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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 E.  
VERGARA IN SUPPORT OF  
BYRON-BETHANY IRRIGATION  
DISTRICT'S CONSOLIDATED  
OPPOSITION TO:

(1) STATE WATER  
CONTRACTORS' MOTION TO  
QUASH SUBPOENAS DUCES  
TECUM TO CHANDRA  
CHILMAKURI AND KYLE  
WINSLOW, OR, IN THE  
ALTERNATIVE, MOTION FOR  
PROTECTIVE ORDER, AND

(2) NON-PARTIES CH2M HILL  
ENGINEERS, INC., CHANDRA  
CHILMAKURI AND KYLE  
WINSLOW'S MOTION TO QUASH  
SUBPEONAS DUCES TECUM TO  
CH2M HILL, CHANDRA  
CHILMAKURI AND KYLE  
WINSLOW OR, ALTERNATIVELY,  
MOTION FOR A PROTECTIVE  
ORDER

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DECLARATION OF MICHAEL E. VERGARA IN SUPPORT OF BBID'S CONSOLIDATED OPPOSITION  
TO: (1) SWC'S MOTION TO QUASH AND (2) CH2M, CHILMAKURI, AND WINSLOW'S MOTION TO  
QUASH

1 I, Michael Vergara, declare:

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

7 2. On June 12, 2015, the SWRCB sent a Curtailment Notice to BBID and  
8 others that purported to curtail appropriative water right with 1903 and later priority dates  
9 within the Sacramento and San Joaquin River watersheds, including the Delta.

10 3. The Curtailment Notice directed BBID to "immediately stop diverting" under  
11 its pre-1914 water rights, and provided that any further diversions would subject BBID to  
12 "administrative penalties, cease and desist orders, or prosecution in court."

13 4. On June 26, 2015, BBID filed suit against the SWRCB, challenging the  
14 Curtailment Notice and asserting that the SWRCB conducted a flawed water availability  
15 analysis, among other errors.

16 5. On July 20, 2015, the SWRCB issued an Administrative Civil Liability  
17 Complaint to BBID, Enforcement Action ENF01951 (ACL), alleging BBID unlawfully  
18 diverted water from June 13, 2015 to June 25, 2015.

19 6. In 2015, Byron-Bethany Irrigation District (BBID) hired CH2M Hill, Inc.  
20 (CH2M) to conduct modeling showing water availability and salinity concentrations in the  
21 Delta and sources of water at BBID's point of diversion in 2015.

22 7. Until the beginning of November 2015, Kyle Winslow (Winslow), an  
23 engineer with CH2M, worked extensively with upper management and counsel for BBID  
24 to produce models addressing questions presented, and underwent several iterations of  
25 modeling to address further questions as they arose.

26 8. Winslow's modeling was all in draft form.

27 9. BBID never received a final report.

28 10. A true and correct copy of a letter from Allan Highstreet, Vice President of

1 CH2M, to Rick Gilmore, General Manager of BBID, dated November 5, 2015, is attached  
2 as Exhibit A.

3 11. A true and correct copy of relevant excerpts of Paul Hutton's (Hutton)  
4 rebuttal testimony and exhibits, dated February 22, 2016, is attached as Exhibit B.

5 12. The draft technical memorandum attached as Exhibit 5 to Hutton's rebuttal  
6 testimony included modeling of salinity concentrations in the Delta from January 28,  
7 2012 through August 29, 2015 with and without the State Water Project.

8 13. On February 24, 2016, BBID served Subpoenas Duces Tecum on Winslow  
9 and Chilmakuri.

10 14. A true and correct copy of the Amended Subpoena Duces Tecum for Kyle  
11 Winslow, dated March 2, 2016, and served March 3, 2016, is attached as Exhibit C.

12 15. A true and correct copy of the Amended Subpoena Duces Tecum for  
13 Chandra Chilmakuri, dated March 2, 2016, and served March 3, 2016, is attached as  
14 Exhibit D.

15 16. A true and correct copy of the Subpoena Duces Tecum for the Custodian  
16 of Records for CH2M Hill, dated March 2, 2016, and served March 3, 2016, is attached  
17 as Exhibit E.

18 17. On March 2, 2016, SWC filed its Motion to Quash Subpoenas Duces  
19 Tecum to Chilmakuri and Winslow.

20 18. A true and correct copy of the letter from Yasmin Coffey, Kutak Rock, to  
21 Daniel Kelly and Michael Vergara, Somach Simmons & Dunn, dated March 3, 2016, is  
22 attached as Exhibit F.

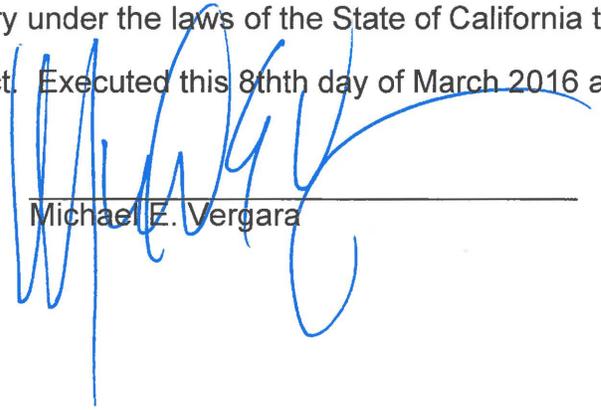
23 19. A true and correct copy of the letter from Michael Vergara, Somach  
24 Simmons & Dunn, to Yasmin Coffey, Kutan Rock, dated March 4, 2016, is attached as  
25 Exhibit G.

26 20. On March 4, 2016, CH2M, Chilmakuri, and Winslow filed a motion to quash  
27 CH2M, Chilmakuri, and Winslow's Subpoenas Duces Tecum.

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I declare under penalty of perjury under the laws of the State of California that the facts recited above are true and correct. Executed this 8thth day of March 2016 at Sacramento, California.



---

Michael E. Vergara

# **EXHIBIT A**



**CH2M**  
2485 Natomas Park Drive  
Suite 600  
Sacramento, CA 95833  
O +1 916 286 0204  
www.ch2m.com

November 5, 2015

Mr. Rick Gilmore  
General Manager  
Byron Bethany Irrigation District  
7995 Bruns Road  
Byron, CA 94514

Subject: Improper Use of State Water Contractors, Inc. data

Dear Rick:

CH2M HILL has been in a contractual relationship with the State Water Contractor's, Inc. (SWC) and Metropolitan Water District of Southern California (MWD) regarding the SWRCB Stored Water Complaint. MWD and SWC recently contacted CH2M HILL regarding the possible use of data prepared for SWC being used for work for BBID. CH2M HILL has reviewed this complaint and found that work done by Kyle Winslow and provided to BBID in draft form was in part based on work done for SWC, which was contractually considered their information and should not have been disclosed.

CH2M HILL improperly provided this information to BBID, and this information cannot be used by BBID. Given the SWC and MWD contractual relationship, CH2M HILL cannot continue to provide support or assistance to BBID on this matter nor provide the final report of our analyses. CH2M HILL will refund the District for any payments for this work.

Sincerely,

CH2M HILL

Allan Highstreet  
Vice President

cc: Tom Price  
Catherine Lang

# **EXHIBIT B**

1 Thomas M. Berliner (SBN 83256)  
2 Jolie-Anne S. Ansley (SBN 221526)  
3 **DUANE MORRIS LLP**  
4 Spear Tower  
5 One Market Plaza, Suite 2200  
6 San Francisco, CA 94105-1127  
7 Telephone: +1 415 957 3000  
8 Fax: +1 415 957 3001  
9 E-mail: tmlberliner@duanemorris.com  
10 jsansley@duanemorris.com

11 Stefanie D. Morris (SBN 239787)  
12 State Water Contractors  
13 1121 L. St., Suite 1050  
14 Sacramento, CA 95814-3974  
15 Telephone: +1 916 447 7357  
16 Fax: +1 916 447 2734  
17 E-mail: smorris@swc.org

18 Attorneys for State Water Contractors

19 **BEFORE THE**  
20 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

21 ENFORCEMENT ACTION ENF01949 -  
22 DRAFT CEASE AND DESIST ORDER  
23 REGARDING UNAUTHORIZED OR  
24 THREATENED UNAUTHORIZED  
25 DIVERSIONS OF WATER FROM OLD RIVER IN  
26 SAN JOAQUIN

**REBUTTAL TESTIMONY OF PAUL  
HUTTON**

27 In the Matter of ENFORCEMENT ACTION  
28 ENF01951 -ADMINISTRATIVE CIVIL  
LIABILITY COMPLAINT REGARDING  
UNAUTHORIZED DIVERSION OF WATER  
FROM THE INTAKE CHANNEL TO THE  
BANKS PUMPING PLANT (FORMERLY  
ITALIAN SLOUGH) IN CONTRA COSTA  
COUNTY

1 I, Paul Hutton, declare:

2 1. I submit this written rebuttal testimony on behalf of the State Water Contractors  
3 (“SWC”) in the following proceedings: 1) Westside Irrigation District Enforcement Matter No.  
4 01949(ENF1949); and 2) Byron-Bethany Irrigation District Enforcement Matter No. 01951  
5 (ENF1951).

6 2. If called as a witness, I can and would testify to the following facts, analyses, findings  
7 and conclusions stated herein, and to the information contained in Exhibits SWC0002, SWC0003,  
8 SWC0004, SWC0005, SWC0006, and WSID0008, pp.198, 200, 202, 205-207, which is incorporated  
9 by reference as part of my written testimony.

10 **BACKGROUND AND QUALIFICATIONS**

11 3. I am currently the Principal Engineer for the Bay-Delta Initiatives at Metropolitan  
12 Water District of Southern California (“MWD”). In that position, which I have held since 2002, I  
13 work collaboratively with interagency and interdisciplinary teams to provide policy-level decision  
14 support for MWD’s ongoing water management, regulatory and legal activities in the areas of  
15 Sacramento-San Joaquin Delta (“Delta”) hydrodynamics and water quality as well as Central Valley  
16 Project (“CVP”) and State Water Project (“SWP”) operations.

17 4. Prior to joining MWD I held several positions at the Department of Water Resources  
18 (“DWR”) from 1990 to 2002. My last position with DWR was the supervising engineer and  
19 program manager of the Delta Modeling Section with a staff of seventeen engineers responsible for  
20 developing and applying various water quality, hydrodynamic and biological models. In addition, I  
21 was the program manager responsible for developing actions and studies for implementing  
22 CALFED’s Drinking Water Improvement Strategy and managing DWR’s Statewide Planning  
23 Program, which involved developing and implementing policies related to the California Water Plan  
24 Update (Bulletin 160-98). My previous experience is summarized in my C.V. at exhibit SWC0002.

25 5. I am a registered civil engineer in California and my license number is C040795.

26 6. I have a B.S. in Civil Engineering and graduated with highest honors from the  
27 University of Illinois, Urbana in May 1983.

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1           7.       I obtained a M.S. in Environmental Engineering from University of Illinois, Urbana  
2 in January of 1985.

3           8.       I obtained a Ph.D. in Civil and Environmental Engineering from the University of  
4 California, Davis in December 1994.

5           9.       I have been working on Delta issues for 25 years. I have published several papers on  
6 hydrodynamics and water quality in the Delta. For a complete list of my publications please see  
7 exhibit SWC0002.

8           10.      In 1994, I received the American Society of Civil Engineers Water Resources  
9 Planning and Management Division Outstanding Journal Paper Award.

10          11.      In 2006, I received the Hugo B. Fischer Award from the California Water and  
11 Environmental Modeling Forum in recognition of model development and application in support of  
12 the San Joaquin River Salinity Management Plan.

13          12.      My job duties include working with the SWC and directing work on behalf of MWD  
14 or in coordination with SWC. As part of my job duties I assisted in the development of an analysis  
15 of without project salinity conditions in the Delta (2012-2015). I completed a comparative analysis  
16 of Delta outflow and salinity in 1931 (historical scenario) and 2015 (without project scenario). I  
17 was also directed to review the technical report by Susan Paulsen (BBID384), the testimony of  
18 Susan Paulsen ( BBID388), the testimony of Thomas Burke (WSID0123), and the following  
19 Department of Public Works Documents: Bulletin 27 (SWC0004) and Bulletin 23 (1931)  
20 (WSID0008, pp. 198, 200, 202, 205-207).

21        **SUMMARY OF WORK COMPLETED**

22          13.      I assisted in directing a CH2M Hill analysis of salinity conditions; the technical report  
23 is attached as exhibit SWC0005. The purpose of this study was to analyze salinity conditions in the  
24 south Delta channels under a “without project” scenario based on historical hydrology spanning the  
25 period January 1, 2012 to August 31, 2015. The without project scenario modifies the historical  
26 hydrology by removing (1) upstream impairments associated with CVP and SWP reservoirs, (2)  
27 Delta diversions at the Banks and Jones Pumping Plants, and (3) the Delta Cross Channel facility.  
28 The multi-year timeframe allows understanding of Delta salinity conditions under a sequence of

1 differing hydrologic conditions. A complete description of the methods and data used in the analysis  
2 are described in the CH2M Hill technical appendix attached as exhibit SWC0005.

3 14. I completed a scenario analysis of irrigation season Delta outflow and salinity  
4 comparing 1931 (historical) and 2015 (without project). The attached figure (SWC0003) compares  
5 monthly average outflow and salinity (as measured by X2 position) for the two scenarios. The  
6 source of the 1931 outflow data is DAYFLOW. The source of the 1931 salinity data is Hutton et al.  
7 (2015) "Nine Decades of Salinity Observations in the San Francisco Bay and Delta: Modeling and  
8 Trend Evaluation." *J. Water Resour. Plng. Mgmt.*, DOI: 10.1061/(ASCE)WR.1943-5452.0000617  
9 (available at: <http://ascelibrary.org/doi/abs/10.1061/%28ASCE%29WR.1943-5452.0000617>). The  
10 source of the 2015 scenario outflow and salinity data is described in exhibit SWC0005.

11 15. In the figure "Comparison of Delta Outflow and Salinity," exhibit SWC0003, month  
12 is shown on the horizontal axis, Delta outflow (in units of cubic feet per second) is shown on the  
13 left-side vertical axis, and X2 position (in units of kilometers) is shown on the right-side vertical  
14 axis. In the same figure, the blue and black bars represent April through August Delta outflow in the  
15 2015 and 1931 scenarios, respectively. In the same figure, the blue and black lines represent April  
16 through August X2 in the 2015 and 1931 scenarios, respectively. X2 is used as an indicator of  
17 salinity intrusion into the Delta.

18 16. As part of my work on this matter, I was directed to review the technical report of  
19 Susan Paulsen (BBID384), the testimony of Susan Paulsen (BBID388), the testimony of Thomas  
20 Burke (WSID0123), and portions of Bulletin 27 (SWC0004) and Bulletin 23 (1931) (WSID0008).  
21 Bulletin 27 (SWC0004) is a true and correct copy that was obtained from DWR by the SWC.  
22 Bulletin 27 is also available on the internet at  
23 [http://www.water.ca.gov/waterdatalibrary/docs/historic/Bulletins/Bulletin\\_27/Bulletin\\_27\\_1931.pdf](http://www.water.ca.gov/waterdatalibrary/docs/historic/Bulletins/Bulletin_27/Bulletin_27_1931.pdf)  
24 [f](#).

### 25 **SUMMARY OF FINDINGS**

26 17. The CH2M Hill analysis, as described in exhibit SWC0005, concluded that salinity  
27 would typically be much higher in the Delta absent the CVP and SWP relative to historical  
28 conditions. The analysis further concluded that, absent the CVP and SWP, salinity (measured as

1 specific conductance) would be above 1.0 mS/cm during the irrigation season of many dry and  
2 critically dry years.

3 18. As part of my job duties, I monitor SWP and CVP compliance with the State Water  
4 Resources Control Board's ("Water Board") Bay-Delta Water Quality Control Plan ("WQCP")  
5 standards. In 2015, DWR and the Bureau of Reclamation ("Reclamation") continued to satisfy  
6 WQCP regulatory obligations, including those modified by the Water Board's orders regarding the  
7 DWR and Reclamation temporary urgency change petition ("TUCP"). The Water Board's 2015  
8 TUCP orders relaxed certain WQCP standards and limited SWP and CVP project pumping during  
9 the irrigation season to health and safety levels. Throughout the irrigation season, the SWP and CVP  
10 continued to make releases from upstream reservoirs to satisfy WQCP standards. DWR also  
11 installed a salinity barrier at West False River from June to September 2015 for the purpose of  
12 blocking salinity intrusion into the Delta from the ocean.

13 19. Unauthorized diversions of SWP stored water released for the purpose of satisfying  
14 WQCP and other regulatory obligations and/or for diversion by the SWP impact the SWC member  
15 agencies as the contractual beneficiaries of the SWP. These unauthorized diversions cause the SWP  
16 to make additional stored water releases or to reduce exports to satisfy WQCP and other regulatory  
17 requirements, thereby decreasing the stored water supplies of the SWP available to SWC member  
18 agencies. In 2014, DWR and Reclamation sent a joint letter stating "Where water quality standards  
19 are controlling Water Project Operations, any diversion of stored water by these diverters results in  
20 additional releases of stored water or reductions in Project deliveries..." This letter is exhibit  
21 SWC0007. This occurred in 2014 as indicated in exhibit SWC0007 and also occurred in 2015.

22 20. My comparison of the 2015 and 1931 scenarios as illustrated in exhibit SWC0003  
23 indicate that historical outflow during the irrigation season (April through August) of 1931 is  
24 consistently higher than without project outflow during the irrigation season of 2015. Outflow in  
25 1931 ranged from approximately -3,000 cfs to 7,500 cfs, whereas without project outflow in 2015  
26 ranged from approximately -3,900 cfs to 6,400 cfs.

27 21. As also shown in exhibit SWC0003, historical salinity during the irrigation season  
28 (April through August) of 1931 is consistently lower than without project salinity during the

1 irrigation season of 2015. Salinity in 1931 (as measured by X2 position) ranged from approximately  
2 76 km to 122 km, whereas without project X2 position in 2015 ranged from approximately 83 km to  
3 137 km.

4 22. Although there are similarities between 1931 and 2015 with respect to annual  
5 unimpaired runoff conditions and water year type, the Delta conditions of 1931 poorly represent  
6 those associated with 2015 absent the CVP and SWP. Due to less upstream development (water use)  
7 in 1931, irrigation season outflow was significantly higher and salinity was significantly lower)  
8 relative to the 2015 without project scenario.

9 23. The 1931 baseline assumption in Susan Paulsen's modeling (BBID384) is  
10 inappropriate. The technical report by Susan Paulsen (BBID384) selected the pre-project year 1931  
11 as a surrogate for 2015 without project conditions. Her assumption is inappropriate because, as  
12 exhibit SWC0003 illustrates, 1931 experienced higher outflows and lower salinity than would have  
13 occurred in 2015 absent the CVP and SWP. The primary reason for the differences between 1931  
14 and 2015 (without project) is because upstream development was lower in 1931 than in 2015.

15 24. Susan Paulsen's analysis (BBID384) is also inappropriate because she fails to remove  
16 SWP and CVP operations and facilities from the modeling of 2015 salinity and flow patterns. To the  
17 extent that Susan Paulsen is using her 2015 modeling results to define the quantity and source of  
18 water available to WSID and BBID in that year, her baseline is flawed because WSID and BBID do  
19 not have a right to stored water supplies based on their senior water rights.

20 25. Susan Paulsen's analysis (BBID384) also fails to acknowledge that the combined  
21 effect of all diversions in the Delta is to change flow patterns and to draw Sacramento River water  
22 into the south Delta.

23 26. Westside Irrigation District (WSID) references Bulletin 23 (1931) (WSID0008),  
24 Table 39, as evidence of the District's diversions in 1931. To the extent diversions occurred in 1931  
25 by WSID and others, the same report analyzes the damage that 1931 diversions of high salinity  
26 water caused to crops and the soil. The report at p. 198 explains that:

27 Since the beginning of salinity observations in the Sacramento-San  
28 Joaquin Delta it has been recognized that in years of deficient Spring

1 and Summer stream flow to the Delta, the resulting extensive  
2 encroachment of salinity from San Francisco Bay has caused damaged  
3 in the Delta. In 1930, 1924, and 1926, but particularly in 1924, the  
4 magnitude of the encroachment was such as to leave no doubt that  
5 damage must have been sustained...In the Spring of 1931 it was plainly  
6 evident that the stream flow to the Delta would probably be as low if  
7 not lower than it was in 1924 and that a salinity encroachment as great  
8 if not greater than in that year could be expected.

9 27. Bulletin 23 (WSID0008) quantified the economic impacts resulting from the salinity  
10 intrusion into the Delta in 1931. The report at p. 200 describes the reasons for the damage and  
11 resulting economic losses, as follows:

12 Under tangible losses is classed [as] the actual loss in production of  
13 crops in 1931 due to (1) the curtailment of irrigation when the salinity  
14 of the irrigation water became too high, (2) the actual application of  
15 irrigation water of too high salinity, and (3) the abandonment of a crop,  
16 or plans for it, because of high salinity.

17 28. Bulletin 23 (WSID0008) quantified the economic impacts at p. 202, Table 92, stating  
18 that the resulting economic losses caused by salinity encroachment into the Delta during the  
19 irrigation season of 1931 totaled \$1,263,716.

20 29. Bulletin 23 (WSID0008) at pp. 205-207 also describes a range of intangible injury to  
21 crops caused by salinity encroachment into the Delta during the irrigation season in 1931, injury that  
22 included agricultural soils, levees, and native vegetation.

23 30. Bulletin 27 (SWC0004) also describes the salinity conditions that existed in the Delta  
24 in 1931 and other dry and critically dry years. Bulletin 27 explains that:

25 Beginning in 1917, there has been an almost unbroken succession of  
26 subnormal years of precipitation and stream flow which, in combination  
27 with increased irrigation and storage diversions from the upper  
28 Sacramento and San Joaquin River system, has resulted in a degree and  
extent of saline invasion greater than has occurred ever before as far as  
known. These abnormal saline invasions not only have curtailed  
irrigation diversions and affected crop production and land values in the  
delta also have reduced considerably the diversions of fresh-water  
supplies from the lower river and upper bay.... (SWC0004, p. 15.)

And:

1 The greater degree and extent of saline invasion in certain years since  
2 1917 have resulted in curtailment of irrigation diversions for a portion  
3 of the delta and upland area. (SWC0004, p. 20.)

4 And:

5 During several years in the period 1920 to 1929, the inflow into the delta  
6 during the summer months has been insufficient to take care of the  
7 consumptive requirements. (SWC0004, p.32.)

8 And:

9 On the other hand, in years when the stream flow into the delta during  
10 the summer months was insufficient to meet the consumptive demands  
11 in the delta, invasions of saline water of considerable extent and degree  
12 have occurred. This was especially true in the dry years of 1924, 1920  
13 and 1926, when stream flow was insufficient to meet consumptive  
14 demands for a considerable period of time. (SWC0004, p. 36.)

## 15 CONCLUSION

16 31. Contrary to the conclusion of Susan Paulsen, the 1931 historical scenario poorly  
17 represents the 2015 without project scenario. In 1931, salinity conditions would have been more  
18 favorable than 2015 (without project), with higher outflow and lower salinity resulting from lesser  
19 upstream water development.

20 32. While agricultural diverters in the Delta may have diverted water in 1931, they also  
21 experienced crop damage, curtailed diversions and abandoned crops in the field, while also  
22 experiencing more intangible salinity damage to agricultural soils (and subsequent crops), levees and  
23 native vegetation. The cost of the salinity damage experienced by farmers in the Delta in 1931 was  
24 estimated to be \$1,263,716.

25 33. Absent the SWP and CVP, salinity in the south Delta would typically exceed 1.0  
26 mS/cm specific conductance during the irrigation season of dry and critically dry years, which is  
27 higher than the current irrigation season WQCP agricultural salinity standard of 0.7 mS/cm. This  
28 suggests that water quality would be too poor to support agricultural use during summer and fall of  
dry and critically dry years if the SWP and CVP did not exist.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 22<sup>nd</sup> day of February, 2016, in Sacramento, California.

  
\_\_\_\_\_  
PAUL HUTTON, Ph.D., P.E.

## 2012 – 2015 Delta Salinity Conditions under a Without Project Scenario

PREPARED FOR: Terry Erlewine/SWC  
PREPARED BY: Tyler Hatch/CH2M HILL  
Chandra Chilmakuri/CH2M HILL  
DATE: June 5, 2015

### Study Objective

The purpose of this study is to analyze salinity conditions in the south Delta channels under a Without Project scenario using the January 1, 2012 to August 31, 2015 Central Valley rim inflows. 2012 - 2015 historic and projected Sacramento River and San Joaquin River inflows to the Delta were modified to remove the impairments related to the upstream CVP – SWP reservoirs under the Without Project Scenario in addition to zeroing out the Delta exports at the Banks and Jones Pumping Plants and closing the Delta Cross Channel. The 2012 – 2015 study is an extension of a previous study of Without Project conditions for the year 2014. The multi-year timeframe allows understanding Delta salinity conditions under a sequence of differing hydrologic conditions.

### Approach

A DSM2 model capable of simulating 2012-2015 historical Delta hydrodynamics and salinity conditions obtained from the DWR was used for representing the With Project scenario in this task. DWR used 2012 – 2015 Delta inflows, exports and salinity as the boundary conditions for the DSM2 model.

For the 2012-2015 Without Project DSM2 model, adjusted daily Delta inflow data at Vernalis and Freeport provided by the SWC were used as boundary conditions. As shown in Figures 1 and 2, Sacramento and San Joaquin Without Project inflows to the Delta are significantly lower (in some cases negative) in the summer and fall months compared to the historical conditions primarily due to the lack of contributions from project reservoir storage. The Without Project Scenario also assumed zero Delta exports from Banks and Jones Pumping Plants. The Without Project DSM2 model also uses historical electrical conductivity estimates for salinity boundary conditions at Freeport consistent with the historical DSM2 model. However, for the San Joaquin River at Vernalis modified electrical conductivity estimates were used to account for the unimpaired conditions under the Without Project scenario. The modified Vernalis EC estimates for the Without Project scenario were computed based on a methodology provided by the SWC, which is outlined in the Appendix A of this memo. For the Without Project conditions, the Delta Cross Channel gates were assumed to be closed for the entire length of the simulation.

Clifton Court Forebay (CCF) gate operations under the historical and Without Project DSM2 simulations were modified to represent Priority 3 gate operations. Under the Without Project simulation, instead of relocating BBID's existing DICU diversion from inside the CCF and closing the CCF gates, the With Project CCF gate operations were assumed to allow for the BBID diversion to continue. Even though the CCF gates are operational under the Without Project scenario, resulting Clifton Court inflow (Figure 3) confirms that inflow to CCF occurs only during the months with BBID diversion.

Sacramento River at Freeport timeseries input into the Without Project DSM2 model used only the positive flows provided. All negative flows were set to zero. Figure 1 below shows a comparison of the historical record, the Without Project timeseries with negative values from SWC, and the timeseries input into DSM2. In the summer months, the demands upstream of the Delta exceed the supply when there is no storage available to supplement the river flows into the Delta.

For the San Joaquin River at Vernalis, the Without Project DSM2 simulation used a 20 cfs base flow, when the Without Project flows from SWC are negative in order to achieve model stability in the channels near the San Joaquin River boundary in the DSM2 model. This base flow was used to keep water in the few channels downstream of Vernalis and was diverted upstream of the Old River (model node 4). Figure 2 shows a comparison between the historical Vernalis flows, the Without Project flows from SWC, and the Without Project flows used in the DSM2 simulation. In addition, the

diversion component of the Delta Island Consumptive Use (DICU) in the channels near the San Joaquin River boundary (at node 1 and 3) were set to zero when the base flow was the only flow assumed in the model at Vernalis. Without curtailing the DICU diversions at model nodes 1 and 3, the base flow would have to be large enough to meet the DICU demand and keep water in the channel.

Based on the modified electrical conductivity at Vernalis under the Without Project conditions, zero or negative flows have zero electrical conductivity. This assumption of zero EC was continued even though 20 cfs base flow was assumed under the Without Project scenario. However, the artificial base flow of 20 cfs with zero EC could therefore dilute salinity in the San Joaquin River near the Vernalis boundary that would otherwise exist in higher concentrations. A sensitivity analysis using the same model and assuming 2014 historical salinity for the 20 cfs base flows shows that the resulting salinity in the San Joaquin River near the Vernalis boundary is somewhat sensitive, but the differences are minimal beyond model node 4. In addition, while the DICU diversion values are set to zero at nodes 1 and 3, the DICU drain flow is continued in the model, which continues to add salt to the Delta channels.

For conditions projected from May 2, 2015 to August 31, 2015, stage and electrical conductivity at the downstream boundary was assumed at 2014 values for both the With Project and Without Project scenarios. For the With Project conditions, 2014 conditions were assumed for May 2, 2015 to August 31, 2015 for all inflows and outflows with the exception of inflows at Freeport and Vernalis and outflows for SWP and DMC. Projected 2015 with project flows at Vernalis were calculated as the sum of New Melones monthly outflows and San Joaquin River above the Stanislaus River flows after removing any contractor deliveries from the forecasted operations provided by the U.S. Bureau of Reclamation to the SWRCB in support of the 2015 TUC petition ([http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/docs/tucp/2015/inputsheet\\_april90\\_upstream\\_ops.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/2015/inputsheet_april90_upstream_ops.pdf)). Projected 2015 With Project flows at Freeport were estimated as the balance of Delta monthly inflows and outflows, and assuming SWP and CVP Delta exports to be zero for May through August 2015. The Without Project simulation used the same boundary inflows and diversions as the With Project simulation for May 2, 2015 to August 31, 2015 period with the exception of Sacramento River at Freeport and San Joaquin River at Vernalis inflows, which were assumed to be zero. Figures 1 and 2 show the assumed inflow boundary conditions for 2015 projected conditions.

## Results

Due to a lack of inflow at both Freeport and Vernalis during the summer and fall months under the Without Project scenario, salinity is much higher in the Delta compared to the historical conditions. During these months there is no fresh water to dilute the higher salinity intrusion, and as a result, the tide brings saltier water further into the Delta. In figures 5 to 52, the saltwater-freshwater interface has moved much further inland by the end of June in the Without Project Scenario than the With Project conditions. The Sacramento River inflows tend to be much higher than the San Joaquin River inflows and cause the salt to be in higher concentrations in the south Delta. However, low flows in the Sacramento River allow the salt concentrations to be relatively high in the north Delta as well. By September the flows in the Sacramento River are high enough to push the saltwater interface further to the south. The area around Frank Tract tends to hold higher salinity water late into the year even after the Sacramento and San Joaquin Delta inflows have flushed much of the saltwater back out of the Delta. The contribution of New Melones Reservoir to flows at Vernalis appears to be a major component of the historical flows during the summer and fall months. Contour plots of weekly EC conditions for 2012 - 2015 are provided as electronic attachments to this memorandum.

## Martinez EC Sensitivity Simulations

To consider the potential effect of modified NDOI on the Martinez EC boundary condition, a sensitivity analysis was performed of the modeled salinity under the With Project and Without Project cases by using the Martinez salinity boundary condition estimated using the DWR's G-Model, instead of the historical Martinez EC values. Figure 4 compares the daily-average Martinez EC values for the historical conditions, G-model estimates using With Project NDOI, and G-model estimates using Without Project NDOI. The G-Model salinity values are higher on average than the historical salinity used. DSM2 model for both With Project and Without Project cases were simulated with G-model based EC values specified at Martinez. DSM2 results showed that the higher salinity conditions extended further into the Delta under both the With Project and Without Project cases. Since the Martinez tide and the hydrology used remained unchanged under the sensitivity runs, the resulting

hydrodynamics remained consistent with the original simulations. Therefore, using the G-model based EC values resulted in similar durations of salinity as compared to the simulations using historical Martinez EC.

## Summary

The results in this memorandum show that without the CVP-SWP project reservoir storage, salinity would be much higher in the Delta during dry years than under the historical (With Project) conditions. There appears to be some pockets of higher salinity that persist late into the fall months in the central/south Delta channels over the multiple dry years simulated. However, due to the higher storm flows into the delta in the Without Project scenario, the driest years still have most of the salinity flushed east of Antioch in the spring months. The high salinity in the summer and fall months would further limit the beneficial use of water from the Delta during years like 2012 through 2015 under the Without Project scenario.

## Limitations

Simulation of Delta salinity under With Project conditions and Without Project conditions using DSM2 are subject to limitations of the model and the approach used. DSM2 limitations and uncertainties are well documented in the DWR Annual Reports (<http://baydeltaoffice.water.ca.gov/modeling/deltamodeling/annualreports.cfm>).

Salinity in San Joaquin River upstream of Head of Old River is likely not accurate due to artificial base flows assumed for model stability, and curtailing of the DICU diversions upstream of Head of Old River (at model nodes 1 and 3), under the Without Project scenario. Projections of Delta inflows and exports for May – Aug 2015 are also subject to change.

The salinity contour plots presented in this memorandum were created from point data in the model using kriging. As a result, the zones where the contours are calculated may be influenced by a neighboring channel without direct access to comingled salinity. An example of this is the Sacramento Deep Water Ship Channel and the Sacramento River on September 6, 2014.

