflow 22,169 cfs. No salvage since Jan. 7, 2015.

## Delta Smelt Distribution and Turbidity at Early Monitoring Location (February 19, 2015)



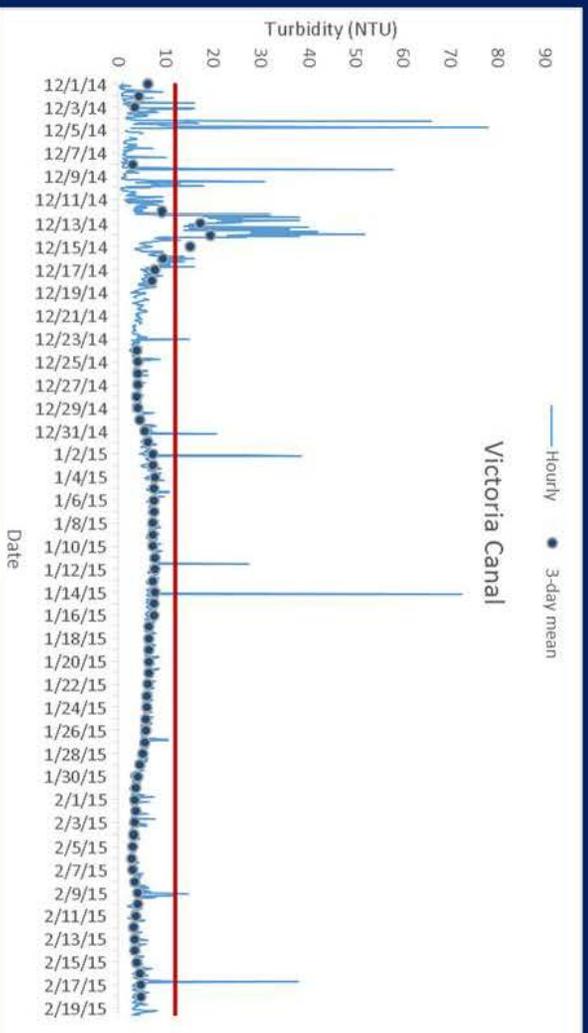
**Some Delta Smelt catch at Prisoners Point (approximately 20 miles from SWP-CVP).  
Turbidity near 20 NTU (12 NTU minimum for species per literature).  
Sacramento outflow 22,169 cfs. No salvage since Jan. 7, 2015.**

## Turbidity At Delta Smelt Early Monitoring Location (February 19, 2015)



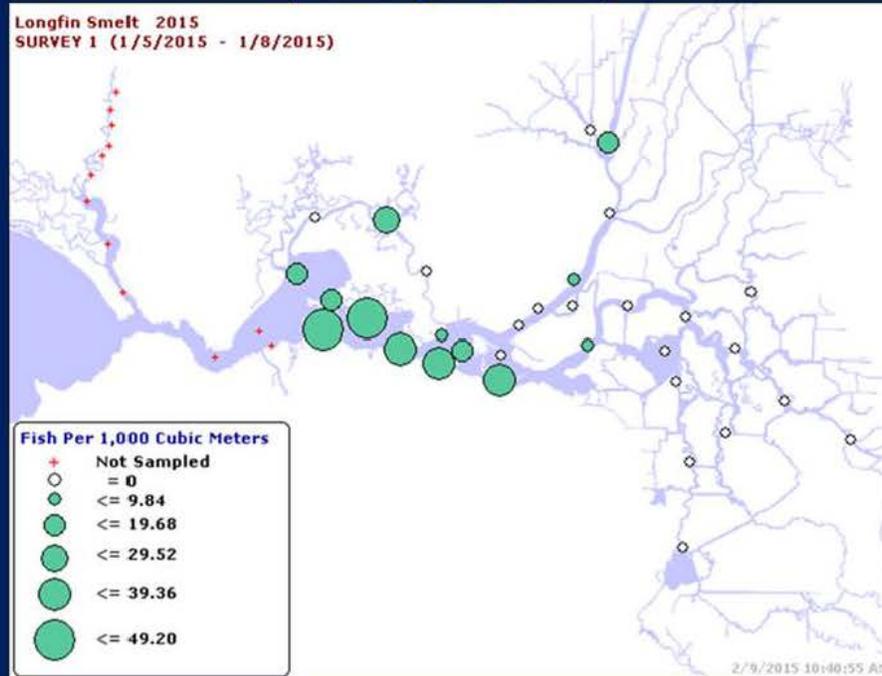
Turbidity approximately 10 NTU (12 NTU minimum for species per literature).  
Holland Cut is approximately 15 miles from CVP-SWP.  
Sacramento River outflow 22,169 cfs. No salvage since Jan. 7, 2015.

