



Terry Tamminen
*Secretary for
Environmental
Protection*

State Water Resources Control Board



Division of Water Rights

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Arnold Schwarzenegger
Governor

**NOTICE OF PETITION
INVOLVING LICENSE AND PERMITS OF THE
CENTRAL VALLEY PROJECT AND THE STATE WATER PROJECT
TEMPORARY URGENCY CHANGE
IN WESTERN DELTA SALINITY OBJECTIVES
IN RESPONSE TO THE DELTA LEVEE FAILURE**

Notice is hereby given that on June 24, 2004,

Department of Water Resources
SWP Operations Control Office
Carl A. Torgersen, Chief
3310 El Camino Avenue, Suite 300
Sacramento, CA 95821

United States Bureau of Reclamation
Central Valley Operations Office
Chester V. Bowling, Projects Manager
3310 El Camino Avenue, Suite 300
Sacramento, CA 95821

jointly filed with the State Water Resources Control Board (SWRCB) a Petition for Temporary Urgency Change pursuant to Water Code section 1435. The petition was filed under the Department of Water Resources' (DWR) State Water Project (SWP) and the United States Bureau of Reclamation's (USBR) Central Valley Project (CVP) water rights (listed on page 4 of the attached order) in response to the June 3, 2004, levee failure in the San Francisco Bay/Sacramento-San Joaquin Delta (Delta). The petition requested the temporary relaxation of two Western Delta Water Quality Objectives contained in the SWRCB's Revised Decision 1641 (D-1641) through August 15, 2004, due to increased salinity concentrations resulting from the levee failure.

The petition also requested the temporary addition of the Tracy Pumping Plant as a point of diversion/redirection under the SWP water rights and the Banks Pumping Plant as a point of diversion/redirection under the CVP water rights for the purposes of stabilizing water levels in the southern Delta during the levee breach period. However, the levee breach already has been closed, and consequently the urgent need for this portion of the proposed temporary urgency change is no longer present and this request is moot.

SWRCB ACTION

Pursuant to Water Code section 1438 (a), the SWRCB may approve a petition for temporary urgency change prior to issuing public notice of the change. The SWRCB has reviewed the petition, a Notice of Exemption for the petition prepared by DWR, letters regarding the petition from the Department of Fish and Game, the National Marine Fisheries Service, the Contra Costa Water District, and the Central Delta Water Agency, and other information contained in its files.

California Environmental Protection Agency

Based on the available information, the SWRCB determined that there is sufficient information to make the findings (provided below in section titled "SWRCB'S STATUTORY PROVISIONS") required to approve the proposed temporary urgency change in Western Delta Water Quality Objectives and that the proposed change is exempt from the California Environmental Quality Act (CEQA).

Based on the information currently available, on July 12, 2004, the SWRCB issued Order WRO 2004-0033-DWR conditionally approving the temporary change (through August 15, 2004) in the value of the Western Delta Water Quality Objectives at the Sacramento River at Emmaton and the San Joaquin River at Jersey Point compliance locations (defined in Table 2 on page 182 of the SWRCB's Revised Decision 1641), from the current objectives of 1.0 mmhos/cm at Emmaton and 0.74 mmhos/cm at Jersey Point, to modified objectives of 1.35 mmhos/cm at Emmaton and 1.0 mmhos/cm at Jersey Point. A copy of Order WRO 2004-0033-DWR is attached to this notice. Additionally, on July 12, 2004, the SWRCB issued a Notice of Exemption for the temporary change. Electronic copies of this notice, Order WRO 2004-0033-DWR, the petition, the Notices of Exemption prepared by DWR and the SWRCB, and the letters reviewed by the SWRCB are available on the Division of Water Rights' website at: www.waterrights.ca.gov.

SWRCB'S STATUTORY PROVISIONS

Chapter 6.6 of Part 2, Division 2, of the Water Code, commencing at section 1435, provides that any permittee or licensee who has an urgent need to change a point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a conditional temporary change order. The California Code of Regulations, title 23, section 791(e), provides that the SWRCB shall follow as nearly as possible the procedures for changes in point of diversion, place of use, or purpose of use when processing petitions for other types of changes in water right permits and licenses. Accordingly, the procedures under section 1435 are applicable to changes to terms and conditions of water right permits and licenses.

Prior to approving a temporary change order pursuant to Chapter 6.6, the SWRCB must make the following findings specified in Water Code section 1435(b):

1. The petitioner has an urgent need to make the proposed change;
2. The proposed change may be made without injury to any other lawful user of water;
3. The proposed change may be made without unreasonable effect upon fish, wildlife or other instream beneficial uses; and
4. The proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

The SWRCB has retained jurisdiction to modify Order WRO 2004-0033-DWR, and, in accordance with the provisions of Water Code section 1435, is seeking further information regarding the proposed temporary urgency change. Any person may file comments concerning the changes authorized in Order WRO 2004-0033-DWR, however, the comments must address the issues that the SWRCB must evaluate, as set forth above. Though the SWRCB has approved

the temporary changes in Western Delta Water Quality Objectives based on the information currently available, this approval may be revised or withdrawn if good cause is shown.

Materials filed in response to this notice shall be mailed to both parties at the addresses listed below. **Since this change is in effect for only 35 days, commenters requesting modification or withdrawal of Order WRO 2004-0033-DWR should file their comments as soon as possible.** The SWRCB will consider comments regarding this petition as soon as possible after their receipt, however, all comments must be filed by 3:00 pm on July 28, 2004 for the SWRCB to consider them. Interested parties are encouraged to file comments, etc., by FAX and to notify the following contact persons by telephone of any materials that will be submitted. However, an original copy of all materials must be received by the SWRCB to be considered.

State Water Resources Control Board
Division of Water Rights
c/o Greg Wilson
P.O. Box 2000
Sacramento, CA 95812-2000
Phone No. (916) 341-5427
FAX No. (916) 341-5400

Department of Water Resources
SWP Operations Control Office
c/o Curtis Creel
3310 El Camino Avenue, Suite 300
Sacramento, CA 95821
Phone No. (916) 574-2722
FAX No. (916) 574-2785

Street Address:

1001 I Street, 14th Floor
Sacramento, CA 95814

Please direct questions about this notice to Greg Wilson at (916) 341-5427. Questions regarding the petition should be directed to Curtis Creel at (916) 574-2722.