FIGURE 1: SACRAMENTO RIVER AT FREEPORT DSM2 MODEL INFLOW FOR 2012 TO 2015

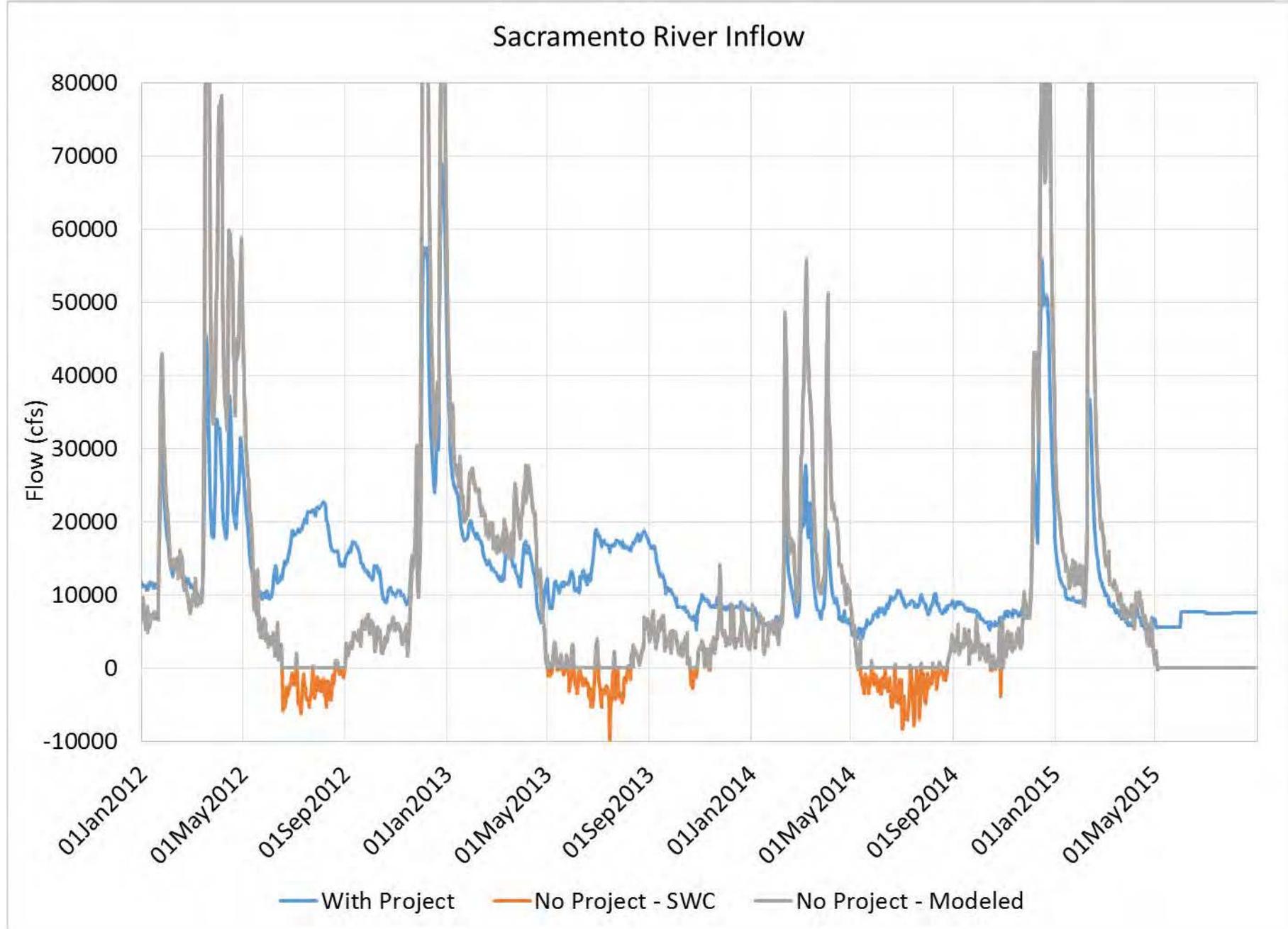


FIGURE 2: SAN JOAQUIN RIVER AT VERNALIS DSM2 MODEL INFLOW FOR 2012 TO 2015

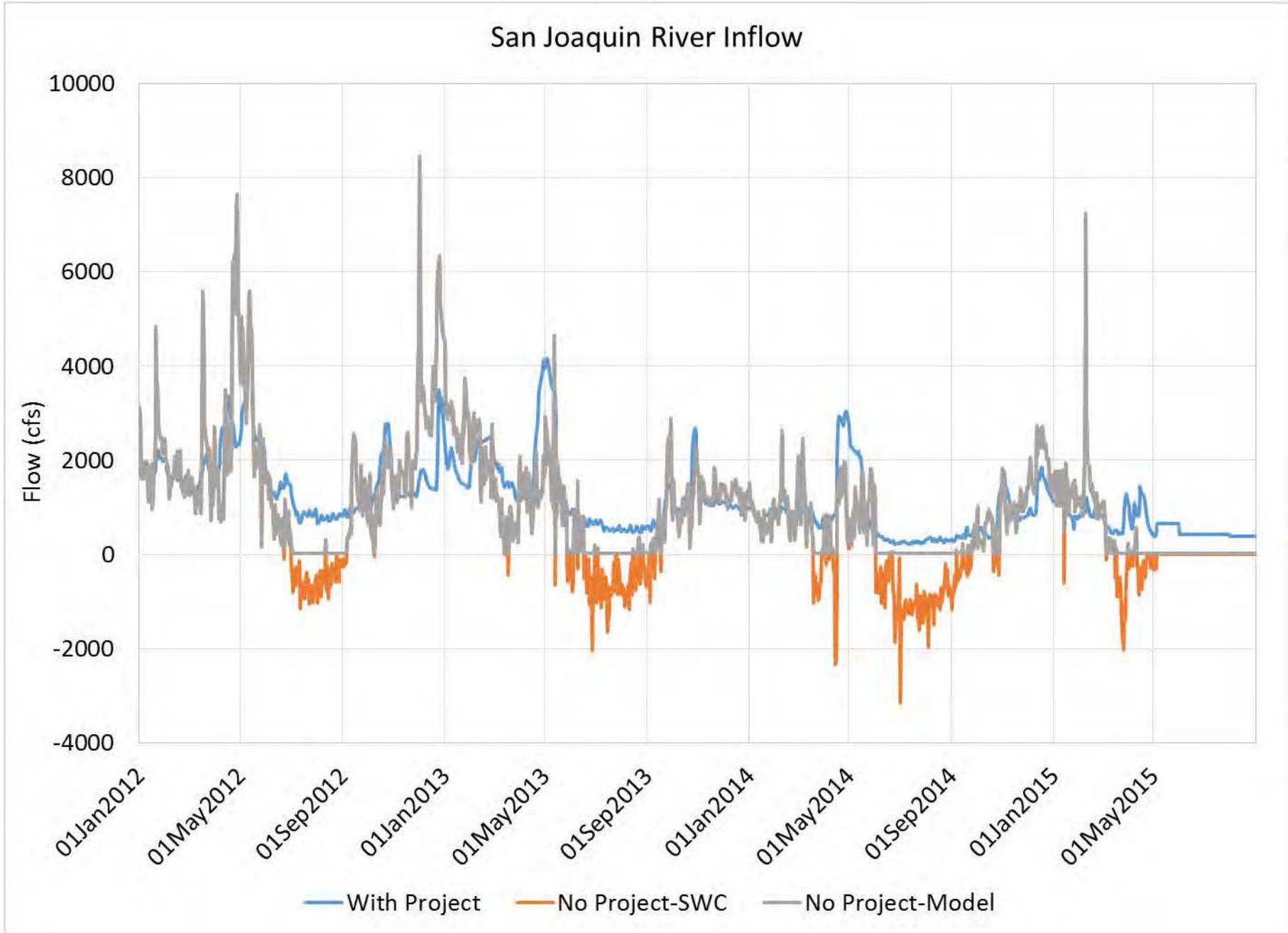


FIGURE 3: ASSUMED BBID DICU DIVERSION, AND DSM2 RESULT OF CLIFTON COURT FOREBAY INFLOW

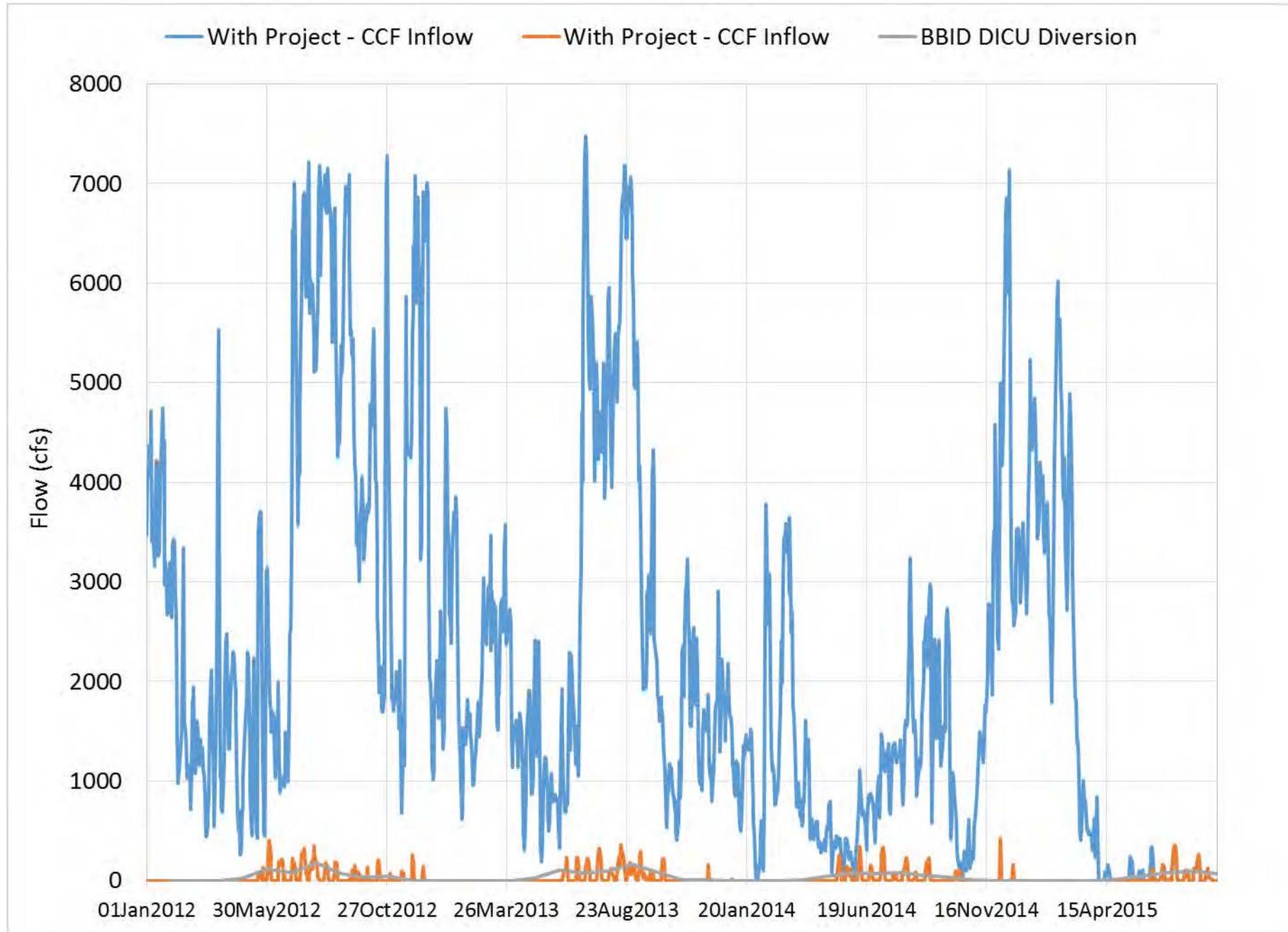
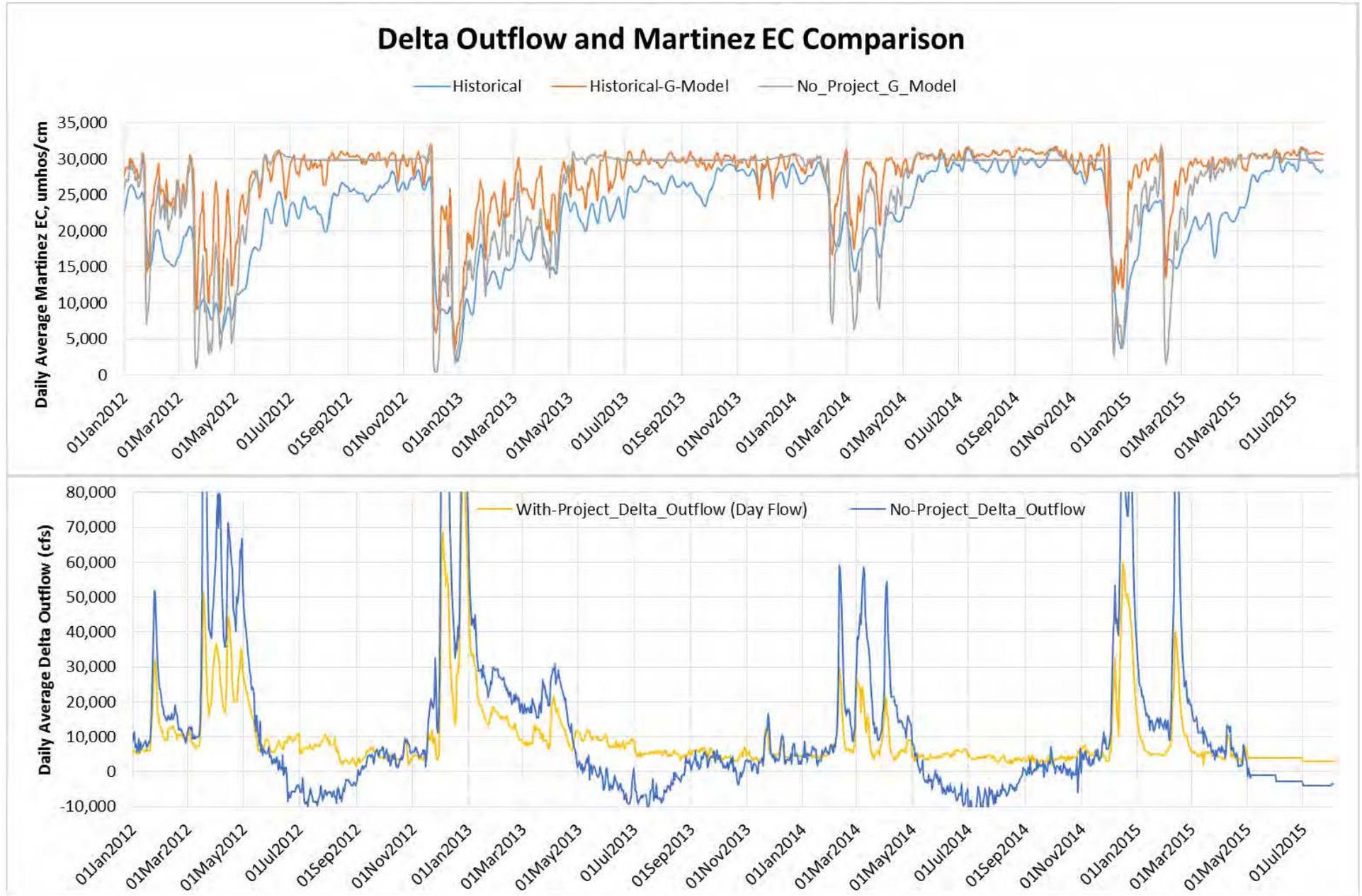
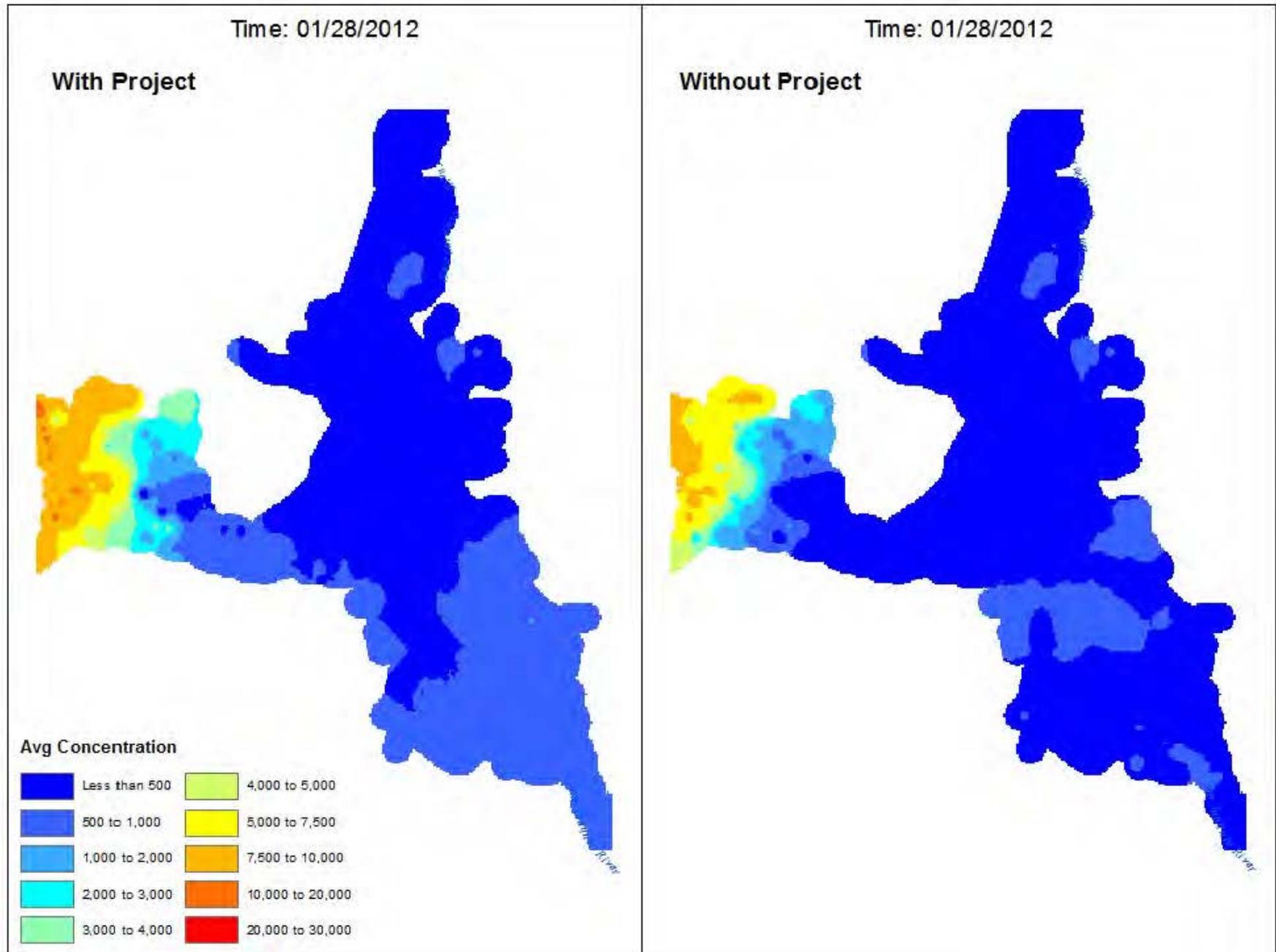


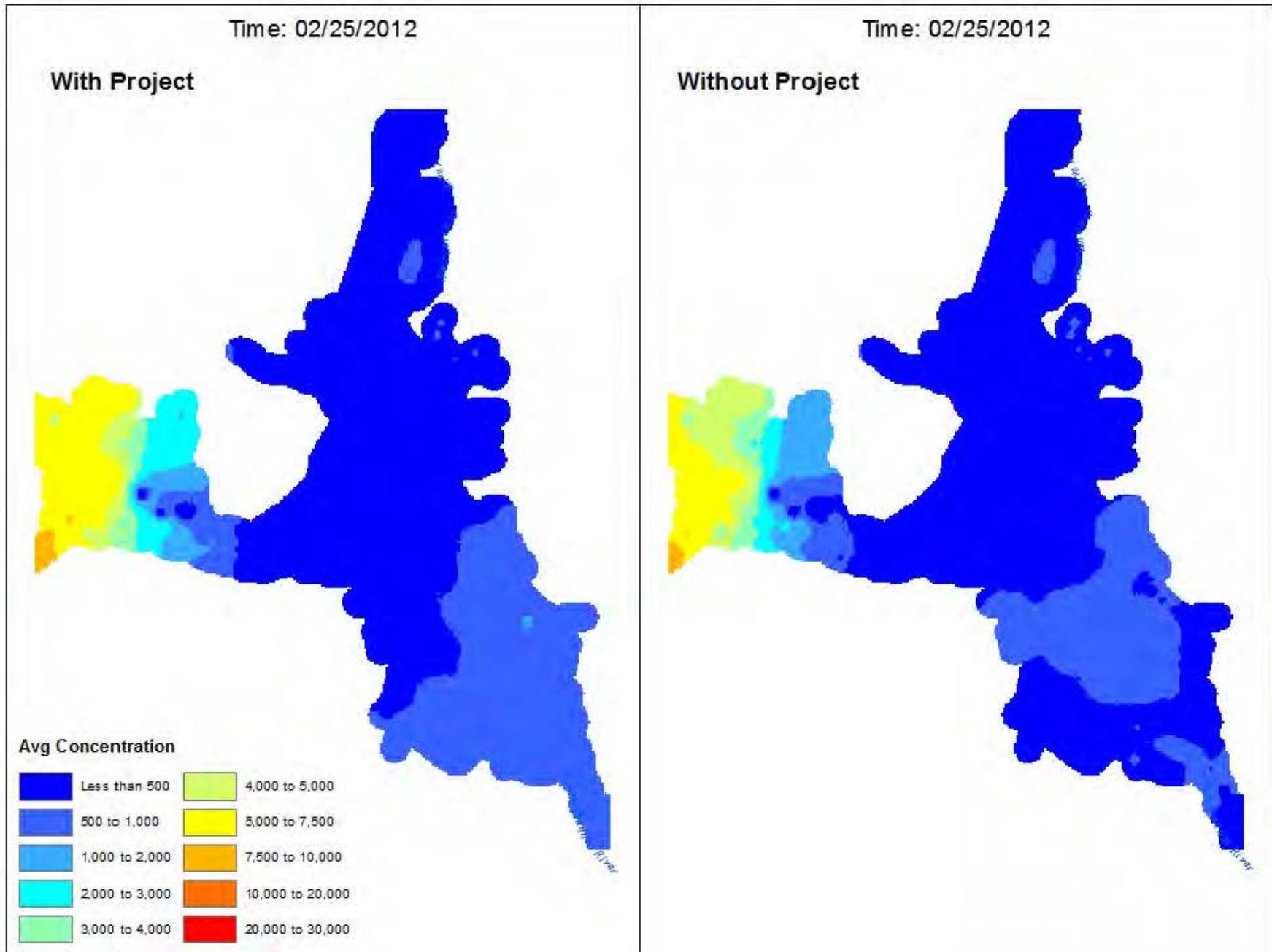
FIGURE 4: DAILY AVERAGED EC AT MARTINEZ FOR 2012 TO 2015

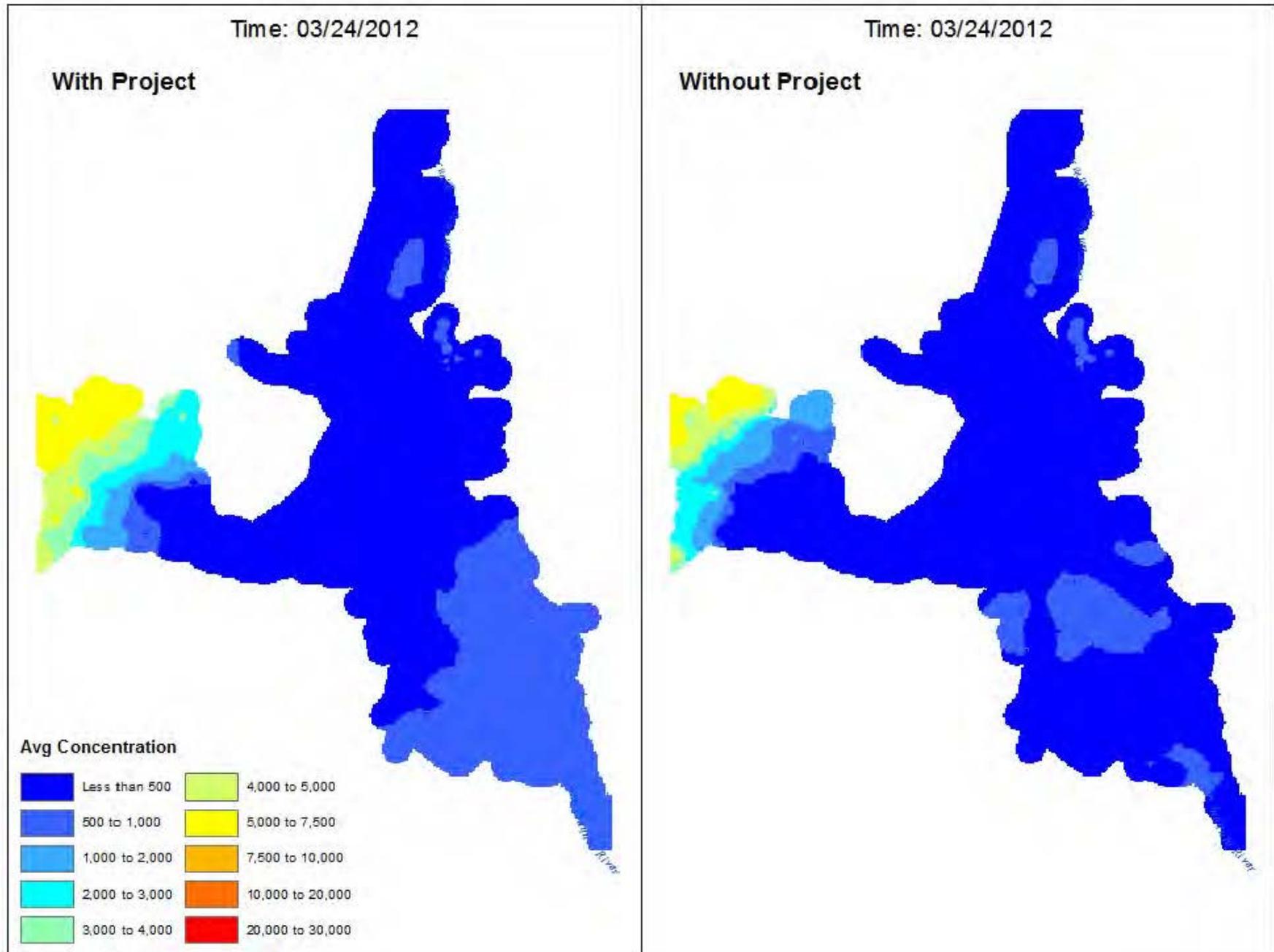


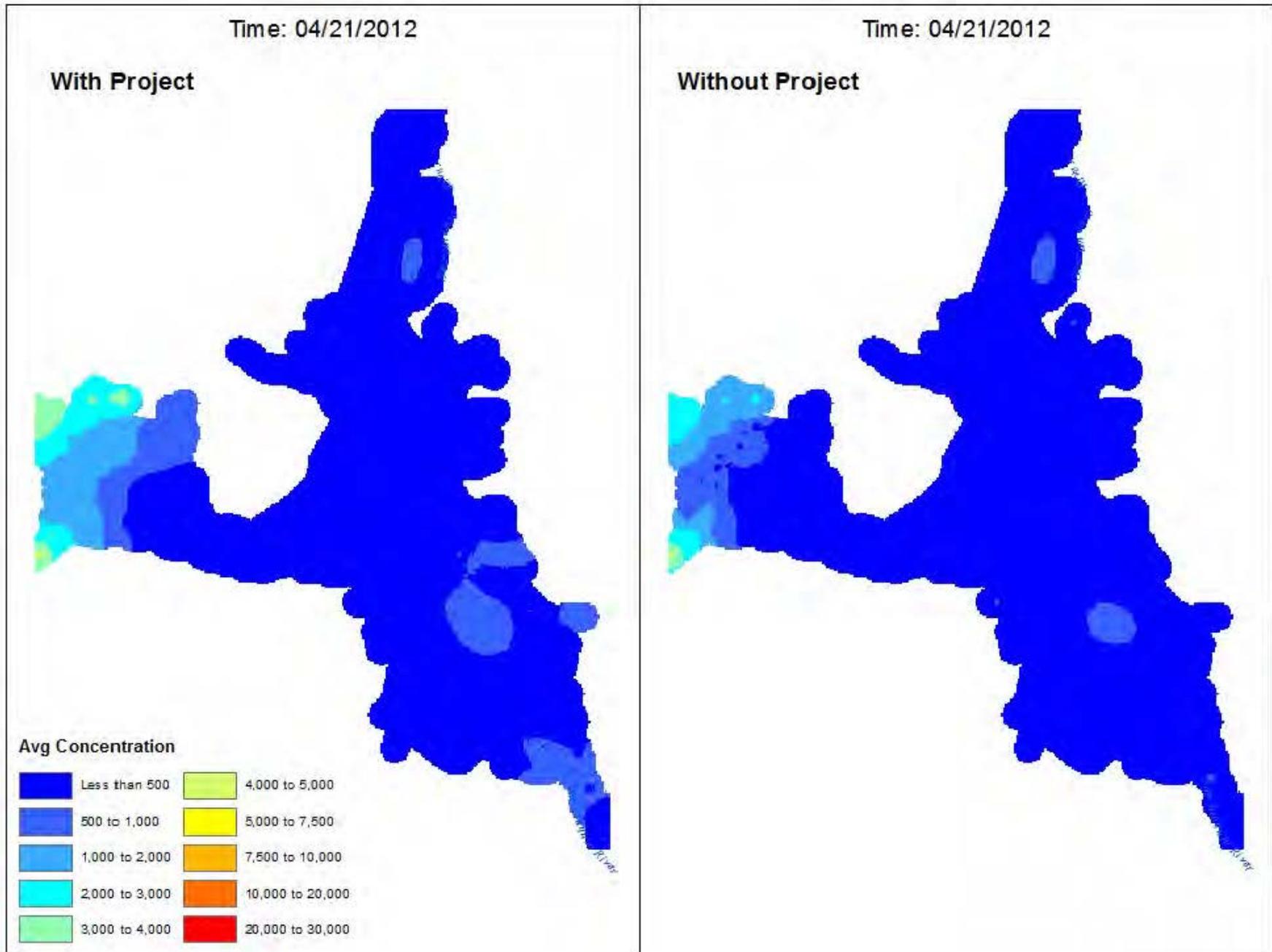
FIGURES 5 TO 52

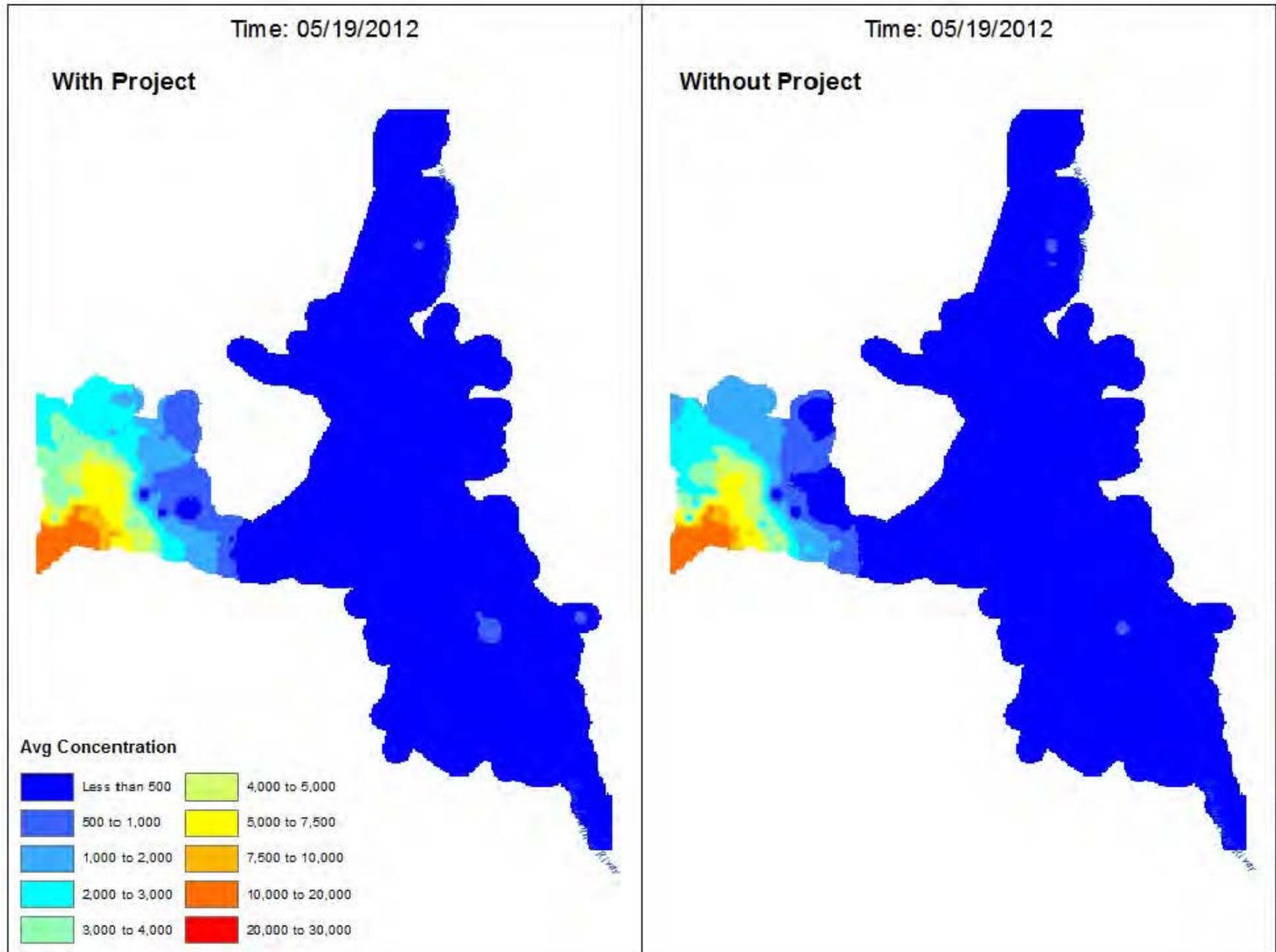
**Contour plots of DSM2 electrical conductivity in the Delta on a 4 week timestep for 2011-2015 for With Project conditions (left) and Without Project conditions (right)**