## Turbidity At Delta Smelt Early Monitoring Location (February 19, 2015)



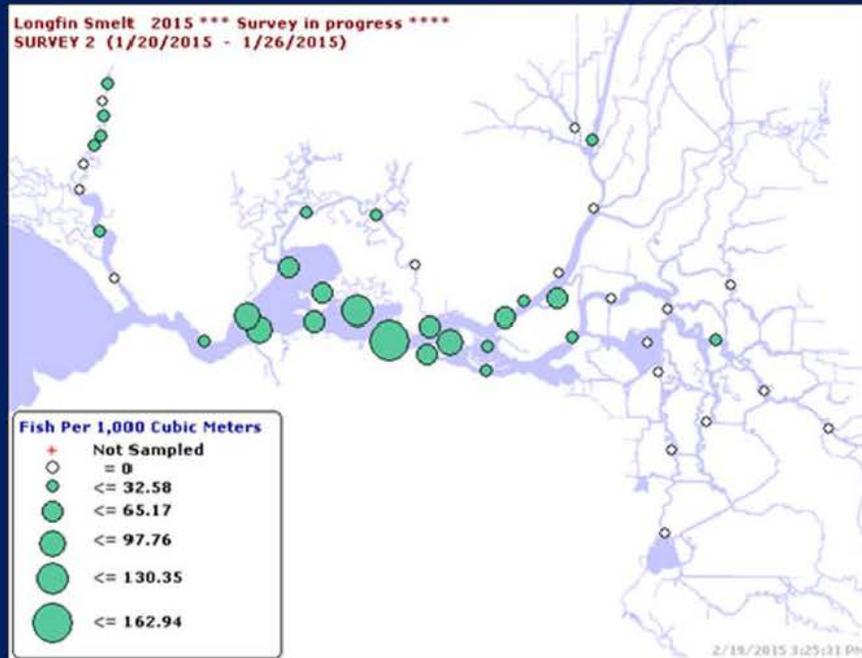
**Turbidity under 5 NTU (12 NTU minimum per published literature).  
Victoria Canal approximately 4 miles from CVP-SWP.  
Sacramento River flow 22,169 cfs. No salvage since Jan. 7, 2015.**

## Larval Longfin Smelt Distribution (January 5-8, 2015)



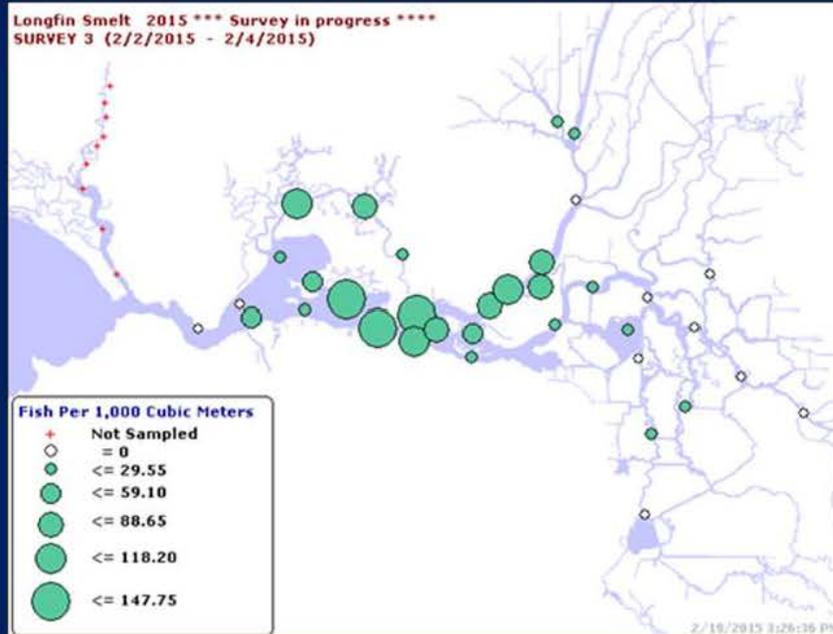
Larval Longfin Smelt Survey #1 indicates spawning distributed toward west.