State Water Resources Control Board

Original Signed By:

James W. Kassel, Chief
Licensing and Compliance Section

Dated: July 14, 2004

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WRO 2004-0033-DWR

**IN THE MATTER OF THE LICENSE AND PERMITS
OF THE CENTRAL VALLEY PROJECT AND THE STATE WATER PROJECT
PETITION FOR TEMPORARY URGENCY CHANGE
IN WESTERN DELTA SALINITY OBJECTIVES
IN RESPONSE TO THE DELTA LEVEE FAILURE**

ORDER APPROVING PETITION FOR TEMPORARY URGENCY CHANGE
IN POINT OF DIVERSION/REDIVERSION AND PERMIT CONDITIONS
BY BOARD CHAIR ARTHUR G. BAGGETT, JR.:

1.0 INTRODUCTION

On June 24, 2004, the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR), hereinafter collectively referred to as the Projects, completed the filing with the State Water Resources Control Board (SWRCB) of a Petition for Temporary Urgency Change pursuant to Water Code section 1435. The petition was filed under DWR's State Water Project (SWP) and USBR's Central Valley Project (CVP) water rights (listed on page 4 of this order) in response to the June 3, 2004, levee failure in the San Francisco Bay/Sacramento-San Joaquin Delta (Delta). The petition requested the temporary relaxation of two Western Delta Water Quality Objectives contained in the SWRCB's Revised Decision 1641 (D-1641) through August 15, 2004, due to increased salinity concentrations resulting from the levee failure.

The petition also requested the temporary addition of the Tracy Pumping Plant as a point of diversion/rediversion under the SWP water rights and the Banks Pumping Plant as a point of diversion/rediversion under the CVP water rights for the purposes of stabilizing water levels in the southern Delta during the levee breach period. However, the levee breach already has been closed, and consequently the urgent need for this portion of the proposed temporary urgency change is no longer present and this request is moot.

I am delegated authority to approve this temporary urgency change, pursuant to Water Code section 1435(d) and SWRCB Resolution No. 2002-0106, section 1.3.

2.0 BACKGROUND

On June 3, 2004, a major levee along the western border of the Upper Jones Tract (located within the southeastern portion of the Delta) failed, inundating the entire island with water. Initial estimates of the volume of water impounded within the Upper Jones Tract ranged between 100,000 and 200,000 af. Operations to repair the levee were initiated immediately, and as of July 7, 2004 the levee failure was closed and the water impounded on the Upper Jones Tract was being pumped back to the Delta. Governor Schwarzenegger declared the levee failure a state of emergency on June 4, 2004.

The Projects took emergency actions to reduce the potential for further levee failure and to attempt to mitigate anticipated saltwater intrusion to the Delta. Exports from the Project's Delta pumping plants

(which were already at zero at the Banks Pumping Plant due to scheduled maintenance) were temporarily decreased to the minimum operating conditions. In consultation with the fisheries agencies (the California Department of Fish and Game (DFG), the National Oceanographic and Atmospheric Administration – Fisheries (NOAA Fisheries), and the United States Fish and Wildlife Service (USFWS)), USBR opened the Delta Cross Channel (DCC) gates to further assist in reducing overall salinity concentrations within the Delta.

3.0 SUBSTANCE OF PETITION

The Projects requested the proposed temporary urgency changes by letter dated June 24, 2004. The Projects request the following changes to the water rights of the SWP and CVP (shown in Figure 1, on page 4 of this order):

Change the value of the Western Delta Water Quality Objectives at the Sacramento River at Emmaton and the San Joaquin River at Jersey Point compliance locations (defined in Table 2 on page 182 of D-1641) such that the Projects are allowed to operate to targets of 1.35 mmhos/cm at Emmaton and 1.0 mmhos/cm at Jersey Point. This change would be effective through August 15, 2004.

Add the Tracy Pumping Plant as a point of diversion/redirection to the SWP water rights and the Banks Pumping Plant as a point of diversion/redirection to the CVP water rights to stabilize water levels in the Southern Delta during the levee breach period. The use of these added points of diversion/redirection would be limited such that it does not increase the amount of water exported from the Delta. This change would be effective through August 15, 2004.

The petition also indicated that the Projects intended to request the addition of the Banks Pumping Plant as a point of diversion/redirection under the CVP water rights for the purpose of exporting 30,000 af of water.

Additionally, the Projects indicated that pursuant to the requirements for Joint Point of Diversion (JPOD) operations contained in D-1641, revised drafts of the Water Level Response Plan, Water Quality Response Plan and Fish and Wildlife Protection Plan would be submitted to the SWRCB under separate cover. The Projects requested that the SWRCB expedite its review of these plans.

A discussion of the proposed changes is provided below.

3.1 Salinity Objectives

The inundation of Upper Jones Tract temporarily increased the inflow of water with a relatively high salinity concentration from the San Francisco Bay into the Delta. This inflow combined with a strong seasonal tide resulted in a significant increase in the salinity concentrations within the western Delta, and to a lesser extent within the entire Delta. Within four days of the levee failure, the daily average electrical conductivity (representative of salinity concentration) at two western Delta monitoring stations (the Sacramento River at Emmaton and the San Joaquin River at Jersey Point) rose from approximately 0.21 - 0.22 mmhos/cm to 1.71 mmhos/cm at Emmaton and 1.04 mmhos/cm at Jersey Point. As a result, the water quality objectives the Projects are required to meet, pursuant to D-1641, for salinity (measured as the 14-day running average of mean daily electrical conductivity in mmhos/cm) at Emmaton and Jersey Point were not met between about June 7 and June 19, 2004. The salinity objectives at Emmaton and Jersey Point returned to compliance on June 20, 2004, and have been met since that date.

Though the salinity objectives within the western Delta have been met since June 20, 2004, water quality conditions in the Delta tend to deteriorate (i.e., salinity concentrations increase) from the period of June through October due to reduced inflows and accretions from the Delta's tributary rivers, and increased upstream agricultural return flows containing relatively high salinity concentrations. The Projects state that the significant increase in salinity caused by the levee failure has essentially changed the observed

Delta conditions from those typical of a below-normal year to those typical of a dry year. The petition includes several figures comparing projected salinity concentrations absent the levee failure and current observed salinity concentrations. The figures project that increased salinity concentrations due to the levee failure will result in an extended period of increased salinity throughout the Delta for the duration of this water year. The Projects conducted an analysis of the impacts of this extended period of increased salinity concentrations and reviewed several potential alternatives to respond to these impacts. Short summaries of these alternatives and the Project's discussion of their relative impacts are provided below:

Alternative #1: Full compliance with the western Delta salinity objectives contained in D-1641.

The Projects stated that it was technically infeasible to release the magnitude of relatively fresh water required to meet the salinity objectives at Emmaton and Jersey Point (which are measured as the 14-day running average of the average daily electrical conductivity) prior to June 20, 2004.

Alternative #2: Compliance with the western Delta salinity objectives contained in D-1641 after June 20, 2004.

This alternative would result in full compliance with the western Delta salinity objectives beginning June 20, 2004. The Projects estimate that the volume of additional releases from upstream storage required to meet the existing objective is approximately 100,000 - 150,000 af more than would be required for Alternative #3. The reduction in upstream storage associated with this alternative could potentially impact project water supplies and the availability of cold-water resources to meet fall water temperature objectives.