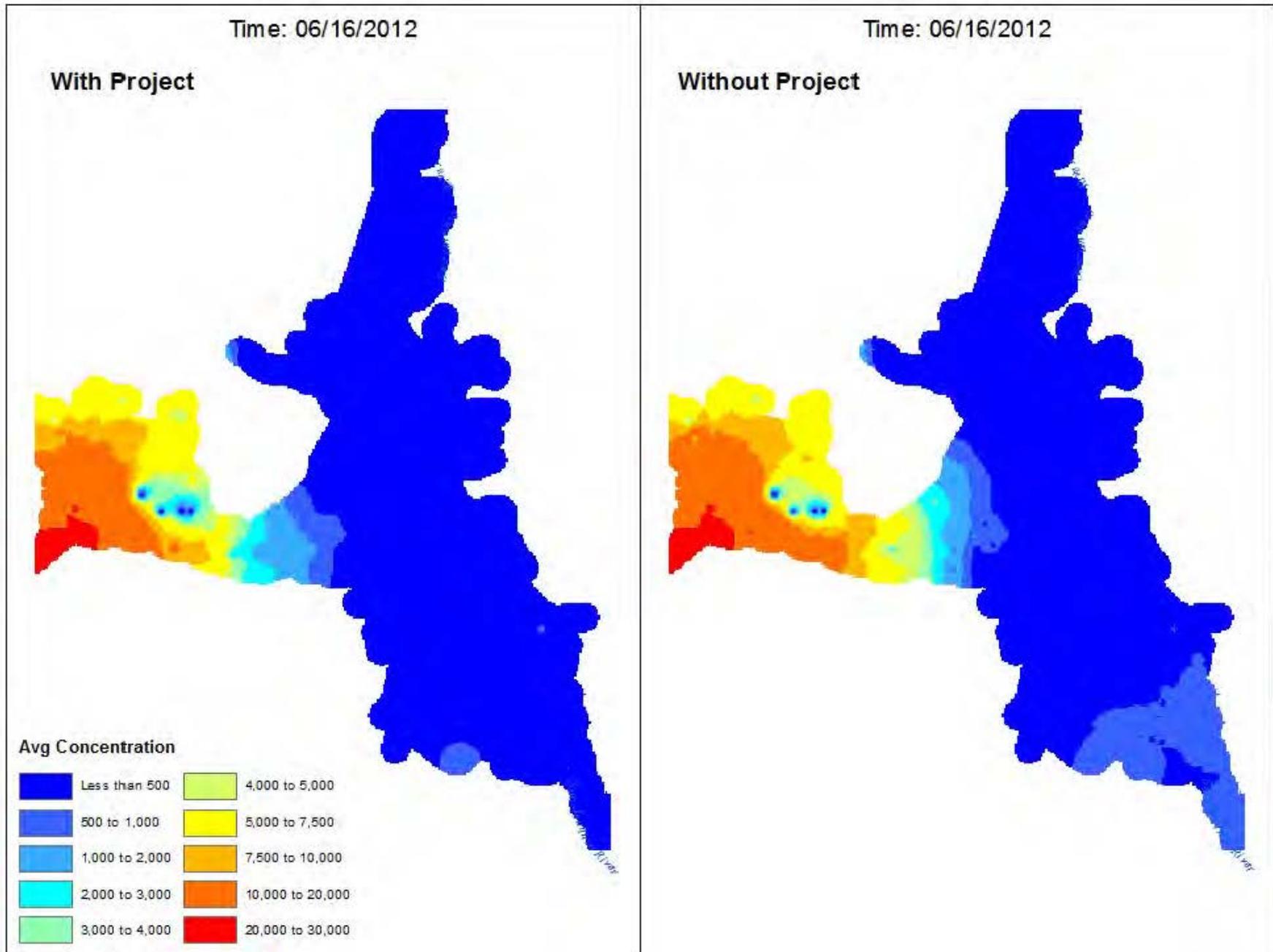


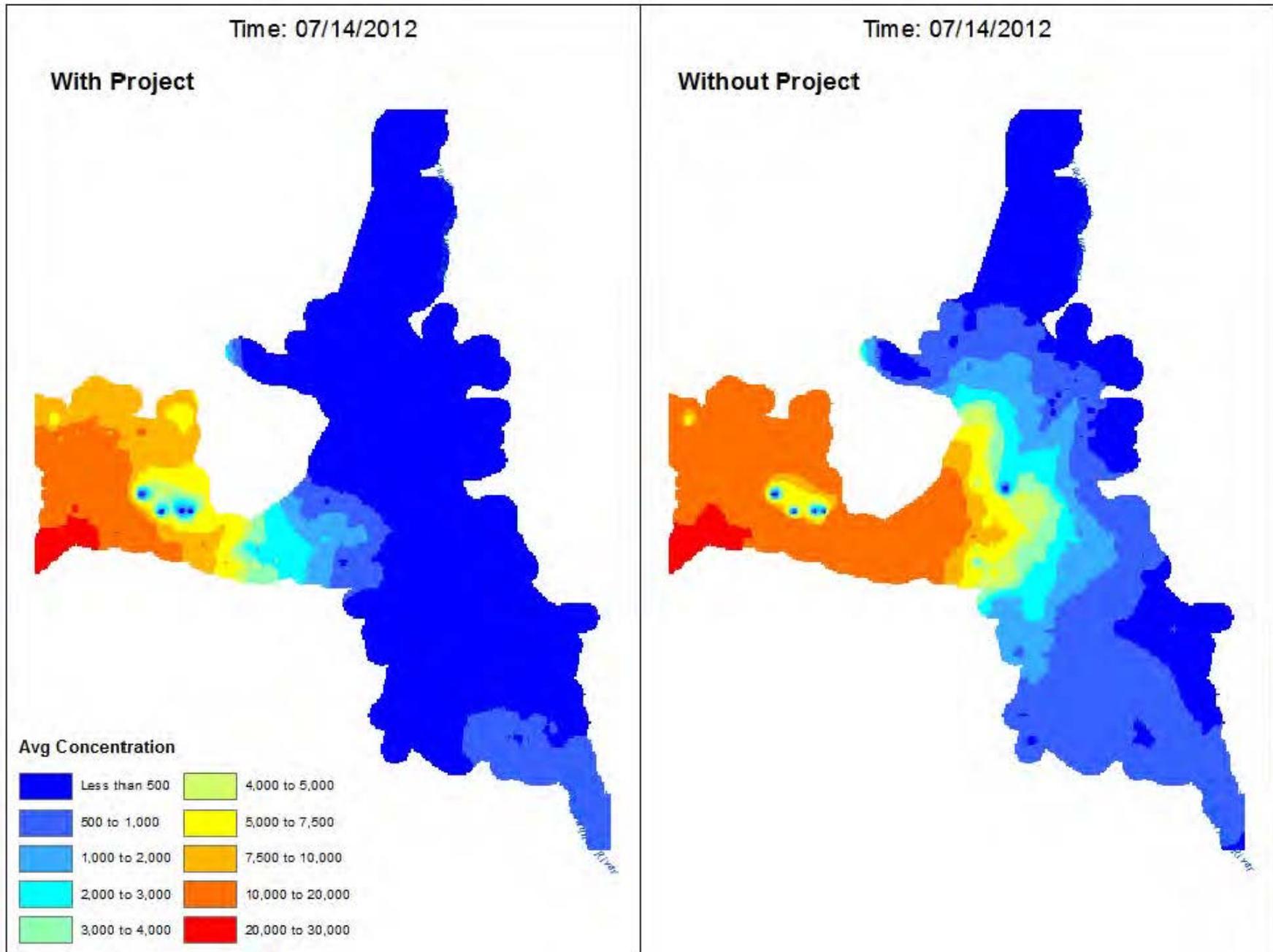


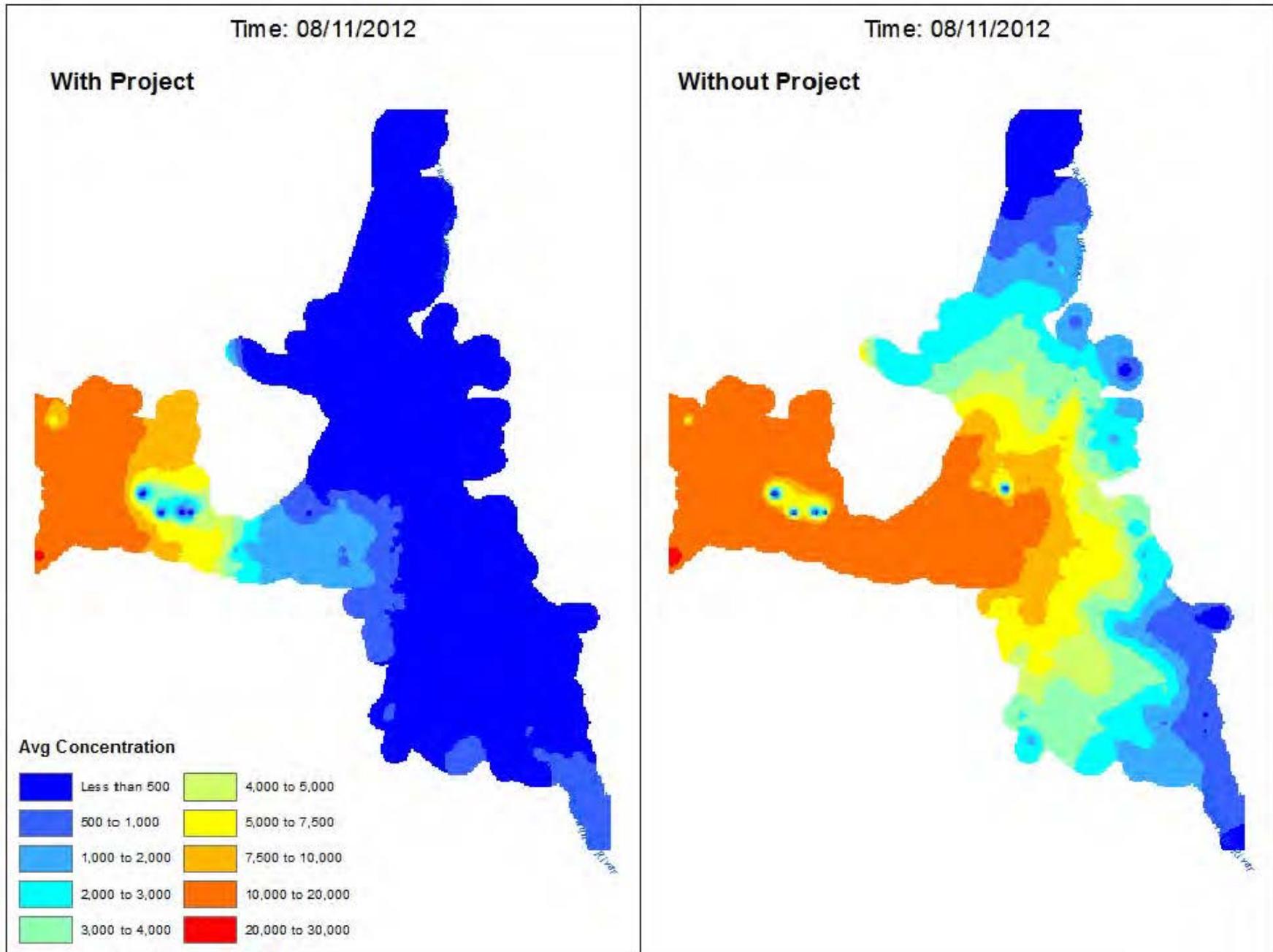


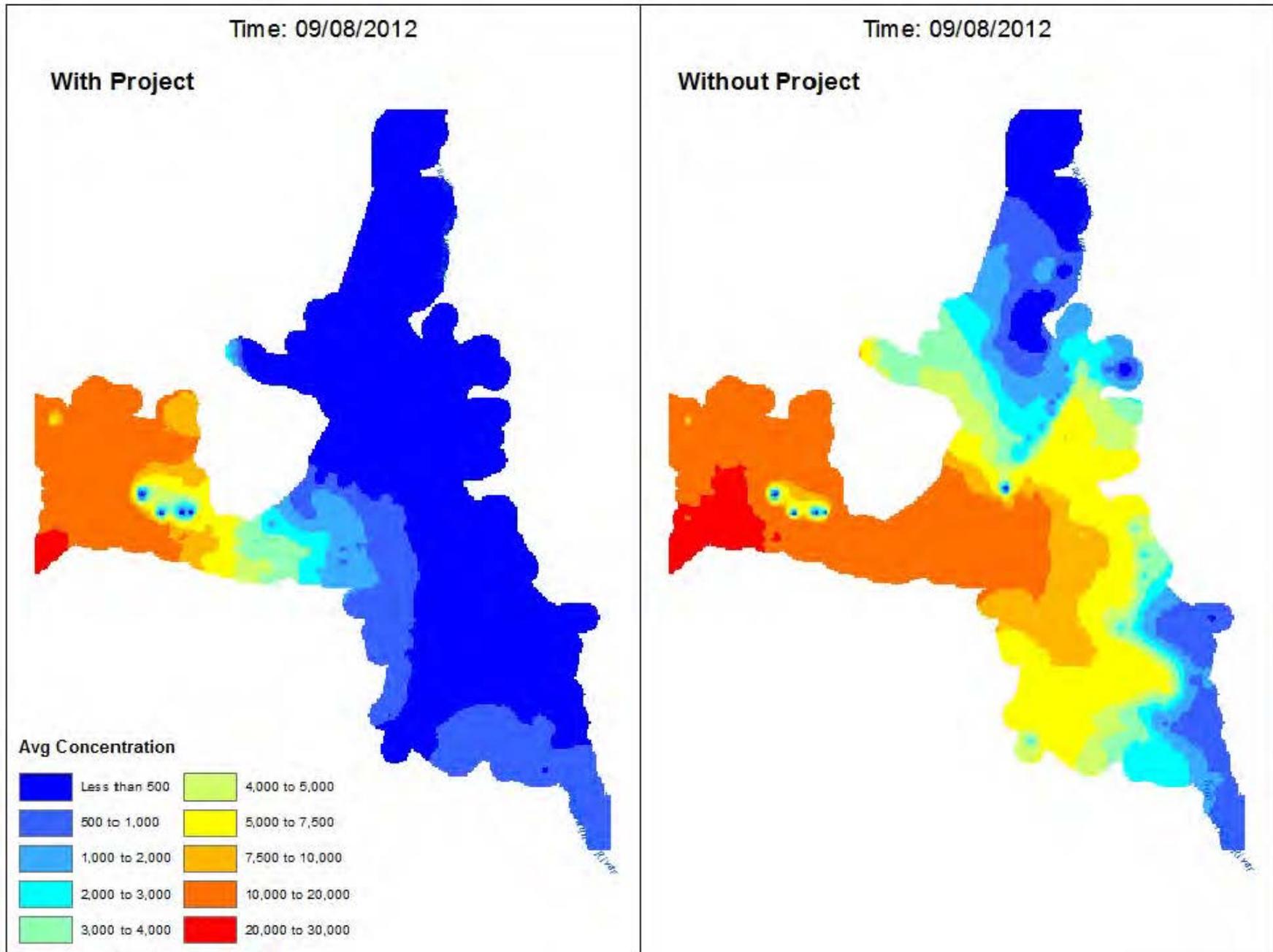


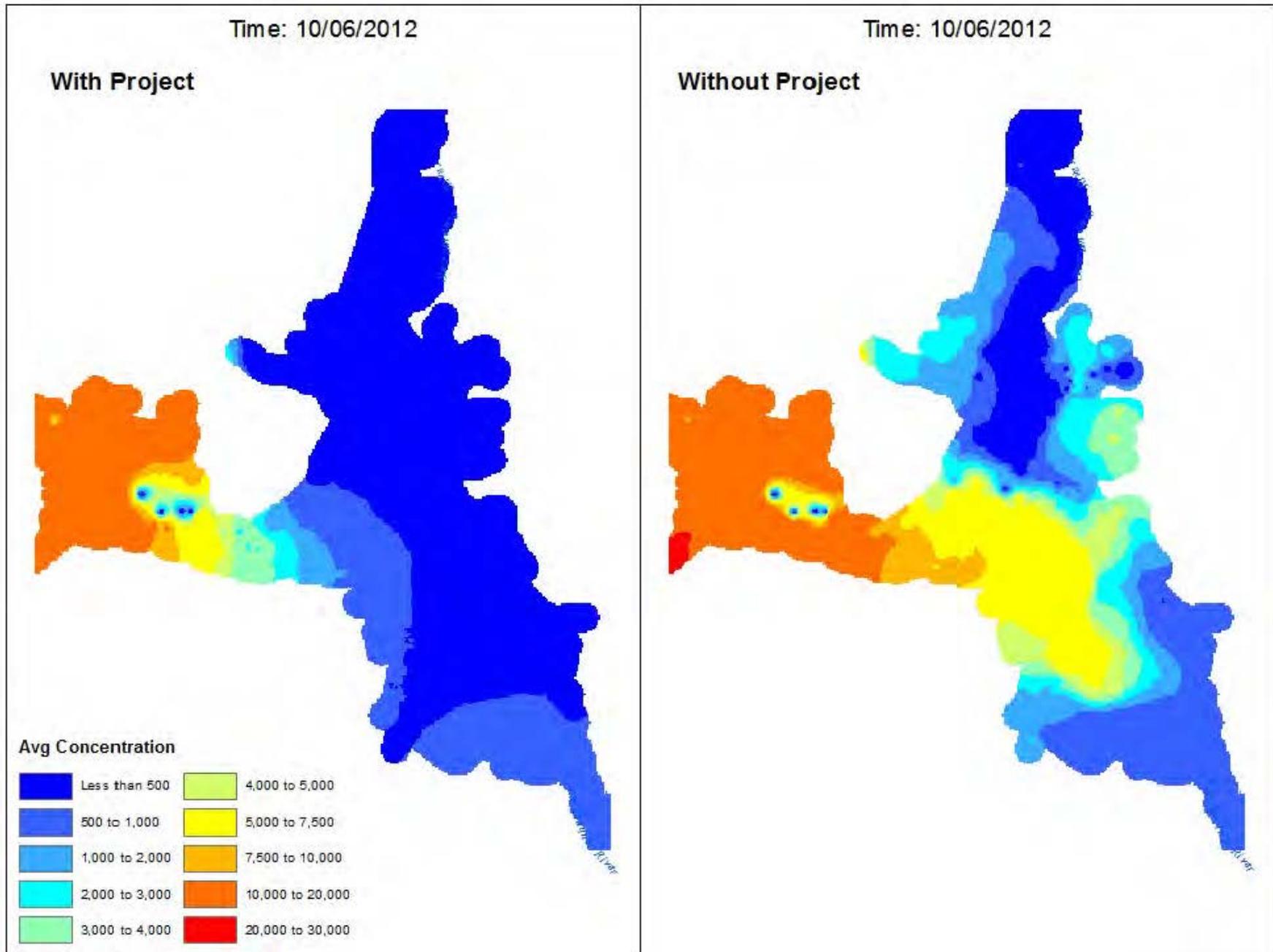


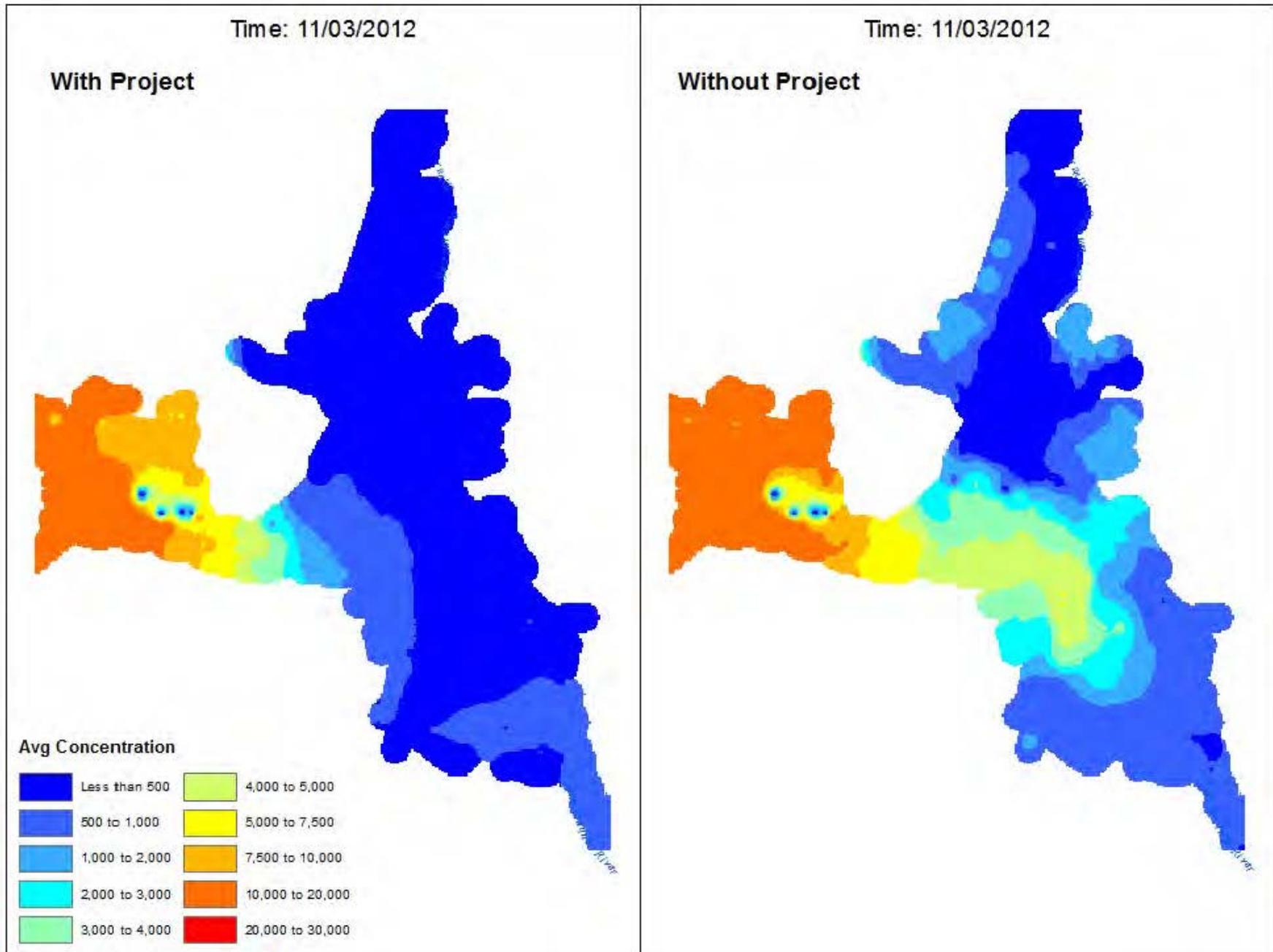


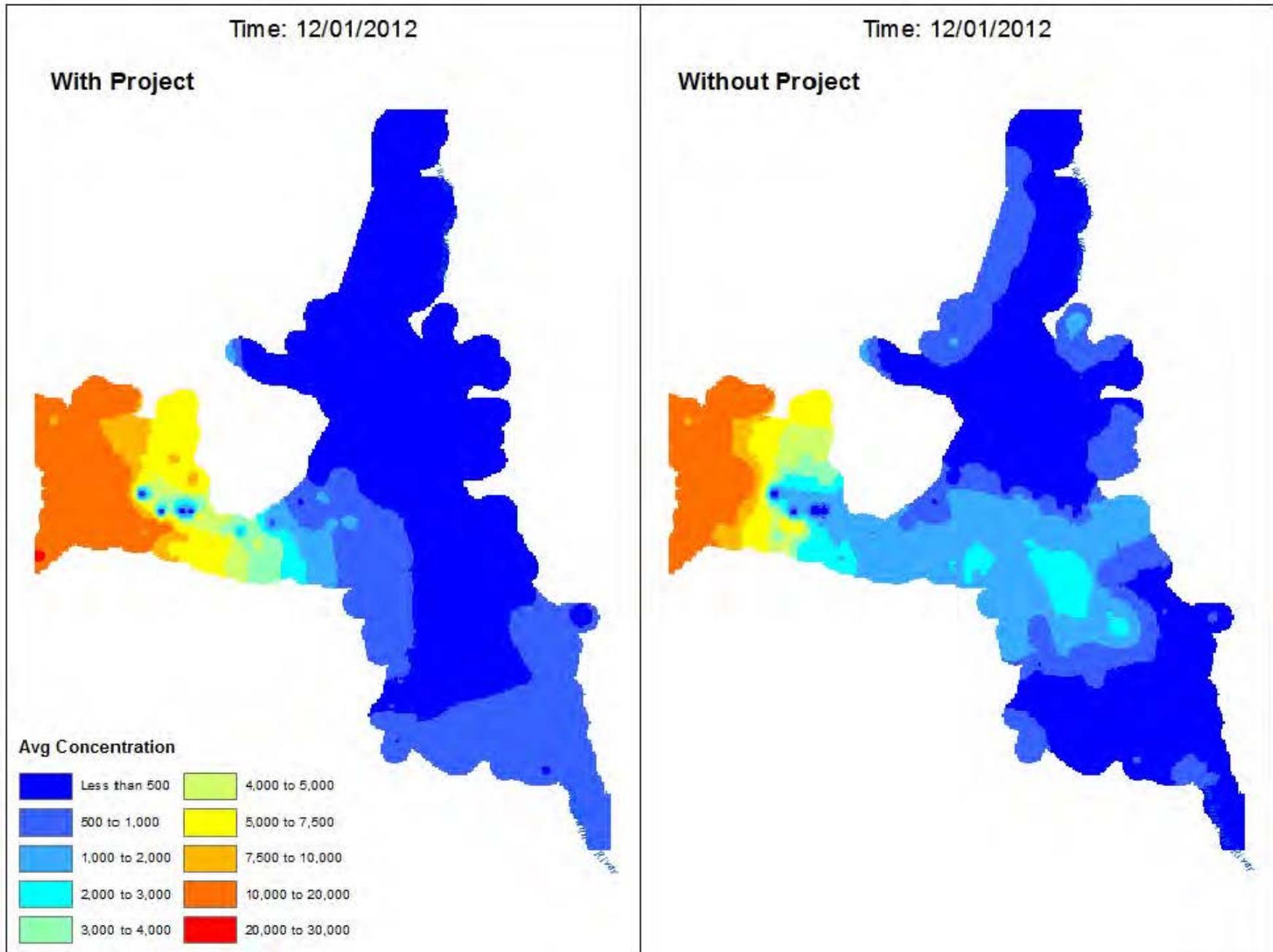


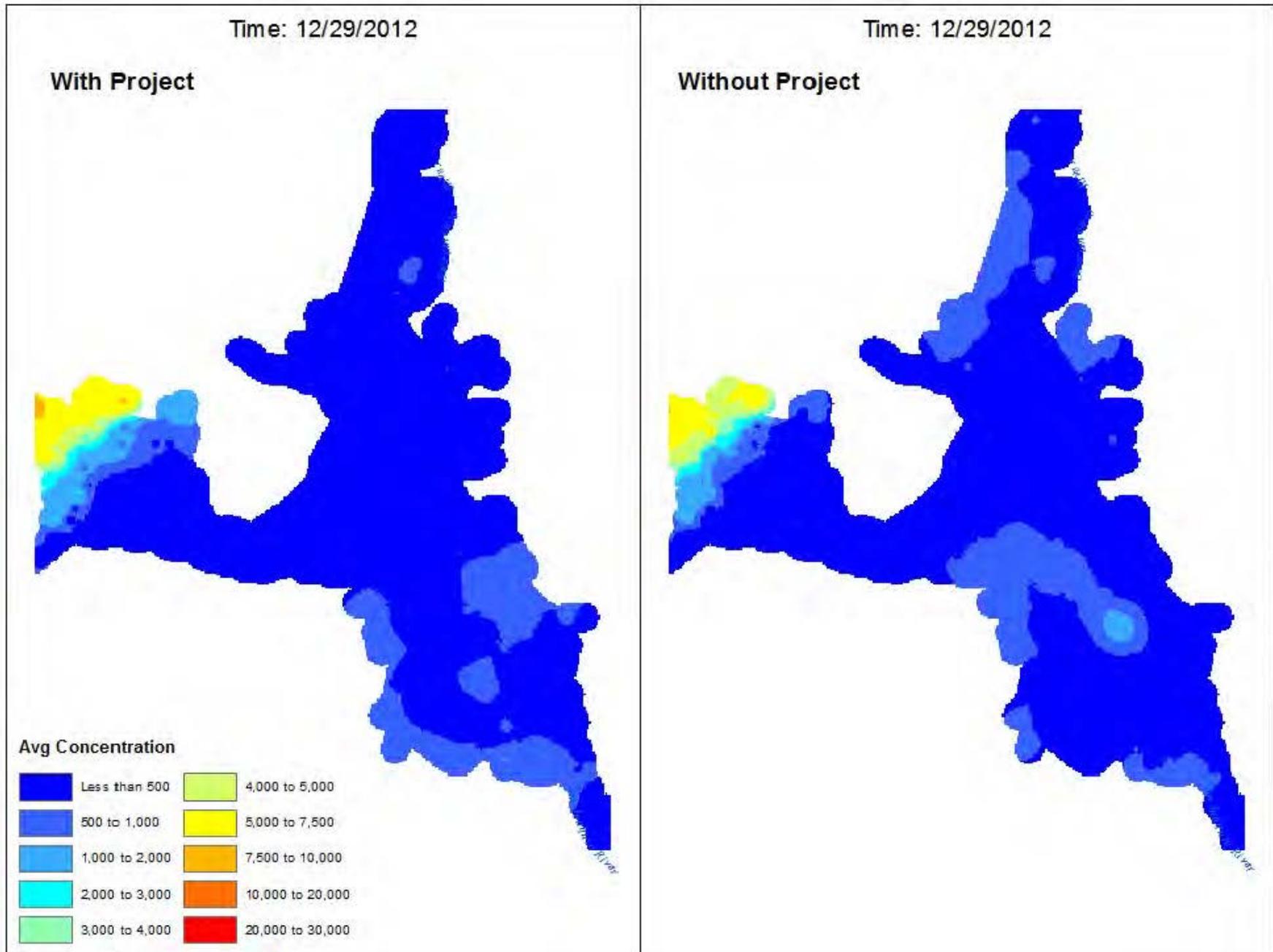


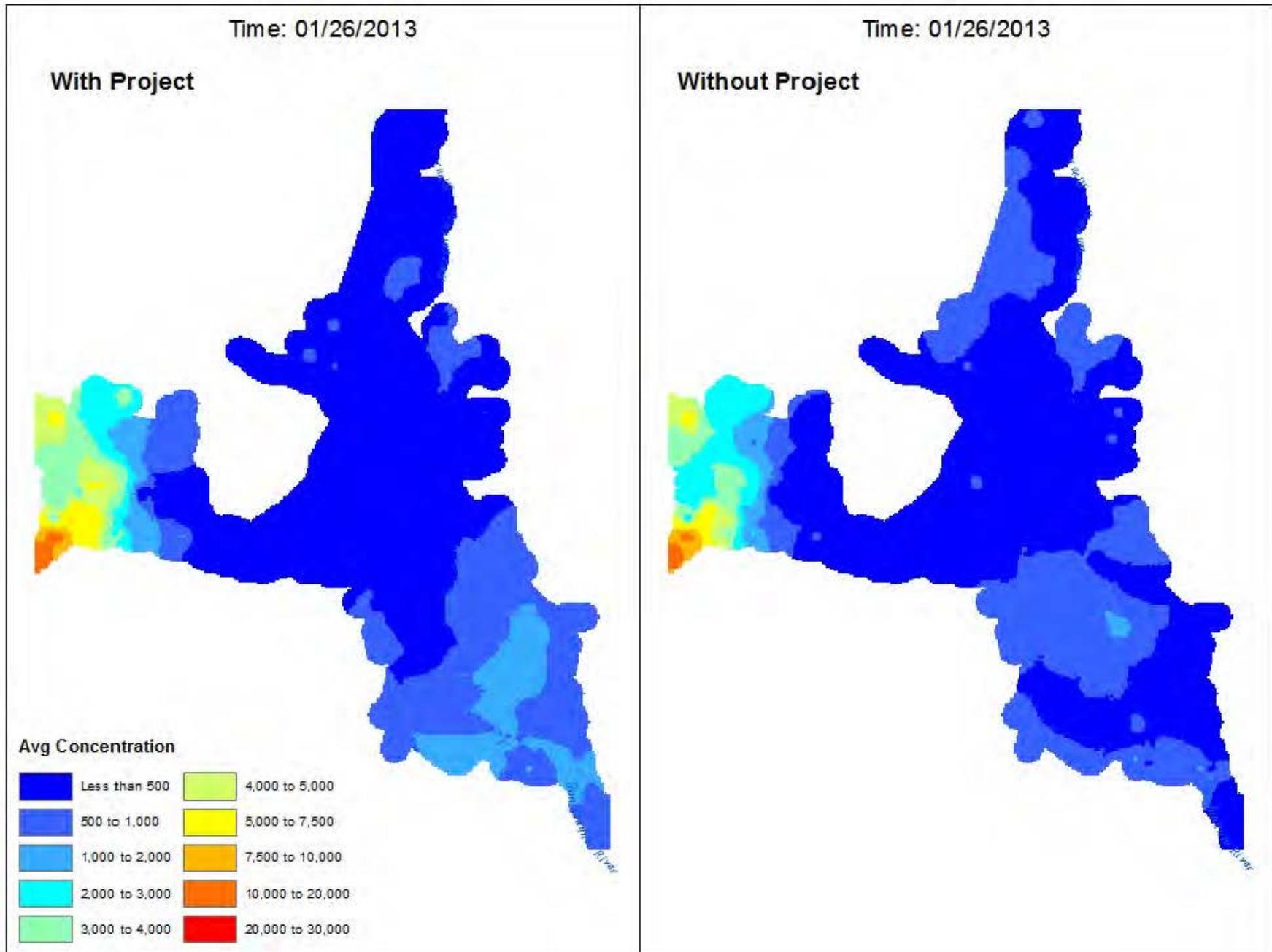


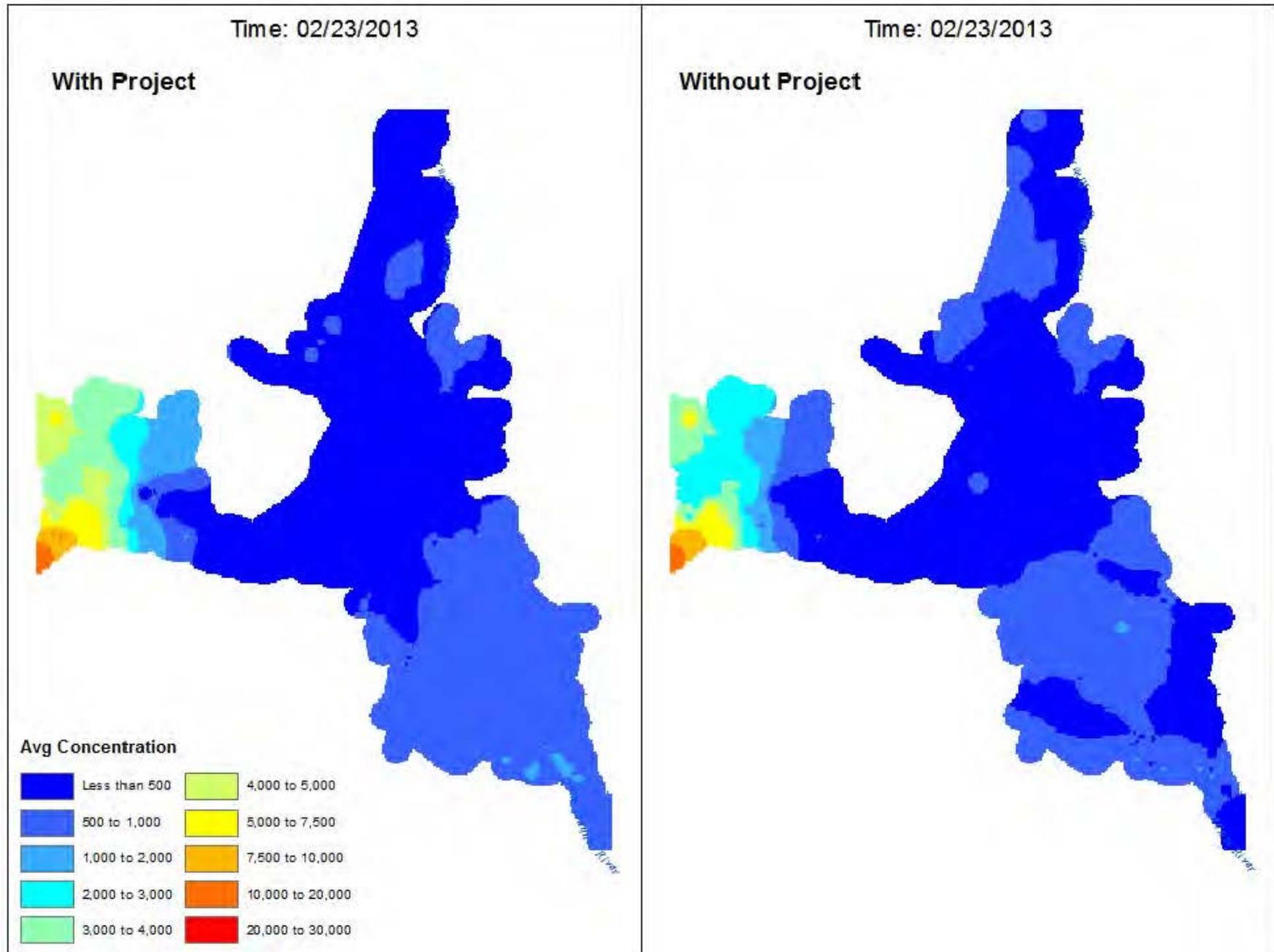


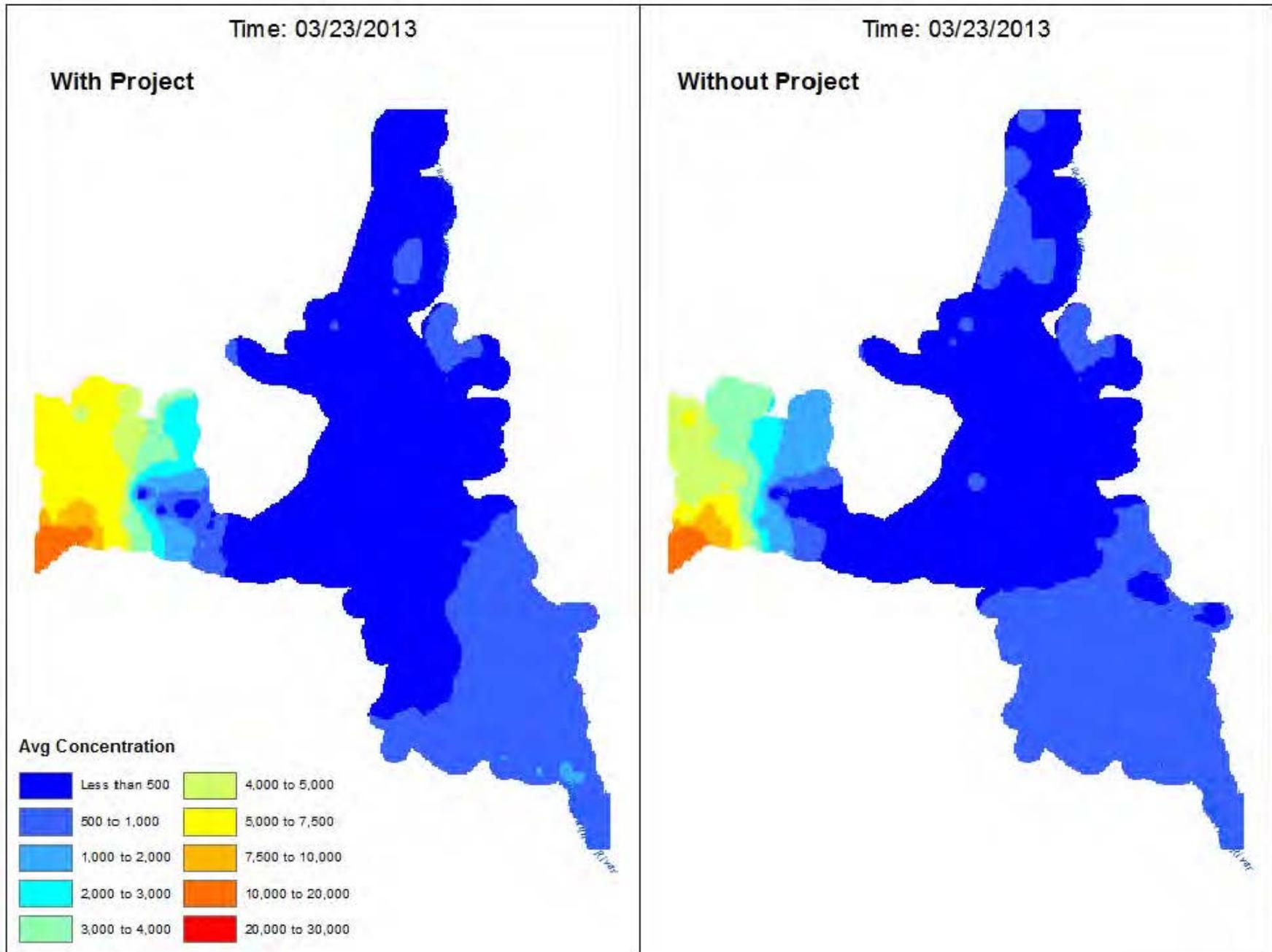


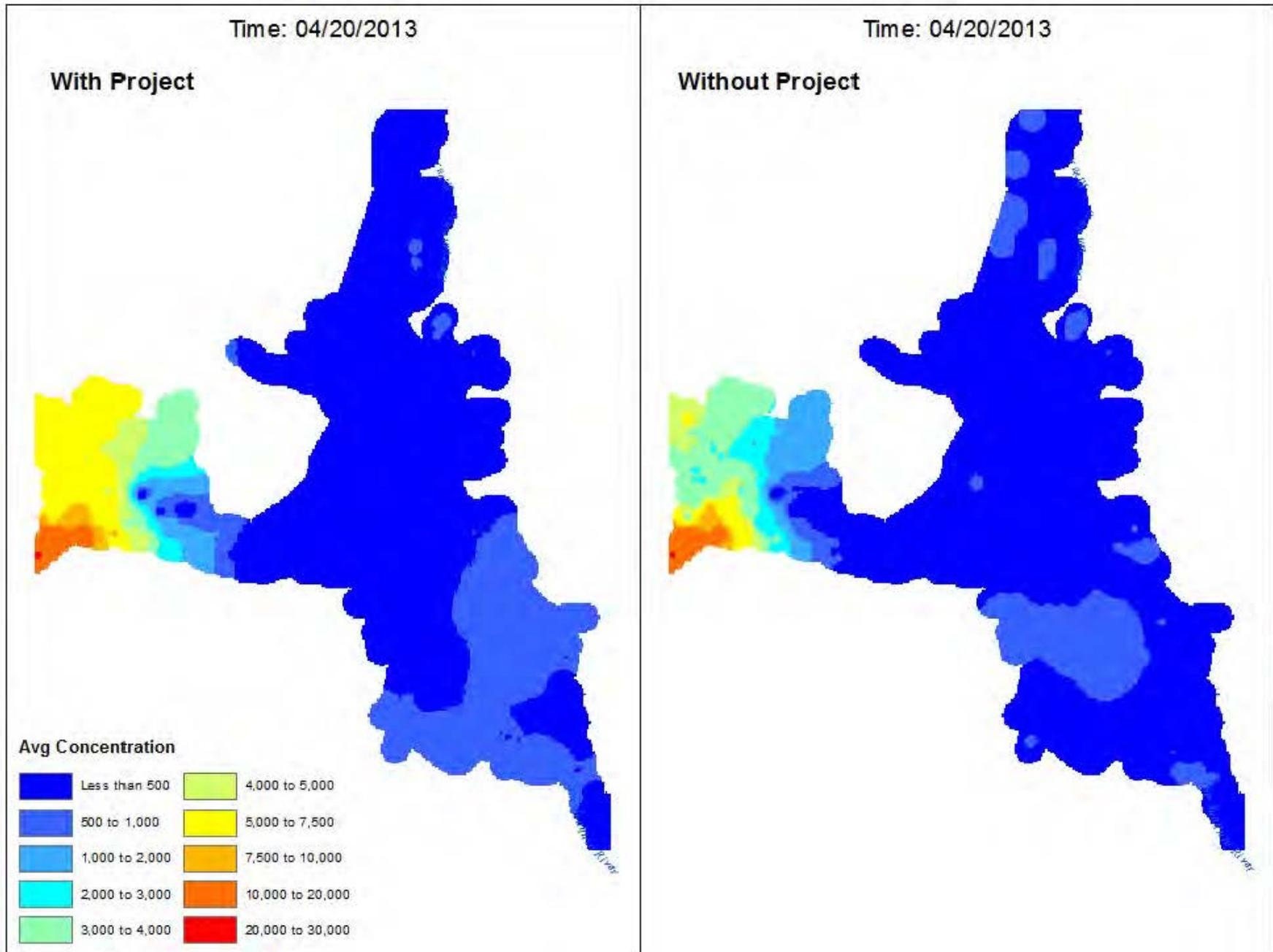


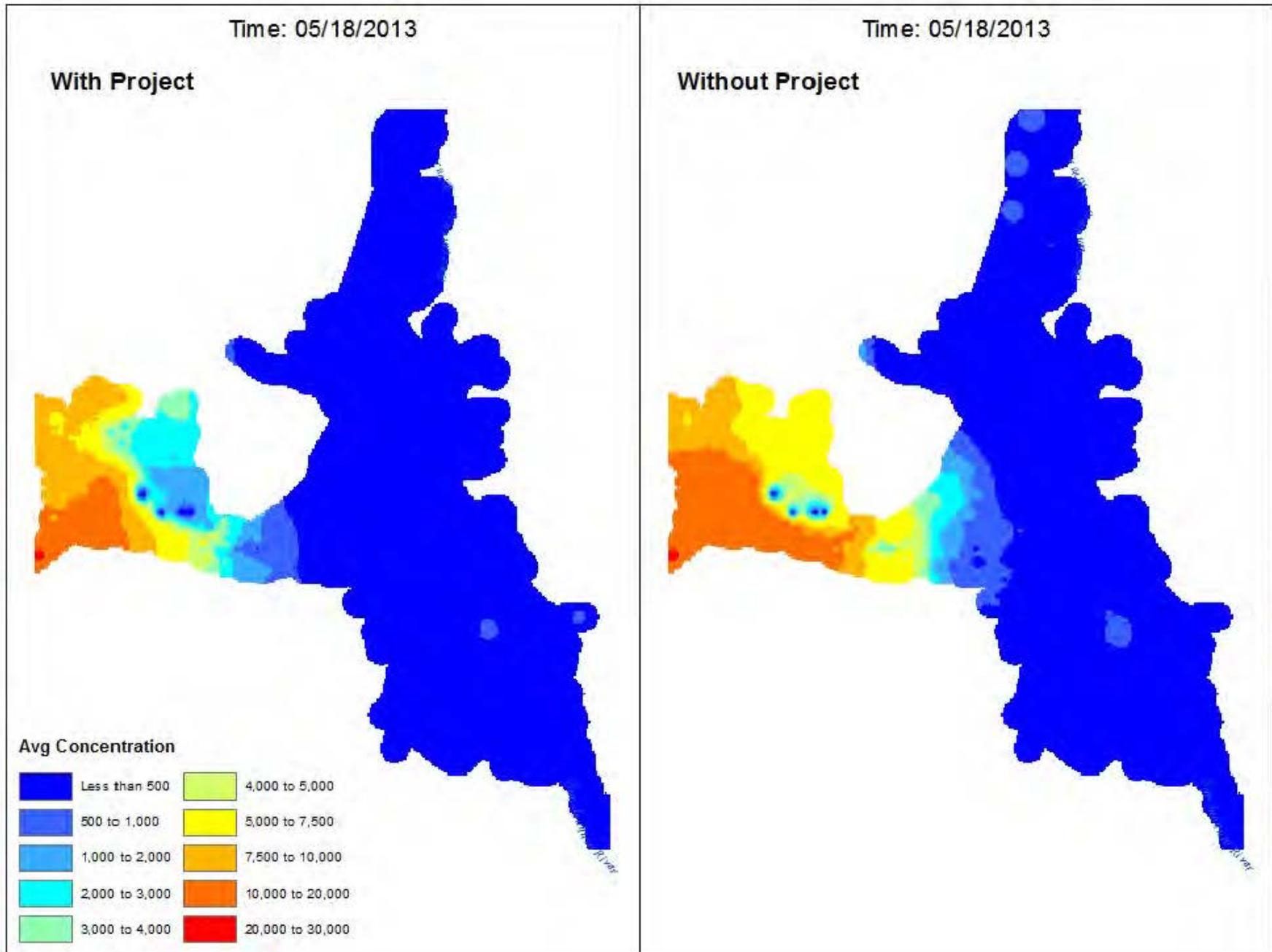


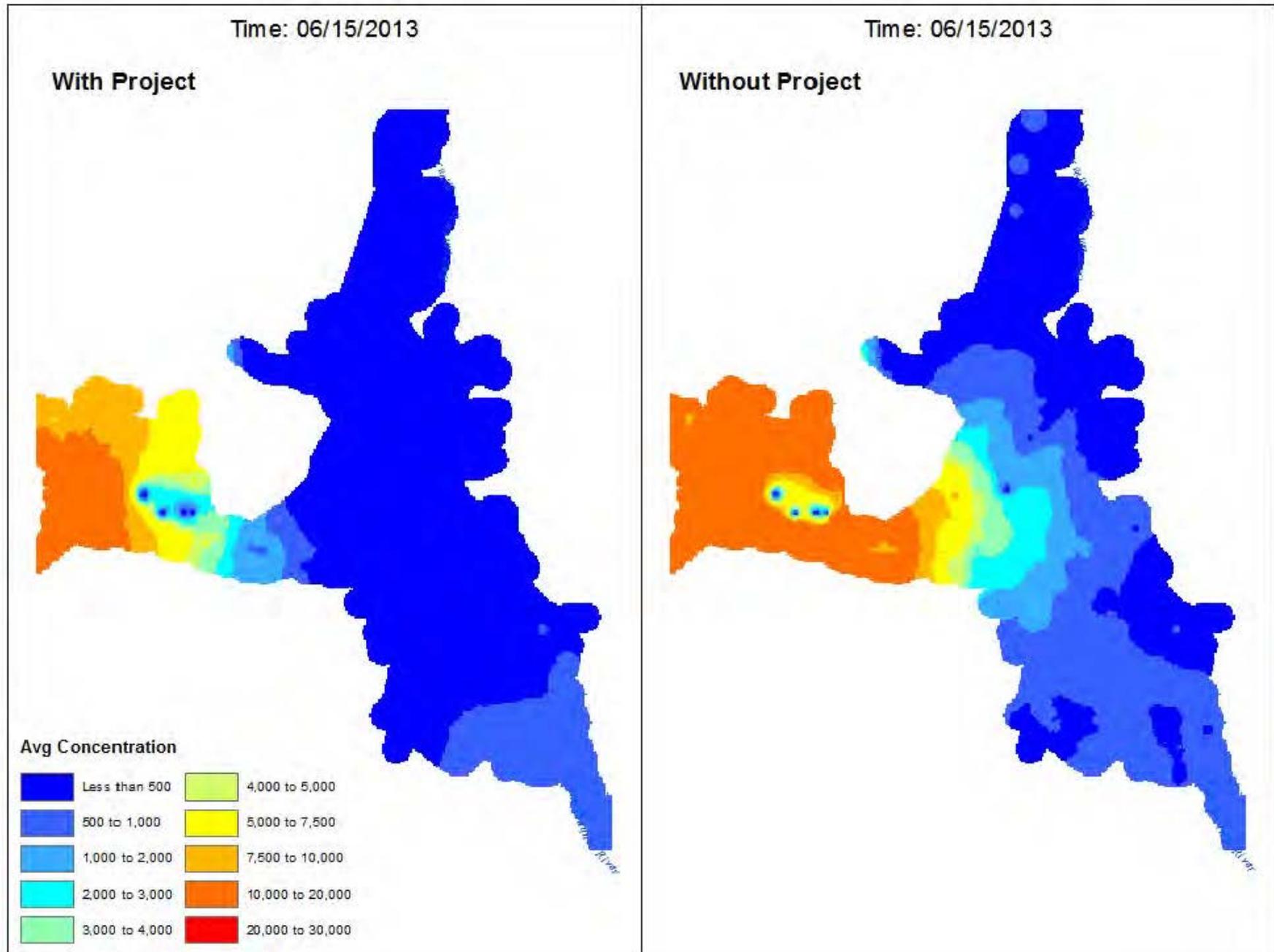


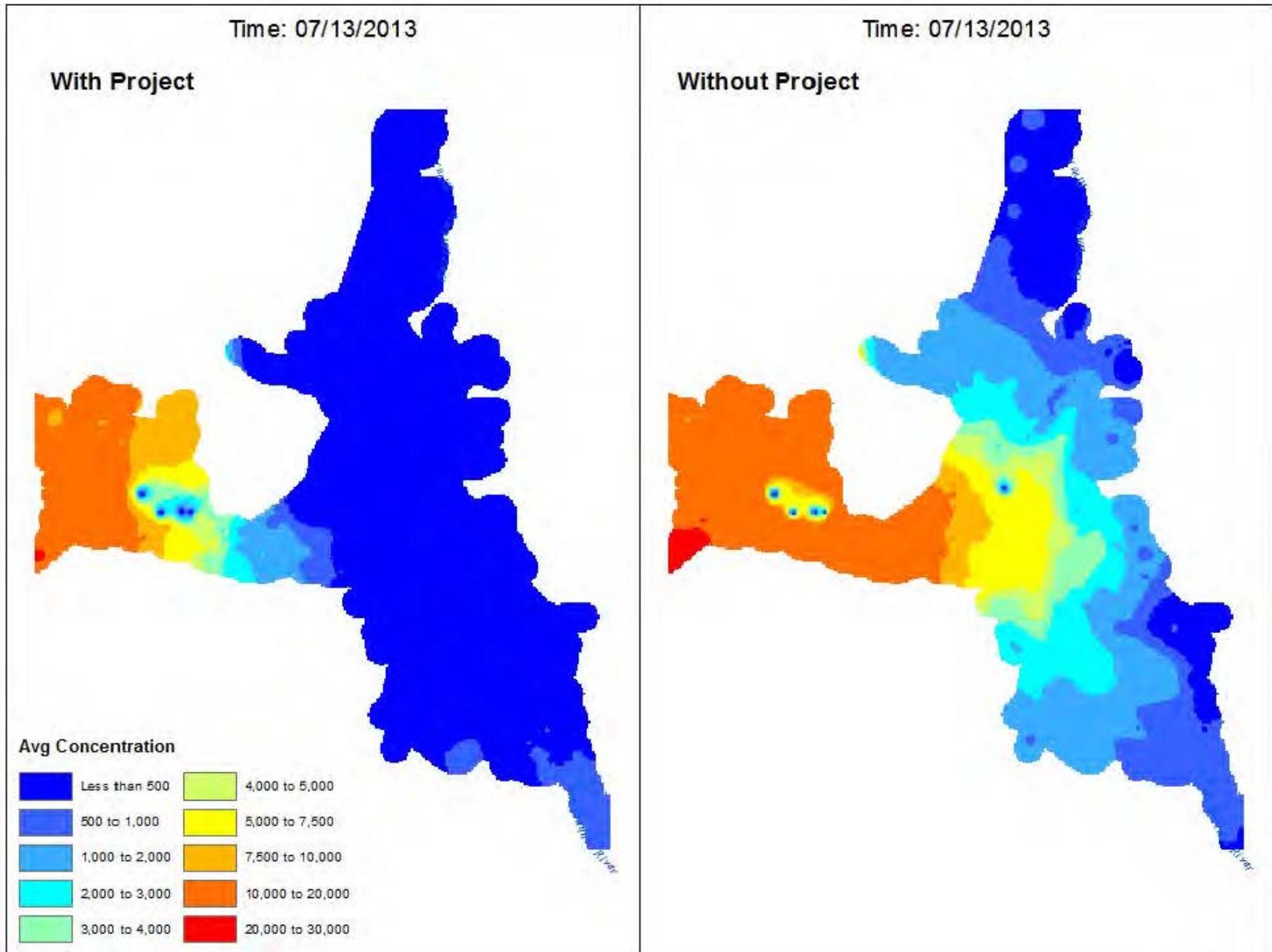


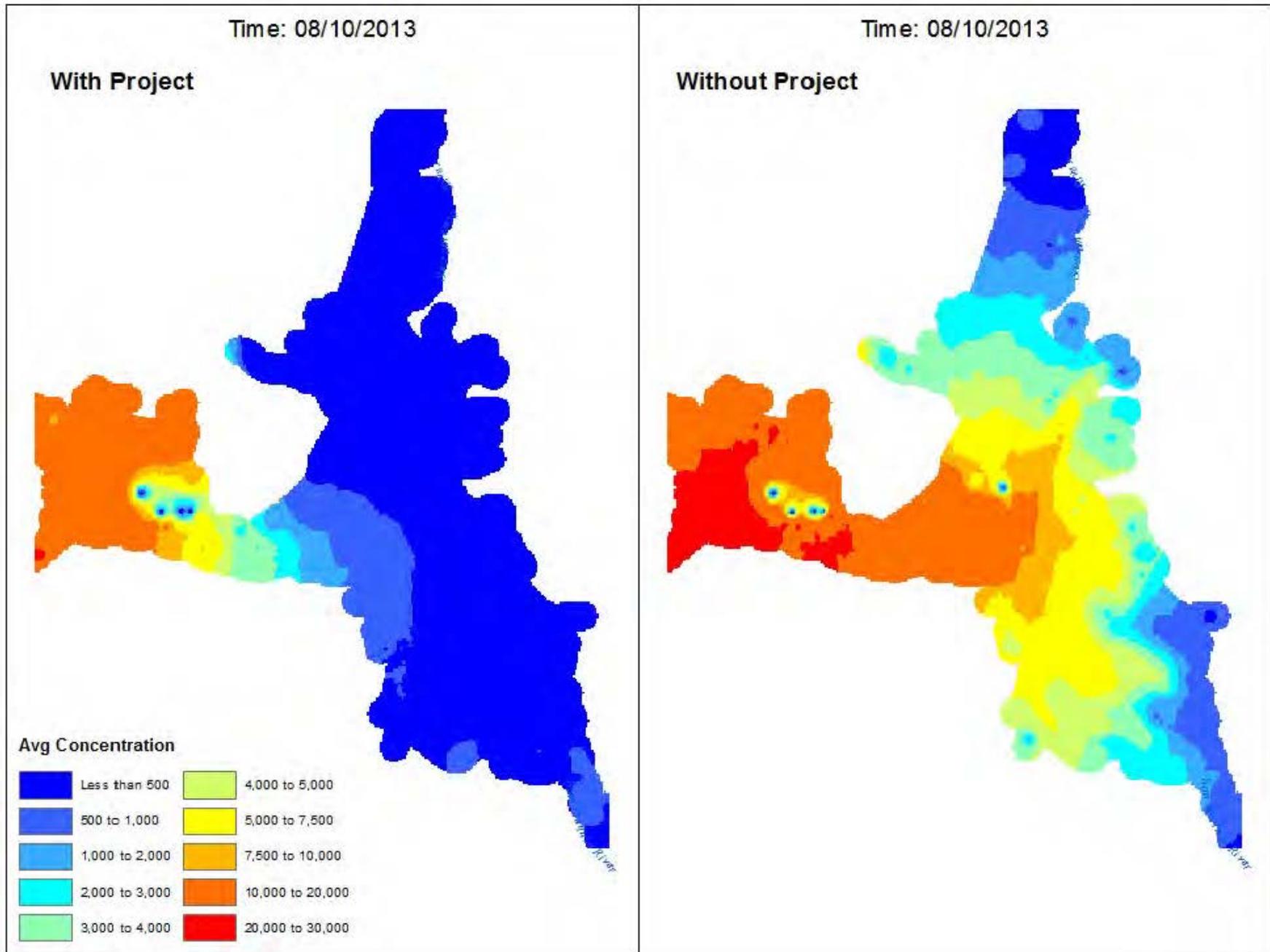


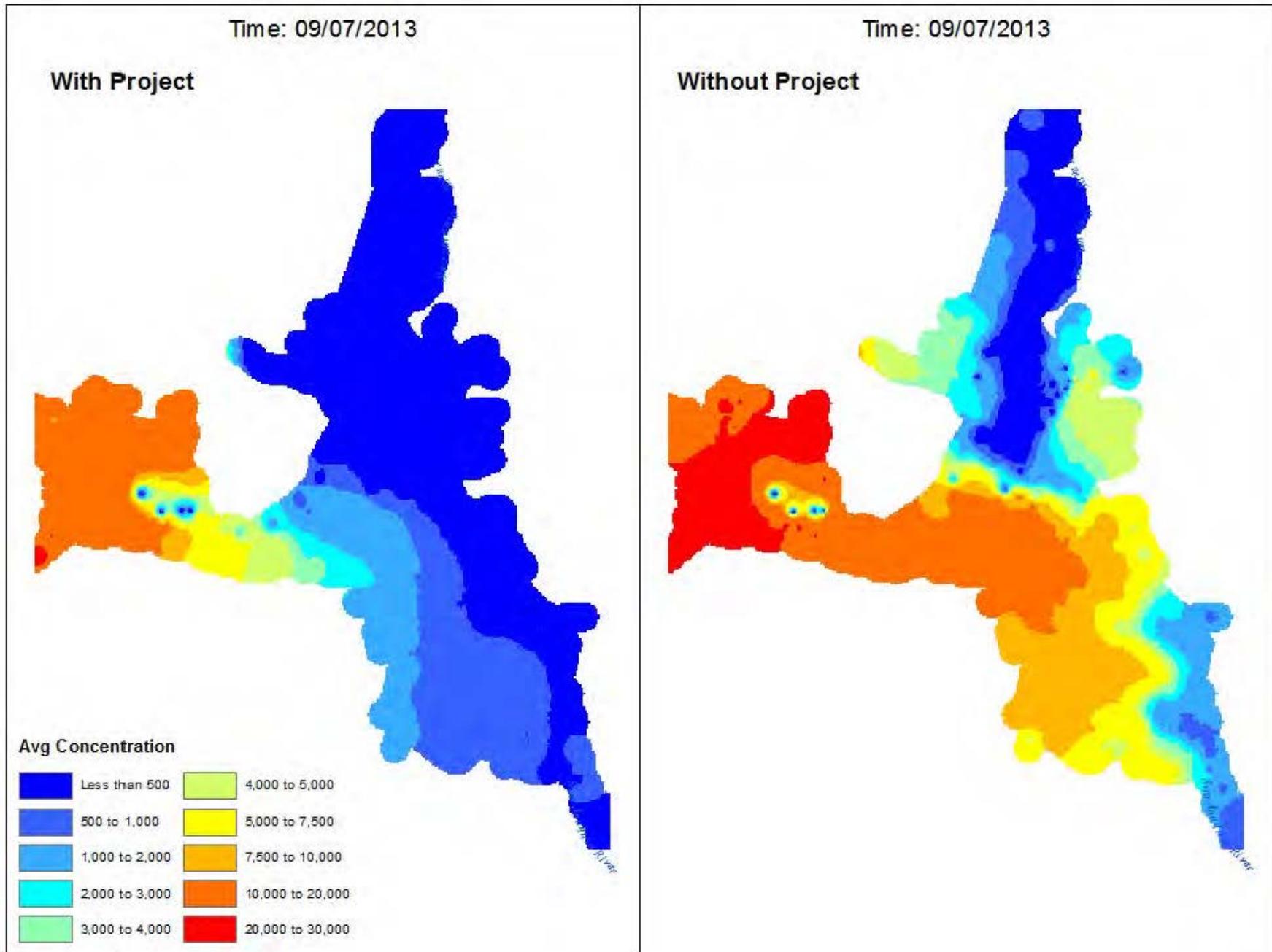


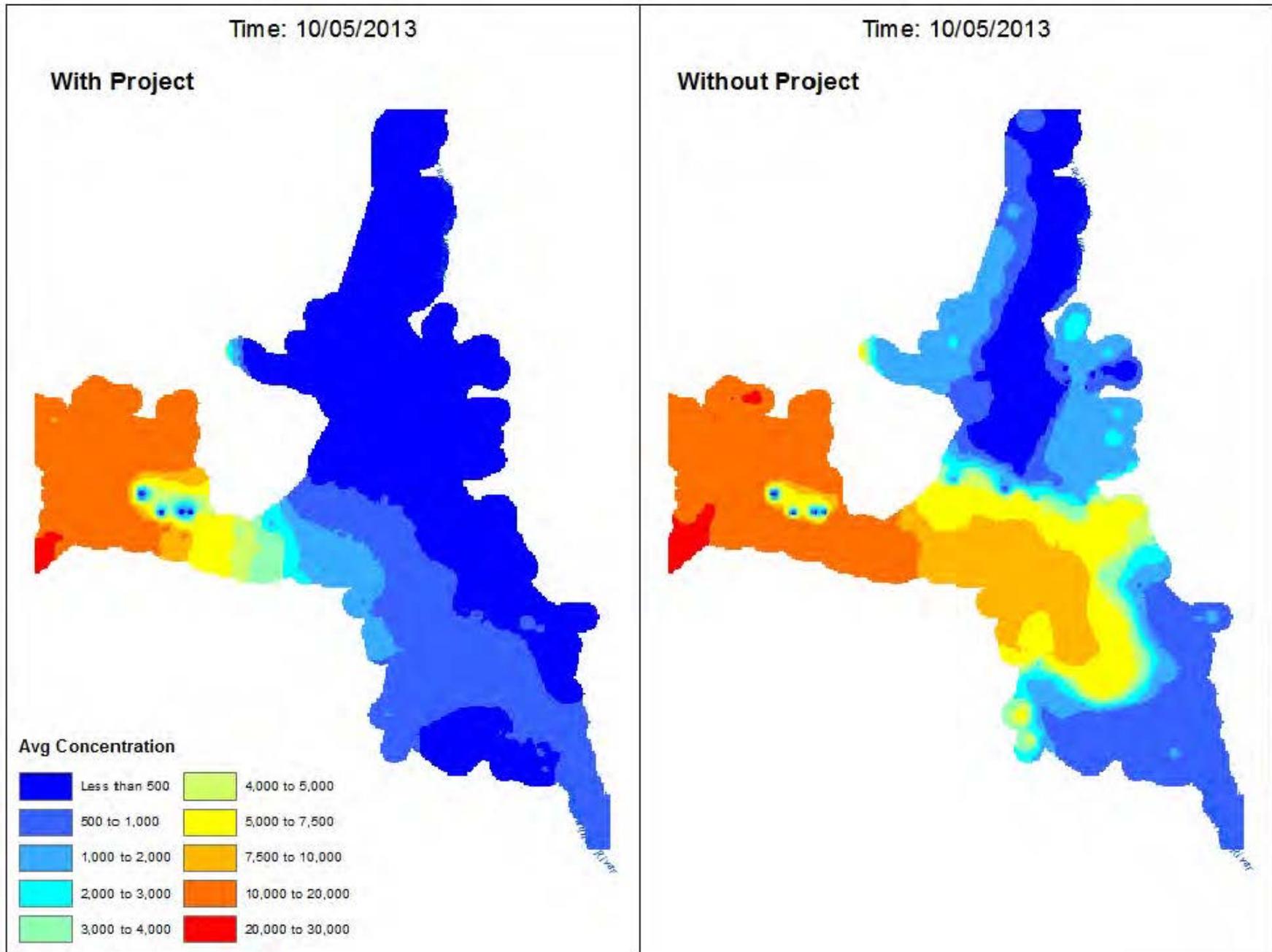


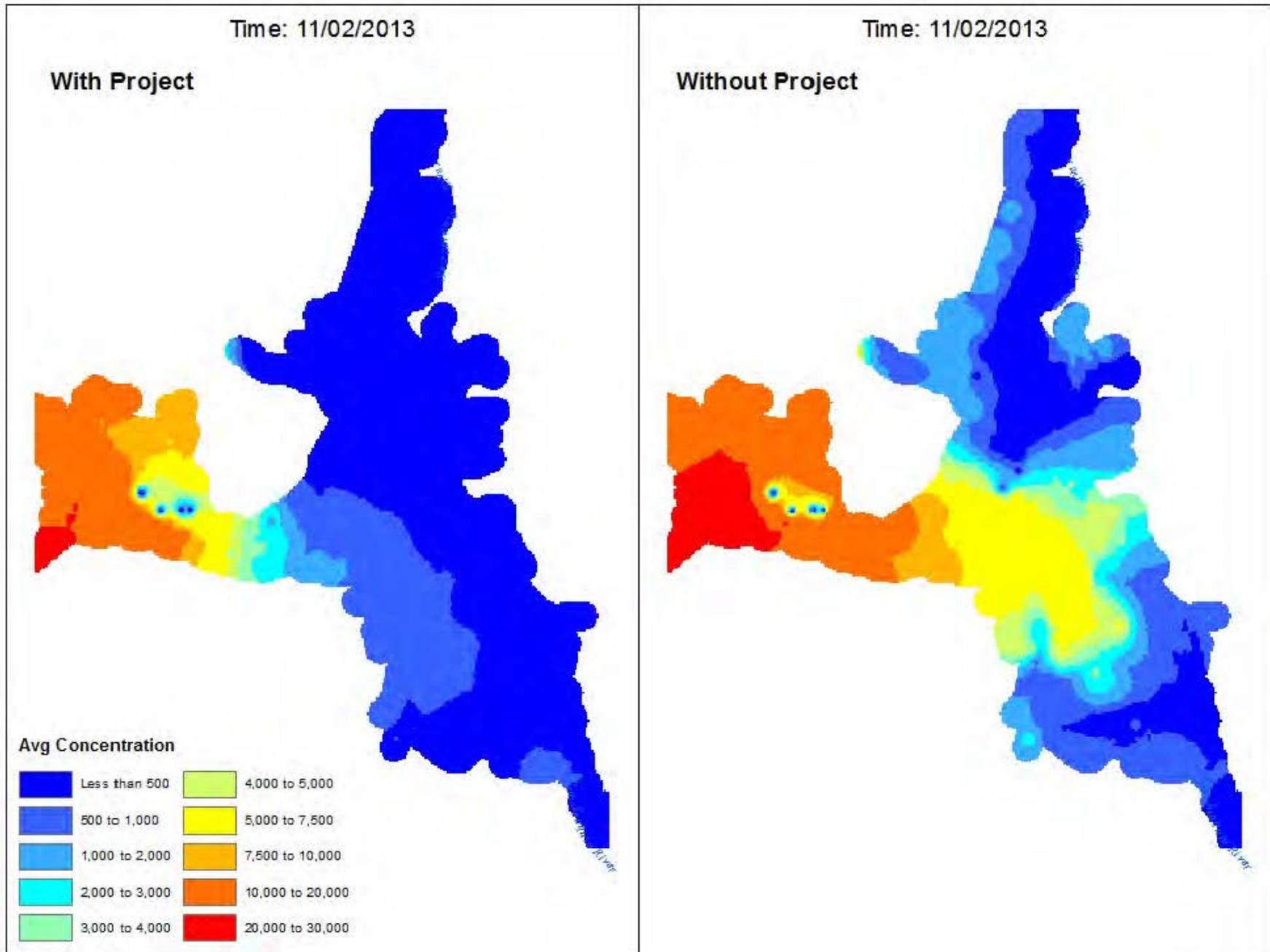


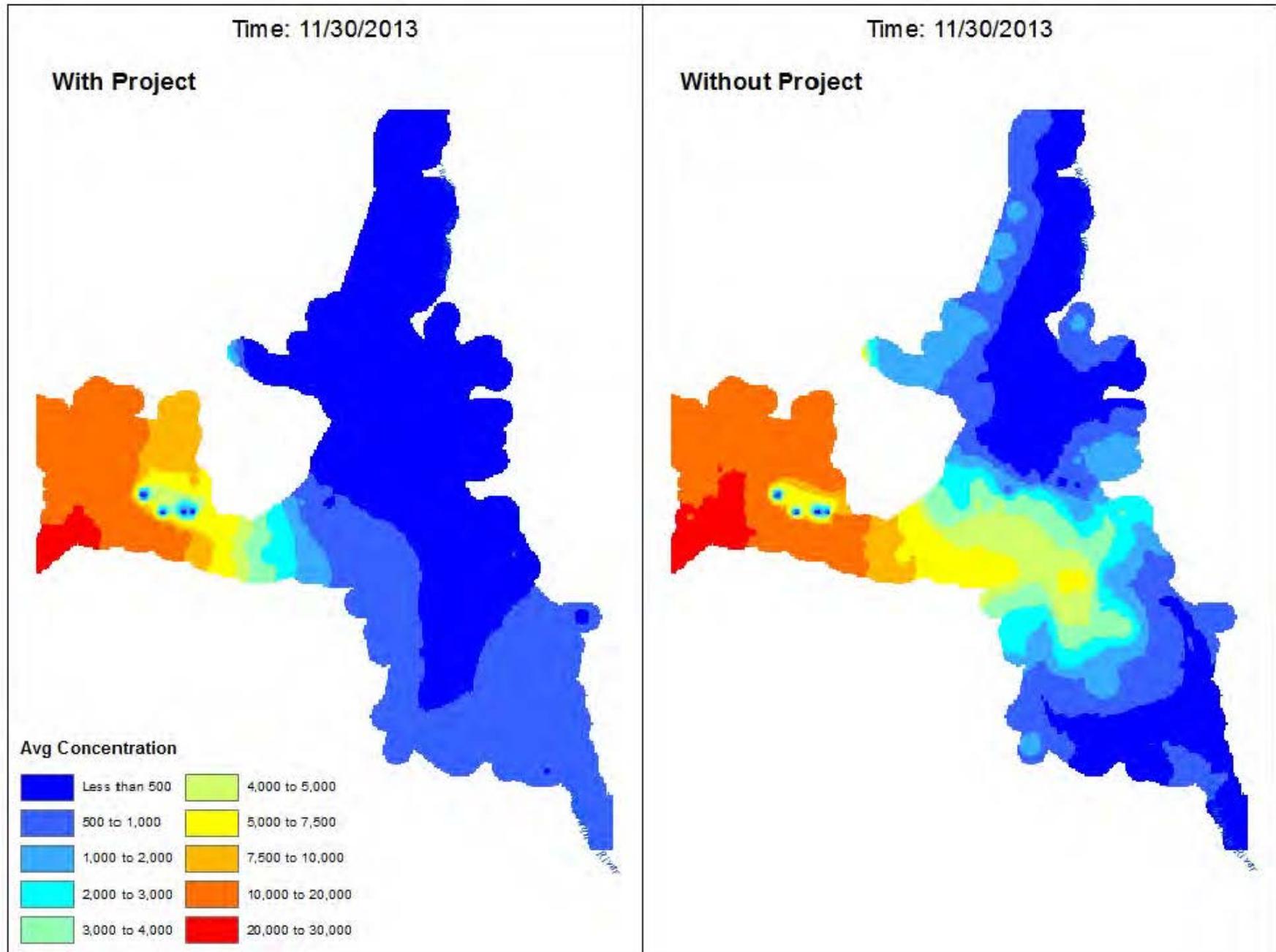


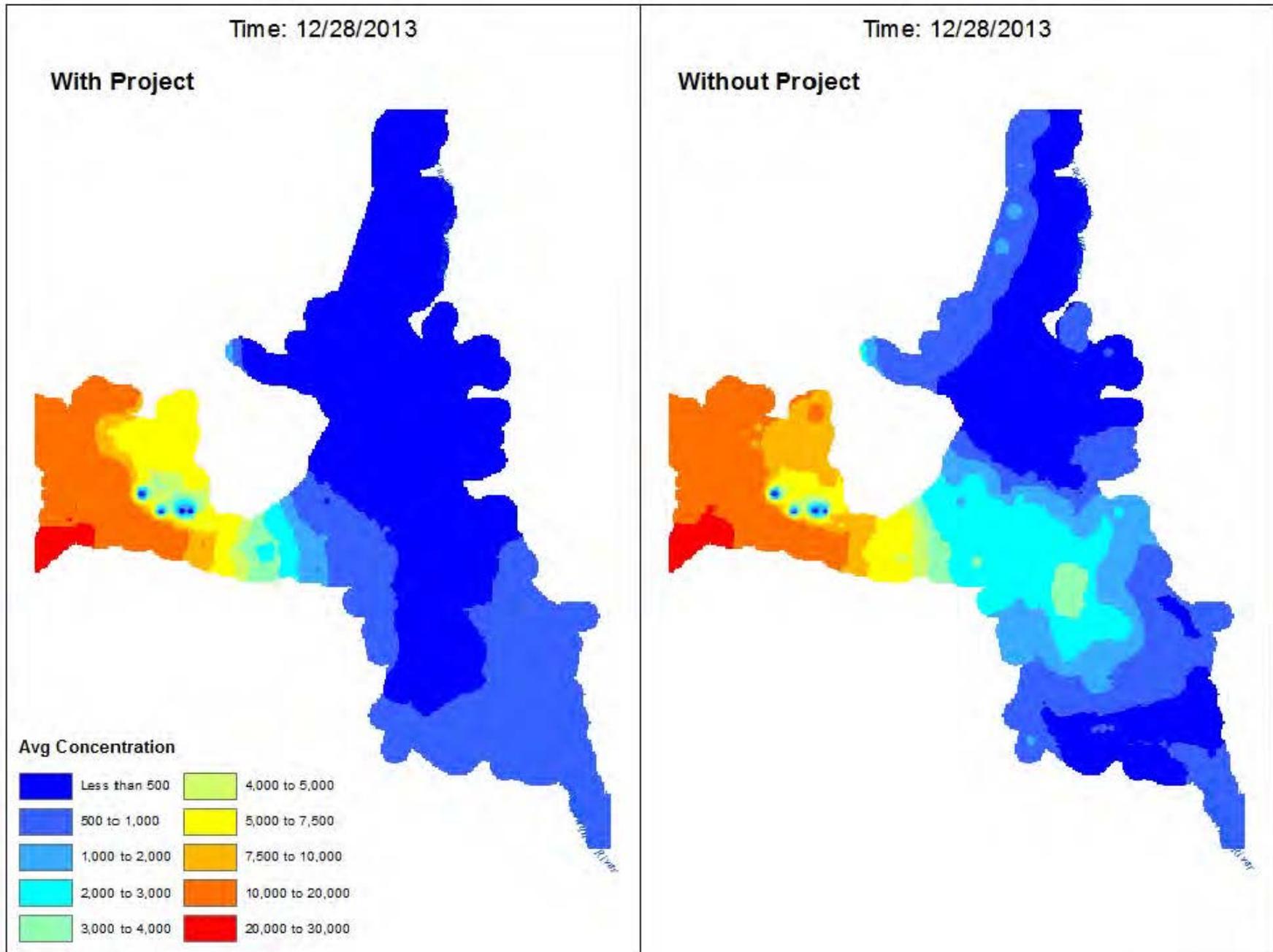


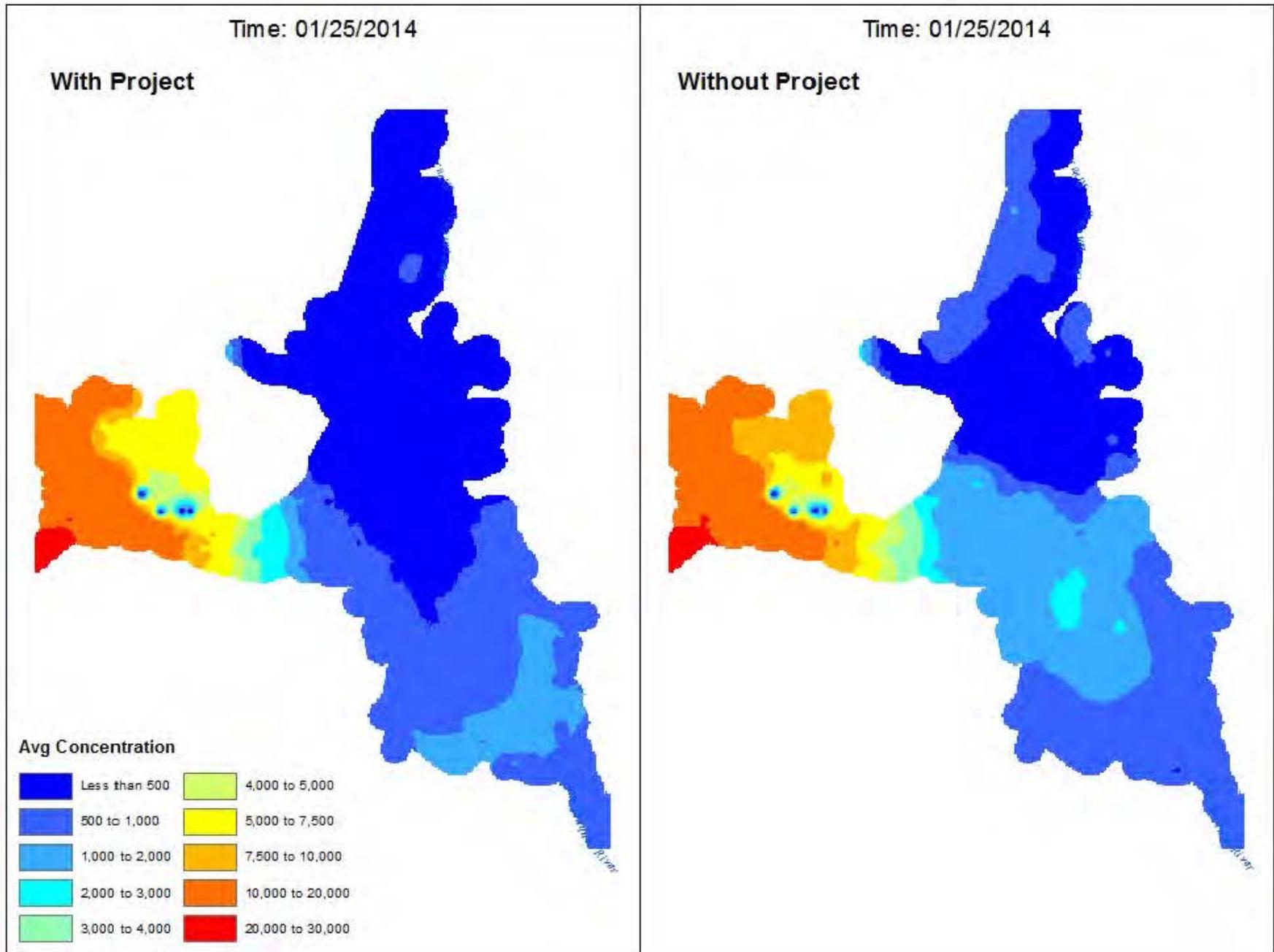


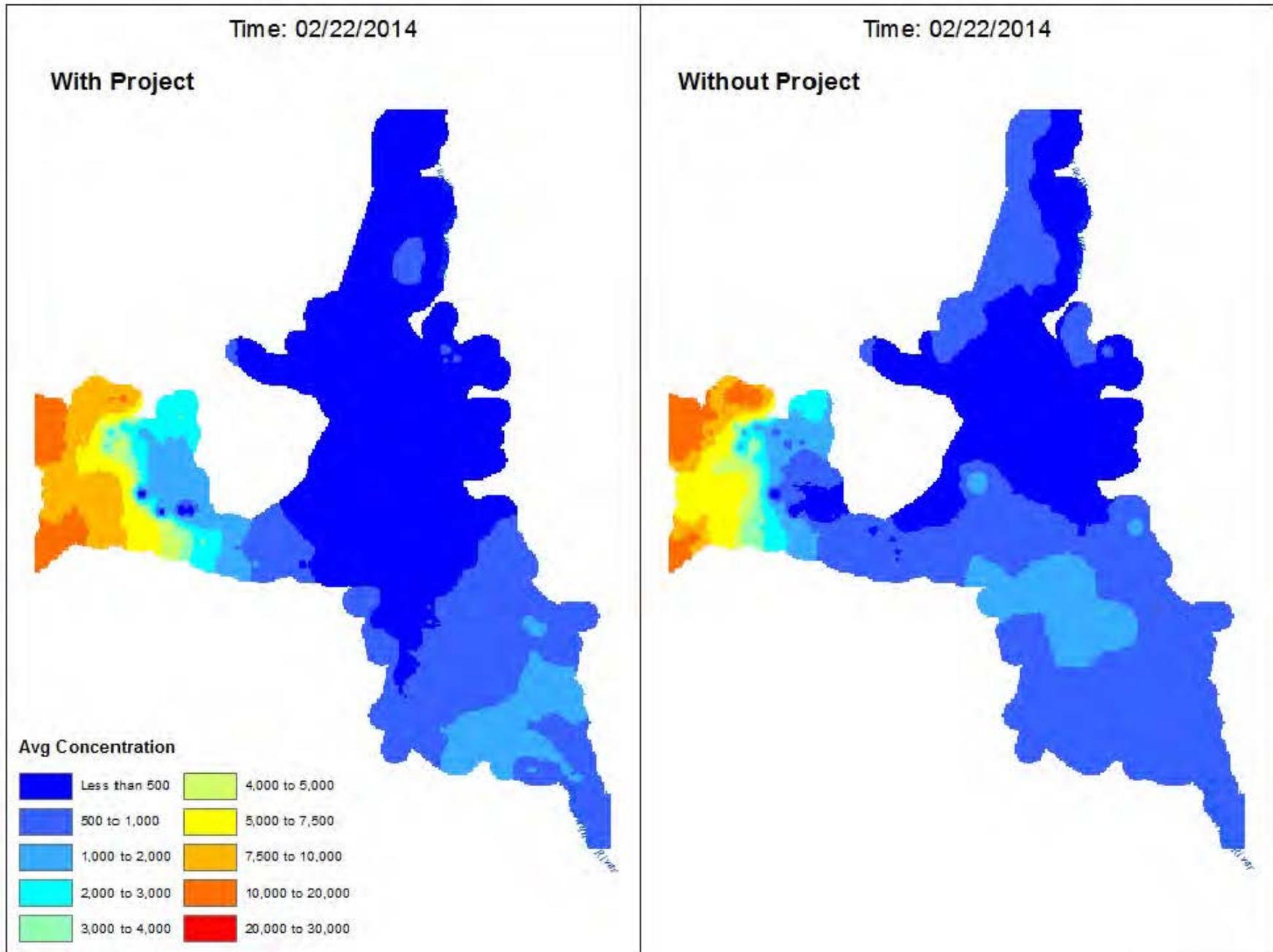


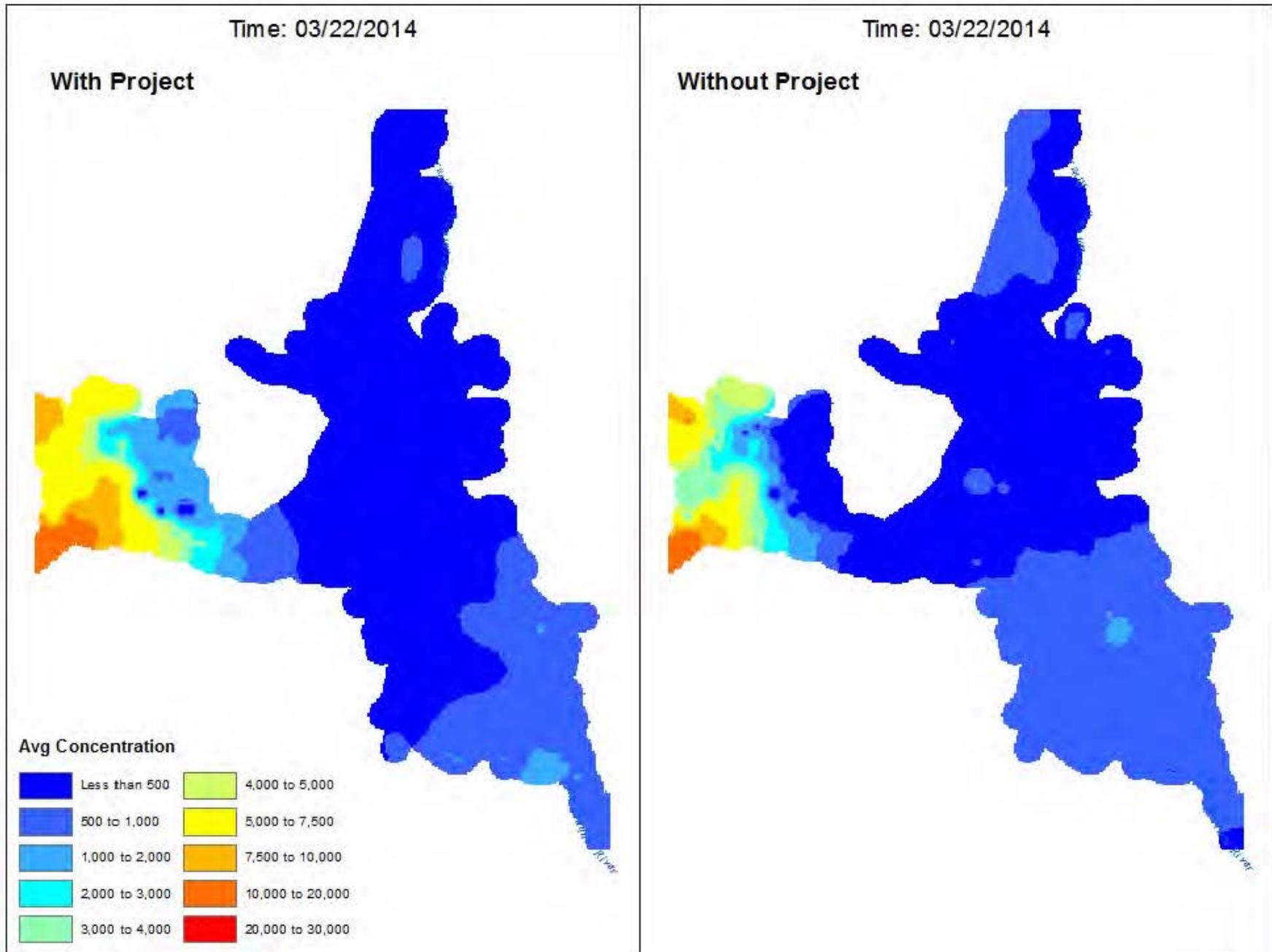


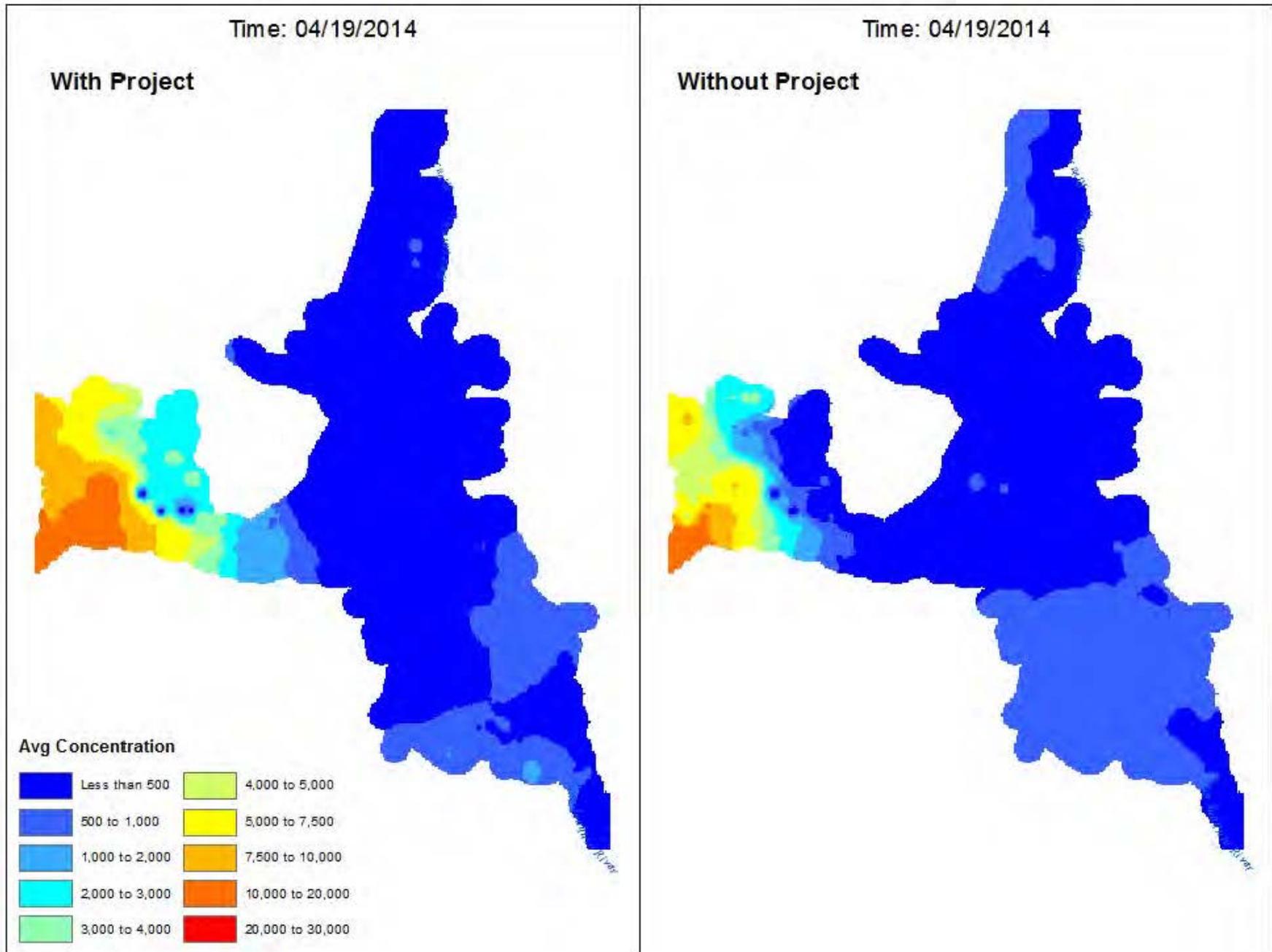


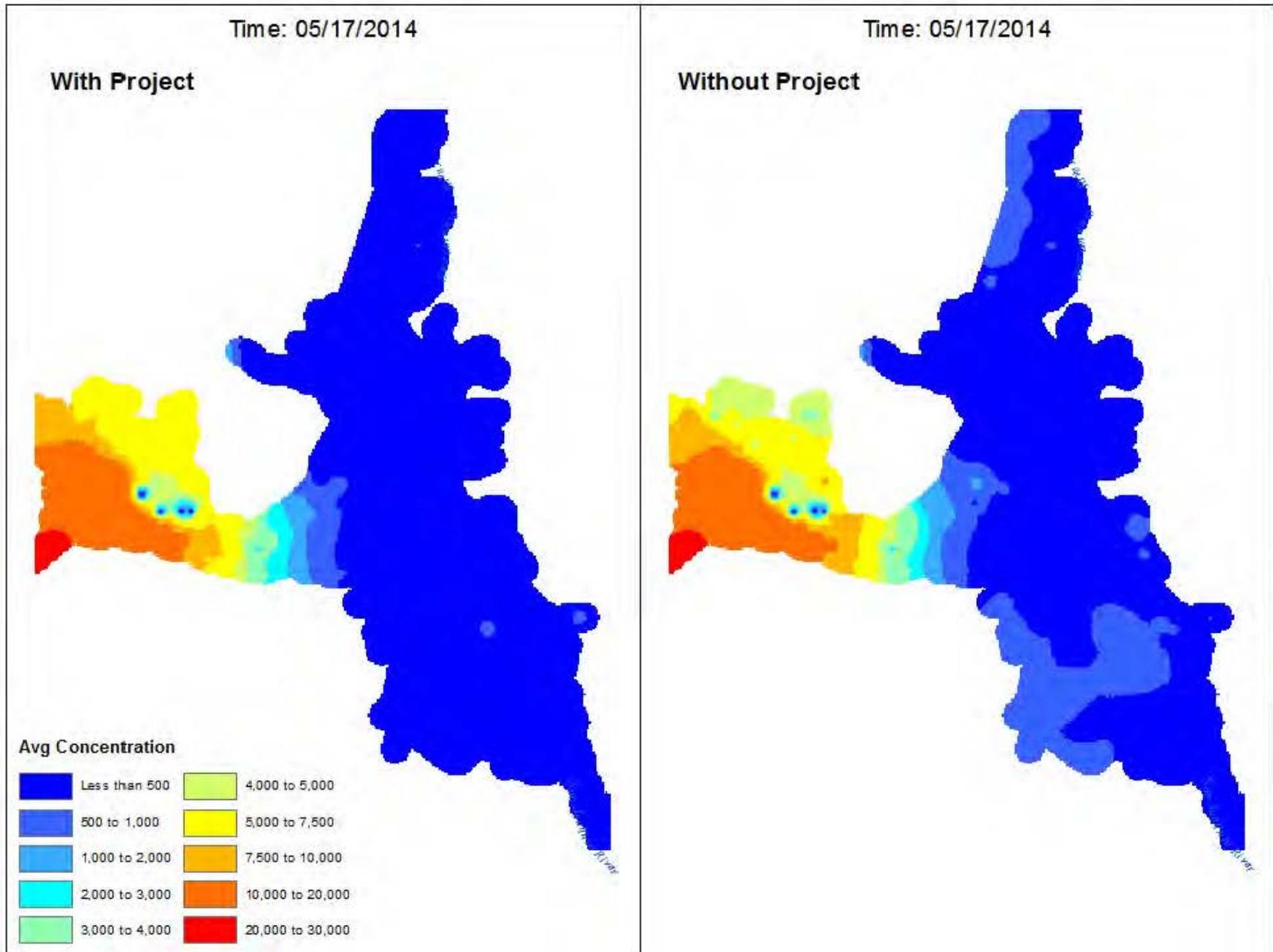


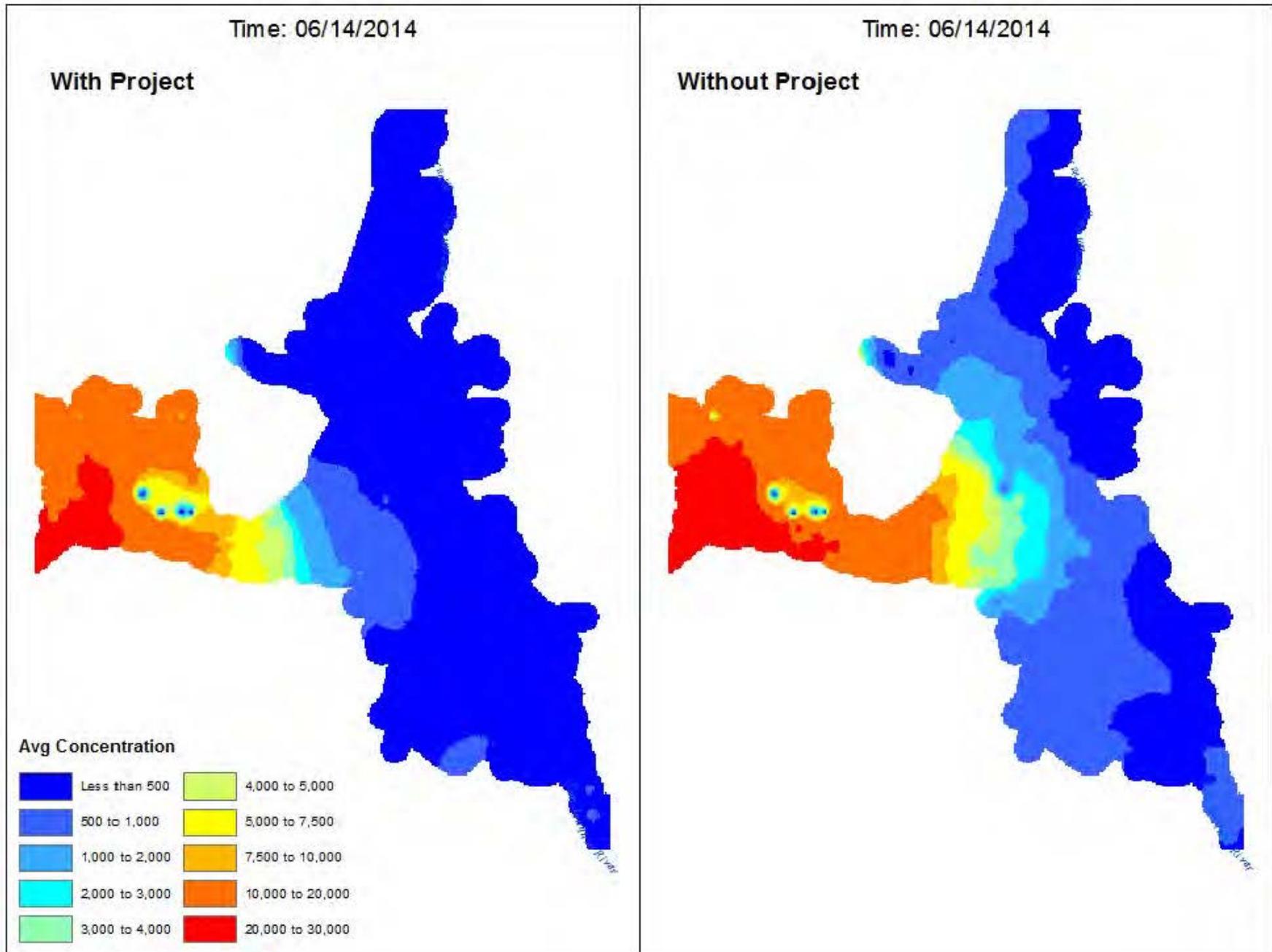


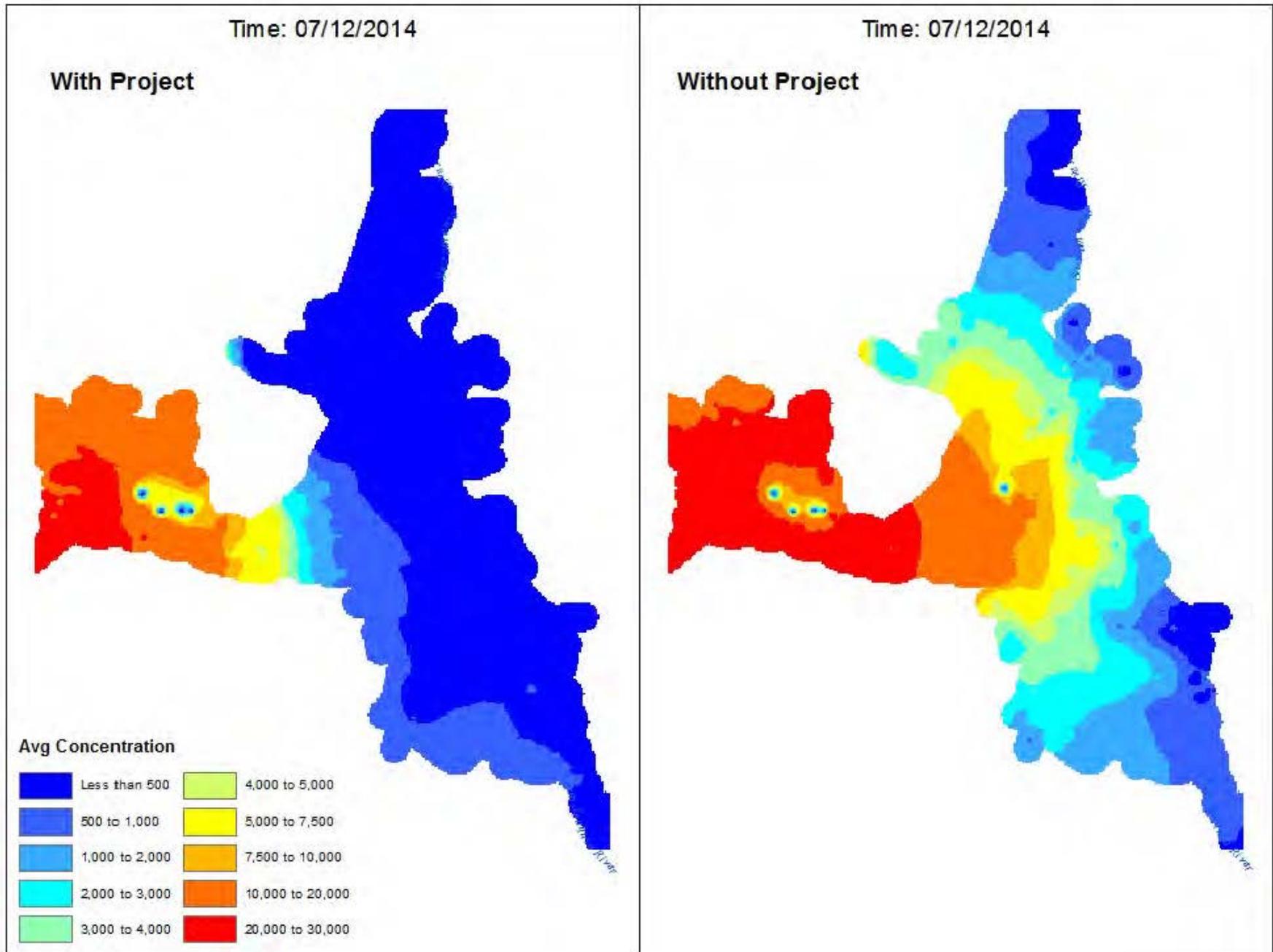


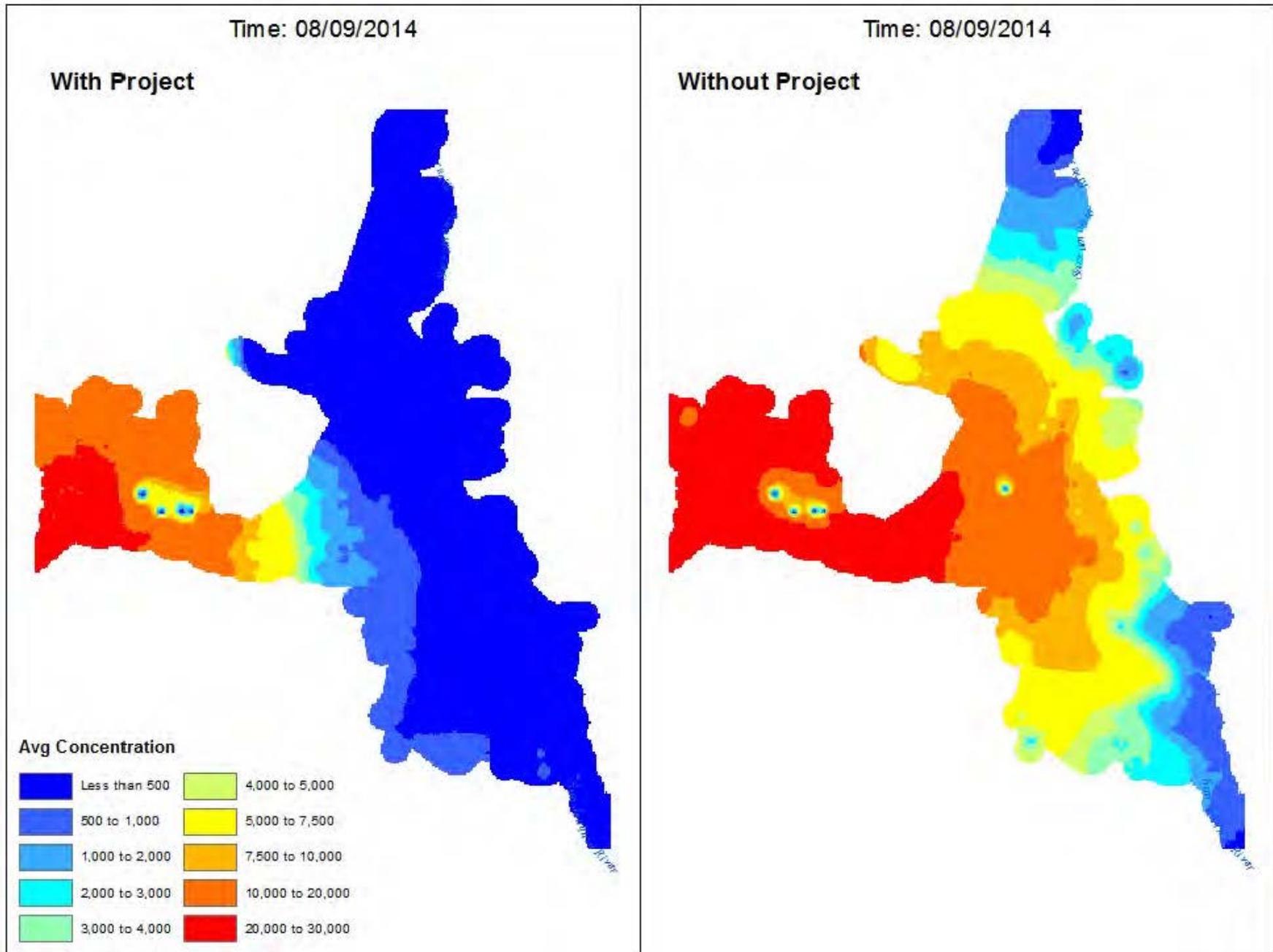


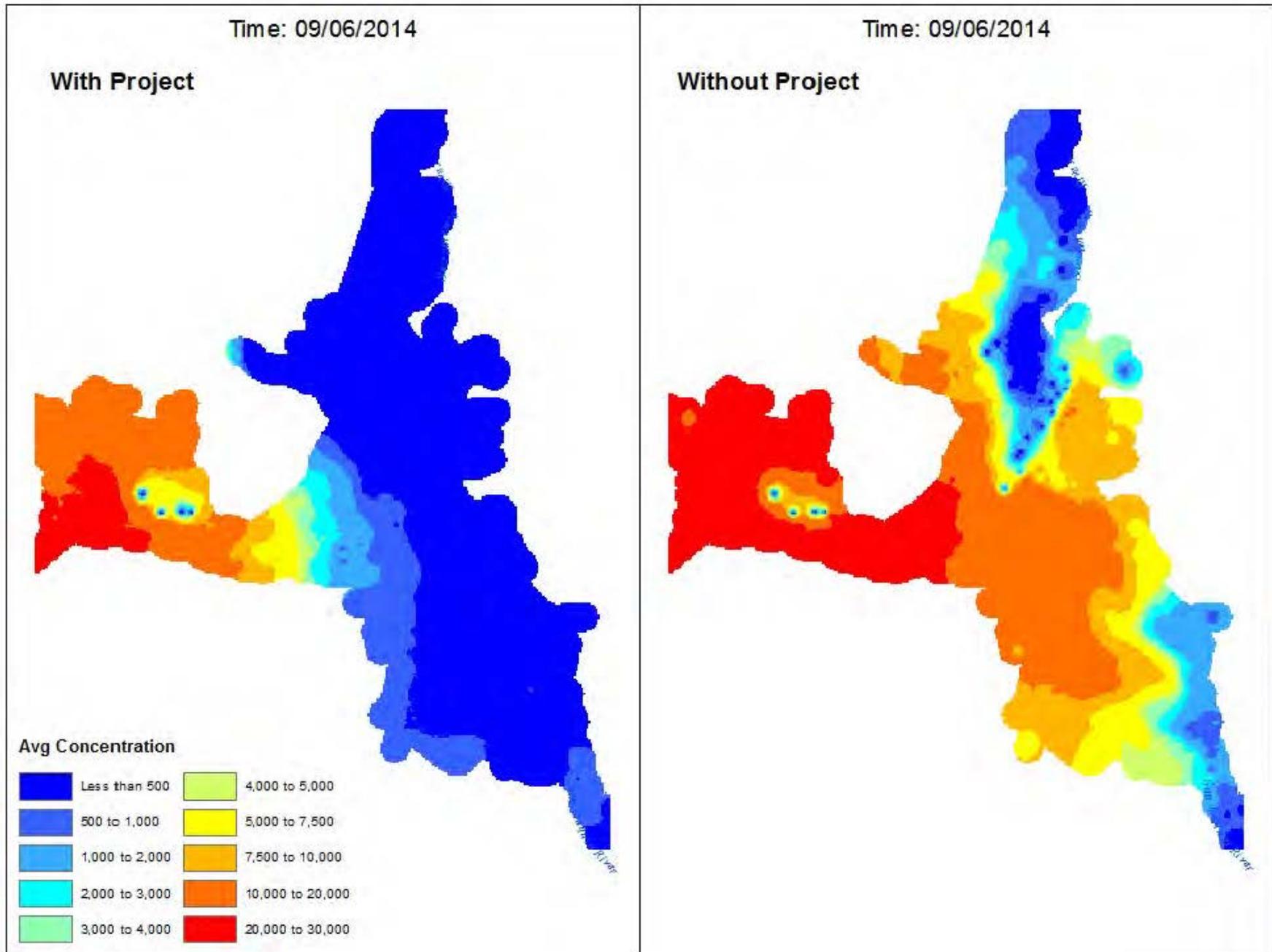


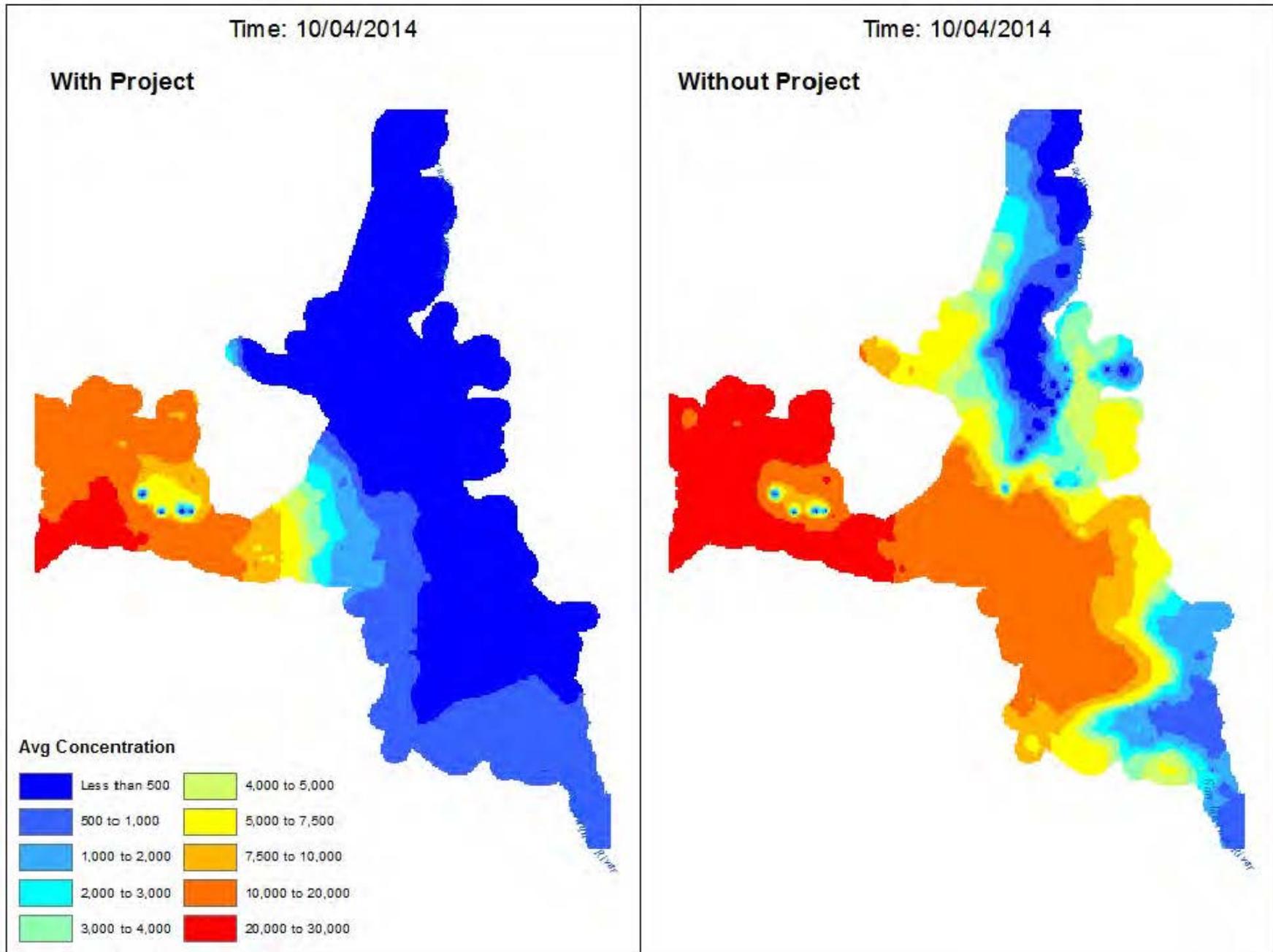


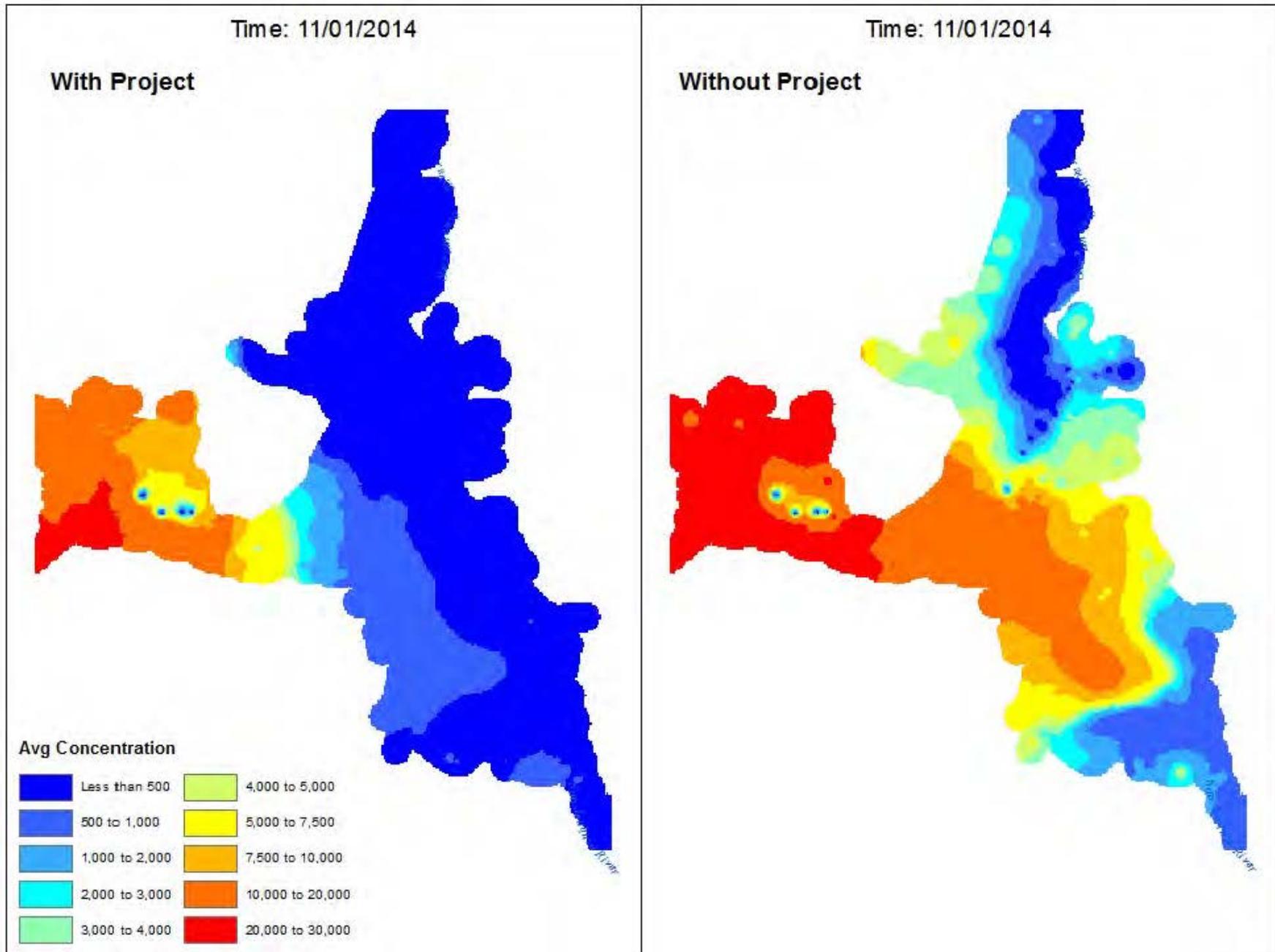


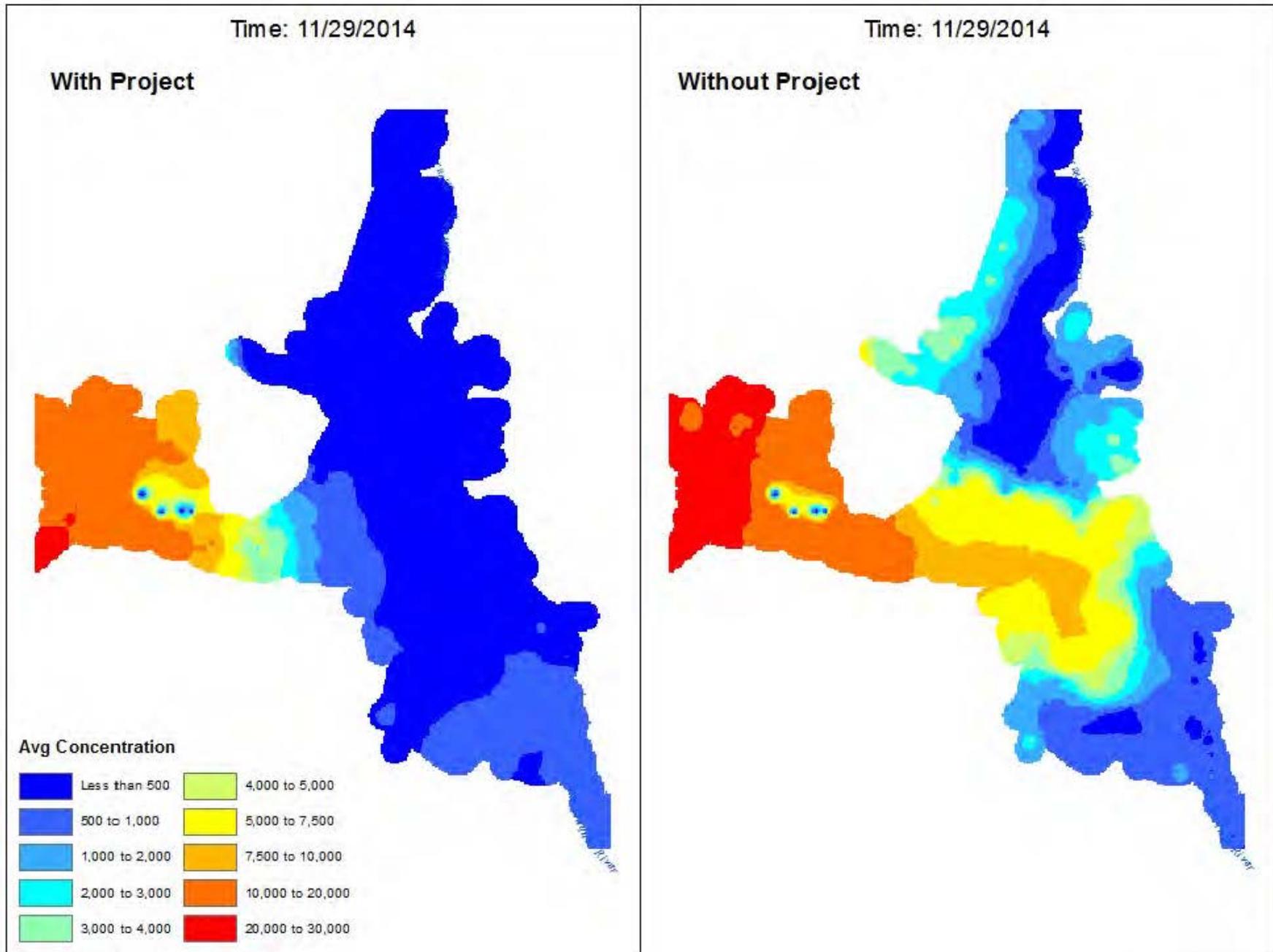


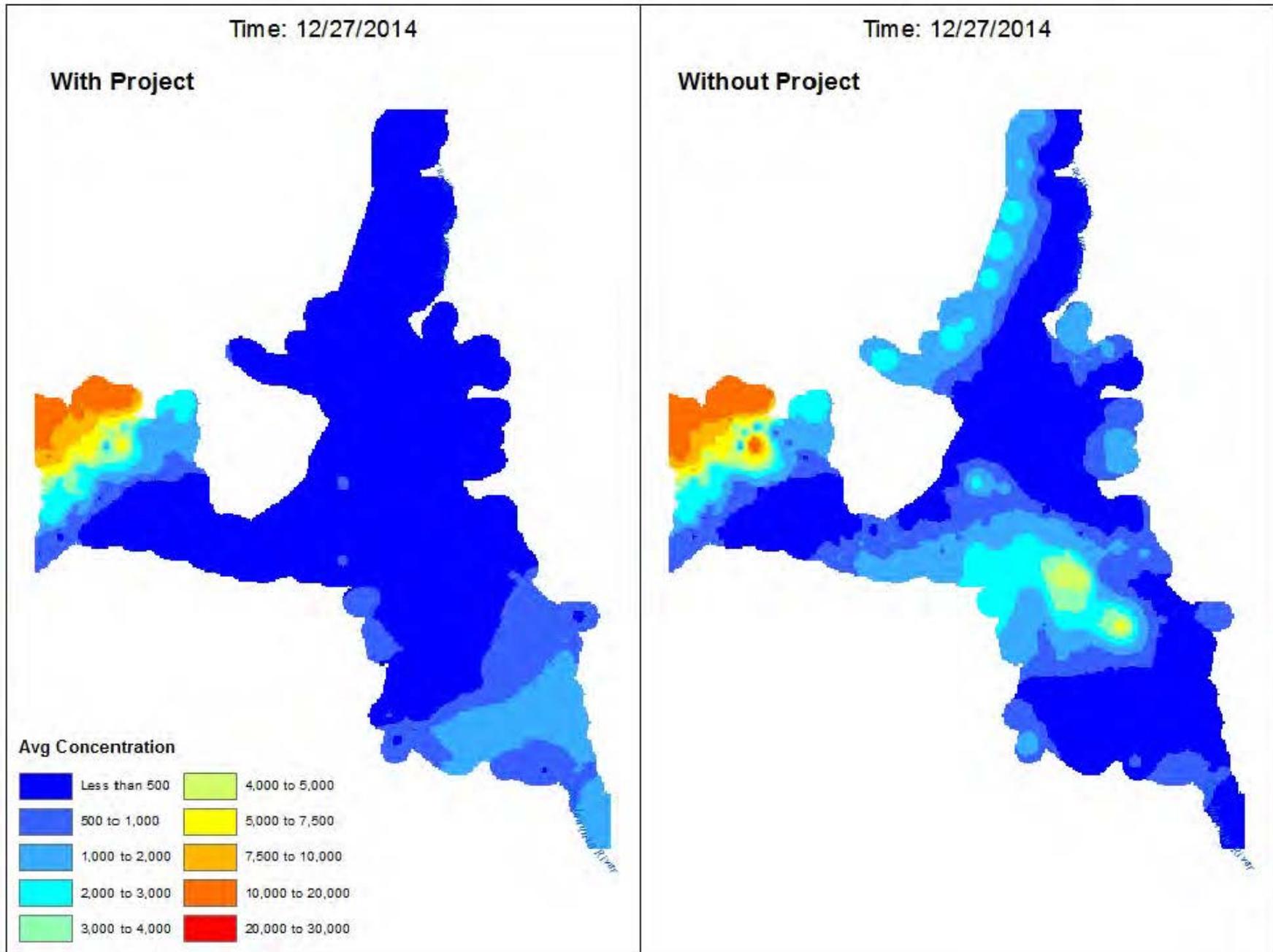


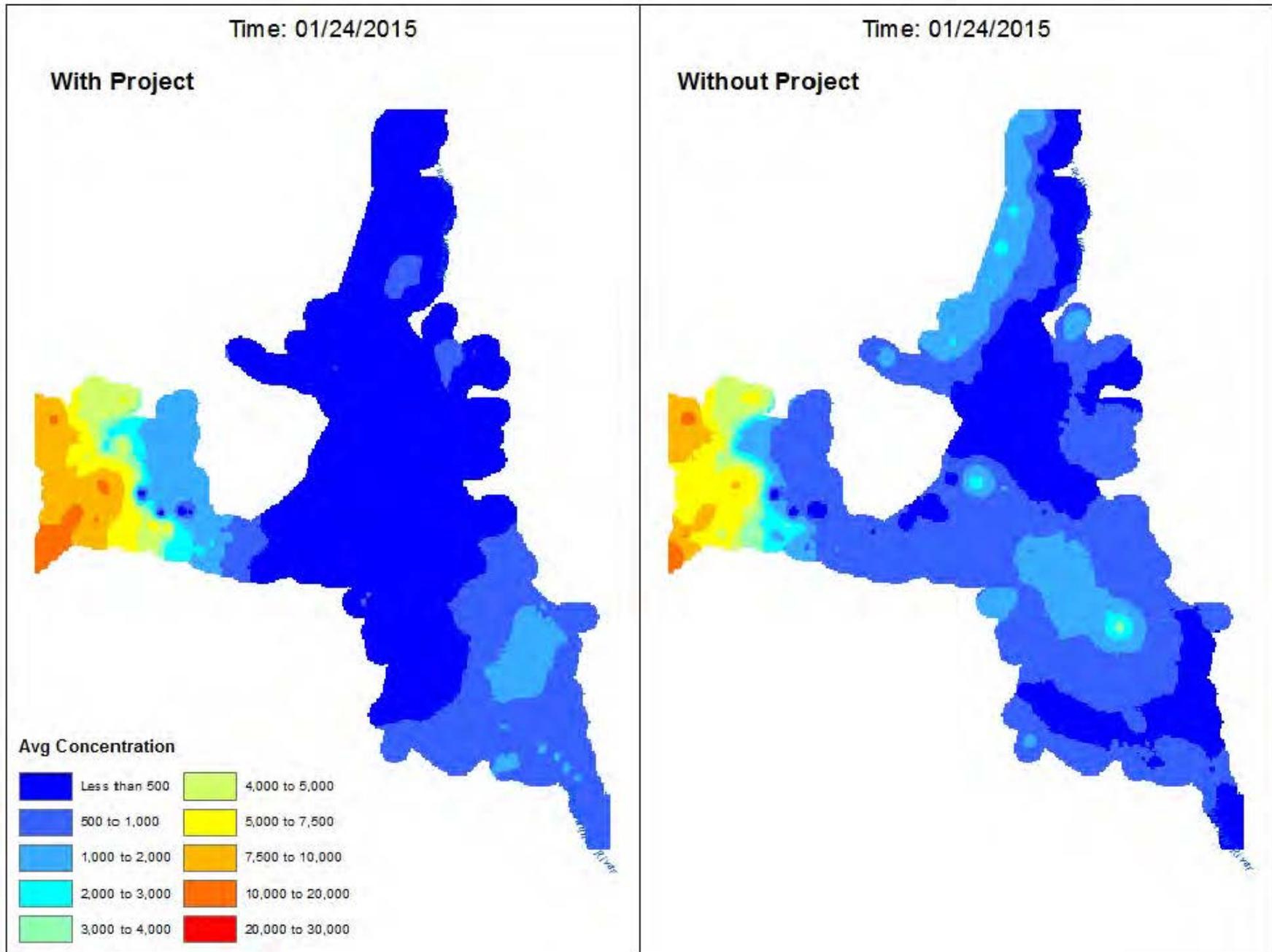


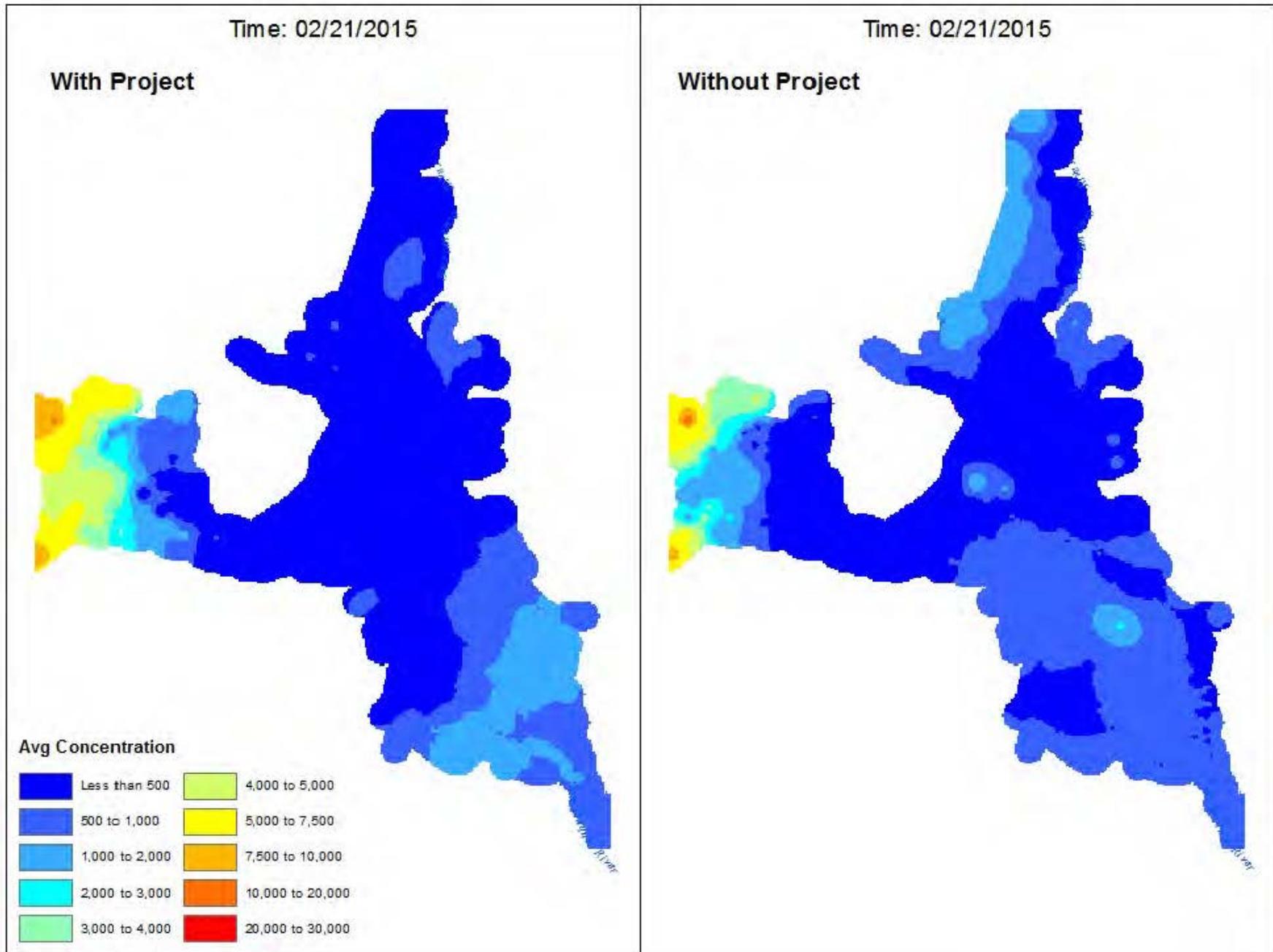


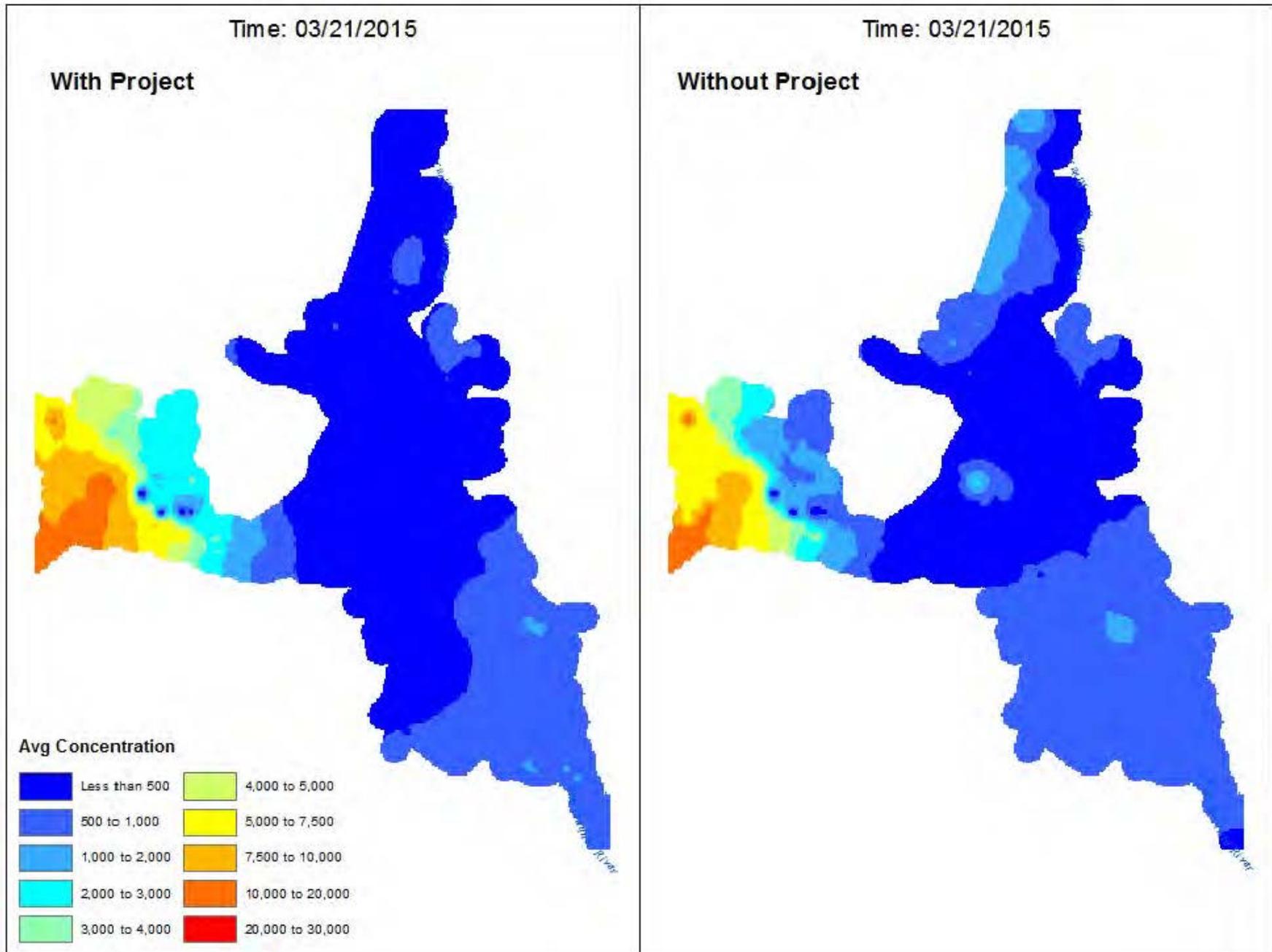


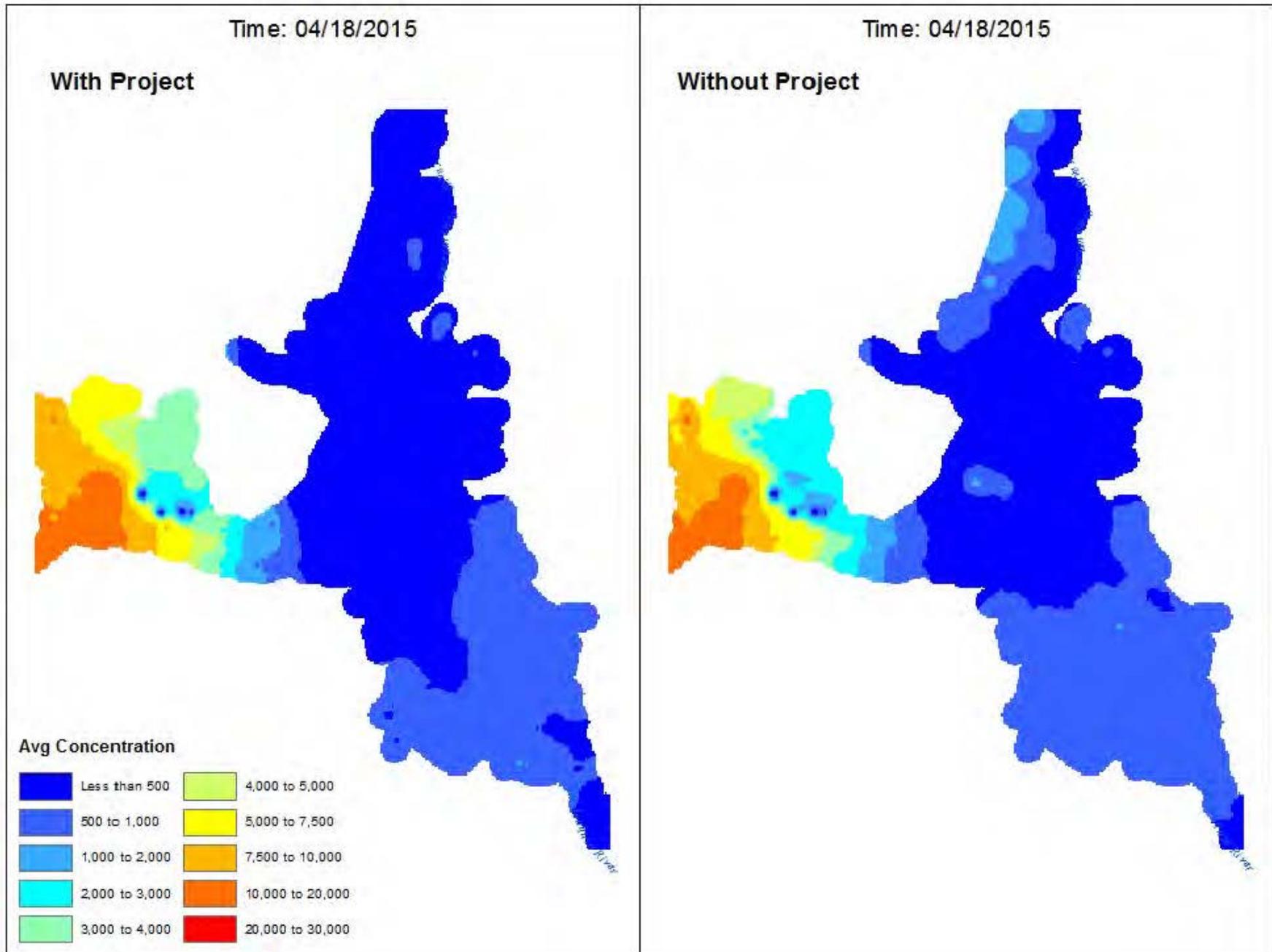


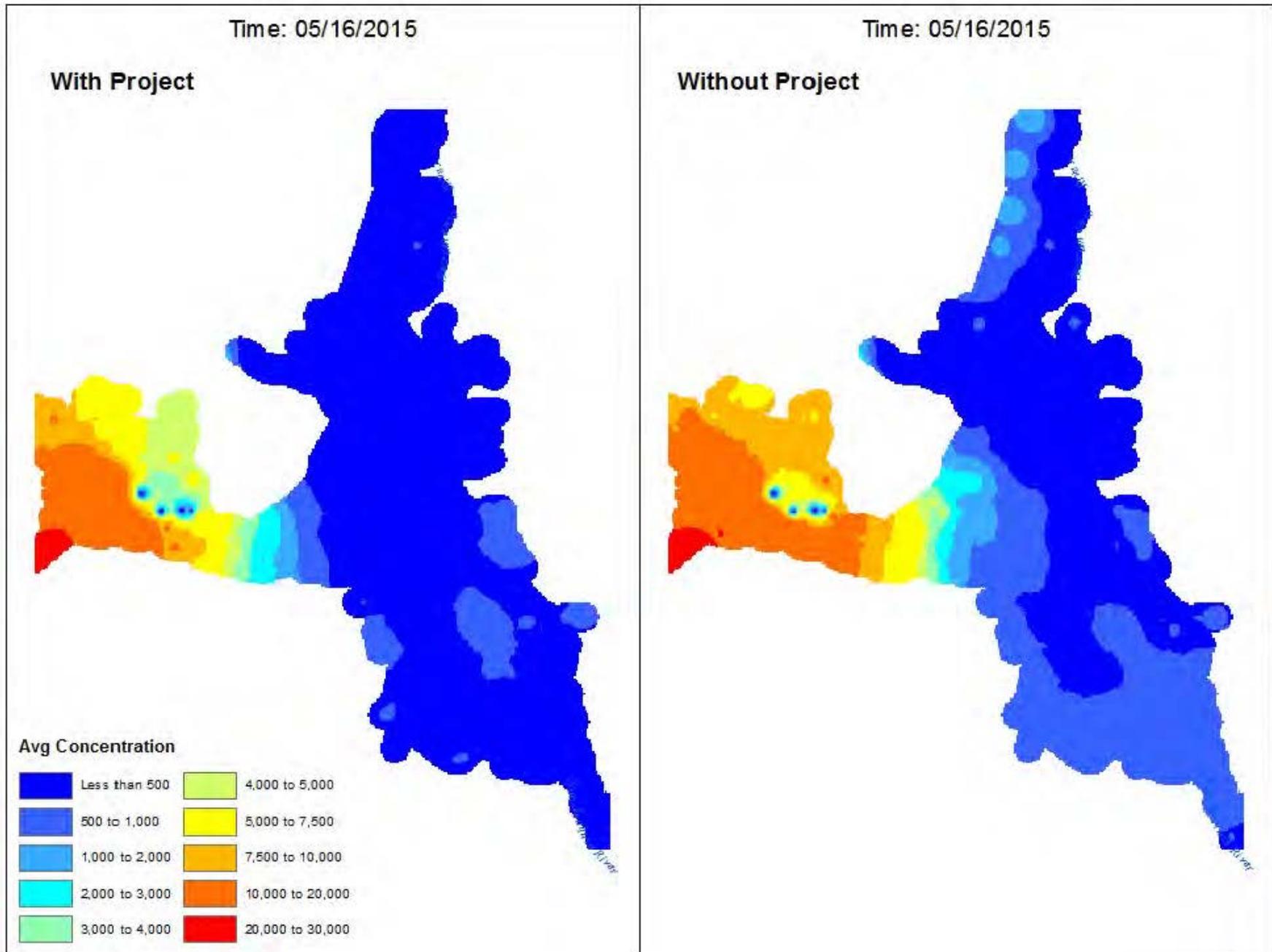


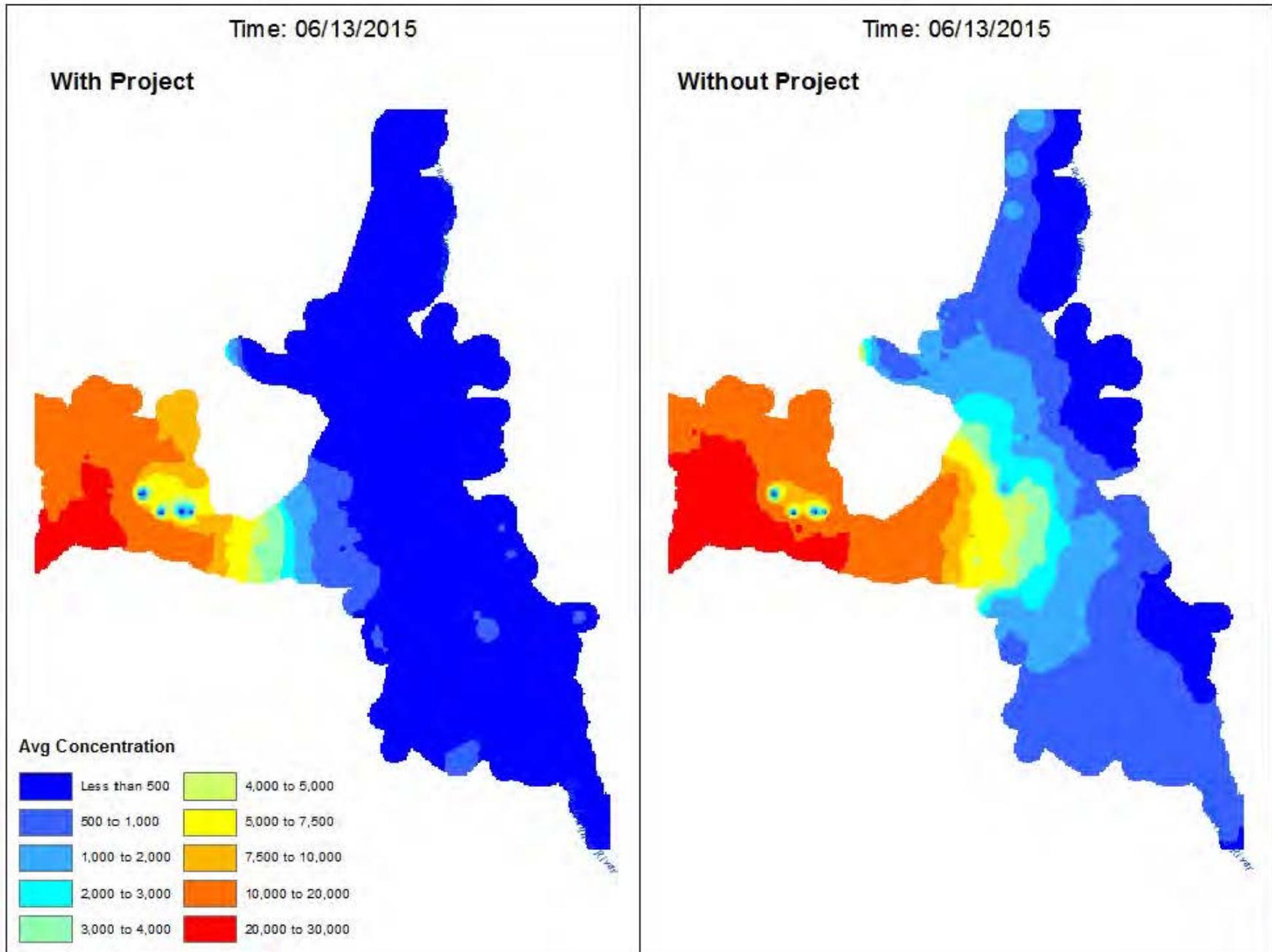


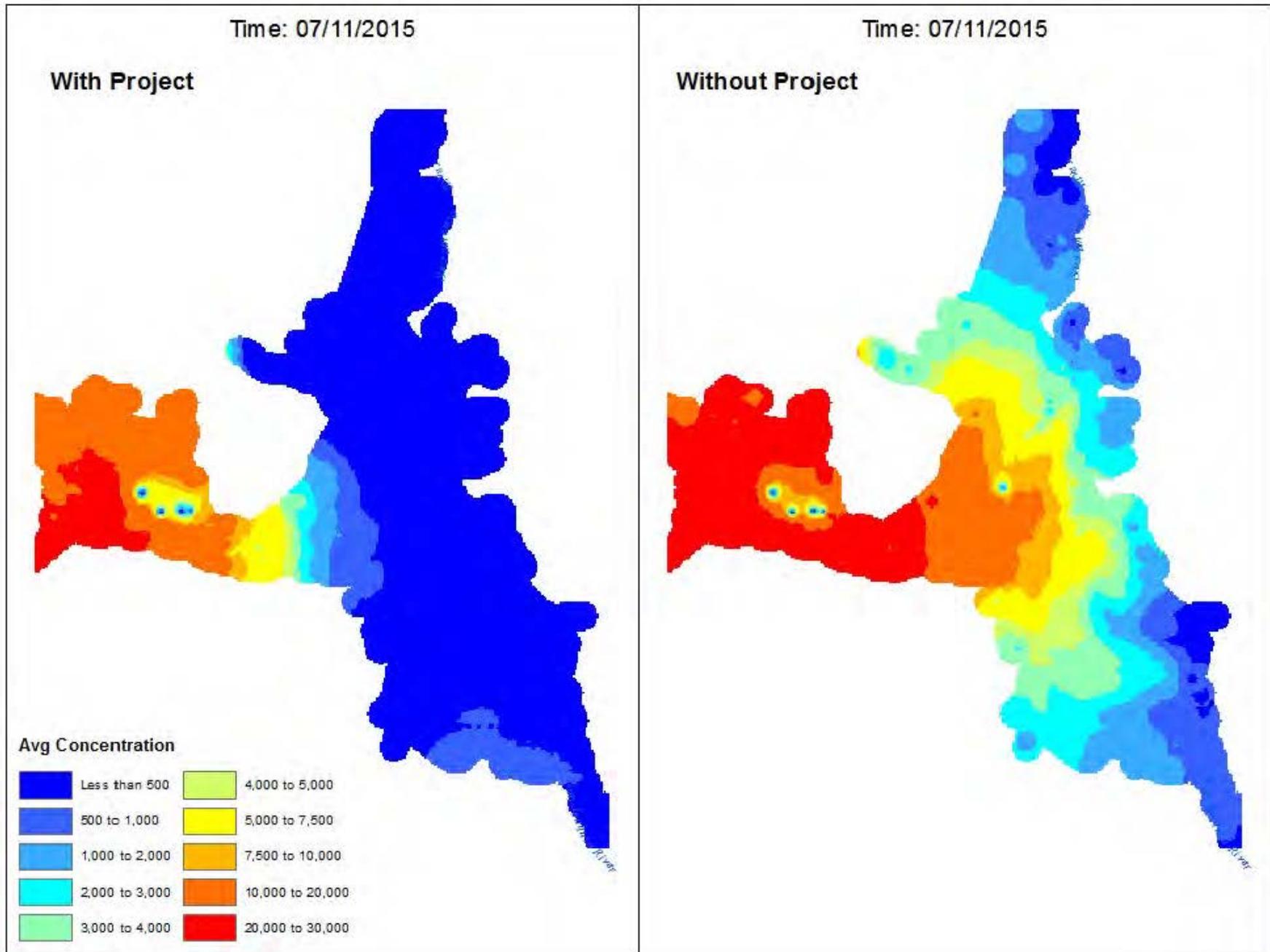


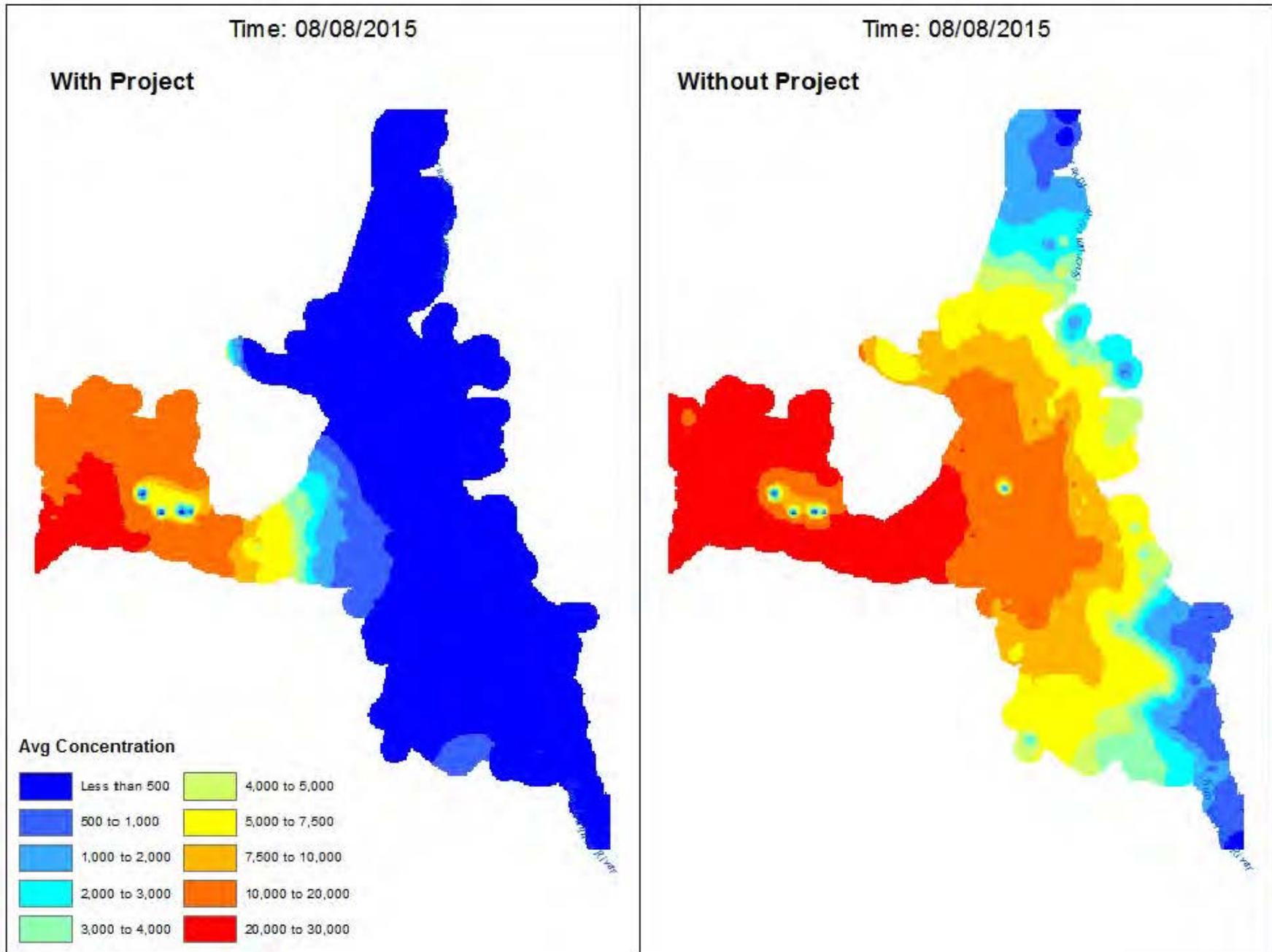


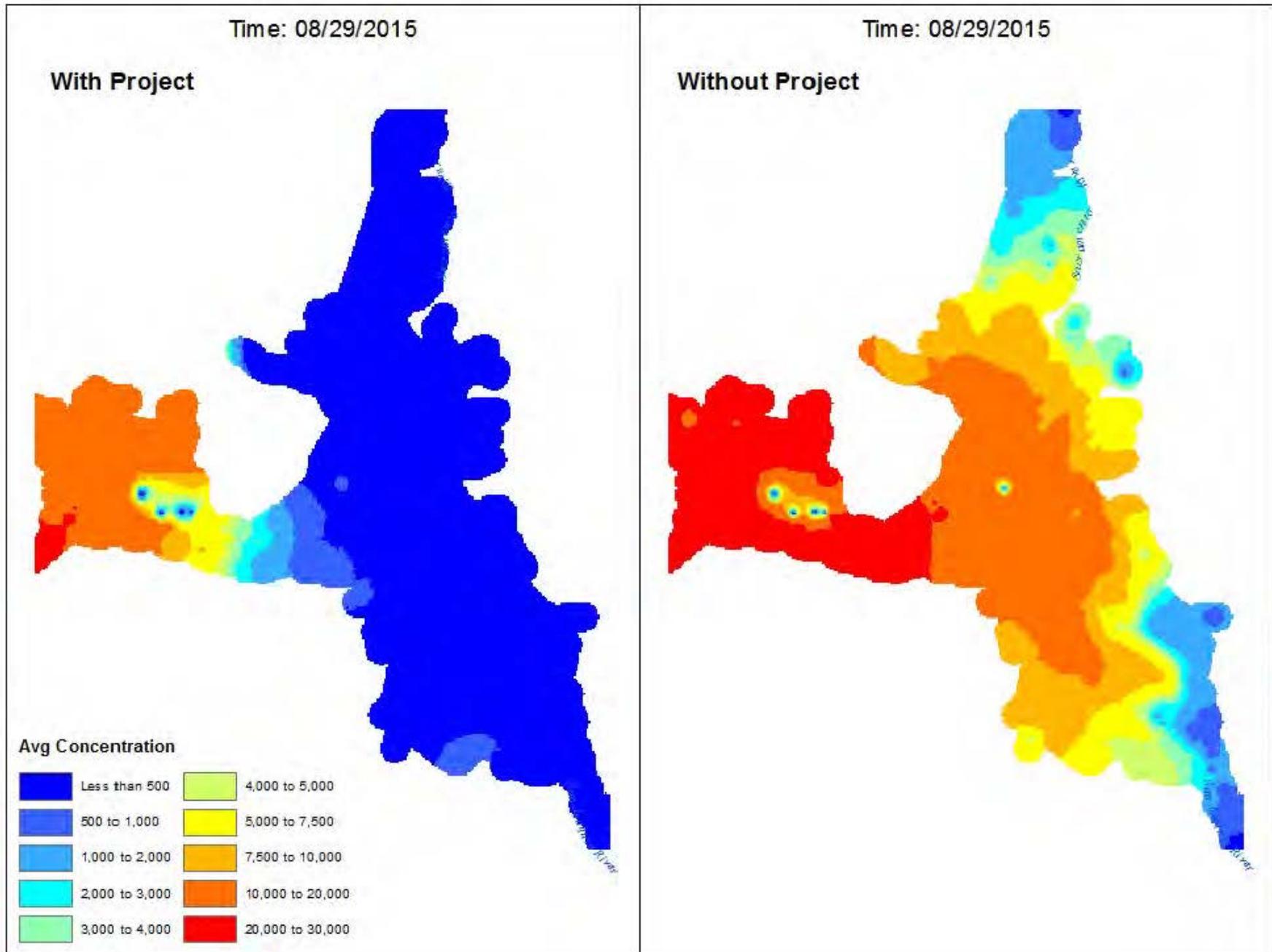












# **EXHIBIT C**

**BEFORE THE STATE WATER RESOURCES CONTROL BOARD OF THE STATE OF CALIFORNIA**

|   |   |
|---|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA (name, address, and telephone no.):<br>Daniel Kelly (SBN 215051)<br>Michael E. Vergara (SBN 137689)<br>Somach Simmons & Dunn<br>500 Capitol Mall, Suite 1000<br>Sacramento, CA 95814 | FOR STATE WATER BOARD USE ONLY  |
| REPRESENTING: <b>Byron-Bethany Irrigation District</b>  |   |
| TITLE OF THE PROCEEDING:<br><p align="center"><b><i>In the Matter of Enforcement Action ENF01951<br/>                 Before the State Water Resources Control Board</i></b></p>  |   |
| <input type="checkbox"/> SUBPOENA<br><input checked="" type="checkbox"/> <b>AMENDED</b><br><input checked="" type="checkbox"/> SUBPOENA DUCES TECUM   | <input type="checkbox"/> RE HEARING<br><input type="checkbox"/> RE DEPOSITION |

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name): **Kyle Winslow**

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this proceeding as follows unless you make special agreement with the person named in item 3:

|   |                      |
|---|----------------------|
| a. Date: <b>March 16, 2016</b>  | Time: <b>10:00am</b> |
| b. Address: <b>500 Capitol Mall, Suite 1000, Sacramento, CA 95814</b> |                      |

2. AND YOU ARE:

- a.  Ordered to appear in person. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)
- b.  Not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. (Wat. Code, § 1080; Gov. Code, § 11450.10(b); Cal. Code Regs., tit. 23, § 649.6(a).)
- c.  Ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)

3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

|                                    |  |
|------------------------------------|--|
| a. Name: <b>Michael E. Vergara</b> | b. Telephone number: <b>916-446-7979</b> |
|------------------------------------|--|

(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

4. WITNESS FEES: You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in item 3. (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 68070 et seq.; Code Civ. Proc., §§ 1986.5, 2065.)

5. If you object to the terms of this subpoena, you may file a motion for a protective order including a motion to quash with the hearing officer assigned to your case. Motions must be made within a reasonable period after receipt of the subpoena, and shall be made with written notice to all parties, with proof of service upon all parties attached. In response to your motion, the hearing officer may make an order quashing the subpoena entirely, modifying it, or directing compliance with it, or may make any order needed to protect the parties or witnesses from unreasonable or oppressive demands, including unreasonable violations of the right to privacy. (Gov. Code, § 11450.30.) (Send motions to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)

**DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW**

(Wat. Code, §§ 1090-1097; Gov. Code, §§ 11450.20(b), 11455.10-11455.20.)

Dated: March 2, 2016



\_\_\_\_\_  
 (signature)  
 Name: **Michael E. Vergara**  
 Title: **Attorney**

Unless issued by an attorney pursuant to Code of Civil Procedure, Section 1985, subdivision (c), the original subpoena is embossed with this seal.

(See reverse for Endorsement on Subpoena, if used, and Proof of Service)

**PROOF OF SERVICE OF SUBPOENA**

(Gov. Code, § 11440.20; Code Civ. Proc., §§ 1987, 1987.5, 1988, 1989, 2015.3, 2015.5.)

1. I served this  subpoena  subpoena duces tecum and supporting affidavit by:

personally delivering a copy to the person served as follows:

|  |  |
|--|--|
| a. Person served (name):   | b. Date of delivery:                         |
| c. Address where served:   | d. Time of delivery:                         |
| e. Witness fees and mileage both ways (check one):<br><br>(1) <input type="checkbox"/> were paid. Amount: \$ _____<br>(2) <input type="checkbox"/> were not paid.<br>(3) <input type="checkbox"/> were tendered to the witness's public entity employer as required by Government Code § 68097.2. The amount tendered was \$ _____ | f. Fees for service.<br><br>Amount: \$ _____ |

- delivering true copies thereof by certified mail, return receipt requested, to the address as shown below.  
 delivering true copies thereof enclosed in a sealed envelope to a messenger for immediate personal delivery to the address as shown below.

Address where served: \_\_\_\_\_

2. I certify that I received this  subpoena  subpoena duces tecum for service on \_\_\_\_\_  
Date

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:  
 Date \_\_\_\_\_ at (place) \_\_\_\_\_, California Signature \_\_\_\_\_