## Larval Longfin Smelt Distribution January 20-26, 2015



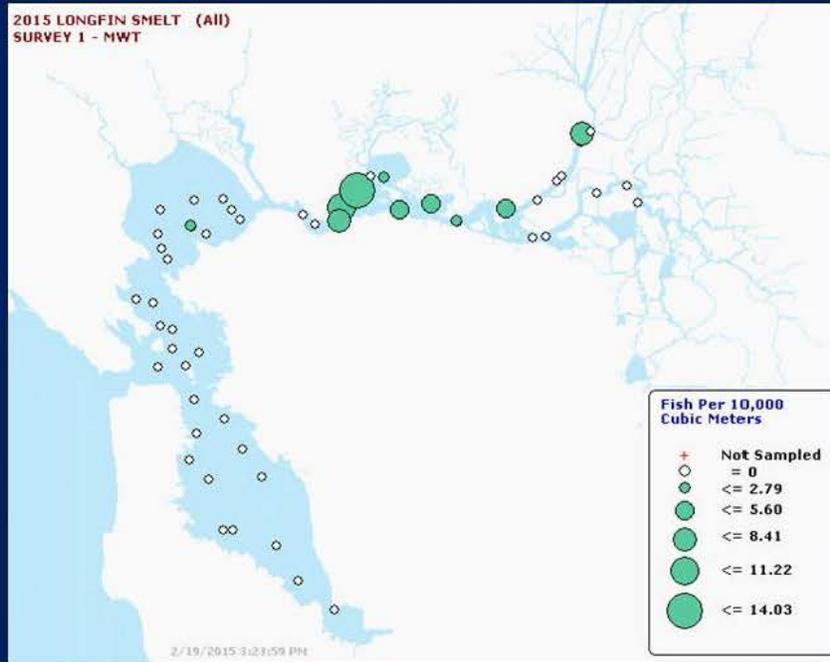
Longfin Smelt Larval Survey #2 indicates spawning distributed west and into Napa River

## Larval Longfin Smelt Distribution (February 2-4, 2014)



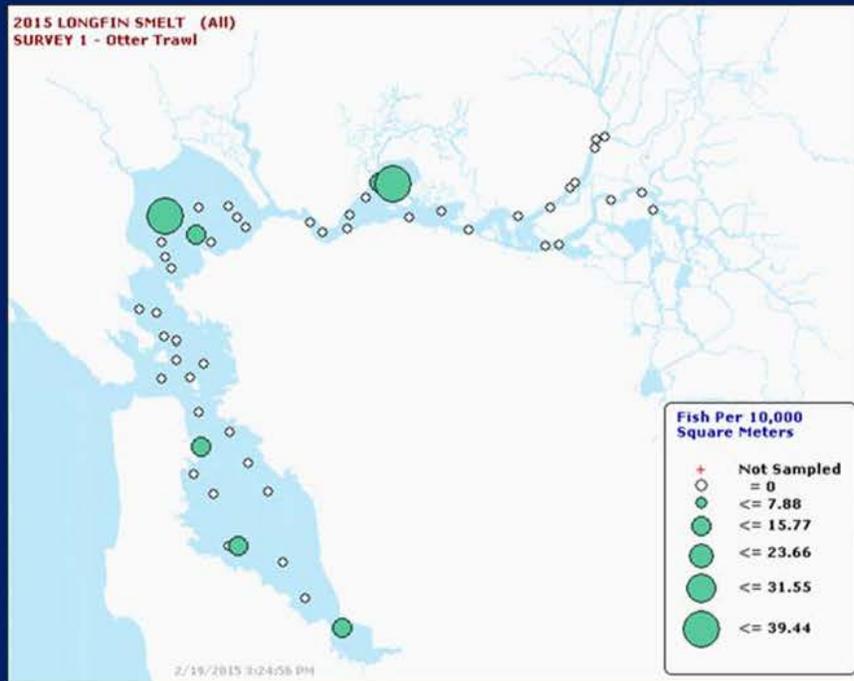
**Longfin Smelt Larval Survey #3 indicates spawning distributed to west.  
Napa River was not sampled.**

## Longfin Smelt Distribution (over 40 mm in Length)



Longfin Smelt distributed (MWT) toward west.