Alternative #3: Compliance with the petitioned salinity objectives of 1.35 mmhos/cm in the Sacramento River at Emmaton and 1.0 mmhos/cm in the San Joaquin River at Jersey Point.

This alternative would result in a salinity regime within the western Delta that is about halfway between the salinity levels required in D-1641 for below normal and dry years. The Projects state that maintaining these amended salinity objectives would require more releases from upstream storage than would be required under Alternative #4, but the impacts to upstream storage would be about 100,000 – 150,000 af less than those required under Alternative #2. The Projects state that this is their preferred alternative since it minimizes the impacts to upstream storage (and associated impacts to cold water resources) while maintaining water quality above that which would be present under dry year objectives.

Alternative #4: Compliance with the western Delta salinity objectives contained in D-1641 for dry year conditions. These objectives are 1.67 mmhos/cm in the Sacramento River at Emmaton and 1.35 mmhos/cm in the San Joaquin River at Jersey Point.

This alternative would result in a salinity regime within the western Delta that is similar to the regime required in D-1641 during dry years. The Projects estimate that the amount of water required to meet the dry year salinity objectives is approximately 100,000 - 150,000 af less than would be required under Alternative #3. The Projects indicated that a dry year salinity regime within the western Delta could have potential impacts to other users of the water that would not occur under the salinity objectives proposed under Alternative #3.

3.2 Water Level Concerns

The Projects state, based on their modeling and analyses that the levee breach had the potential to alter the hydrodynamics within the Delta and its waterways, limiting their ability to manage upstream releases and exports efficiently while maintaining water quality objectives and water levels within the southern Delta. Accordingly, the Projects stated that the use of each other's pumping facilities in the Delta would allow the operational flexibility to better manage their exports, southern Delta water levels, and water quality. The Projects stated that the use of each other's Delta pumping facilities would be limited to

managing water levels and would not allow an increase of total exports from the Delta above that which would have been present absent the change.

The levee breach was closed and pumping of the water impounded on the Upper Jones Tract to the Delta commenced on July 7, 2004. Thus, the impacts to Delta hydrodynamics due to the levee failure are no longer present, and the urgent need for this portion of the proposed temporary change is no longer present. Accordingly, this order does not approve the requested temporary change in points of diversion.

**Figure 1
Description of the SWP and CVP Water Rights**

SWP Water Rights			
Application No.	Permit No.	License No.	Description
5630	16478	n/a	Oroville Project
14443	16479	n/a	Oroville Project
14445A	16481	n/a	Banks Pumping Plant
17512	16482	n/a	San Luis Reservoir
17514A	16483	n/a	North Bay Aquaduct
CVP Water Rights			
Application No.	Permit No.	License No.	
23	273	1986	Friant Project
234	11885	n/a	Friant Project
1465	11886	n/a	Friant Project
5626	12721	n/a	Shasta Project
5628	11967	n/a	Trinity Project
5638	11887	n/a	Friant Project
9363	12722	n/a	Shasta Project
9364	12723	n/a	Shasta Project
9366	12725	n/a	Contra Costa Canal
9367	12726	n/a	Contra Costa Canal
9368	12727	n/a	Tracy Pumping Plant
13370	11315	n/a	Folsom Project
13371	11316	n/a	Folsom Project
14858A	16597	n/a	New Melones Project
14858B	20245	n/a	New Melones Project
15374	11968	n/a	Trinity Project
15375	11969	n/a	Trinity Project
15376	11970	n/a	Trinity Project
15764	12860	n/a	San Luis Reservoir
16767	11971	n/a	Trinity Project
16768	11972	n/a	Trinity Project
17374	11973	n/a	Trinity Project
17376	12364	n/a	Whiskeytown Lake
19304	16600	n/a	New Melones Project
22316	15735	n/a	Contra Costa Canal

4.0 COMMENTS REGARDING THE PETITION

In addition to its submittal to the SWRCB, the Projects provided copies of the June 24, 2004 letter to several potentially interested parties. The SWRCB requested that the Projects obtain comments on the petition from the fishery agencies to assist its review. Prior to issuance of this order, Contra Costa Water District (CCWD), the Central Delta Water Agency (CDWA), DFG, and NOAA Fisheries submitted comments to the SWRCB regarding the proposed change. (The Projects also solicited comments from the USFWS, but the SWRCB did not receive the USFWS comments prior to the issuance of this order. NOAA Fisheries stated that USFWS agrees with its comments.). These comments are summarized below.

Contra Costa Water District

CCWD states that increased salinity concentrations within the Delta due to the levee failure forced it to shut down its Delta intake facilities resulting in a loss of approximately 6,000 af of water which could have been diverted to Los Vaqueros Reservoir absent the levee failure. Additionally, CCWD indicates that the increased salinity conditions projected to occur throughout the Delta this summer (assuming that the petitioned change in salinity objectives is implemented) will result in an additional reduction of between 15,000 and 20,000 af of storage in Los Vaqueros Reservoir due to increased blending demands. CCWD also notes that since the water impounded on Upper Jones Tract may contain significant concentrations of organic carbons, it may cause additional water quality impacts and increased blending demands when it is pumped back to the Delta. CCWD states that the loss of storage in Los Vaqueros Reservoir due to the levee failure may have significant impacts on its ability to make releases for fisheries and meet its drinking water standards and customer demands during the 2005 water year (October 2004 through September 2005) and beyond. Accordingly, CCWD indicated that it would like to work with the SWRCB, DWR, USBR and the fishery agencies to determine whether future temporary modifications to the operating requirements for Los Vaqueros Reservoir are appropriate.

Additionally, CCWD made the following comments regarding the proposed temporary urgency change:

The proposed modifications to the water quality objective for salinity in the Sacramento River at Emmaton and the San Joaquin River at Jersey Point should be enforceable objectives as opposed to operational targets.

CCWD does not oppose the proposed addition of the Tracy Pumping Plant as a point of diversion/rediversion to the SWP water rights and the Banks Pumping Plant as a point of diversion/rediversion to the CVP water rights for the purpose of stabilizing southern Delta water levels as long as it does not increase the total amount of water exported from the Delta.

CCWD stated that it would not oppose the use of the proposed addition of the Banks Pumping Plant as a point of diversion/rediversion to the CVP water rights to increase exports by 30,000 af of water to make up for reduced diversions and deliveries of water to CVP contractors, if the change is approved only as part of an overall plan to assist all parties impacted by the levee failure.

Water pumped from the Upper Jones Tract to the Delta should be accounted for in the Projects' water supply calculations and made available for use by all affected parties.