*(For California sheriff, marshal, or constable use only)*  
 I certify that the foregoing is true and correct and that this certificate is executed on:  
 Date \_\_\_\_\_ at (place) \_\_\_\_\_, California Signature \_\_\_\_\_

**NOTE: IF THIS SUBPOENA IS ISSUED IN CONNECTION WITH A HEARING IN AN ADJUDICATIVE PROCEEDING UNDER GOVERNMENT CODE § 11400 ET SEQ., THE ATTORNEY OR PARTY WITHOUT AN ATTORNEY REQUESTING THIS SUBPOENA MUST PROVIDE A COPY OF THE SUBPOENA TO EVERY PARTY IN THE HEARING, AND FILE A COPY WITH THE STATE WATER RESOURCES CONTROL BOARD. THE COPY PROVIDED TO THE STATE WATER RESOURCES CONTROL BOARD MUST BE ACCOMPANIED BY A CERTIFICATE OF SERVICE LISTING THE NAMES AND ADDRESSES OF PARTIES WHO WERE PROVIDED COPIES IN ACCORDANCE WITH GOVERNMENT CODE § 11440.20. (Gov. Code, § 11440.20; Cal. Code Regs., tit. 23, § 648.4(c).) (Send to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)**

**ENDORSEMENT ON SUBPOENA IN A PROCEEDING  
OTHER THAN AN ADJUDICATIVE PROCEEDING**

Pursuant to Water Code §1086 and upon affidavit of \_\_\_\_\_ (copy attached) showing that the testimony of the witness ordered by the subpoena to appear is material and necessary to this proceeding, it is required that said witness attend this proceeding.

Dated: \_\_\_\_\_  
(signature)  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 State Water Resources Control Board

**NOTE: This ENDORSEMENT is required if the subpoena is in connection with a proceeding other than a hearing under Government Code § 11400 and the witness is being compelled to testify at a location that is both out of the witness's county of residence and 150 miles or more from the witness's place of residence. (Wat. Code, § 1086; Cal. Code Regs., tit. 23, § 649.6(c).)**

1 SOMACH SIMMONS & DUNN  
A Professional Corporation  
2 DANIEL KELLY, ESQ. (SBN 215051)  
MICHAEL E. VERGARA, ESQ. (SBN 137689)  
3 THERESA C. BARFIELD, ESQ. (SBN 185568)  
M. ELI UNDERWOOD (SBN 267665)  
4 500 Capitol Mall, Suite 1000  
Sacramento, California 95814-2403  
5 Telephone: (916) 446-7979  
Facsimile: (916) 446-8199

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

8  
9 BEFORE THE  
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

SWRCB Enforcement Action  
ENF01951 and ENF01949

AFFIDAVIT

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

20  
21 I, Michael E. Vergara, declare as follows:

22 1. I am an attorney admitted to practice law in the State of California. I am a  
23 shareholder at the law firm of Somach Simmons & Dunn. I am one of the attorneys of  
24 record for Byron-Bethany Irrigation District (BBID). The following matters are within my  
25 personal knowledge, and if called as a witness, I could competently testify thereto.

26 2. On June 12, 2015, the State Water Resources Control Board's (SWRCB)  
27 sent a curtailment notice to BBID, which purports to curtail a pre-1914 appropriative  
28 water right of BBID and others with 1903 and later priority dates within the entire

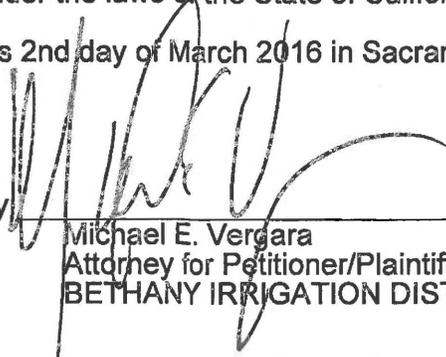
1 Sacramento and San Joaquin River watersheds, including the California Delta  
2 (Curtailment Notice). The Curtailment Notice directed BBID to "immediately stop  
3 diverting" under its pre-1914 water rights, and provided that any further diversions would  
4 subject BBID to "administrative penalties, cease and desist orders, or prosecution in  
5 court."

6 3. In response, BBID filed suit against the SWRCB on June 26, 2015,  
7 challenging the Curtailment Notice, and asserting that the SWRCB exceeded its  
8 jurisdiction, violated due process, and conducted a flawed water availability analysis.  
9 Multiple other water right holders similarly situated to BBID, including the West Side  
10 Irrigation District (WSID), also sued the SWRCB to challenge the Curtailment Notice.

11 4. On July 20, 2015, the SWRCB issued the Administrative Civil Liability  
12 (ACL) Complaint, alleging that BBID unlawfully diverted water from June 13, 2015 to  
13 June 25, 2015.

14 5. Good cause exists for the production of documents described in the  
15 Amended Subpoena Duces Tecum and Addendum, as the requested documents are  
16 narrowly tailored and relevant to BBID's investigation of the claims and defenses at  
17 issue in this proceeding and/or reasonably calculated to lead to the discovery of  
18 admissible evidence.

19 I declare under penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct. Executed this 2nd day of March 2016 in Sacramento,  
21 California.

22  
23 By 

24 Michael E. Vergara  
25 Attorney for Petitioner/Plaintiff BYRON-  
26 BETHANY IRRIGATION DISTRICT  
27  
28

1 SOMACH SIMMONS & DUNN  
A Professional Corporation  
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500 Capitol Mall, Suite 1000  
6 Sacramento, California 95814-2403  
7 Telephone: (916) 446-7979  
8 Facsimile: (916) 446-8199

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  
13 REGARDING UNAUTHORIZED  
14 DIVERSIONS OR THREATENED  
15 UNAUTHORIZED DIVERSIONS OF WATER  
16 FROM OLD RIVER IN SAN JOAQUIN  
17 COUNTY

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

SWRCB Enforcement Action  
ENF01951 and ENF01949

DEPOSITION NOTICE OF KYLE  
WINSLOW AND ADDENDUM TO  
AMENDED SUBPOENA DUCES  
TECUM

California Water Code § 1080;  
California Government Code §  
11450.10; Cal. Code Regs., tit. 23 §  
6496(a); Code of Civil Procedure  
section 2025.510

20 TO all parties and their attorneys of record in this proceeding:

21 PLEASE TAKE NOTICE that Petitioner/ Plaintiff Byron-Bethany Irrigation District  
22 (BBID) will take the oral deposition of Kyle Winslow, as an agent of CH2M, 402 West  
23 Broadway, Suite 1450, San Diego, CA 92101.

24 The deposition will occur on March 16, 2016, commencing at 10:00 AM, and  
25 continuing day-to-day until complete, at 500 Capitol Mall, Suite 1000, Sacramento,  
26 California, in accordance with Code of Civil Procedure section 2020.510, Water Code  
27 section 1080, Government Code section 11450.10, California Code of Regulations, title  
28

1 23, section 649.6, subdivision (a), and as set forth in Section (1)(a-b) of the  
2 accompanying Amended Subpoena Duces Tecum.

3 NOTICE IS GIVEN THAT CH2M may seek the advice of an attorney in any matter  
4 connected with this amended subpoena, and should consult its attorney promptly so that  
5 any problems concerning the production of documents may be resolved within the time  
6 required by this Amended Subpoena. Failure to comply with the commands of this  