## Longfin Smelt Distribution (over 40 mm)



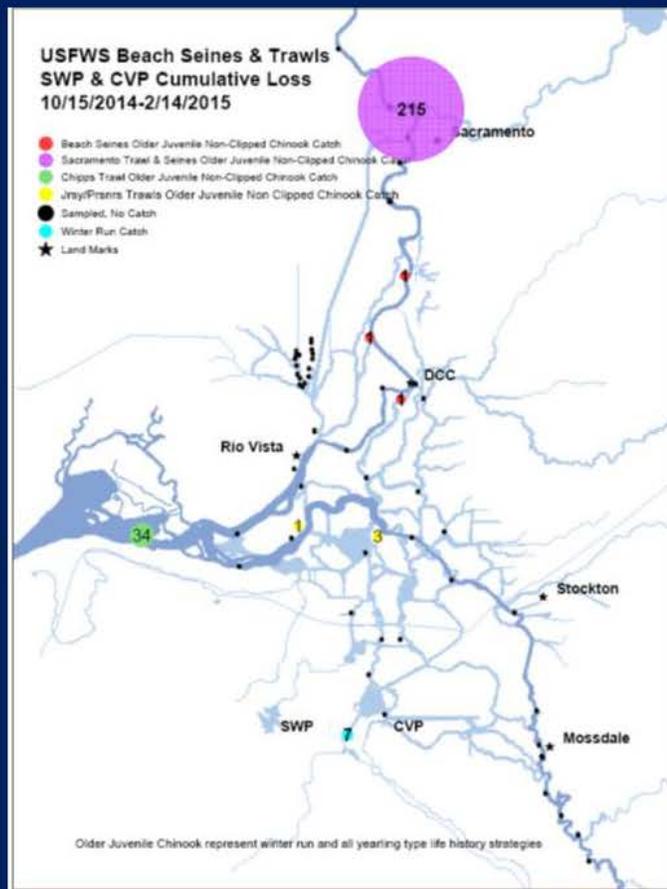
Longfin Smelt distributed (Otter Trawl) to west.

Chinook salmon  
distribution data.

Older juvenile non-clipped  
Chinook catch.

Older juveniles are based  
on length data and  
represent winter-run,  
yearling spring-run, and  
late-fall-run.

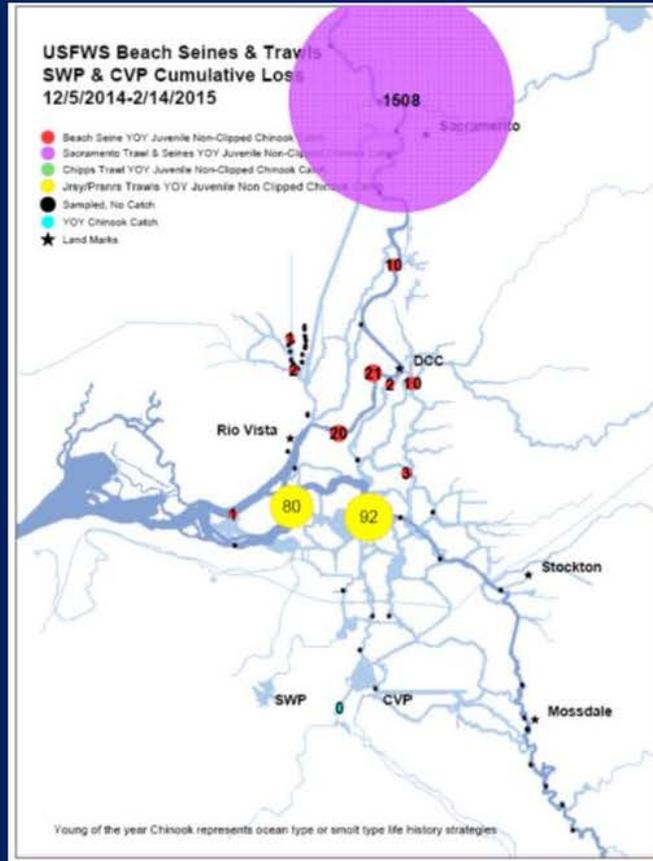
Non - clipped represents  
naturally spawned fish



### Chinook salmon distribution data.

Young of the year is based on length data and represents fall-run and potentially some spring-run from Sacramento River.

Non-clipped represents Naturally spawned fish



## Chinook salmon distribution data

Fin- clipped indicating  
hatchery releases.

All hatchery releases  
combined.