The proposed temporary urgency changes should be conditioned such that their approval is contingent upon the agreement to a plan to assist all Delta water users affected by the levee failure.

Central Delta Water Agency

CDWA indicated that it did not support the Projects intended request to add the Banks Pumping Plant as a point of diversion/rediversion under the CVP water rights for the purpose of exporting 30,000 af of water lost to the CVP as a result of the Project's response to the levee failure. CDWA also noted that the levee breach has been closed and that the water impounded on the Upper Jones tract is in the process of being

returned to the Delta. Finally, CDWA stated that the SWRCB should require an evaluation of the potential for the increased salinity concentrations associated with the proposed temporary change in water quality objectives to result in additional salt build-up in the soils prior to approving any modifications to the Delta standards.

Department of Fish and Game

DFG stated that it had reviewed the petition for temporary urgency change and it does not anticipate any unreasonable adverse impacts to fish in the Delta as a result of the proposed changes in water quality objectives. DFG stated that the operations associated with the proposed temporary change may be the alternative most beneficial to anadromous and resident fish at this time.

National Oceanographic and Atmospheric Administration - Fisheries

NOAA Fisheries stated that it had worked closely with USBR, DWR, DFG and the USFWS evaluating potential impacts to fishery resources of concern following the levee failure. Consequently, NOAA Fisheries supports the changes proposed in the petition for temporary urgency change. NOAA Fisheries stated that the operations undertaken by the Projects to date have not adversely affected listed salmonids and it concurred with DFG's conclusion that the operations associated with the proposed temporary change may be the alternative most beneficial to anadromous and resident fish at this time.

5.0 PUBLIC NOTICE OF THE PETITION

Pursuant to Water Code section 1438 (a), the SWRCB is issuing this order concurrently with issuing public notice of the temporary urgency change. In accordance with Water Code section 1438(b)(1), the Projects shall mail public notice of this proposed temporary urgency change to interested parties and publish it in the Stockton Record as soon as is practicable, but not later than five days from the date of this order. The SWRCB retains jurisdiction to modify this order based on any comments or objections that it may receive in response to the public notice.

6.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGE

Chapter 6.6 of Part 2, Division 2, of the Water Code, commencing at section 1435, provides that any permittee or licensee who has an urgent need to change a point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a conditional temporary change order. The SWRCB's regulation, at California Code of Regulations, title 23, section 791(e), provides that the SWRCB shall follow as nearly as possible the procedures for changes in point of diversion, place of use, or purpose of use when processing petitions for other types of changes in water right permits and licenses. Accordingly, the procedures under section 1435 are applicable to changes to terms and conditions of water right permits and licenses.

The SWRCB must make the findings specified in section 1435(b) when issuing a temporary change order pursuant to Chapter 6.6. The required findings are:

1. The permittee or licensee has an urgent need to make the proposed change.
2. The proposed change may be made without injury to any other lawful user of water.
3. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.
4. The proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

6.1 Urgency of the Proposed Change

Under Water Code section 1435 (c), an urgent need to make a proposed change exists when the SWRCB concludes that the proposed temporary change is necessary to further the constitutional policy that the water resources of the State be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented. Additionally, the SWRCB shall not find the need urgent if it concludes that the petitioner has failed to exercise due diligence in petitioning for a change pursuant to other appropriate provisions of the Water Code. In this case, an urgent need exists for the proposed change because without this change the Projects would need to release additional stored water, resulting in lower carryover of water supply for the following years and a reduction in cold water resources to meet water temperature objectives for anadromous fish during this fall.

6.2 No Injury to Any Other Lawful User of Water

The proposed increased salinity levels will result in an increase in salinity concentrations within the western Delta and, to a lesser extent, within the entire Delta. Increased salinity, if excessive, has the potential to injure agricultural and municipal users of water within the Delta. The increased salinity involved in the proposed change, however, will remain within the range that is considered protective of agricultural and municipal uses, and will be better than the salinity levels required during dry years.

Based on this discussion, I find that the proposed change will not cause injury to any lawful user of water.

6.3 No Unreasonable Effect upon Fish, Wildlife, or Other Instream Beneficial Uses

The proposed increased salinity objectives will result in an increase in salinity concentrations within the western Delta and, to a lesser extent, the entire Delta. Increased salinity concentrations, if excessive, have the potential to adversely impact fish, wildlife, or other instream beneficial uses in these areas. However, DWR, USBR, DFG, and NOAA - Fisheries have all reviewed the proposed temporary changes and concluded that the potential impacts to fish and wildlife due to increased salinity conditions pose less of a threat to the fish and wildlife than the potential impacts of meeting the salinity objectives and consequently reducing the available cold water resources during the fall.

Based on this discussion, I find that the proposed change will not have an unreasonable effect on fish, wildlife and other instream beneficial uses of water.

6.4 The Proposed Change is in the Public Interest

The proposed change will help conserve cold water in upstream storage for anadromous fisheries during the fall and will help mitigate and recoup the loss of water supplies to the Projects and their water supply contractors due to the levee break. It is in the public interest to preserve water supplies for these beneficial uses when unusual circumstances such as the levee break would otherwise cause the significant loss of these water supplies.

7.0 ENVIRONMENTAL COMPLIANCE

Under the provisions of the California Environmental Quality Act (CEQA), DWR is the lead agency for this project. DWR has prepared a Notice of Exemption (dated July 6, 2004) stating that the project is exempt from CEQA since it is the result of a declared emergency. The SWRCB has reviewed DWR's Notice of Exemption, information contained in the petition, comments from DFG, and NOAA - Fisheries, and information contained in its files; and finds that the proposed temporary urgency change is statutorily exempt from CEQA. Accordingly, the SWRCB has prepared a Notice of Exemption (dated July 9, 2004) in support of this finding.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition for temporary urgency change under Permits 16478, 16479, 16481, 16482, and 16483 (Applications 5630, 14443, 14445A, 17512, and 17514A, respectively) of the Department of Water Resources (DWR) State Water Project (SWP) and License 1986 (Application 23) and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 16600, and 20245 (Applications 13370, 13371, 234, 1465, 5638, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 19304, and 14858B, respectively) of the United States Bureau of Reclamation's (USBR) Central Valley Project (CVP) is approved, in part, subject to the following terms and conditions. All other terms and conditions of the subject license and permits and State Water Resources Control Board Revised Decision 1641 (D-1641) shall remain in effect.