7 Amended Subpoena will subject CH2M to the proceedings and penalties provided by  
8 law.

9 NOTICE IS FURTHER GIVEN that BBID intends to record the testimony at the  
10 above-described deposition by the stenographic method, through instant visual display  
11 of testimony.

12 NOTICE IS ALSO GIVEN that the deposition may be videotaped and may be  
13 used at trial in lieu of live testimony under Code of Civil Procedure section 2025.220(5).

14 If the deponent requires an interpreter's services, advise this office in writing no  
15 later than five days before the date set for deposition of both the need for an interpreter  
16 and the language that will be required. If the deposition is continued for lack of an  
17 interpreter because notice is not given, sanctions will be sought against both counsel  
18 and deponent.

19 NOTICE IS FURTHER GIVEN THAT the deponent is required to bring and  
20 produce the following materials at their deposition under Code of Civil Procedure section  
21 2020.510, and Government Code section 11450.10.

#### 22 DEFINITIONS

23 1. The term "PERSON" or "PERSONS" mean associations, corporations,  
24 natural persons, partnerships, trusts, governmental, or other forms of legal entities.

25 2. The terms "CH2M" means CH2M, CH2M Hill, and each PERSON acting or  
26 purporting to act on its behalf, including but not limited to, its former or present officers,  
27 employees, agents, contractors, consultants, and representatives.

28

- 1           3.     The terms "YOU" or "YOUR" mean Kyle Winslow, employed by CH2M.
- 2           4.     The term "CONTROL" means care, control, custody, or possession in the  
3 broadest sense possible under Code of Civil Procedure section 2031.010.
- 4           5.     The term "SWC" refers to the State Water Contractors—a non-profit mutual  
5 benefit corporation organized and existing under the laws of the State of California—and  
6 each of its' 27 public water supply agencies that contract with the State of California for  
7 water from the State Water Project.
- 8           6.     The term "MET" refers to a special district—organized and existing under  
9 the provisions of an Act of the California State Legislature, The Metropolitan Water  
10 District Act (Water Code § 109-1 et seq.), and operating as a consortium of 26 cities and  
11 water districts—and its members.
- 12          7.     The terms "COMMUNICATION" or "COMMUNICATIONS" mean the  
13 expression or exchange of information by speech, writing, gestures, or conduct, the  
14 process of bringing an idea to another's perception as defined in Black's Law Dictionary  
15 (9th Ed. 2009) p. 316. The terms COMMUNICATION and COMMUNICATIONS, include,  
16 but are not limited to, posting or other display on the Internet or World Wide Web.
- 17          8.     The terms "RELATING TO" or "RELATE TO" means to bring into  
18 association with or connection with, to have bearing or concern, to pertain, refer, stand in  
19 some relation, with "to," as defined in Black's Law Dictionary (5th ed. 1979), p. 1158.
- 20          9.     The terms "DOCUMENT" or "DOCUMENTS" are used in the broadest  
21 sense possible under Code of Civil Procedure section 2016.020, subdivision (c), and  
22 mean each writing as defined in Evidence Code section 250, including the original or a  
23 copy of every other means of recording upon any tangible thing any form of oral or  
24 written exchange of words, information, representation, or COMMUNICATION including  
25 electronic mail, facsimile, letters, pictures, sounds, symbols, words, or combinations of  
26 them, regardless of the manner in which the record has been stored, within YOUR  
27 CONTROL.
- 28

1           Every draft or non-identical copy of a DOCUMENT is a separate DOCUMENT.  
2           Specifically included as a separate DOCUMENT is information stored in a computer data  
3           base or drive and capable of being generated in documentary form, whether the  
4           DOCUMENTS are presently in existence or not.

5           Computer media should be accompanied by (a) an identification of the generally  
6           available software needed to open and view the DOCUMENTS or (b) a copy of the  
7           software needed to open and view the DOCUMENT.

8           For each DOCUMENT contained in an audio or video medium, YOU should  
9           provide the tape, disk, or other device from which the audio or video can be played and  
10          the transcript of the DOCUMENT.

11          If any DOCUMENT is withheld under a claim of privilege or other protection,  
12          please provide a privilege log consistent with Code of Civil Procedure section 2031.240  
13          containing the following information with respect to such DOCUMENTS: (a) an  
14          identification of the DOCUMENT with reasonable specificity and particularity, including  
15          its nature (memorandum, letter, etc.), title and date; (b) the parties, individuals, and  
16          entities that the COMMUNICATION is between or references; (c) the exact nature of the  
17          privilege asserted; and (d) all of the facts upon which your claim of privilege is based or  
18          which supports said claim of privilege.

19          10.    The terms "BYRON-BETHANY IRRIGATION DISTRICT" and "BBID" mean  
20          the Byron-Bethany Irrigation District, an Irrigation District formed pursuant to Division 11  
21          of the California Water Code, and anyone working on its behalf, including but not limited  
22          to, its officers, employees, agents, contractors, consultants, and representatives.

23          11.    The term "DRAFT TECHNICAL MEMORANDUM" means the Draft  
24          Technical Memorandum, 2012–2015 Delta Salinity Conditions under a Without Project  
25          Scenario, Prepared For: Terry Erlewine/SWC, Prepared By: Tyler Hatch/CH2M HILL /  
26          Chandra Chilmakuri/CH2M HILL, Dated: June 5, 2015.

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1 identifying the category in the request for DOCUMENTS for which that person is the  
2 most knowledgeable.

3 3. Unless otherwise indicated, for any DOCUMENT stored in a computer,  
4 including all electronic mail messages, YOU should produce the DOCUMENT in the  
5 original electronic file format in which it was created (e.g., Microsoft email should be  
6 provided in its original format, which would have the .pst suffix, not in a tif file;  