1. The value of the Water Quality Objectives for Agricultural Beneficial Uses for the Sacramento River at Emmaton and for the San Joaquin River at Jersey Point, contained on Table 2 on page 182 of D-1641, shall be temporarily changed to a value of 1.35 mmhos/cm at Emmaton and 1.0 mmhos/cm at Jersey Point. This change shall be effective from the date of this order through August 15, 2004.
2. No later than September 30, 2004, representatives of DWR and USBR shall jointly appear before the SWRCB at a scheduled meeting and shall summarize the actions taken pursuant to this petition for temporary change and describe any benefits or adverse impacts of the change on other legal users of water and fish, wildlife and other instream beneficial uses.
3. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary change order are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare, to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.
4. This temporary change order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this order, the petitioners shall obtain authorization for an incidental take prior to construction or operation of the project. The petitioners shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this order.
5. I reserve jurisdiction to supervise the use of water under this temporary change order and to coordinate or modify its terms and conditions as warranted by future public comment on the petition or for the protection of vested rights; fish, and wildlife, instream beneficial uses; and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

Arthur G. Baggett, Jr., Chair
State Water Resources Control Board

Dated: July 12, 2004



United States Department of the Interior

BUREAU OF RECLAMATION
Central Valley Operations Office
3310 El Camino Avenue, Suite 300
Sacramento, California 95821

IN REPLY
REFER TO:

CVO-100
WTR.1-100

JUN 24 2004

Ms. Victoria Whitney
Chief, Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, California 95812-2000

Subject: Temporary Urgency Change Petition: Response to Water Quality Conditions in the Sacramento-San Joaquin River Delta Caused by Levee Failure in the Southern Delta on June 3, 2004

Dear Ms. Whitney:

On June 3, 2004, a major levee failed on the western side of Upper Jones Tract, in the southern Delta. As a result, both Upper and Lower Jones Tract have filled with water from the Delta, thereby drawing saltier water into the Delta. By this letter, the Bureau of Reclamation (Reclamation) and the California Department of Water Resources (Department) hereby petition the State Water Resource Control Board (SWRCB) for a temporary urgency change in the terms and conditions of their water right permits, pursuant to California Water Code Section 1435 and California Administrative Code Title 23, Section 791(e).

Specifically, the Department and Reclamation request that the terms and conditions in the water right permits for the State Water Project (SWP) and the Central Valley Project (CVP, or jointly the Projects) be temporarily adjusted to allow the Projects to operate to meet a Western Delta agricultural water quality target of 1.35 mS/cm at Emmaton and 1.0 mS/cm at Jersey Point. This petition also requests approval for the immediate use of joint point of diversion to manage for South Delta water level concerns that may occur as a result of the levee failure.

Background. After the unfortunate levee failure, Delta water rushed into Jones Tract. The initial estimates of the total water storage in Jones Tract range between 100,000 and 200,000 acre-feet. This inundation brought additional water farther into the Delta from the estuary downstream. Due to this uncontrollable event, the salinity conditions in the Delta have increased substantially above levels that existed prior to the levee failure and have exceeded the D-1641 Western Delta agricultural water quality standards at two locations. The Department and Reclamation do not anticipate any exceedence of Decision 1641 M&I standards in 2004 due to the levee failure. The Governor of California declared a state of emergency due to the levee failure on June 4th.

Actions Immediately After the Levee Failure. On June 3, shortly after the Projects were notified of the levee break, Reclamation reduced diversions at Tracy Pumping Plant from

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approximately 4300 cfs to 800 cfs and opened the Delta Cross Channel gates. The Department already had reduced diversions at Clifton Court Forebay to zero cfs, as part of regularly scheduled maintenance activities. These immediate actions were intended to help minimize the salinity intrusion into the central Delta from Suisun Bay, which was occurring as a result of the inundation of Jones Tract. To aid in minimizing salinity intrusion, exports at Tracy Pumping Plant and diversions into Clifton Court Forebay continued at limited rates throughout the period that Jones Tract was filling, and for a few days more as the high spring tide peaked. In addition, the Department and Reclamation increased releases from Lake Oroville and Lake Shasta, respectively, to increase inflow to the Delta.

When the Projects significantly reduced diversions from the Delta, they simultaneously asked CVP and SWP contractors to reduce their water demands from the Projects for at least three days to help alleviate any potential structural instability that might be caused by a faster than normal drawdown of San Luis Reservoir. The contractors responded by reducing demand on the Projects' supplies by more than 1200 cfs.

Delta Cross Channel Gate Closure. The Delta Cross Channel (DCC) gates have remained open since June 3, and were not closed for the 14-day period provided by D-1641, which states:

For the May 21-June 15 period, close Delta Cross Channel gates for a total of 14 days. The USBR will determine the timing and duration of the gate closure after consultation with the USFWS, the NMFS, and the DFG. Consultation with the CALFED Operations Group established under the Framework Agreement will satisfy the consultation requirement.

The DCC gates remained closed May 21-28 for fishery protection purposes, as requested by the fishery management agencies. Reclamation opened the DCC gates on May 29 for the Memorial Day Weekend and closed them on Tuesday, June 1 at the request of fishery management agencies. The DCC gates were scheduled to re-open on Friday June 4 as part of a weekend-open/weekday-closed schedule during the May 21 to June 15 period. Due to the June 3 levee failure, however, Reclamation opened the DCC gates as part of the initial reactions to minimize salinity intrusion into the Interior Delta.

The U.S. Fish and Wildlife Service, NOAA Fisheries Service, and the California Department of Fish and Game (collectively referred to as the Management Agencies) were notified of the unscheduled change in DCC operations. With the above actions the DCC was closed for a total of nine days for fishery management purposes. Reclamation advised the Management Agencies that under the levee break conditions, the Department and Reclamation strongly preferred to keep the DCC gates in the open position for the foreseeable future. The Management Agencies concurred that, considering the levee break, the greatest beneficial use of the DCC is for salinity management and that keeping the DCC open will have minimal impacts on Endangered Species Act-listed fish.

Increased Salinity. Despite the efforts of the Department and Reclamation, the 14-day average electrical conductivity (EC) exceeded the standard of 0.45 mS/cm at Emmaton on June 7, 2004,

Subject: Temporary Urgency Change Petition: Response to Water Quality Conditions in the 3
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and at Jersey Point on June 8, 2004 and continues to exceed D-1641 standards at these two locations.

The salinity profiles in Suisun Bay and Western Delta now reflect levels more commonly associated with conditions in dry and critical years or conditions similar to late summer of wetter years. In other words, the inundation of Jones Tract compressed the salinity degradation of Suisun Bay and the western Delta that would normally occur over a 6-week period to just four days. Currently, during this neap tide, the 14-day average EC at Emmaton is at 0.84 mS/cm and increasing; daily values have range from a high of 1.71 mS/cm to 0.47 mS/cm. Similar values for Jersey Point are 0.73 mS/cm 14-day average and increasing; daily values have declined to range from a high of 1.09 mS/cm to 0.57 mS/cm. These recent salinity values will be near the lowest values we expect to see for the remainder of the water year based on the most recent hydrologic forecasts.

Proposed 2004 Western Delta Salinity Management. After considering several alternatives (as reflected in the attached alternative analysis) and discussions with the Management Agencies, the Department and Reclamation request a temporary urgency change that would set the Western Delta agricultural water quality objective for salinity at 1.35 mS/cm at Emmaton and 1.0 mS/cm at Jersey Point for the remainder of the Western Delta agricultural standard season, which ends August 15. The proposed objective of 1.00 mS/cm at Jersey Point and 1.35 mS/cm at Emmaton reflect the salinity profile observed during the spring tide immediately after the levee break. We believe future spring tides will reflect similar or more saline conditions in the months to come. Nevertheless, these values represent a salinity regime we believe is controllable by the Projects at a cost similar to what would have been incurred absent the levee failure.

Urgent Need/Reasonable Use. This proposal represents the best approach for managing Delta water quality and California's water resources in responding to the increased salinity arising out of the levee failure and ensuring the reasonable and efficient use of Project water resources for all beneficial uses for the remainder of 2004. The Jones Tract levee failure created an "urgent need" for this temporary permit adjustment, as that term is defined in California Water Code Section 1435. The changes requested in this petition are statutorily exempt as specific actions necessary to prevent or mitigate an emergency (Public Resources Code Section 21080(b)(4)).

Adjusting the standards for Emmaton and Jersey Point effectively responds to the changed Delta hydrodynamics arising out of the flooded Jones Tract. We anticipate that the salinity dynamics will not react as project operators have historically experienced. Therefore, we believe these operational targets – rather than rigid standards – are a more reasonable way to operate as we react to the changed salinity conditions and Delta hydrodynamics caused by the flooded Jones Tract. This change may be made with no injury to any other lawful user of water, and may be made without unreasonable effect upon fish, wildlife or any other instream beneficial use, particularly considering the Delta's deteriorating salinity conditions were caused by the levee failure, not the Projects' operations.

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For background information regarding Western Delta agriculture effects, after the Department completed the purchase of Sherman Island, the Department's contract with the North Delta Water Agency was amended. The contractual salinity standards were changed from the Emmaton location to Three-mile Slough and new diversion facilities, Three-mile Slough is generally less saline than the Emmaton location. Generally, a daily average Emmaton salinity of 1.35 mS/cm equates to 0.73 mS/cm at Three-mile Slough. Furthermore, recent studies suggest that corn crop yields are a function of average soil salinity over the growing season and not irrigation water quality. The studies also indicated no decrement to crop yield with soil water below 1.6 mS/cm. Therefore, the requested change to the Western Delta agricultural water quality objective should result in no significant change to Western Delta agriculture at Sherman Island.

Southern Delta Water Level Management. In addition to changes in the water quality standards for Emmaton and Jersey Point, the Department and Reclamation also request that the SWRCB approve use of the joint point of diversion for the purpose of responding to potential water level concerns in southern Delta channels that may occur due to the changed hydraulic conditions in those channels as a result of the levee failure. At this point in time, the hydraulic response of water levels in the Southern Delta to an open Jones Tract is poorly understood. The Department and Reclamation may conclude that, by adjusting export patterns through each of the two project facilities, the impact on water levels by the levee failure can be mitigated. We seek this approval only to assist aid with improving water levels within the South Delta – NOT to export additional water supplies or increase the authorized rates of diversion under either project's current water right permits.

The Department and Reclamation will submit shortly the water quality response plans required by D-1641 for Stage 1 and 2 use of the joint point of diversion. Your timely review and consideration of this and the water level response plans will be extremely helpful to the Project's efforts.

The Department and Reclamation also anticipate the need to utilize JPOD as part of the operational efforts to recover lost export capacity at Tracy Pumping Plant of approximately 30,000 acre-feet as a result of actions taken to minimize salinity intrusion. We anticipate being able to utilize JPOD in July or August which will help minimize the effect of the lost capacity before the low point in storage in San Luis Reservoir and, thereby, minimize concerns for the contractors South of the Delta.

To summarize, the Department and Reclamation hereby request that the SWRCB approve the following:

- Temporary changes to the CVP/SWP water right permits to allow operations consistent with meeting the Western Delta agricultural water quality objective for salinity at 1.35 mS/cm at Emmaton and 1.0 mS/cm at Jersey Point for the remainder of the Western Delta agricultural standard season.

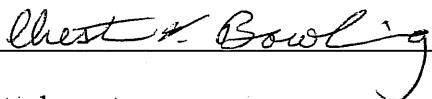
Subject: Temporary Urgency Change Petition: Response to Water Quality Conditions in the 5 Sacramento-San Joaquin River Delta Caused by Levee Failure in the Southern Delta on June 3, 2004

- Immediate approval of use of JPOD to improve export operations management and address South Delta water level concerns during the levee breach period.
 - Limited to existing authorized daily diversion capacities.

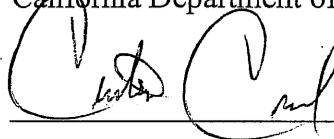
For your information, Reclamation and the Department will be shortly submitting the required D-1641 response plans for approval of JPOD operations and the potential use of JPOD in July and August 2004 to recover lost CVP export capacity due to the levee failure. Your timely review of the submitted response plans will be appreciated.

If you have any questions concerning the above matter, feel free to contact Chester V. Bowling at 916-979-2199 with Reclamation, or Carl A. Torgersen at 916-574-2656 with the Department.

Chester V. Bowling
Bureau of Reclamation
Projects Manager



for Carl A. Torgersen
Chief, SWP Operations Control Office
California Department of Water Resources



Attachment

cc: Mr. Greg Gartrell
Assistant General Manager
Contra Costa Water District
P.O. Box H20
Concord, CA 94524

Mr. Wayne White
Field Supervisor
U.S. Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, CA 95825-1846

Mr. Michael Aceituno
Sacramento Area Office
NOAA Fisheries
650 Capitol Mall, Suite 8-300
Sacramento, CA 95814-4706

Dr. Diana Jacobs
Deputy Director, Scientific Advisor
Department of Fish & Game
1416 9th Street
Sacramento, CA 95814

Mr. Russ Kanz
Environmental (Specialist)
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Attachment A

Salinity Management Alternative Analysis

CVP/SWP operations staff considered several Western Delta salinity management alternatives or options. These alternatives are operational targets that the projects would meet in lieu of the WQCP standards. These alternatives assume that: 1) the Jones Tract levee break will be closed in early July; 2) pump-out operations will begin shortly thereafter and will continue into the fall until Jones Tract is dry; 3) no further levee breaks will occur; and 4) flooding will be confined to Jones Tract. Each alternative was evaluated on the basis of impact on overall water supply, reservoir storage, available cold-water resources, Western Delta agricultural beneficial uses, immediate project operation effects, and seasonal project operation effects. The estimations of water supply effects in these analyses rely largely on CVP/SWP operations staff experience and knowledge of historical and current salinity conditions in the Delta. In addition, the Department has contracted with Resource Management Associates (RMA) to study the effects of levee failure (due to seismic activity) as part of an ongoing Bay-Delta Authority study. At the request of the Department, RMA has produced preliminary modeling results of Delta hydrodynamics and salinity transport with the levee break and subsequent flooding of Jones Tract (see attached plots). The plots are included to indicate the likely incremental magnitude change to salinity conditions due to the levee failure at several key locations in the delta. The plots are not intended to be a prediction of salinity conditions this summer, nor the management of the project operations for salinity objectives. The RMA results are supported by initial DSM2 analysis conducted by the Department.