7 spreadsheets should be in their original file form, such as an Excel file and word-  
8 processed DOCUMENTS should be in their original file format, such as a Word or  
9 WordPerfect file), together with instructions and all other materials necessary to use or  
10 interpret the data. Electronic mail messages should be provided, even if only available  
11 on backup or archive tapes or disks. Computer media should be accompanied by (a) an  
12 identification of the generally available software needed to open and view the  
13 DOCUMENTS or (b) a copy of the software needed to open and view the DOCUMENT.  
14 Note, however, that if a print- out from a computer DOCUMENT is a non-identical copy  
15 of the electronic form in which it was created (non-identical by way of example but not  
16 limitation, because it has a signature, handwritten notation, or other mark or attachment  
17 not included in the computer DOCUMENT), both the electronic form in which the  
18 DOCUMENT was created and the original print-out should be produced.

19 4. For all DOCUMENTS for which YOU do not produce in the original, as  
20 defined in Evidence Code section 255, YOU may produce copies (black and white  
21 copies if the original was in black and white, color copies if the original was in color, and,  
22 if the original was in electronic format, in the same electronic medium as the original) in  
23 lieu of original DOCUMENTS provided that such copies are accompanied by an affidavit  
24 of an officer of CH2M stating that the copies of all types DOCUMENTS are true, correct,  
25 and complete copies of the original DOCUMENTS. If there is in YOUR possession,  
26 custody or control no original, but only a copy or photographic record thereof, then YOU  
27 should produce a true and legible copy of each such DOCUMENT. The accompanying  
28

1 affidavit should state that the DOCUMENT is only a copy or photographic record and not  
2 the original.

3 5. If a DOCUMENT is responsive to this Amended Deposition Notice and is in  
4 YOUR control, but is not in YOUR possession or custody, in addition to obtaining and  
5 producing the DOCUMENT, identify the person who had possession or custody of the  
6 DOCUMENT, their telephone number and current business and residence addresses.

7 6. If any DOCUMENT subpoenaed is no longer in YOUR possession,  
8 custody, control, or care, YOU should provide a written statement identifying the  
9 DOCUMENT with specificity, stating whether it is lost, missing, has been destroyed, has  
10 been transferred to others, or has otherwise been disposed of. The written statement  
11 should also identify the person who disposed of the DOCUMENT, explain the  
12 circumstances and authorization for the disposition and the approximate date of the  
13 disposition of the DOCUMENT. If there are no DOCUMENTS responsive to a document  
14 request, as to each such document request, YOU should include a statement to that  
15 effect in the accompanying declaration or affidavit.

16 7. DOCUMENTS provided in response to this Amended Deposition Notice  
17 should be complete and unredacted, submitted as found in YOUR files (e.g.,  
18 DOCUMENTS that in their original condition were stapled, clipped, attached as a "post-  
19 it," or otherwise fastened together shall be produced in the same form).

20 8. Each DOCUMENT produced pursuant to this Amended Deposition Notice  
21 should be identified according to the category in the Amended Deposition Notice to  
22 which it is responsive. In lieu of indicating on each DOCUMENT the category to which it  
23 is responsive, on the date set for production, YOU may instead provide an index if YOU  
24 provide it in both paper and in electronic form (such as a computerized spreadsheet in  
25 Excel or a Word or WordPerfect document set up in a table format) of all DOCUMENTS  
26 YOU produce, as long as this index shows by document control number the request(s) to  
27 which each DOCUMENT or group of DOCUMENTS is responsive. Responsive  
28

1 DOCUMENTS from each person's files should be produced together, in one box or in  
2 consecutive boxes, or on one disk or consecutive disks. Mark each page of a paper  
3 DOCUMENT and each tangible thing containing audio, video, computer, or other  
4 electronic DOCUMENTS (e.g. cassette, disk, tape or CD) with corporate identification  
5 and consecutive document control numbers (e.g., S.L . 00001, S.I. CD 001, S.I. audio  
6 tape 001). Number each box of DOCUMENTS produced and mark each with the  
7 name(s) of the person(s) whose files are contained therein, the requests(s) to which they  
8 are responsive, and the document control numbers contained therein.

9 9. For data produced in spreadsheets or tables, include in the declaration or  
10 affidavit the identification of the fields and codes and a description of the information  
11 contained in each coded field.

12 10. The document requests contained in this Amended Deposition Notice shall  
13 be deemed to include a request for all relevant DOCUMENTS in the personal files,  
14 including but not limited to files contained on laptops, handheld devices, home  
15 computers and home files of all YOUR officers, employees, accountants, agents and  
16 representatives, including sales agents who are independent contractors, and attorneys.

17 11. Whenever necessary to bring within the scope of this Amended Deposition  
18 Notice DOCUMENTS that might otherwise be construed as outside its scope, the use of  
19 the verb in any tense shall be construed, as the use of that verb in all other tenses, and  
20 the singular shall include the plural, and vice versa, so as to make this Deposition Notice  
21 broadly inclusive.

22 **DOCUMENTS TO BE PRODUCED**

23 1. All DOCUMENTS in YOUR CONTROL RELATED TO the DRAFT  
24 TECHNICAL MEMORANDUM.

25 2. All DOCUMENTS in YOUR CONTROL RELATED TO  
26 COMMUNICATIONS between CH2M and the SWC about the DRAFT TECHNICAL  
27 MEMORANDUM.

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3. All DOCUMENTS in YOUR CONTROL RELATED TO COMMUNICATIONS between CH2M and MET about the DRAFT TECHNICAL MEMORANDUM.

4. All DOCUMENTS in YOUR CONTROL RELATED TO COMMUNICATIONS between CH2M and the SWC about BBID.

5. All DOCUMENTS in YOUR CONTROL RELATED TO COMMUNICATIONS between CH2M and MET about BBID.

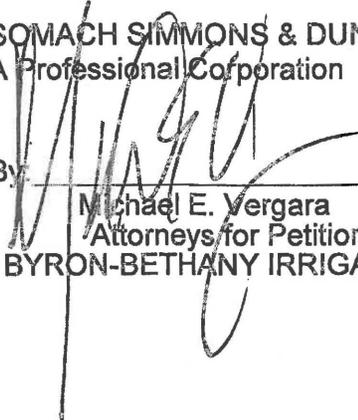
6. All DOCUMENTS in YOUR CONTROL RELATED TO COMMUNICATIONS between CH2M and the SWC about CH2M's modeling work for BBID.