Alternative #1 – Full Compliance with Existing Western Delta Agricultural Standards. The CVP and SWP would maintain substantially reduced Delta diversions and substantially increase upstream reservoir releases in order to comply with Western Delta Agricultural objectives of 0.45 mS/cm through June 20, and 1.14 mS/cm at Emmaton and 0.74 mS/cm at Jersey Point from June 20 through August 15.

Estimated immediate project operation to comply

- It is virtually impossible to achieve compliance with the water quality objectives of this alternative by June 20. Lowering the 14-day average to achieve such compliance would require continuous daily average electrical conductivity values of 0.12 mS/cm at Jersey Point and 0.03 mS/cm at Emmaton.

Alternative #2 – Compliance With Western Delta Agricultural Objectives Starting June 20. Operate the CVP and SWP to comply with a 14-day average electric conductivity of 1.14 mS/cm at Emmaton and 0.74 mS/cm at Jersey Point on and/or after June 20.

Project Operation:

- We believe this water quality objective could be met by June 20, or no later than shortly after the breach is closed in early July. However, staff estimates that this alternative may

require release of as much as an additional 100,000 – 150,000 acre-feet of CVP/SWP stored water over the course of the summer to maintain water quality at this level.

Likely effects on project operations;

- CVP and SWP Reservoirs (Shasta-Trinity, Oroville, Folsom) already suffer reduced storage, due to very dry spring precipitation/runoff conditions and substantially increased reservoir releases. The March-May precipitation period was the second driest on record. Only 1924 were drier. In addition, the Projects' reservoirs released substantial amounts of stored water in order to meet the April D-1641 2.64 mS/cm requirements at Port Chicago (also known as the Roe Island X2 standard). Even before the levee break, the fishery agencies, (NOAA Fisheries, Fish and Wildlife Service, and the Department of Fish and Game) were concerned about the availability of cold-water resources in Project reservoirs to meet summer and fall water temperature objectives for salmonids. The additional reservoir releases required for this alternative would reduce the availability of cold-water resources to meet the water temperature objectives this fall.
- The additional reservoir releases for this alternative would lower project reservoir carryover further than previously forecasted prior to the levee break and could affect project water supplies for 2005.

Likely effects to Western Delta beneficial uses;

- This alternative would bring Western Delta salinity into compliance with the existing below normal year standards on or shortly after the June 20th date and therefore would minimize the effect of the levee break to Western Delta beneficial uses beyond this date.

Alternative # 3 – Changes In Western Delta Agricultural Water Quality Target. The SWRCB would adjust CVP/SWP water right permits to allow compliance at 1.35 mS/cm at Emmaton and 1.0 mS/cm at Jersey Point.

Project Operation

- No immediate project operation changes would occur.

Likely effects to project operations;

- This alternative would limit the additional effects on cold-water resources to those necessary to maintain the current salinity regime in the Delta. Additional reservoir releases would be associated with carriage water effects, and the cold-water effects could be limited to reservoirs with greater cold-water management flexibility.

- The additional reservoir releases for this alternative could lower project reservoir carryover further than previously forecasted prior to the levee break and could marginally affect project water supplies for 2005.

Likely effects to Western Delta beneficial uses;

- This alternative would limit the effects of the levee break to Western Delta salinity to those that occurred due to the levee break. The proposed Western Delta salinity targets are essentially a salinity regime that is between the D-1641 Below Normal year standards and the Dry Year standards.

Alternative #4 – Application of Western Delta Agricultural Water Quality Objectives for Dry Years. The Projects would operate to achieve standards that ordinarily would apply in dry years. That is, the 14-day average electric conductivity would be set at 1.67 mS/cm at Emmaton and 1.35 mS/cm at Jersey Point.

Project Operation

- This alternative would allow for additional Western Delta salinity degradation beyond current salinity conditions and therefore Project reservoir releases over the summer would likely be reduced.

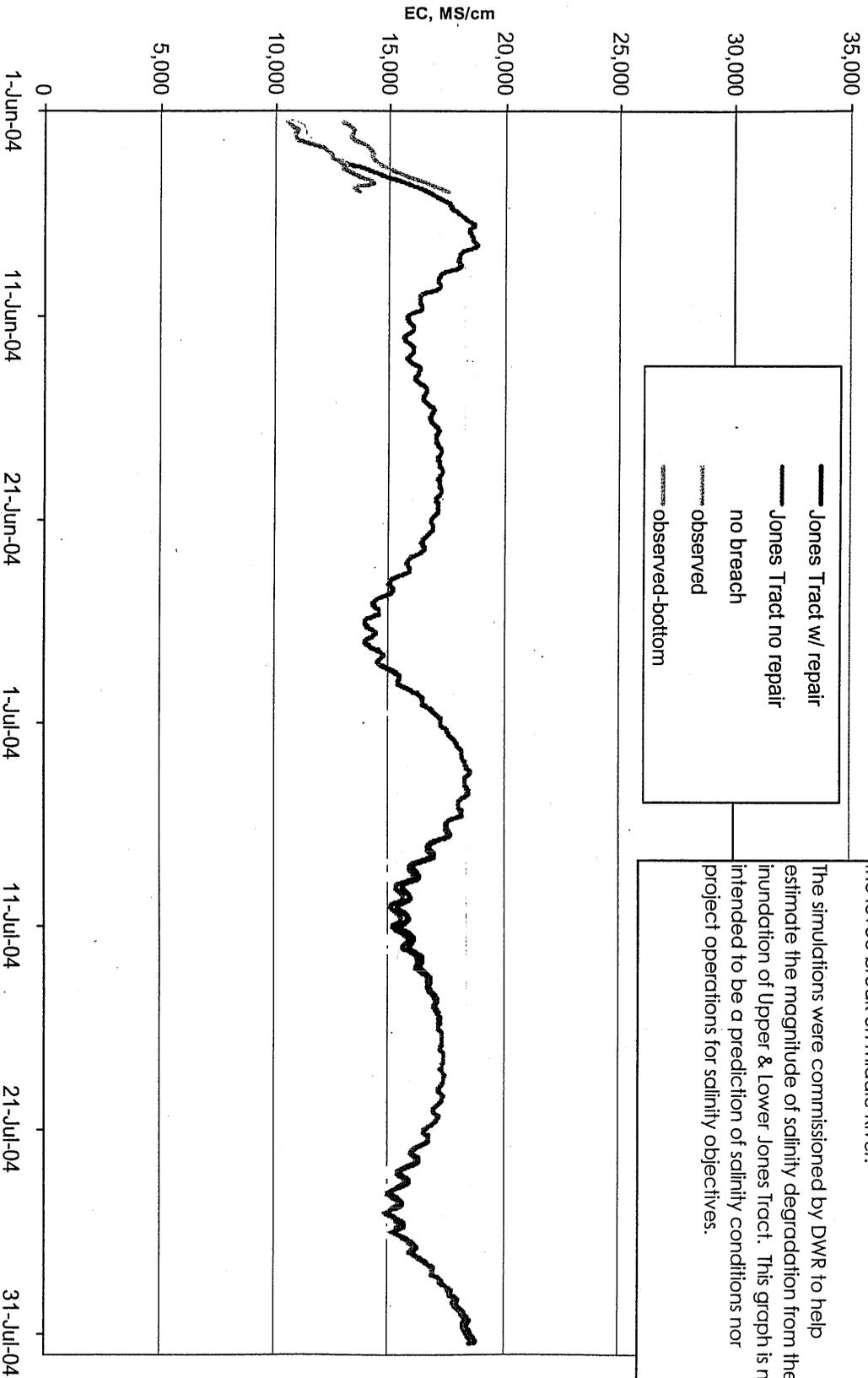
Likely effects to project operations;