7. All DOCUMENTS in YOUR CONTROL RELATED TO COMMUNICATIONS between CH2M and MET about CH2M's modeling work for BBID.

8. All DOCUMENTS in YOUR CONTROL RELATED TO the BBID REPORT.

Dated: March 2, 2016

SOMACH SIMMONS & DUNN  
A Professional Corporation

By   
Michael E. Vergara  
Attorneys for Petitioner/Plaintiff  
BYRON-BETHANY IRRIGATION DISTRICT

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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 3, 2016, I served the following document(s):

**AMENDED SUBPOENA DUCES TECUM TO KYLE WINSLOW;  
AFFIDAVIT; AND  
DEPOSITION NOTICE OF KYLE WINSLOW AND ADDENDUM TO AMENDED  
SUBPOENA DUCES TECUM**

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 3, 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  
A Professional Corporation

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|--|--|
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Division of Water Rights<br/>Prosecution Team<br/>Andrew Tauriainen, Attorney III<br/>SWRCB Office of Enforcement<br/>1001 I Street, 16th Floor<br/>Sacramento, CA 95814<br/><a href="mailto:andrew.tauriainen@waterboards.ca.gov">andrew.tauriainen@waterboards.ca.gov</a></p>  | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Byron-Bethany Irrigation District<br/>Daniel Vergara<br/>Somach Simmons &amp; Dunn<br/>500 Capitol Mall, Suite 1000<br/>Sacramento, CA 95814<br/><a href="mailto:dVergara@somachlaw.com">dVergara@somachlaw.com</a></p>  |
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Patterson Irrigation District<br/>Banta-Carbona Irrigation District<br/>The West Side Irrigation District<br/>Jeanne M. Zolezzi<br/>Herum\Crabtree\Suntag<br/>5757 Pacific Avenue, Suite 222<br/>Stockton, CA 95207<br/><a href="mailto:izolezzi@herumcrabtree.com">izolezzi@herumcrabtree.com</a></p>   | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>City and County of San Francisco<br/>Jonathan Knapp<br/>Office of the City Attorney<br/>1390 Market Street, Suite 418<br/>San Francisco, CA 94102<br/><a href="mailto:jonathan.knapp@sfgov.org">jonathan.knapp@sfgov.org</a></p>   |
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Central Delta Water Agency<br/>Jennifer Spaletta Law PC<br/>P.O. Box 2660<br/>Lodi, CA 95241<br/><a href="mailto:jennifer@spalettalaw.com">jennifer@spalettalaw.com</a></p> <p>Dante John Nomellini<br/>Daniel A. McDaniel<br/>Dante John Nomellini, Jr.<br/>NOMELLINI, GRILLI &amp; MCDANIEL<br/>235 East Weber Avenue<br/>Stockton, CA 95202<br/><a href="mailto:ngmplcs@pacbell.net">ngmplcs@pacbell.net</a><br/><a href="mailto:dantejr@pacbell.net">dantejr@pacbell.net</a></p> | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>California Department of Water Resources<br/>Robin McGinnis, Attorney<br/>P.O. Box 942836<br/>Sacramento, CA 94236-0001<br/><a href="mailto:robin.mcginnis@water.ca.gov">robin.mcginnis@water.ca.gov</a></p>   |
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Richard Morat<br/>2821 Berkshire Way<br/>Sacramento, CA 95864<br/><a href="mailto:rmorat@gmail.com">rmorat@gmail.com</a></p>   | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>San Joaquin Tributaries Authority<br/>Tim O'Laughlin<br/>Valerie C. Kincaid<br/>O'Laughlin &amp; Paris LLP<br/>2617 K Street, Suite 100<br/>Sacramento, CA 95816<br/><a href="mailto:towater@olaughlinparis.com">towater@olaughlinparis.com</a><br/><a href="mailto:vkincaid@olaughlinparis.com">vkincaid@olaughlinparis.com</a></p> |

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| <u>VIA ELECTRONIC MAIL</u>   | <u>VIA ELECTRONIC MAIL</u>   |
|--|--|
| South Delta Water Agency<br>John Herrick<br>Law Offices of John Herrick<br>4255 Pacific Avenue, Suite 2<br>Stockton, CA 95207<br>Email: Jherrlaw@aol.com | State Water Contractors<br>Stefani Morris<br>1121 L Street, Suite 1050<br>Sacramento, CA 95814<br><a href="mailto:smorris@swc.org">smorris@swc.org</a> |

SOMACH SIMMONS & DUNN  
A Professional Corporation

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**SERVICE LIST  
WEST SIDE IRRIGATION DISTRICT  
CEASE AND DESIST ORDER HEARING**

|  |   |
|--|---|
| <p>Division of Water Rights<br/>Prosecution Team<br/>Andrew Tauriainen, Attorney III<br/>SWRCB Office of Enforcement<br/>1001 I Street, 16th Floor<br/>Sacramento, CA 95814<br/><a href="mailto:andrew.tauriainen@waterboards.ca.gov">andrew.tauriainen@waterboards.ca.gov</a></p> | <p>The West Side Irrigation District<br/>Jeanne M. Zolezzi<br/>Karna Harringfeld<br/>Janelle Krattiger<br/>Herum\Crabtree\Suntag<br/>5757 Pacific Avenue, Suite 222<br/>Stockton, CA 95207<br/><a href="mailto:jzolezzi@herumcrabtree.com">jzolezzi@herumcrabtree.com</a><br/><a href="mailto:kharringfeld@herumcrabtree.com">kharringfeld@herumcrabtree.com</a><br/><a href="mailto:jkrattiger@herumcrabtree.com">jkrattiger@herumcrabtree.com</a></p> |
| <p>State Water Contractors<br/>Stefani Morris<br/>1121 L Street, Suite 1050<br/>Sacramento, CA 95814<br/><a href="mailto:smorris@swc.org">smorris@swc.org</a></p>  | <p>Westlands Water District<br/>Daniel O'Hanlon<br/>Rebecca Akroyd<br/>Kronick Moskovitz Tiedemann &amp; Girad<br/>400 Capitol Mall, 27<sup>th</sup> Floor<br/>Sacramento, CA 95814<br/><a href="mailto:dohanlon@kmtg.com">dohanlon@kmtg.com</a><br/><a href="mailto:rakroyd@kmtg.com">rakroyd@kmtg.com</a></p> <p>Phillip Williams of Westlands Water District<br/><a href="mailto:pwilliams@westlandswater.org">pwilliams@westlandswater.org</a></p>  |
| <p>South Delta Water Agency<br/>John Herrick<br/>Law Offices of John Herrick<br/>4255 Pacific Avenue, Suite 2<br/>Stockton, CA 95207<br/>Email: <a href="mailto:Jherlaw@aol.com">Jherlaw@aol.com</a></p>   | <p>Central Delta Water Agency<br/>Jennifer Spaletta Law PC<br/>P.O. Box 2660<br/>Lodi, CA 95241<br/><a href="mailto:jennifer@spalettalaw.com">jennifer@spalettalaw.com</a></p> <p>Dante Nomellini and Dante Nomellini, Jr.<br/>NOMELLINI, GRILLI &amp; MCDANIEL<br/><a href="mailto:ngmplcs@pacbell.net">ngmplcs@pacbell.net</a><br/><a href="mailto:dantejr@pacbell.net">dantejr@pacbell.net</a></p>   |
| <p>City and County of San Francisco<br/>Jonathan Knapp<br/>Office of the City Attorney<br/>1390 Market Street, Suite 418<br/>San Francisco, CA 94102<br/><a href="mailto:jonathan.knapp@sfgov.org">jonathan.knapp@sfgov.org</a></p>  | <p>San Joaquin Tributaries Authority<br/>Valerie C. Kincaid<br/>O'Laughlin &amp; Paris LLP<br/>2617 K Street, Suite 100<br/>Sacramento, CA 95816<br/><a href="mailto:vkincaid@olaughlinparis.com">vkincaid@olaughlinparis.com</a></p>   |
| <p>Byron-Bethany Irrigation District<br/>Daniel Vergara<br/>Somach Simmons &amp; Dunn<br/>500 Capitol Mall, Suite 1000<br/>Sacramento, CA 95814<br/><a href="mailto:dVergara@somachlaw.com">dVergara@somachlaw.com</a></p>   | <p>California Department of Water Resources<br/>Robin McGinnis, Attorney<br/>P.O. Box 942836<br/>Sacramento, CA 94236-0001<br/><a href="mailto:robin.mcginnis@water.ca.gov">robin.mcginnis@water.ca.gov</a></p>   |

# **EXHIBIT D**

**BEFORE THE STATE WATER RESOURCES CONTROL BOARD OF THE STATE OF CALIFORNIA**

|  |   |
|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA (name, address, and telephone no.):<br>Daniel Kelly<br>Michael Vergara<br>Somach Simmons & Dunn<br>500 Capitol Mall, Suite 1000<br>Sacramento, CA 95814 | FOR STATE WATER BOARD USE ONLY  |
| REPRESENTING: Byron-Bethany Irrigation District  |   |
| TITLE OF THE PROCEEDING:<br><p align="center"><b><i>In the Matter of Enforcement Action ENF01951<br/>                 Before the State Water Resources Control Board</i></b></p>                               |   |
| <input type="checkbox"/> SUBPOENA<br><input checked="" type="checkbox"/> <b>AMENDED</b> SUBPOENA DUCES TECUM   | <input type="checkbox"/> RE HEARING<br><input type="checkbox"/> RE DEPOSITION |

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name): **Chandra Chilmakuri**

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this proceeding as follows unless you make special agreement with the person named in item 3:

|   |                      |
|---|----------------------|
| a. Date: <b>March 18, 2016</b>  | Time: <b>10:00am</b> |
| b. Address: <b>500 Capitol Mall, Suite 1000, Sacramento, CA 95814</b> |                      |

2. AND YOU ARE:

- a.  Ordered to appear in person. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)
- b.  Not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. (Wat. Code, § 1080; Gov. Code, § 11450.10(b); Cal. Code Regs., tit. 23, § 649.6(a).)
- c.  Ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)

3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

|                                 |  |
|---------------------------------|--|
| a. Name: <b>Michael Vergara</b> | b. Telephone number: <b>916-446-7979</b> |
|---------------------------------|--|

(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

4. WITNESS FEES: You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in item 3. (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 68070 et seq.; Code Civ. Proc., §§ 1986.5, 2065.)

5. If you object to the terms of this subpoena, you may file a motion for a protective order including a motion to quash with the hearing officer assigned to your case. Motions must be made within a reasonable period after receipt of the subpoena, and shall be made with written notice to all parties, with proof of service upon all parties attached. In response to your motion, the hearing officer may make an order quashing the subpoena entirely, modifying it, or directing compliance with it, or may make any order needed to protect the parties or witnesses from unreasonable or oppressive demands, including unreasonable violations of the right to privacy. (Gov. Code, § 11450.30.) (Send motions to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)

**DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW**

(Wat. Code, §§ 1090, 1097; Gov. Code, §§ 11450.20(b), 11455.10-11455.20.)

Dated: March 2, 2016



\_\_\_\_\_ (signature)  
 Name: Michael Vergara  
 Title: Attorney

Unless issued by an attorney pursuant to Code of Civil Procedure, Section 1985, subdivision (c), the original subpoena is embossed with this seal.

(See reverse for Endorsement on Subpoena, if used, and Proof of Service)

**PROOF OF SERVICE OF SUBPOENA**

(Gov. Code, § 11440.20; Code Civ. Proc., §§ 1987, 1987.5, 1988, 1989, 2015.3, 2015.5.)

1. I served this  subpoena  subpoena duces tecum and supporting affidavit by:

personally delivering a copy to the person served as follows:

|  |  |
|--|--|
| a. Person served (name):   | b. Date of delivery:                         |
| c. Address where served:   | d. Time of delivery:                         |
| e. Witness fees and mileage both ways (check one):<br><br>(1) <input type="checkbox"/> were paid. Amount: \$ _____<br>(2) <input type="checkbox"/> were not paid.<br>(3) <input type="checkbox"/> were tendered to the witness's public entity employer as required by Government Code § 68097.2. The amount tendered was \$ _____ | f. Fees for service.<br><br>Amount: \$ _____ |

- delivering true copies thereof by certified mail, return receipt requested, to the address as shown below.  
 delivering true copies thereof enclosed in a sealed envelope to a messenger for immediate personal delivery to the address as shown below.

Address where served: \_\_\_\_\_

2. I certify that I received this  subpoena  subpoena duces tecum for service on \_\_\_\_\_ Date

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:  
 Date \_\_\_\_\_ at (place) \_\_\_\_\_, California Signature \_\_\_\_\_

*(For California sheriff, marshal, or constable use only)*  
 I certify that the foregoing is true and correct and that this certificate is executed on:  
 Date \_\_\_\_\_ at (place) \_\_\_\_\_, California Signature \_\_\_\_\_

**NOTE: IF THIS SUBPOENA IS ISSUED IN CONNECTION WITH A HEARING IN AN ADJUDICATIVE PROCEEDING UNDER GOVERNMENT CODE § 11400 ET SEQ., THE ATTORNEY OR PARTY WITHOUT AN ATTORNEY REQUESTING THIS SUBPOENA MUST PROVIDE A COPY OF THE SUBPOENA TO EVERY PARTY IN THE HEARING, AND FILE A COPY WITH THE STATE WATER RESOURCES CONTROL BOARD. THE COPY PROVIDED TO THE STATE WATER RESOURCES CONTROL BOARD MUST BE ACCOMPANIED BY A CERTIFICATE OF SERVICE LISTING THE NAMES AND ADDRESSES OF PARTIES WHO WERE PROVIDED COPIES IN ACCORDANCE WITH GOVERNMENT CODE § 11440.20. (Gov. Code, § 11440.20; Cal. Code Regs., tit. 23, § 648.4(c).) (Send to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)**

**ENDORSEMENT ON SUBPOENA IN A PROCEEDING  
OTHER THAN AN ADJUDICATIVE PROCEEDING**

Pursuant to Water Code §1086 and upon affidavit of \_\_\_\_\_ (copy attached) showing that the testimony of the witness ordered by the subpoena to appear is material and necessary to this proceeding, it is required that said witness attend this proceeding.

Dated: \_\_\_\_\_ (signature) \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 State Water Resources Control Board

**NOTE: This ENDORSEMENT is required if the subpoena is in connection with a proceeding other than a hearing under Government Code § 11400 and the witness is being compelled to testify at a location that is both out of the witness's county of residence and 150 miles or more from the witness's place of residence. (Wat. Code, § 1086; Cal. Code Regs., tit. 23, § 649.6(c).)**

1 SOMACH SIMMONS & DUNN  
A Professional Corporation  
2 DANIEL KELLY, ESQ. (SBN 215051)  
MICHAEL E. VERGARA, ESQ. (SBN 137689)  
3 THERESA C. BARFIELD, ESQ. (SBN 185568)  
M. ELI UNDERWOOD (SBN 267665)  
4 500 Capitol Mall, Suite 1000  
Sacramento, California 95814-2403  
5 Telephone: (916) 446-7979  
Facsimile: (916) 446-8199

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

8  
9 BEFORE THE  
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

SWRCB Enforcement Action  
ENF01951 and ENF01949

AFFIDAVIT

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

20  
21 I, Michael E. Vergara, declare as follows:

22 1. I am an attorney admitted to practice law in the State of California. I am a  
23 shareholder at the law firm of Somach Simmons & Dunn. I am one of the attorneys of  
24 record for Byron-Bethany Irrigation District (BBID). The following matters are within my  
25 personal knowledge, and if called as a witness, I could competently testify thereto.

26 2. On June 12, 2015, the State Water Resources Control Board's (SWRCB)  
27 sent a curtailment notice to BBID, which purports to curtail a pre-1914 appropriative  
28 water right of BBID and others with 1903 and later priority dates within the entire

1 Sacramento and San Joaquin River watersheds, including the California Delta  
2 (Curtailment Notice). The Curtailment Notice directed BBID to "immediately stop  
3 diverting" under its pre-1914 water rights, and provided that any further diversions would  
4 subject BBID to "administrative penalties, cease and desist orders, or prosecution in  
5 court."

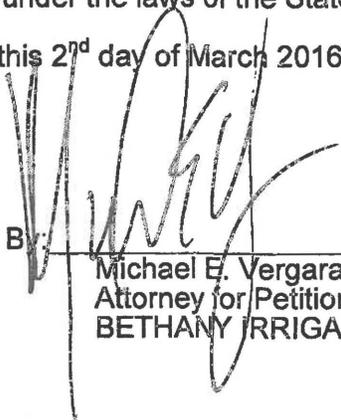
6 3. In response, BBID filed suit against the SWRCB on June 26, 2015,  
7 challenging the Curtailment Notice, and asserting that the SWRCB exceeded its  
8 jurisdiction, violated due process, and conducted a flawed water availability analysis.  
9 Multiple other water right holders similarly situated to BBID, including the West Side  
10 Irrigation District (WSID), also sued the SWRCB to challenge the Curtailment Notice.

11 4. On July 20, 2015, the SWRCB issued the Administrative Civil Liability  
12 (ACL) Complaint, alleging that BBID unlawfully diverted water from June 13, 2015 to  
13 June 25, 2015.

14 5. Good cause exists for the production of documents described in the  
15 Amended Subpoena Duces Tecum and Addendum, as the requested documents are  
16 narrowly tailored and relevant to BBID's investigation of the claims and defenses at  
17 issue in this proceeding and/or reasonably calculated to lead to the discovery of  
18 admissible evidence.

19 I declare under penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct. Executed this 2<sup>nd</sup> day of March 2016 in Sacramento,  
21 California.

22  
23 B.



24 Michael E. Vergara  
25 Attorney for Petitioner/Plaintiff BYRON-  
26 BETHANY IRRIGATION DISTRICT  
27  
28

SOMACH SIMMONS & DUNN  
A Professional Corporation

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Facsimile: (916) 446-8199

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

8  
9 BEFORE THE  
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11 ENFORCEMENT ACTION ENFO1949  
DRAFT CEASE AND DESIST ORDER  
12 REGARDING UNAUTHORIZED  
DIVERSIONS OR THREATENED  
13 UNAUTHORIZED DIVERSIONS OF WATER  
FROM OLD RIVER IN SAN JOAQUIN  
14 COUNTY

SWRCB Enforcement Action  
ENF01951 and ENF01949

DEPOSITION NOTICE OF  
CHANDRA CHILMAKURI AND  
ADDENDUM TO AMENDED  
SUBPOENA DUCES TECUM

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

California Water Code § 1080;  
California Government Code §  
11450.10; Cal. Code Regs., tit. 23 §  
6496(a); Code of Civil Procedure  
section 2025.510

19  
20 TO all parties and their attorneys of record in this proceeding:

21 PLEASE TAKE NOTICE that Petitioner/ Plaintiff Byron-Bethany Irrigation District  
22 (BBID) will take the oral deposition of Chandra Chilmakuri, as an agent of CH2M, 2485  
23 Natomas Park Drive #600, Sacramento, CA 95833.

24 The deposition will occur on March 18, 2016, commencing at 10:00 AM, and  
25 continuing day-to-day until complete, at 500 Capitol Mall, Suite 1000, Sacramento,  
26 California, in accordance with Code of Civil Procedure section 2020.510, Water Code  
27 section 1080, Government Code section 11450.10, California Code of Regulations, title  
28 23, section 649.6, subdivision (a), and as set forth in Section (1)(a-b) of the

DEPOSITION NOTICE OF CHANDRA CHILMAKURI AND ADDENDUM TO AMENDED SUBPOENA  
DUCES TECUM

1 accompanying Amended Subpoena Duces Tecum.

2 NOTICE IS GIVEN THAT CH2M may seek the advice of an attorney in any matter  
3 connected with this amended subpoena, and should consult its attorney promptly so that  
4 any problems concerning the production of documents may be resolved within the time  
5 required by this Amended Subpoena. Failure to comply with the commands of this  
6 Amended Subpoena will subject CH2M to the proceedings and penalties provided by  
7 law.

8 NOTICE IS FURTHER GIVEN that BBID intends to record the testimony at the  
9 above-described deposition by the stenographic method, through instant visual display  
10 of testimony.

11 NOTICE IS ALSO GIVEN that the deposition may be videotaped and may be  
12 used at trial in lieu of live testimony under Code of Civil Procedure section 2025.220(5).

13 If the deponent requires an interpreter's services, advise this office in writing no  
14 later than five days before the date set for deposition of both the need for an interpreter  
15 and the language that will be required. If the deposition is continued for lack of an  
16 interpreter because notice is not given, sanctions will be sought against both counsel  
17 and deponent.

18 NOTICE IS FURTHER GIVEN THAT the deponent is required to bring and  
19 produce the following materials at her deposition under Code of Civil Procedure section  
20 2020.510, and Government Code section 11450.10.

21 **DEFINITIONS**

22 1. The term "PERSON" or "PERSONS" mean associations, corporations,  
23 natural persons, partnerships, trusts, governmental, or other forms of legal entities.

24 2. The terms "CH2M" means CH2M, CH2M Hill, and each PERSON acting or  
25 purporting to act on its behalf, including but not limited to, its former or present officers,  
26 employees, agents, contractors, consultants, and representatives.

27 3. The terms "YOU" or "YOUR" mean Chandra Chilmakuri, employed by  
28 CH2M.

1           4.     The term "CONTROL" means care, control, custody, or possession in the  
2     broadest sense possible under Code of Civil Procedure section 2031.010.

3           5.     The term "SWC" refers to the State Water Contractors, a non-profit mutual  
4     benefit corporation organized and existing under the laws of the State of California, and  
5     its' 27 public water supply agencies that contract with the State of California for water  
6     from the State Water Project.

7           6.     The term "MET" refers to a special district, organized and existing under  
8     the provisions of an Act of the California State Legislature, The Metropolitan Water  
9     District Act (Water Code § 109-1 et seq.), operating as a consortium of 26 cities and  
10    water districts, and its members.

11          7.     The terms "COMMUNICATION" or "COMMUNICATIONS" mean the  
12    expression or exchange of information by speech, writing, gestures, or conduct, the  
13    process of bringing an idea to another's perception as defined in Black's Law Dictionary  
14    (9th Ed. 2009) p. 316. The terms COMMUNICATION and COMMUNICATIONS, include,  
15    but are not limited to, posting or other display on the Internet or World Wide Web.

16          8.     The terms "RELATING TO" or "RELATE TO" means to bring into  
17    association with or connection with, to have bearing or concern, to pertain, refer, stand in  
18    some relation, with "to," as defined in Black's Law Dictionary (5th ed. 1979), p. 1158.

19          9.     The terms "DOCUMENT" or "DOCUMENTS" are used in the broadest  
20    sense possible under Code of Civil Procedure section 2016.020, subdivision (c), and  
21    mean each writing as defined in Evidence Code section 250, including the original or a  
22    copy of every other means of recording upon any tangible thing any form of oral or  
23    written exchange of words, information, representation, or COMMUNICATION including  
24    electronic mail, facsimile, letters, pictures, sounds, symbols, words, or combinations of  
25    them, regardless of the manner in which the record has been stored, within YOUR  
26    CONTROL.

27                Every draft or non-identical copy of a DOCUMENT is a separate DOCUMENT.

28

1 Specifically included as a separate DOCUMENT is information stored in a computer data  
2 base or drive and capable of being generated in documentary form, whether the  
3 DOCUMENTS are presently in existence or not.

4 Computer media should be accompanied by (a) an identification of the generally  
5 available software needed to open and view the DOCUMENTS or (b) a copy of the  
6 software needed to open and view the DOCUMENT.

7 For each DOCUMENT contained in an audio or video medium, YOU should  
8 provide the tape, disk, or other device from which the audio or video can be played and  
9 the transcript of the DOCUMENT.

10 If any DOCUMENT is withheld under a claim of privilege or other protection,  
11 please provide a privilege log consistent with Code of Civil Procedure section 2031.240  
12 containing the following information with respect to such DOCUMENTS: (a) an  
13 identification of the DOCUMENT with reasonable specificity and particularity, including  
14 its nature (memorandum, letter, etc.), title and date; (b) the parties, individuals, and  
15 entities that the COMMUNICATION is between or references; (c) the exact nature of the  
16 privilege asserted; and (d) all of the facts upon which your claim of privilege is based or  
17 which supports said claim of privilege.

18 10. The terms "BYRON-BETHANY IRRIGATION DISTRICT" and "BBID" mean  
19 the Byron-Bethany Irrigation District, an Irrigation District formed pursuant to Division 11  
20 of the California Water Code, and anyone working on its behalf, including but not limited  
21 to, its officers, employees, agents, contractors, consultants, and representatives.

22 11. The term "DRAFT TECHNICAL MEMORANDUM" means the Draft  
23 Technical Memorandum, 2012–2015 Delta Salinity Conditions under a Without Project  
24 Scenario, Prepared For: Terry Erlewine/SWC, Prepared By: Tyler Hatch/CH2M HILL /  
25 Chandra Chilmakuri/CH2M HILL, Dated: June 5, 2015.

26 12. Definitions for industry or trade terms contained here are to be construed  
27 broadly. Where the industry or trade definition set forth herein does not coincide  
28

1 precisely with YOUR definition, the question, inquiry or production request should be  
2 responded to or answered by using the definition that YOU apply and/or recognize in  
3 YOUR usage of the term, and YOU should further document YOUR definition in the  
4 response. Non-industry or non-trade definitions should be applied as defined here.

5 **INSTRUCTIONS**

6 1. Unless otherwise indicated, the time period covered by this Amended  
7 Deposition Notice is from January 1, 2013 to up to five days before YOUR full  
8 compliance with this Amended Deposition Notice. Any documents RELATING TO this  
9 time period are to be produced, regardless of whether the documents came into  
10 existence before or during this period.

11 2. YOUR response to the Amended Deposition Notice should include a  
12 declaration or affidavit. It should state that a diligent search for all requested  
13 DOCUMENTS has been conducted and that the affiant or declarant was in charge of the  
14 search or otherwise monitored and reviewed the search sufficiently to be able to  
15 represent under oath that such a search was conducted. It should be signed under oath  
16 by the person most knowledgeable about the DOCUMENTS and YOUR efforts to  
17 comply with the Amended Deposition Notice. If different people are the most  
18 knowledgeable about portions of the search (e.g., one person is most knowledgeable  
19 about DOCUMENTS contained in computer media and a different person is most  
20 knowledge about DOCUMENTS contained on paper) each should sign an affidavit or  
21 declaration identifying the category in the request for DOCUMENTS for which that  
22 person is the most knowledgeable.

23 3. Unless otherwise indicated, for any DOCUMENT stored in a computer,  
24 including all electronic mail messages, YOU should produce the DOCUMENT in the  
25 original electronic file format in which it was created (e.g., Microsoft email should be  
26 provided in its original format, which would have the .pst suffix, not in a tif file;  
27 spreadsheets should be in their original file form, such as an Excel file and word-

28

1 processed DOCUMENTS should be in their original file format, such as a Word or  
2 WordPerfect file), together with instructions and all other materials necessary to use or  
3 interpret the data. Electronic mail messages should be provided, even if only available  
4 on backup or archive tapes or disks. Computer media should be accompanied by (a) an  
5 identification of the generally available software needed to open and view the  
6 DOCUMENTS or (b) a copy of the software needed to open and view the DOCUMENT.  
7 Note, however, that if a print- out from a computer DOCUMENT is a non-identical copy  
8 of the electronic form in which it was created (non-identical by way of example but not  
9 limitation, because it has a signature, handwritten notation, or other mark or attachment  
10 not included in the computer DOCUMENT), both the electronic form in which the  
11 DOCUMENT was created and the original print-out should be produced.

12 4. For all DOCUMENTS for which YOU do not produce in the original, as  
13 defined in Evidence Code section 255, YOU may produce copies (black and white  
14 copies if the original was in black and white, color copies if the original was in color, and,  
15 if the original was in electronic format, in the same electronic medium as the original) in  
16 lieu of original DOCUMENTS provided that such copies are accompanied by an affidavit  
17 of an officer of CH2M stating that the copies of all types DOCUMENTS are true, correct,  
18 and complete copies of the original DOCUMENTS. If there is in YOUR possession,  
19 custody or control no original, but only a copy or photographic record thereof, then YOU  
20 should produce a true and legible copy of each such DOCUMENT. The accompanying  
21 affidavit should state that the DOCUMENT is only a copy or photographic record and not  
22 the original.

23 5. If a DOCUMENT is responsive to this Amended Deposition Notice and is in  
24 YOUR control, but is not in YOUR possession or custody, in addition to obtaining and  
25 producing the DOCUMENT, identify the person who had possession or custody of the  
26 DOCUMENT, their telephone number and current business and residence addresses.  
27  
28

1           6.     If any DOCUMENT subpoenaed is no longer in YOUR possession,  
2 custody, control, or care, YOU should provide a written statement identifying the  
3 DOCUMENT with specificity, stating whether it is lost, missing, has been destroyed, has  
4 been transferred to others, or has otherwise been disposed of. The written statement  
5 should also identify the person who disposed of the DOCUMENT, explain the  
6 circumstances and authorization for the disposition and the approximate date of the  
7 disposition of the DOCUMENT. If there are no DOCUMENTS responsive to a document  
8 request, as to each such document request, YOU should include a statement to that  
9 effect in the accompanying declaration or affidavit.

10           7.     DOCUMENTS provided in response to this Amended Deposition Notice  
11 should be complete and unredacted, submitted as found in YOUR files (e.g.,  
12 DOCUMENTS that in their original condition were stapled, clipped, attached as a "post-  
13 it," or otherwise fastened together shall be produced in the same form).

14           8.     Each DOCUMENT produced pursuant to this Amended Deposition Notice  
15 should be identified according to the category in the Amended Deposition Notice to  
16 which it is responsive. In lieu of indicating on each DOCUMENT the category to which it  
17 is responsive, on the date set for production, YOU may instead provide an index if YOU  
18 provide it in both paper and in electronic form (such as a computerized spreadsheet in  
19 Excel or a Word or WordPerfect document set up in a table format) of all DOCUMENTS  
20 YOU produce, as long as this index shows by document control number the request(s) to  
21 which each DOCUMENT or group of DOCUMENTS is responsive. Responsive  
22 DOCUMENTS from each person's files should be produced together, in one box or in  
23 consecutive boxes, or on one disk or consecutive disks. Mark each page of a paper  
24 DOCUMENT and each tangible thing containing audio, video, computer, or other  
25 electronic DOCUMENTS (e.g. cassette, disk, tape or CD) with corporate identification  
26 and consecutive document control numbers (e.g., S.L . 00001, S.I. CD 001, S.I. audio  
27 tape 001). Number each box of DOCUMENTS produced and mark each with the  
28

1 name(s) of the person(s) whose files are contained therein, the requests(s) to which they  
2 are responsive, and the document control numbers contained therein.

3 9. For data produced in spreadsheets or tables, include in the declaration or  
4 affidavit the identification of the fields and codes and a description of the information  
5 contained in each coded field.

6 10. The document requests contained in this Amended Deposition Notice shall  
7 be deemed to include a request for all relevant DOCUMENTS in the personal files,  
8 including but not limited to files contained on laptops, handheld devices, home  
9 computers and home files of all YOUR officers, employees, accountants, agents and  
10 representatives, including sales agents who are independent contractors, and attorneys.

11 11. Whenever necessary to bring within the scope of this Amended Deposition  
12 Notice DOCUMENTS that might otherwise be construed as outside its scope, the use of  
13 the verb in any tense shall be construed, as the use of that verb in all other tenses, and  
14 the singular shall include the plural, and vice versa, so as to make this Amended  
15 Deposition Notice broadly inclusive.

16 **DOCUMENTS TO BE PRODUCED**

17 1. All DOCUMENTS in YOUR CONTROL RELATED TO the DRAFT  
18 TECHNICAL MEMORANDUM.

19 2. All DOCUMENTS in YOUR CONTROL RELATED TO  
20 COMMUNICATIONS between CH2M and the SWC about the DRAFT TECHNICAL  
21 MEMORANDUM.

22 3. All DOCUMENTS in YOUR CONTROL RELATED TO  
23 COMMUNICATIONS between CH2M and MET about the DRAFT TECHNICAL  
24 MEMORANDUM.

25 4. All DOCUMENTS in YOUR CONTROL RELATED TO  
26 COMMUNICATIONS between CH2M and the SWC about BBID.

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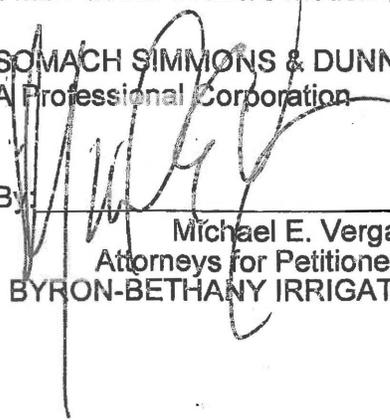
5. All DOCUMENTS in YOUR CONTROL RELATED TO  
COMMUNICATIONS between CH2M and MET about BBID.

6. All DOCUMENTS in YOUR CONTROL RELATED TO  
COMMUNICATIONS between CH2M and the SWC about CH2M's modeling work for  
BBID.

7. All DOCUMENTS in YOUR CONTROL RELATED TO  
COMMUNICATIONS between CH2M and MET about CH2M's modeling work for BBID.

Dated: March 2, 2016

SOMACH SIMMONS & DUNN  
A Professional Corporation

By: 

Michael E. Vergara  
Attorneys for Petitioner/Plaintiff  
BYRON-BETHANY IRRIGATION DISTRICT

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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.

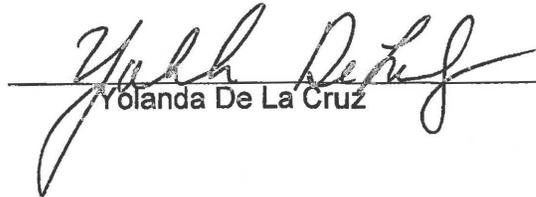
On March 2, 2016, I served the following document(s):

**AMENDED SUBPOENA DUCES TECUM TO CHANDRA CHILMAKURI;  
AFFIDAVIT; AND  
DEPOSITION NOTICE OF CHANDRA CHILMAKURI AND ADDENDUM TO  
AMENDED SUBPOENA DUCES TECUM**

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 2, 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**  
A Professional Corporation

|   |  |
|---|--|
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Division of Water Rights<br/>Prosecution Team<br/>Andrew Tauriainen, Attorney III<br/>SWRCB Office of Enforcement<br/>1001 I Street, 16th Floor<br/>Sacramento, CA 95814<br/><a href="mailto:andrew.tauriainen@waterboards.ca.gov">andrew.tauriainen@waterboards.ca.gov</a></p>   | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Byron-Bethany Irrigation District<br/>Daniel Vergara<br/>Somach Simmons &amp; Dunn<br/>500 Capitol Mall, Suite 1000<br/>Sacramento, CA 95814<br/><a href="mailto:dVergara@somachlaw.com">dVergara@somachlaw.com</a></p>  |
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Patterson Irrigation District<br/>Banta-Carbona Irrigation District<br/>The West Side Irrigation District<br/>Jeanne M. Zolezzi<br/>Herum\Crabtree\Suntag<br/>5757 Pacific Avenue, Suite 222<br/>Stockton, CA 95207<br/><a href="mailto:jzolezzi@herumcrabtree.com">jzolezzi@herumcrabtree.com</a></p>  | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>City and County of San Francisco<br/>Jonathan Knapp<br/>Office of the City Attorney<br/>1390 Market Street, Suite 418<br/>San Francisco, CA 94102<br/><a href="mailto:jonathan.knapp@sfgov.org">jonathan.knapp@sfgov.org</a></p>   |
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Central Delta Water Agency<br/>Jennifer Spaletta Law PC<br/>P.O. Box 2660<br/>Lodi, CA 95241<br/><a href="mailto:jennifer@spalettalaw.com">jennifer@spalettalaw.com</a></p> <p>Dante John Nomellini<br/>Daniel A. McDaniel<br/>Dante John Normellini, Jr.<br/>NOMELLINI, GRILLI &amp; MCDANIEL<br/>235 East Weber Avenue<br/>Stockton, CA 95202<br/><a href="mailto:ngmplcs@pacbell.net">ngmplcs@pacbell.net</a><br/><a href="mailto:dantejr@pacbell.net">dantejr@pacbell.net</a></p> | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>California Department of Water<br/>Resources<br/>Robin McGinnis, Attorney<br/>P.O. Box 942836<br/>Sacramento, CA 94236-0001<br/><a href="mailto:robin.mcginnis@water.ca.gov">robin.mcginnis@water.ca.gov</a></p>   |
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Richard Morat<br/>2821 Berkshire Way<br/>Sacramento, CA 95864<br/><a href="mailto:rmorat@gmail.com">rmorat@gmail.com</a></p>  | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>San Joaquin Tributaries Authority<br/>Tim O'Laughlin<br/>Valerie C. Kincaid<br/>O'Laughlin &amp; Paris LLP<br/>2617 K Street, Suite 100<br/>Sacramento, CA 95816<br/><a href="mailto:towater@olaughlinparis.com">towater@olaughlinparis.com</a><br/><a href="mailto:vkincaid@olaughlinparis.com">vkincaid@olaughlinparis.com</a></p> |

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| <u>VIA ELECTRONIC MAIL</u>   | <u>VIA ELECTRONIC MAIL</u>   |
|--|--|
| South Delta Water Agency<br>John Herrick<br>Law Offices of John Herrick<br>4255 Pacific Avenue, Suite 2<br>Stockton, CA 95207<br>Email: <a href="mailto:Jherrlaw@aol.com">Jherrlaw@aol.com</a> | State Water Contractors<br>Stefani Morris<br>1121 L Street, Suite 1050<br>Sacramento, CA 95814<br><a href="mailto:smorris@swc.org">smorris@swc.org</a> |

**SERVICE LIST  
WEST SIDE IRRIGATION DISTRICT  
CEASE AND DESIST ORDER HEARING**

**SOMACH SIMMONS & DUNN**  
A Professional Corporation

|  |   |
|--|---|
| <p>3 Division of Water Rights<br/>Prosecution Team<br/>4 Andrew Tauriainen, Attorney III<br/>SWRCB Office of Enforcement<br/>5 1001 I Street, 16th Floor<br/>Sacramento, CA 95814<br/>6 <a href="mailto:andrew.tauriainen@waterboards.ca.gov">andrew.tauriainen@waterboards.ca.gov</a></p> | <p>The West Side Irrigation District<br/>Jeanne M. Zolezzi<br/>Karna Harringfeld<br/>Janelle Krattiger<br/>Herum\Crabtree\Suntag<br/>5757 Pacific Avenue, Suite 222<br/>Stockton, CA 95207<br/><a href="mailto:jzolezzi@herumcrabtree.com">jzolezzi@herumcrabtree.com</a><br/><a href="mailto:kharringfeld@herumcrabtree.com">kharringfeld@herumcrabtree.com</a><br/><a href="mailto:jkrattiger@herumcrabtree.com">jkrattiger@herumcrabtree.com</a></p> |
| <p>8 State Water Contractors<br/>Stefani Morris<br/>9 1121 L Street, Suite 1050<br/>Sacramento, CA 95814<br/>10 <a href="mailto:smorris@swc.org">smorris@swc.org</a></p>   | <p>Westlands Water District<br/>Daniel O'Hanlon<br/>Rebecca Akroyd<br/>Kronick Moskowitz Tiedemann &amp; Girad<br/>400 Capitol Mall, 27<sup>th</sup> Floor<br/>Sacramento, CA 95814<br/><a href="mailto:dohanlon@kmtg.com">dohanlon@kmtg.com</a><br/><a href="mailto:rakroyd@kmtg.com">rakroyd@kmtg.com</a></p> <p>Phillip Williams of Westlands Water District<br/><a href="mailto:pwilliams@westlandswater.org">pwilliams@westlandswater.org</a></p>  |
| <p>14 South Delta Water Agency<br/>John Herrick<br/>15 Law Offices of John Herrick<br/>4255 Pacific Avenue, Suite 2<br/>16 Stockton, CA 95207<br/>Email: <a href="mailto:Jherrlaw@aol.com">Jherrlaw@aol.com</a></p>  | <p>Central Delta Water Agency<br/>Jennifer Spaletta Law PC<br/>P.O. Box 2660<br/>Lodi, CA 95241<br/><a href="mailto:jennifer@spalettalaw.com">jennifer@spalettalaw.com</a></p> <p>Dante Nomellini and Dante Nomellini, Jr.<br/>NOMELLINI, GRILLI &amp; MCDANIEL<br/><a href="mailto:ngmplcs@pacbell.net">ngmplcs@pacbell.net</a><br/><a href="mailto:dantejr@pacbell.net">dantejr@pacbell.net</a></p>   |
| <p>20 City and County of San Francisco<br/>Jonathan Knapp<br/>21 Office of the City Attorney<br/>1390 Market Street, Suite 418<br/>22 San Francisco, CA 94102<br/><a href="mailto:jonathan.knapp@sfgov.org">jonathan.knapp@sfgov.org</a></p>   | <p>San Joaquin Tributaries Authority<br/>Valerie C. Kincaid<br/>O'Laughlin &amp; Paris LLP<br/>2617 K Street, Suite 100<br/>Sacramento, CA 95816<br/><a href="mailto:vkincaid@olaughlinparis.com">vkincaid@olaughlinparis.com</a></p>   |
| <p>23 Byron-Bethany Irrigation District<br/>Daniel Vergara<br/>24 Somach Simmons &amp; Dunn<br/>500 Capitol Mall, Suite 1000<br/>25 Sacramento, CA 95814<br/><a href="mailto:dVergara@somachlaw.com">dVergara@somachlaw.com</a></p>  | <p>California Department of Water Resources<br/>Robin McGinnis, Attorney<br/>P.O. Box 942836<br/>Sacramento, CA 94236-0001<br/><a href="mailto:robin.mcginis@water.ca.gov">robin.mcginis@water.ca.gov</a></p>   |

# **EXHIBIT E**

**BEFORE THE STATE WATER RESOURCES CONTROL BOARD OF THE STATE OF CALIFORNIA**

|  |   |
|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA (name, address, and telephone no.):<br>Daniel Kelly (SBN 215051)<br>Michael Vergara (SBN 137689)<br>Somach Simmons & Dunn<br>500 Capitol Mall, Suite 1000<br>Sacramento, CA 95814 | FOR STATE WATER BOARD USE ONLY  |
| REPRESENTING: Byron-Bethany Irrigation District<br>TITLE OF THE PROCEEDING:<br><p align="center"><i>In the Matter of Enforcement Action ENF01951<br/>                 Before the State Water Resources Control Board</i></p>             |   |
| <input type="checkbox"/> SUBPOENA<br><input checked="" type="checkbox"/> SUBPOENA DUCES TECUM  | <input type="checkbox"/> RE HEARING<br><input type="checkbox"/> RE DEPOSITION |

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name): **Custodian of Records for CH2M Hill**

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this proceeding as follows unless you make special agreement with the person named in Item 3:

|   |                     |
|---|---------------------|
| a. Date: <b>March 12, 2016</b>  | Time: <b>5:00pm</b> |
| b. Address: <b>500 Capitol Mall, Suite 1000, Sacramento, CA 95814</b> |                     |

2. AND YOU ARE:

- a.  Ordered to appear in person. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)  
 b.  Not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. (Wat. Code, § 1080; Gov. Code, § 11450.10(b); Cal. Code Regs., tit. 23, § 649.6(a).)  
 c.  Ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1580, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)

3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

|                                 |  |
|---------------------------------|--|
| a. Name: <b>Michael Vergara</b> | b. Telephone number: <b>916-446-7979</b> |
|---------------------------------|--|

(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

4. **WITNESS FEES:** You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in Item 3. (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 88070 et seq.; Code Civ. Proc., §§ 1986.5, 2065.)
5. If you object to the terms of this subpoena, you may file a motion for a protective order including a motion to quash with the hearing officer assigned to your case. Motions must be made within a reasonable period after receipt of the subpoena, and shall be made with written notice to all parties, with proof of service upon all parties attached. In response to your motion, the hearing officer may make an order quashing the subpoena entirely, modifying it, or directing compliance with it, or may make any order needed to protect the parties or witnesses from unreasonable or oppressive demands, including unreasonable violations of the right to privacy. (Gov. Code, § 11450.30.) (Send motions to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)

**DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW**  
 (Wat. Code, §§ 1096-1097; Gov. Code, §§ 11450.20(b), 11455.10-11455.20.)

Dated: March 2, 2016



(signature)  
 Name: Michael Vergara  
 Title: Attorney

Unless issued by an attorney pursuant to Code of Civil Procedure, Section 1985, subdivision (c), the original subpoena is embossed with this seal. (See reverse for Endorsement on Subpoena, if used, and Proof of Service)

**PROOF OF SERVICE OF SUBPOENA**

(Gov. Code, § 11440.20; Code Civ. Proc., §§ 1987, 1987.5, 1988, 1989, 2015.3, 2015.5.)

1. I served this  subpoena  subpoena duces tecum and supporting affidavit by:

personally delivering a copy to the person served as follows:

|  |  |
|--|--|
| a. Person served (name):   | b. Date of delivery:                     |
| c. Address where served:   | d. Time of delivery:                     |
| e. Witness fees and mileage both ways (check one):<br>(1) <input type="checkbox"/> were paid. Amount: \$ _____<br>(2) <input type="checkbox"/> were not paid.<br>(3) <input type="checkbox"/> were tendered to the witness's public entity employer as required by Government Code § 88097.2. The amount tendered was \$ _____ | f. Fees for service.<br>Amount: \$ _____ |

delivering true copies thereof by certified mail, return receipt requested, to the address as shown below.  
 delivering true copies thereof enclosed in a sealed envelope to a messenger for immediate personal delivery to the address as shown below.

Address where served: \_\_\_\_\_

2. I certify that I received this  subpoena  subpoena duces tecum for service on \_\_\_\_\_ Date

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:  
 Date \_\_\_\_\_ at (place) \_\_\_\_\_, California Signature \_\_\_\_\_

(For California sheriff, marshal, or constable use only)  
 I certify that the foregoing is true and correct and that this certificate is executed on:  
 Date \_\_\_\_\_ at (place) \_\_\_\_\_, California Signature \_\_\_\_\_

**NOTE: IF THIS SUBPOENA IS ISSUED IN CONNECTION WITH A HEARING IN AN ADJUDICATIVE PROCEEDING UNDER GOVERNMENT CODE § 11400 ET SEQ., THE ATTORNEY OR PARTY WITHOUT AN ATTORNEY REQUESTING THIS SUBPOENA MUST PROVIDE A COPY OF THE SUBPOENA TO EVERY PARTY IN THE HEARING, AND FILE A COPY WITH THE STATE WATER RESOURCES CONTROL BOARD. THE COPY PROVIDED TO THE STATE WATER RESOURCES CONTROL BOARD MUST BE ACCOMPANIED BY A CERTIFICATE OF SERVICE LISTING THE NAMES AND ADDRESSES OF PARTIES WHO WERE PROVIDED COPIES IN ACCORDANCE WITH GOVERNMENT CODE § 11440.20. (Gov. Code, § 11440.20; Cal. Code Regs., tit. 23, § 648.4(c).) (Send to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)**

**ENDORSEMENT ON SUBPOENA IN A PROCEEDING  
OTHER THAN AN ADJUDICATIVE PROCEEDING**

Pursuant to Water Code §1086 and upon affidavit of \_\_\_\_\_ (copy attached) showing that the testimony of the witness ordered by the subpoena to appear is material and necessary to this proceeding, it is required that said witness attend this proceeding.

Dated: \_\_\_\_\_ (signature) \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 State Water Resources Control Board

**NOTE: This ENDORSEMENT is required if the subpoena is in connection with a proceeding other than a hearing under Government Code § 11400 and the witness is being compelled to testify at a location that is both out of the witness's county of residence and 150 miles or more from the witness's place of residence. (Wat. Code, § 1086; Cal. Code Regs., tit. 23, § 649.6(c).)**

1 SOMACH SIMMONS & DUNN  
A Professional Corporation  
2 DANIEL KELLY, ESQ. (SBN 215051)  
MICHAEL E. VERGARA, ESQ. (SBN 137689)  
3 THERESA C. BARFIELD, ESQ. (SBN 185568)  
M. ELI UNDERWOOD (SBN 267665)  
4 500 Capitol Mall, Suite 1000  
Sacramento, California 95814-2403  
5 Telephone: (916) 446-7979  
Facsimile: (916) 446-8199

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

8  
9 BEFORE THE  
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

SWRCB Enforcement Action  
ENF01951 and ENF01949

AFFIDAVIT

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

20  
21 I, Michael E. Vergara, declare as follows:

22 1. I am an attorney admitted to practice law in the State of California. I am a  
23 shareholder at the law firm of Somach Simmons & Dunn. I am one of the attorneys of  
24 record for Byron-Bethany Irrigation District (BBID). The following matters are within my  
25 personal knowledge, and if called as a witness, I could competently testify thereto.

26 2. On June 12, 2015, the State Water Resources Control Board's (SWRCB)  
27 sent a curtailment notice to BBID, which purports to curtail a pre-1914 appropriative  
28 water right of BBID and others with 1903 and later priority dates within the entire

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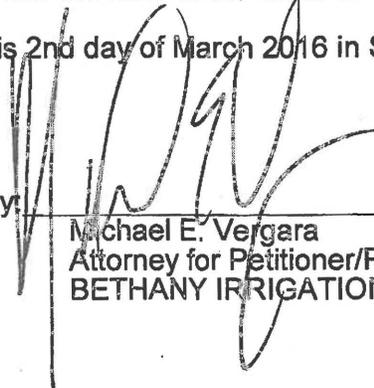
Sacramento and San Joaquin River watersheds, including the California Delta (Curtailment Notice). The Curtailment Notice directed BBID to "immediately stop diverting" under its pre-1914 water rights, and provided that any further diversions would subject BBID to "administrative penalties, cease and desist orders, or prosecution in court."

3. In response, BBID filed suit against the SWRCB on June 26, 2015, challenging the Curtailment Notice, and asserting that the SWRCB exceeded its jurisdiction, violated due process, and conducted a flawed water availability analysis. Multiple other water right holders similarly situated to BBID, including the West Side Irrigation District (WSID), also sued the SWRCB to challenge the Curtailment Notice.

4. On July 20, 2015, the SWRCB issued the Administrative Civil Liability (ACL) Complaint, alleging that BBID unlawfully diverted water from June 13, 2015 to June 25, 2015.

5. Good cause exists for the production of documents described in the Subpoena Duces Tecum and Addendum, as the requested documents are narrowly tailored and relevant to BBID's investigation of the claims and defenses at issue in this proceeding and/or reasonably calculated to lead to the discovery of admissible evidence.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of March 2016 in Sacramento, California.

By:   
Michael E. Vergara  
Attorney for Petitioner/Plaintiff BYRON-  
BETHANY IRRIGATION DISTRICT

SOMACH SIMMONS & DUNN  
A Professional Corporation

1 SOMACH SIMMONS & DUNN  
A Professional Corporation  
2 DANIEL KELLY, ESQ. (SBN 215051)  
MICHAEL E. VERGARA, ESQ. (SBN 137689)  
3 THERESA C. BARFIELD, ESQ. (SBN 185568)  
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4 500 Capitol Mall, Suite 1000  
Sacramento, California 95814-2403  
5 Telephone: (916) 446-7979  
Facsimile: (916) 446-8199

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 UNAUTHORIZED DIVERSIONS OF WATER  
FROM OLD RIVER IN SAN JOAQUIN  
14 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  
COUNTY

SWRCB Enforcement Action  
ENF01951 and ENF01949

ADDENDUM TO SUBPOENA  
DUCES TECUM

California Water Code § 1080;  
California Government Code §  
11450.10; Cal. Code Regs., tit. 23 §  
6496(a); Code of Civil Procedure §§  
2020.410 et seq.

19 To: Custodian of Records of CH2M Hill  
20 2485 Natomas Park Drive, #600  
Sacramento, CA 95833

21 ( ) You are served as an individual.

22 ( ) You are served as (or on behalf of) the person  
23 doing business under the fictitious name  
of

24 (X) You are served on behalf of CH2M and/or CH2M HILL (collectively  
25 CH2M).

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1 TO all parties and their attorneys of record in this proceeding:

2 PLEASE TAKE NOTICE that Petitioner/ Plaintiff Byron-Bethany Irrigation District  
3 (BBID) demands that CH2M, doing business at 2485 Natomas Park Drive #600,  
4 Sacramento, CA 95833, and 402 West Broadway, Suite 1450, San Diego, California  
5 92101, produce the documents described herein below in CH2M's possession, custody  
6 and/or control on **March 12, 2016, by 5:00 p.m.**, in accordance with Code of Civil  
7 Procedure sections 2020.410 et seq., Water Code section 1080, Government Code  
8 section 11450.10, California Code of Regulations, title 23, section 649.6, subdivision  
9 (a), and as set forth in Section (1)(a-b) of the accompanying Amended Subpoena Duces  
10 Tecum.

11 Please send the documents to: Michael E. Vergara, Somach, Simmons & Dunn,  
12 500 Capitol Mall, Suite 1000, Sacramento, California 95814. You may email electronic  
13 records to [mvergara@somachlaw.com](mailto:mvergara@somachlaw.com), or deliver all records via mail or courier on a  
14 suitable electronic storage device, or make electronic records available to download via  
15 the Internet.

16 NOTICE IS GIVEN THAT CH2M may seek the advice of an attorney in any  
17 matter connected with this subpoena, and should consult its attorney promptly so that  
18 any problems concerning the production of documents may be resolved within the time  
19 required by this Subpoena. Failure to comply with the commands of this Subpoena will  
20 subject CH2M to the proceedings and penalties provided by law.

21 SUBPOENA FOR RECORDS AND DOCUMENTS

22 **CUSTODIAN OF RECORDS (CUSTODIAN) for CH2M IS COMMANDED** to  
23 produce the papers, books, records, and documents that are in CUSTODIAN and/or  
24 CH2M's possession custody and/or control as follows:

25 A. DEFINITIONS

26 The capitalized terms listed below, as used in this Addendum to Subpoena duces  
27 tecum, are defined as follows:  
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- 1           1.     The terms "YOU," "YOUR," or "CH2M" means CH2M, CH2M Hill, doing  
2 business at 2485 Natomas Park Drive #600, Sacramento, CA 95833, and 402 West  
3 Broadway, Suite 1450, San Diego, California 92101, and each PERSON acting or  
4 purporting to act on its behalf, including but not limited to, its former or present officers,  
5 employees, agents, contractors, consultants, and representatives (CH2M).
- 6           2.     The term "CUSTODIAN" means Custodian of Records for CH2M, and any  
7 partners or shareholders or attorneys of CH2M, Sacramento, California.
- 8           3.     The terms "YOU" or "YOUR" mean "CUSTODIAN" and/or CH2M.
- 9           4.     The terms "COMMUNICATION" or "COMMUNICATIONS" mean any  
10 occurrence whereby data, expressions, facts, opinions, thoughts, or other information of  
11 any kind is transmitted in any form including, but not limited to, any conversation,  
12 correspondence, discussion, electronic mail, meeting, memorandum, message, note, or  
13 posting or other display on the Internet or the World Wide Web. These terms include,  
14 but are not limited to, COMMUNICATIONS which may contain attorney-client  
15 communications and/or attorney work product.
- 16          5.     The terms "RELATING TO" or "RELATE TO" shall be construed in the  
17 broadest possible sense and shall mean, without limitation, pertaining to, regarding,  
18 concerning, comprising, constituting, in connection with, reflecting, respecting, referring  
19 to, stating, describing, recording, noting, embodying, containing, mentioning, studying,  
20 analyzing, discussing or evaluating.
- 21          6.     The terms "DOCUMENT" or "DOCUMENTS" encompass all documents,  
22 things, property and/or electronic materials within the scope of section 2031.010 of the  
23 California Code of Civil Procedure, and includes all writings as defined in section 250 of  
24 the California Evidence Code, and shall include, but not be limited to, any kind of  
25 written, graphic or recorded matter, however produced or reproduced, of any kind or  
26 description, whether sent or received or neither, including originals, copies and drafts  
27 and both sides thereof, and including but not limited to paper, books, letters,  
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1 photographs, posters, objects, tangible things, correspondence, telegrams, cables,  
2 facsimiles, telex messages, confirmations, account statements, receipts, billing  
3 statements, memoranda, legal memoranda, notes, notations, work papers, transcripts,  
4 minutes, reports, and recordings of telephone or other conversations, or other  
5 conversations, or in conferences or other meetings, affidavits, statements, opinions,  
6 reports, studies, analysis, evaluations, financial statements, prospectuses, circulars,  
7 certificates, press releases, annual reports, quarterly reports, magazine or newspaper  
8 articles, manuals, contracts, agreements, statistical records, journals, desk calendars,  
9 appointment books, diaries, lists, tabulations, summaries, sound recordings, computer  
10 printouts, data processing input and output, electronic mail, all records of  
11 communications recorded or encoded onto magnetic or computer disks, diskettes, audio  
12 and video tapes or any other media, all records kept by electronic, photographic, or  
13 mechanical means, and things similar to any of the foregoing, however denominated,  
14 dated, produced, generated or received. These terms include, but are not limited to,  
15 DOCUMENTS which may contain attorney-client communications and/or attorney work  
16 product.

17 7. The terms "BYRON-BETHANY IRRIGATION DISTRICT" and "BBID"  
18 mean The Byron-Bethany Irrigation District, an Irrigation District formed pursuant to  
19 Division 11 of the California Water Code, and anyone working on its behalf, including  
20 but not limited to, its officers, employees, agents, contractors, consultant, and  
21 representatives.

22 8. The term "DRAFT TECHNICAL MEMORANDUM" means the Draft  
23 Technical Memorandum, 2012– 2015 Delta Salinity Conditions under a Without Project  
24 Scenario, Prepared For: Terry Erlewine/SWC, Prepared By: Tyler Hatch/CH2M HILL /  
25 Chandra Chilmakuri/CH2M HILL, Dated: June 5, 2015.

26 9. Definitions for industry or trade terms contained herein are to be construed  
27 broadly. Where the industry or trade definition set forth herein does not coincide  
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1 precisely with YOUR definition, the question, inquiry or production request should be  
2 responded to or answered by using the definition that YOU apply and/or recognize in  
3 YOUR usage of the term, and YOUR should further document YOUR definition in the  
4 response. Non-industry or non-trade definitions should be applied as defined herein.

5 B. INSTRUCTIONS

6 1. Unless otherwise indicated, the time period covered by this subpoena is  
7 from January 1, 2013 to the present. Any documents RELATING TO this time period  
8 are to be produced, regardless of whether the documents came into existence before or  
9 during this period.

10 2. YOUR response to the subpoena should include a declaration or affidavit.  
11 It should state that a diligent search for all requested DOCUMENTS has been  
12 conducted and that the affiant or declarant was in charge of the search or otherwise  
13 monitored and reviewed the search sufficiently to be able to represent under oath that  
14 such a search was conducted. It should be signed under oath by the person most  
15 knowledgeable about the DOCUMENTS and YOUR efforts to comply with the  
16 subpoena. If different people are the most knowledgeable about portions of the search  
17 (e.g., one person is most knowledgeable about DOCUMENTS contained in computer  
18 media and a different person is most knowledgeable about DOCUMENTS contained on  
19 paper) each should sign an affidavit or declaration identifying the category in the  
20 request for DOCUMENTS for which that person is the most knowledgeable.

21 3. Unless otherwise indicated, for any DOCUMENT stored in a computer,  
22 including all electronic mail messages, YOU should produce the DOCUMENT in the  
23 original electronic file format in which it was created (e.g., Microsoft email should be  
24 provided in its original format, which would have the .pst suffix, not in a tif file;  
25 spreadsheets should be in their original file form, such as an Excel file and word-  
26 processed DOCUMENTS should be in their original file format, such as a Word or  
27 WordPerfect file), together with instructions and all other materials necessary to use or  
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1 interpret the data. Electronic mail messages should be provided, even if only available  
2 on backup or archive tapes or disks. Computer media should be accompanied by (a) an  
3 identification of the generally available software needed to open and view the  
4 DOCUMENTS or (b) a copy of the software needed to open and view the DOCUMENT.  
5 Note, however, that if a print- out from a computer DOCUMENT is a non-identical copy  
6 of the electronic form in which it was created (non-identical by way of example but not  
7 limitation, because it has a signature, handwritten notation, or other mark or attachment  
8 not included in the computer DOCUMENT), both the electronic form in which the  
9 DOCUMENT was created and the original print-out should be produced.

10 4. For each DOCUMENT contained in an audio or video medium, YOU  
11 should provide the tape, disk, or other device from which the audio or video can be  
12 played and the transcript of the DOCUMENT.

13 5. For all DOCUMENTS for which YOU do not produce in the original, as  
14 defined in Evidence Code section 255, YOU may submit copies (black and white copies  
15 if the original was in black and white, color copies if the original was in color, and, if the  
16 original was in electronic format, in the same electronic medium as the original) in lieu of  
17 original DOCUMENTS provided that such copies are accompanied by an affidavit of an  
18 officer of SWC stating that the copies of all types DOCUMENTS are true, correct, and  
19 complete copies of the original DOCUMENTS. If there is in YOUR possession, custody  
20 or control no original, but only a copy or photographic record thereof, then YOU should  
21 produce a true and legible copy of each such DOCUMENT. The accompanying affidavit  
22 should state that the DOCUMENT is only a copy or photographic record and not the  
23 original.

24 6. If a DOCUMENT is responsive to this subpoena and is in YOUR control,  
25 but is not in YOUR possession or custody, in addition to obtaining and producing the  
26 DOCUMENT, identify the person who had possession or custody of the DOCUMENT,  
27 their telephone number and current business and residence addresses.

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1           7.     If any DOCUMENT subpoenaed is no longer in YOUR possession,  
2 custody, control, or care, YOU should provide a written statement identifying the  
3 DOCUMENT with specificity, stating whether it is lost or missing, has been destroyed;  
4 has been transferred to others, or has otherwise been disposed of. The written  
5 statement should also identify the person who disposed of the DOCUMENT, explain the  
6 circumstances and authorization for the disposition and the approximate date of the  
7 disposition of the DOCUMENT. If there are no DOCUMENTS responsive to a  
8 document request, as to each such document request, YOU should include a statement  
9 to that effect in the accompanying declaration or affidavit.

10           8.     DOCUMENTS provided in response to this subpoena should be complete  
11 and unredacted, submitted as found in YOUR files (e.g., DOCUMENTS that in their  
12 original condition were stapled, clipped, attached as a "post-it," or otherwise fastened  
13 together shall be produced in the same form).

14           9.     Each DOCUMENT produced pursuant to this subpoena should be  
15 identified according to the category in the subpoena to which it is responsive. In lieu of  
16 indicating on each DOCUMENT the category to which it is responsive, on the date set  
17 for production, YOU may instead provide an index if YOU provide it in both paper and in  
18 electronic form (such as a computerized spreadsheet in Excel or a Word or WordPerfect  
19 document set up in a table format) of all DOCUMENTS YOU produce, as long as this  
20 index shows by document control number the request(s) to which each DOCUMENT or  
21 group of DOCUMENTS is responsive. Responsive DOCUMENTS from each person's  
22 files should be produced together, in one box or in consecutive boxes, or on one disk or  
23 consecutive disks. Mark each page of a paper DOCUMENT and each tangible thing  
24 containing audio, video, computer, or other electronic DOCUMENTS (e.g. cassette,  
25 disk, tape or CD) with corporate identification and consecutive document control  
26 numbers (e.g., S.L . 00001, S.I. CD 001, S.I. audio tape 001). Number each box of  
27 DOCUMENTS produced and mark each with the name(s) of the person(s) whose files  
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1 are-contained therein, the requests(s) to which they are responsive, and the document  
2 control numbers contained therein.

3 10 For data produced in spreadsheets or tables, include in the declaration or  
4 affidavit the identification of the fields and codes and a description of the information  
5 contained in each coded field.

6 11. The document requests contained in this subpoena shall be deemed to  
7 include a request for all relevant DOCUMENTS in the personal files, including but not  
8 limited to files contained on laptops, handheld devices, home computers and home files  
9 of all YOUR officers, employees, accountants, agents and representatives, including  
10 sales agents who are independent contractors, and attorneys.

11 12. YOU are required to produce all DOCUMENTS responsive to this  
12 Subpoena duces tecum, regardless of any claim of attorney-client communication  
13 and/or attorney work product privilege.

14 13. Whenever necessary to bring within the scope of this subpoena  
15 DOCUMENTS that might otherwise be construed as outside its scope, the use of the  
16 verb in any tense shall be construed, as the use of that verb in all other tenses, and the  
17 singular shall include the plural, and vice versa, so as to make this subpoena broadly  
18 inclusive.

19 C. DOCUMENTS TO BE PRODUCED

20 1. All DOCUMENTS in CH2M's CONTROL RELATED TO the DRAFT  
21 TECHNICAL MEMORANDUM.

22 2. All DOCUMENTS in CH2M's CONTROL RELATED TO modeling work  
23 conducted by CH2M for BBID.

24 3. All DOCUMENTS in CH2M's CONTROL RELATED TO  
25 COMMUNICATIONS between CH2M and the State Water Contractors regarding the  
26 DRAFT TECHNICAL MEMORANDUM.

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4. All DOCUMENTS in CH2M's CONTROL RELATED TO COMMUNICATIONS between CH2M and the Metropolitan Water District of Southern California regarding the DRAFT TECHNICAL MEMORANDUM.

5. All DOCUMENTS in CH2M's CONTROL RELATED TO COMMUNICATIONS between CH2M and the State Water Contractors regarding BBID.

6. All DOCUMENTS in CH2M's CONTROL RELATED TO COMMUNICATIONS between CH2M and the Metropolitan Water District of Southern California regarding BBID.

7. All DOCUMENTS in CH2M's CONTROL RELATED TO COMMUNICATIONS between CH2M and the State Water Contractors regarding modeling work conducted by CH2M for BBID.

8. All DOCUMENTS in CH2M's CONTROL RELATED TO COMMUNICATIONS between CH2M and the Metropolitan Water District of Southern California regarding modeling work conducted by CH2M for BBID.

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.

Dated: March 2, 2016

SOMACH SIMMONS & DUNN  
A Professional Corporation  
By:   
Michael E. Vergara  
Attorneys for Petitioner/Plaintiff  
BYRON-BETHANY IRRIGATION DISTRICT

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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 2, 2016, I served the following document(s):

**SUBPOENA DUCES TECUM TO CUSTODIAN OF RECORDS;  
AFFIDAVIT; AND  
ADDENDUM TO SUBPOENA DUCES TECUM**

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 2, 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**  
A Professional Corporation

|  |  |
|--|--|
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Division of Water Rights<br/>Prosecution Team<br/>Andrew Tauriainen, Attorney III<br/>SWRCB Office of Enforcement<br/>1001 I Street, 16th Floor<br/>Sacramento, CA 95814<br/><a href="mailto:andrew.tauriainen@waterboards.ca.gov">andrew.tauriainen@waterboards.ca.gov</a></p>  | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Byron-Bethany Irrigation District<br/>Daniel Vergara<br/>Somach Simmons &amp; Dunn<br/>500 Capitol Mall, Suite 1000<br/>Sacramento, CA 95814<br/><a href="mailto:dVergara@somachlaw.com">dVergara@somachlaw.com</a></p>  |
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Patterson Irrigation District<br/>Banta-Carbona Irrigation District<br/>The West Side Irrigation District<br/>Jeanne M. Zolezzi<br/>Herum\Crabtree\Suntag<br/>5757 Pacific Avenue, Suite 222<br/>Stockton, CA 95207<br/><a href="mailto:jzolezzi@herumcrabtree.com">jzolezzi@herumcrabtree.com</a></p>   | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>City and County of San Francisco<br/>Jonathan Knapp<br/>Office of the City Attorney<br/>1390 Market Street, Suite 418<br/>San Francisco, CA 94102<br/><a href="mailto:jonathan.knapp@sfgov.org">jonathan.knapp@sfgov.org</a></p>   |
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Central Delta Water Agency<br/>Jennifer Spaletta Law PC<br/>P.O. Box 2660<br/>Lodi, CA 95241<br/><a href="mailto:jennifer@spalettalaw.com">jennifer@spalettalaw.com</a></p> <p>Dante John Nomellini<br/>Daniel A. McDaniel<br/>Dante John Nomellini, Jr.<br/>NOMELLINI, GRILLI &amp; MCDANIEL<br/>235 East Weber Avenue<br/>Stockton, CA 95202<br/><a href="mailto:ngmplcs@pacbell.net">ngmplcs@pacbell.net</a><br/><a href="mailto:dantejr@pacbell.net">dantejr@pacbell.net</a></p> | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>California Department of Water Resources<br/>Robin McGinnis, Attorney<br/>P.O. Box 942836<br/>Sacramento, CA 94236-0001<br/><a href="mailto:robin.mcginnis@water.ca.gov">robin.mcginnis@water.ca.gov</a></p>   |
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Richard Morat<br/>2821 Berkshire Way<br/>Sacramento, CA 95864<br/><a href="mailto:rmorat@gmail.com">rmorat@gmail.com</a></p>   | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>San Joaquin Tributaries Authority<br/>Tim O'Laughlin<br/>Valerie C. Kincaid<br/>O'Laughlin &amp; Paris LLP<br/>2617 K Street, Suite 100<br/>Sacramento, CA 95816<br/><a href="mailto:towater@olaughlinparis.com">towater@olaughlinparis.com</a><br/><a href="mailto:vkincaid@olaughlinparis.com">vkincaid@olaughlinparis.com</a></p> |

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| <u>VIA ELECTRONIC MAIL</u>   | <u>VIA ELECTRONIC MAIL</u>   |
|--|--|
| South Delta Water Agency<br>John Herrick<br>Law Offices of John Herrick<br>4255 Pacific Avenue, Suite 2<br>Stockton, CA 95207<br>Email: <a href="mailto:Jherrlaw@aol.com">Jherrlaw@aol.com</a> | State Water Contractors<br>Stefani Morris<br>1121 L Street, Suite 1050<br>Sacramento, CA 95814<br><a href="mailto:smorris@swc.org">smorris@swc.org</a> |

**SERVICE LIST  
WEST SIDE IRRIGATION DISTRICT  
CEASE AND DESIST ORDER HEARING**

SOMACH SIMMONS & DUNN  
A Professional Corporation

|  |   |
|--|---|
| <p>Division of Water Rights<br/>Prosecution Team<br/>Andrew Tauriainen, Attorney III<br/>SWRCB Office of Enforcement<br/>1001 I Street, 16th Floor<br/>Sacramento, CA 95814<br/><a href="mailto:andrew.tauriainen@waterboards.ca.gov">andrew.tauriainen@waterboards.ca.gov</a></p> | <p>The West Side Irrigation District<br/>Jeanne M. Zolezzi<br/>Karna Harringfeld<br/>Janelle Krattiger<br/>Herum\Crabtree\Suntag<br/>5757 Pacific Avenue, Suite 222<br/>Stockton, CA 95207<br/><a href="mailto:jzolezzi@herumcrabtree.com">jzolezzi@herumcrabtree.com</a><br/><a href="mailto:kharringfeld@herumcrabtree.com">kharringfeld@herumcrabtree.com</a><br/><a href="mailto:jkrattiger@herumcrabtree.com">jkrattiger@herumcrabtree.com</a></p> |
| <p>State Water Contractors<br/>Stefani Morris<br/>1121 L Street, Suite 1050<br/>Sacramento, CA 95814<br/><a href="mailto:smorris@swc.org">smorris@swc.org</a></p>  | <p>Westlands Water District<br/>Daniel O'Hanlon<br/>Rebecca Akroyd<br/>Kronick Moskovitz Tiedemann &amp; Girad<br/>400 Capitol Mall, 27<sup>th</sup> Floor<br/>Sacramento, CA 95814<br/><a href="mailto:dohanlon@kmtg.com">dohanlon@kmtg.com</a><br/><a href="mailto:rakroyd@kmtg.com">rakroyd@kmtg.com</a></p> <p>Phillip Williams of Westlands Water District<br/><a href="mailto:pwilliams@westlandswater.org">pwilliams@westlandswater.org</a></p>  |
| <p>South Delta Water Agency<br/>John Herrick<br/>Law Offices of John Herrick<br/>4255 Pacific Avenue, Suite 2<br/>Stockton, CA 95207<br/>Email: <a href="mailto:Jherriaw@aol.com">Jherriaw@aol.com</a></p>   | <p>Central Delta Water Agency<br/>Jennifer Spaletta Law PC<br/>P.O. Box 2660<br/>Lodi, CA 95241<br/><a href="mailto:jennifer@spalettalaw.com">jennifer@spalettalaw.com</a></p> <p>Dante Nomellini and Dante Nomellini, Jr.<br/>NOMELLINI, GRILLI &amp; MCDANIEL<br/><a href="mailto:ngmplcs@pacbell.net">ngmplcs@pacbell.net</a><br/><a href="mailto:dantejr@pacbell.net">dantejr@pacbell.net</a></p>   |
| <p>City and County of San Francisco<br/>Jonathan Knapp<br/>Office of the City Attorney<br/>1390 Market Street, Suite 418<br/>San Francisco, CA 94102<br/><a href="mailto:jonathan.knapp@sfgov.org">jonathan.knapp@sfgov.org</a></p>  | <p>San Joaquin Tributaries Authority<br/>Valerie C. Kincaid<br/>O'Laughlin &amp; Paris LLP<br/>2617 K Street, Suite 100<br/>Sacramento, CA 95816<br/><a href="mailto:vkincaid@olaughlinparis.com">vkincaid@olaughlinparis.com</a></p>   |
| <p>Byron-Bethany Irrigation District<br/>Daniel Vergara<br/>Somach Simmons &amp; Dunn<br/>500 Capitol Mall, Suite 1000<br/>Sacramento, CA 95814<br/><a href="mailto:dVergara@somachlaw.com">dVergara@somachlaw.com</a></p>   | <p>California Department of Water Resources<br/>Robin McGinnis, Attorney<br/>P.O. Box 942836<br/>Sacramento, CA 94236-0001<br/><a href="mailto:robin.mcginis@water.ca.gov">robin.mcginis@water.ca.gov</a></p>   |

# **EXHIBIT F**

KUTAK ROCK LLP  
SUITE 4550  
777 SOUTH FIGUEROA STREET  
LOS ANGELES, CALIFORNIA 90017-5747  
213-312-4000  
FACSIMILE 213-312-4001  
www.kutakrock.com

ATLANTA  
CHICAGO  
DENVER  
FAYETTEVILLE  
IRVINE  
KANSAS CITY  
LITTLE ROCK  
MINNEAPOLIS  
OKLAHOMA CITY  
OMAHA  
PHILADELPHIA  
RICHMOND  
SCOTTSDALE  
SPOKANE  
WASHINGTON, D.C.  
WICHITA

YASMIN S. COFFEY  
Yasmin.Coffey@KutakRock.com  
(213) 312-4011

March 3, 2016

Via E-Mail

Daniel Kelly, Esq.  
Michael E. Vergara, Esq.  
Somach Simmons & Dunn  
500 Capitol Mall, Suite 1000  
Sacramento, CA 95814

Re: *In the Matter of Enforcement Action ENF01951 and ENF01949*  
Before the State Water Resources Control Board

Dear Mr. Kelly and Mr. Vergara:

As you know, this firm represents CH2M Hill Engineers, Inc., Chandra Chilmakuri and Kyle Winslow, non-parties to Enforcement Proceeding ENF01949 and 01951. We are writing to you in connection with the subpoenas issued to CH2M Hill, Mr. Chilmakuri and Mr. Winslow you served our office via email earlier today.

Please be advised that we are in the process of preparing a motion to quash / motion for protective order in connection with the subpoenas. We are aware that you have already met and conferred with counsel for State Water Contractors regarding earlier versions of the subpoenas issued to Messrs. Chilmakuri and Winslow. We are also aware that you were unable to reach an agreement with SWC regarding these earlier subpoenas. We share concerns similar to SWC's and include, but are not limited to, the fact that the information sought is confidential and/or protected by the attorney work product doctrine and is information that is owned by others, that the subpoenas are untimely and do not provide a reasonable time frame for production and seek information that is irrelevant and not reasonable calculated to lead to the discovery of admissible evidence, that the depositions would be improperly seeking expert opinions, and complying with the subpoenas will be unduly burdensome.

We are happy to discuss these concerns with you. However, since you were unable to reach an agreement with SWC, we are doubtful that a meet and confer at this juncture will be fruitful. In any event, the dates to respond to the subpoenas are fast approaching, and we would

KUTAK ROCK LLP

Daniel Kelly, Esq.

Michael E. Vergara, Esq.

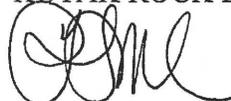
Re: *In the Matter of Enforcement Action ENF01951 and ENF01949*

March 3, 2016

Page 2

like to discuss as soon as possible. Please let me know if you are available this afternoon or tomorrow morning for a meet and confer call.

Very truly yours,  
KUTAK ROCK LLP

A handwritten signature in black ink, appearing to read 'YSC', is written over the typed name of Yasmin S. Coffey.

Yasmin S. Coffey

YSC:vlg

cc: Bradley P. Boyer, Esq.  
Jad Davis, Esq.

# **EXHIBIT G**



SOMACH SIMMONS & DUNN  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814  
OFFICE: 916-446-7979 FAX: 916-446-8199  
SOMACHLAW.COM

March 4, 2016

Via Electronic Mail and U.S. Mail

Yasmin S. Coffey  
Kutak Rock LLP  
777 South Figueroa Street, Suite 4550  
Los Angeles, CA 90017

Re: In the matter of the Enforcement Action ENF01951 and ENF01949  
Before the State Water Resources Control Board

Dear Ms. Coffey:

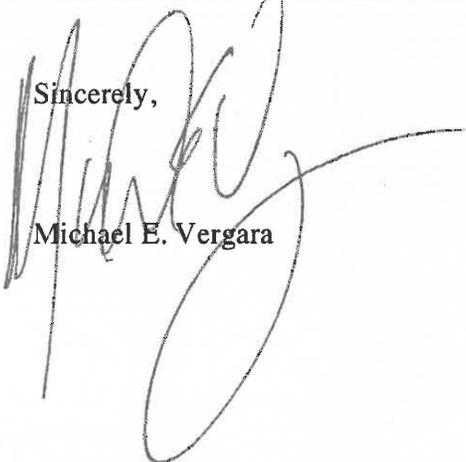
Thank you for your letter dated March 3, 2016 regarding the Amended Subpoena Duces Tecums served on Chandra Chilmakuri and Kyle Winslow, both with CH2M Hill. Your letter references a meet and confer with the State Water Contractors (SWC) with respect to these prior versions of these subpoenas. The SWC has not met and conferred with Byron-Bethany Irrigation District (BBID) with respect to these subpoenas or prior versions of these subpoenas. Instead, we met and conferred with the SWC with respect to Deposition Notices issued to Paul Hutton and Paul Marshall.

Regardless, your letter asserts privilege and insufficient time to comply with the subpoenas. Mr. Winslow undertook work on behalf of the Byron-Bethany Irrigation District (BBID). The subpoena issued to Mr. Winslow seeks information regarding that work, and cannot be withheld from BBID based on an assertion of privilege. Mr. Chilmakuri engaged in work on behalf of the SWC, and the results of that work have been submitted to the State Water Resources Control Board as part of the SWC's testimony in ENF01951. Therefore, the SWC cannot assert privilege to materials submitted as expert testimony in a quasi-adjudicatory proceeding. While BBID understands the short timeframe within which to comply with the subpoena, the SWC submitted testimony which relies, in part, on Mr. Chilmakuri's work, just weeks prior to the evidentiary hearing in ENF01951.

Yasmin S. Coffey  
Re: In the matter of the Enforcement Action ENF01951 and ENF01949  
March 4, 2016  
Page 2

To the extent there is an assertion of privilege for materials or information truly protected by the attorney-client privilege, those materials can be withheld under claim of privilege (supported by a privilege log), and witnesses can be directed not to answer questions at the depositions.

Sincerely,



Michael E. Vergara

MEV:yd

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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 8, 2016, I served the following document(s):

DECLARATION OF MICHAEL E. VERGARA IN SUPPORT OF BYRON-BETHANY IRRIGATION DISTRICT'S CONSOLIDATED OPPOSITION TO:

(1) STATE WATER CONTRACTORS' MOTION TO QUASH SUBPOENAS DUCES TECUM TO CHANDRA CHILMAKURI AND KYLE WINSLOW, OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER, AND

(2) NON-PARTIES CH2M HILL ENGINEERS, INC., CHANDRA CHILMAKURI AND KYLE WINSLOW'S MOTION TO QUASH SUBPEONAS DUCES TECUM TO CH2M HILL, CHANDRA CHILMAKURI AND KYLE WINSLOW OR, ALTERNATIVELY, MOTION FOR A PROTECTIVE ORDER

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 8, 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  
A Professional Corporation

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| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Division of Water Rights<br/>Prosecution Team<br/>Andrew Tauriainen, Attorney III<br/>SWRCB Office of Enforcement<br/>1001 I Street, 16th Floor<br/>Sacramento, CA 95814<br/><a href="mailto:andrew.tauriainen@waterboards.ca.gov">andrew.tauriainen@waterboards.ca.gov</a></p>  | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Byron-Bethany Irrigation District<br/>Michael E. Vergara<br/>Somach Simmons &amp; Dunn<br/>500 Capitol Mall, Suite 1000<br/>Sacramento, CA 95814<br/><a href="mailto:dkelly@somachlaw.com">dkelly@somachlaw.com</a></p>  |
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Patterson Irrigation District<br/>Banta-Carbona Irrigation District<br/>The West Side Irrigation District<br/>Jeanne M. Zolezzi<br/>Herum\Crabtree\Suntag<br/>5757 Pacific Avenue, Suite 222<br/>Stockton, CA 95207<br/><a href="mailto:jzolezzi@herumcrabtree.com">jzolezzi@herumcrabtree.com</a></p>   | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>City and County of San Francisco<br/>Jonathan Knapp<br/>Office of the City Attorney<br/>1390 Market Street, Suite 418<br/>San Francisco, CA 94102<br/><a href="mailto:jonathan.knapp@sfgov.org">jonathan.knapp@sfgov.org</a></p>   |
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Central Delta Water Agency<br/>Jennifer Spaletta Law PC<br/>P.O. Box 2660<br/>Lodi, CA 95241<br/><a href="mailto:jennifer@spalettalaw.com">jennifer@spalettalaw.com</a></p> <p>Dante John Nomellini<br/>Daniel A. McDaniel<br/>Dante John Nomellini, Jr.<br/>NOMELLINI, GRILLI &amp; MCDANIEL<br/>235 East Weber Avenue<br/>Stockton, CA 95202<br/><a href="mailto:ngmplcs@pacbell.net">ngmplcs@pacbell.net</a><br/><a href="mailto:dantejr@pacbell.net">dantejr@pacbell.net</a></p> | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>California Department of Water<br/>Resources<br/>Robin McGinnis, Attorney<br/>P.O. Box 942836<br/>Sacramento, CA 94236-0001<br/><a href="mailto:robin.mcginnis@water.ca.gov">robin.mcginnis@water.ca.gov</a></p>   |
| <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>Richard Morat<br/>2821 Berkshire Way<br/>Sacramento, CA 95864<br/><a href="mailto:rmorat@gmail.com">rmorat@gmail.com</a></p>   | <p><b><u>VIA ELECTRONIC MAIL</u></b></p> <p>San Joaquin Tributaries Authority<br/>Tim O'Laughlin<br/>Valerie C. Kincaid<br/>O'Laughlin &amp; Paris LLP<br/>2617 K Street, Suite 100<br/>Sacramento, CA 95816<br/><a href="mailto:towater@olaughlinparis.com">towater@olaughlinparis.com</a><br/><a href="mailto:vkincaid@olaughlinparis.com">vkincaid@olaughlinparis.com</a></p> |

DECLARATION OF MICHAEL E. VERGARA IN SUPPORT OF BBID'S CONSOLIDATED OPPOSITION TO: (1) SWC'S MOTION TO QUASH AND (2) CH2M, CHILMAKURI, AND WINSLOW'S MOTION TO QUASH

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**VIA ELECTRONIC MAIL**

South Delta Water Agency  
John Herrick  
Law Offices of John Herrick  
4255 Pacific Avenue, Suite 2  
Stockton, CA 95207  
Email: [Jherrlaw@aol.com](mailto:Jherrlaw@aol.com)

**VIA ELECTRONIC MAIL**

State Water Contractors  
Stefani Morris  
1121 L Street, Suite 1050  
Sacramento, CA 95814  
[smorris@swc.org](mailto:smorris@swc.org)

**SERVICE LIST  
WEST SIDE IRRIGATION DISTRICT  
CEASE AND DESIST ORDER HEARING**

|  |   |
|--|---|
| <p>3 Division of Water Rights<br/>Prosecution Team<br/>4 Andrew Tauriainen, Attorney III<br/>SWRCB Office of Enforcement<br/>5 1001 I Street, 16th Floor<br/>Sacramento, CA 95814<br/>6 <a href="mailto:andrew.tauriainen@waterboards.ca.gov">andrew.tauriainen@waterboards.ca.gov</a></p> | <p>The West Side Irrigation District<br/>Jeanne M. Zolezzi<br/>Karna Harringfeld<br/>Janelle Krattiger<br/>Herum\Crabtree\Suntag<br/>5757 Pacific Avenue, Suite 222<br/>Stockton, CA 95207<br/><a href="mailto:jzolezzi@herumcrabtree.com">jzolezzi@herumcrabtree.com</a><br/><a href="mailto:kharringfeld@herumcrabtree.com">kharringfeld@herumcrabtree.com</a><br/><a href="mailto:jkrattiger@herumcrabtree.com">jkrattiger@herumcrabtree.com</a></p> |
| <p>8 State Water Contractors<br/>Stefani Morris<br/>9 1121 L Street, Suite 1050<br/>Sacramento, CA 95814<br/>10 <a href="mailto:smorris@swc.org">smorris@swc.org</a></p>   | <p>Westlands Water District<br/>Daniel O'Hanlon<br/>Rebecca Akroyd<br/>Kronick Moskowitz Tiedemann &amp; Girad<br/>400 Capitol Mall, 27<sup>th</sup> Floor<br/>Sacramento, CA 95814<br/><a href="mailto:dohanlon@kmtg.com">dohanlon@kmtg.com</a><br/><a href="mailto:rakroyd@kmtg.com">rakroyd@kmtg.com</a></p> <p>Phillip Williams of Westlands Water District<br/><a href="mailto:pwilliams@westlandswater.org">pwilliams@westlandswater.org</a></p>  |
| <p>14 South Delta Water Agency<br/>John Herrick<br/>15 Law Offices of John Herrick<br/>4255 Pacific Avenue, Suite 2<br/>16 Stockton, CA 95207<br/>Email: <a href="mailto:Jherrlaw@aol.com">Jherrlaw@aol.com</a></p>  | <p>Central Delta Water Agency<br/>Jennifer Spaletta Law PC<br/>P.O. Box 2660<br/>Lodi, CA 95241<br/><a href="mailto:jennifer@spalettalaw.com">jennifer@spalettalaw.com</a></p> <p>Dante Nomellini and Dante Nomellini, Jr.<br/>NOMELLINI, GRILLI &amp; MCDANIEL<br/><a href="mailto:ngmplcs@pacbell.net">ngmplcs@pacbell.net</a><br/><a href="mailto:dantejr@pacbell.net">dantejr@pacbell.net</a></p>   |
| <p>20 City and County of San Francisco<br/>Jonathan Knapp<br/>21 Office of the City Attorney<br/>1390 Market Street, Suite 418<br/>22 San Francisco, CA 94102<br/><a href="mailto:jonathan.knapp@sfgov.org">jonathan.knapp@sfgov.org</a></p>   | <p>San Joaquin Tributaries Authority<br/>Valerie C. Kincaid<br/>O'Laughlin &amp; Paris LLP<br/>2617 K Street, Suite 100<br/>Sacramento, CA 95816<br/><a href="mailto:vkincaid@olaughlinparis.com">vkincaid@olaughlinparis.com</a></p>   |
| <p>23 Byron-Bethany Irrigation District<br/>Michael E. Vergara<br/>24 Somach Simmons &amp; Dunn<br/>500 Capitol Mall, Suite 1000<br/>25 Sacramento, CA 95814<br/><a href="mailto:dkelly@somachlaw.com">dkelly@somachlaw.com</a></p>  | <p>California Department of Water Resources<br/>Robin McGinnis, Attorney<br/>P.O. Box 942836<br/>Sacramento, CA 94236-0001<br/><a href="mailto:robin.mcginnis@water.ca.gov">robin.mcginnis@water.ca.gov</a></p>   |

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