- This alternative would minimize the effects to cold-water resources. It is anticipated that no additional reservoir releases would be associated with carriage water effects. The reservoir releases for this alternative would likely be less than those anticipated before the levee break and therefore project reservoir carryover would likely be marginally better.
- This alternative would likely have no additional carriage water requirements for the remainder of the western agricultural season. In fact, about 50,000 acre-feet of water could be conserved in upstream storage by reducing the Western Delta agricultural criteria to the dry year standard.

Likely effects to Western Delta beneficial uses;

- This alternative would allow for the current delta salinity regime to degrade to the dry year beneficial use standards. This alternative would maximize the salinity effects to Western Delta agricultural beneficial uses by allowing the current levee break salinity regime to degrade to dry year standards not previously considered for 2004 beneficial needs. Western Delta agricultural activities would experience effects similar to a dry year for the remainder of the agricultural season.

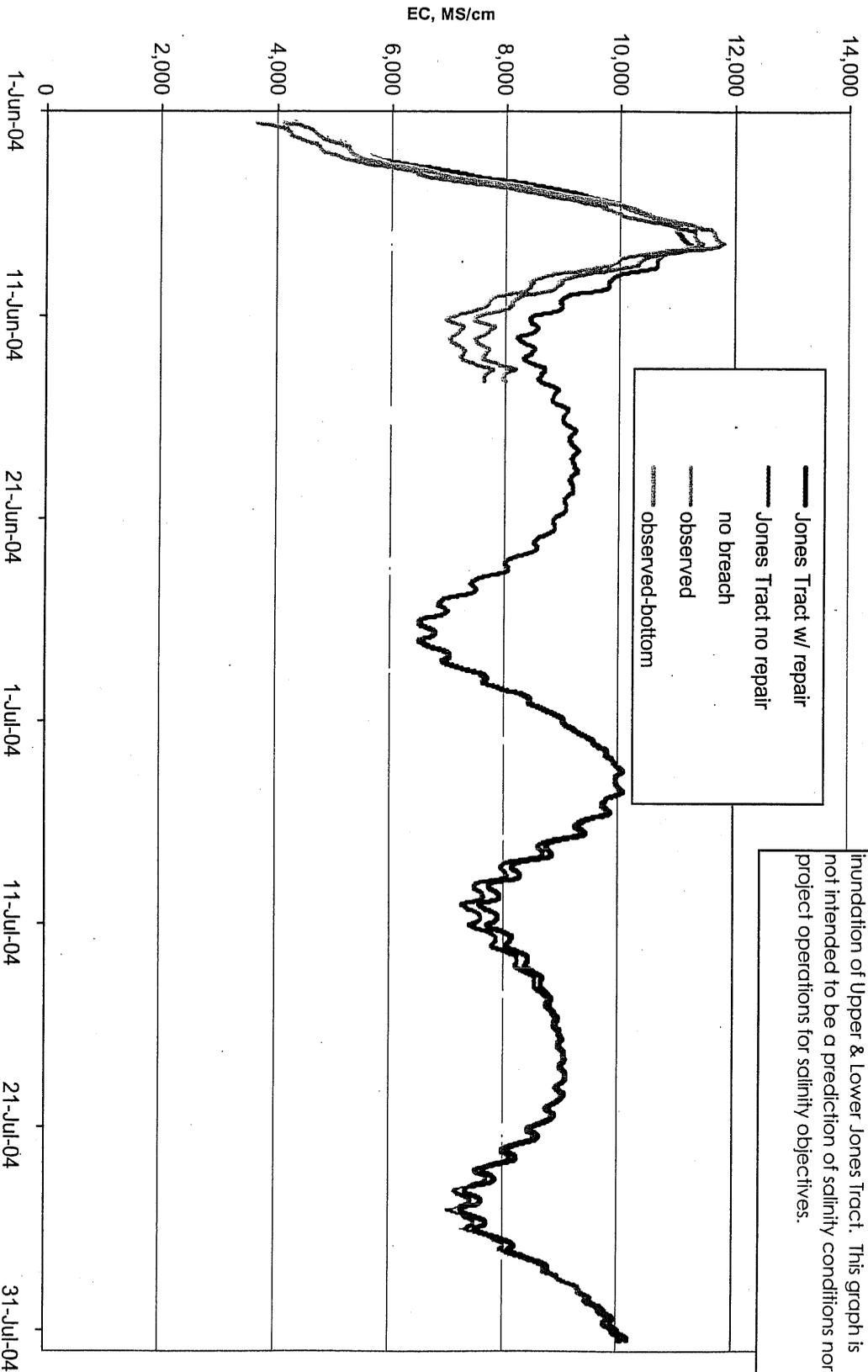
Port Chicago



This graph suggests conditions at Port Chicago degraded to levels not likely to have occurred for six weeks absent the levee break on Middle River.

The simulations were commissioned by DWR to help estimate the magnitude of salinity degradation from the inundation of Upper & Lower Jones Tract. This graph is not intended to be a prediction of salinity conditions nor project operations for salinity objectives.

Mallard Island

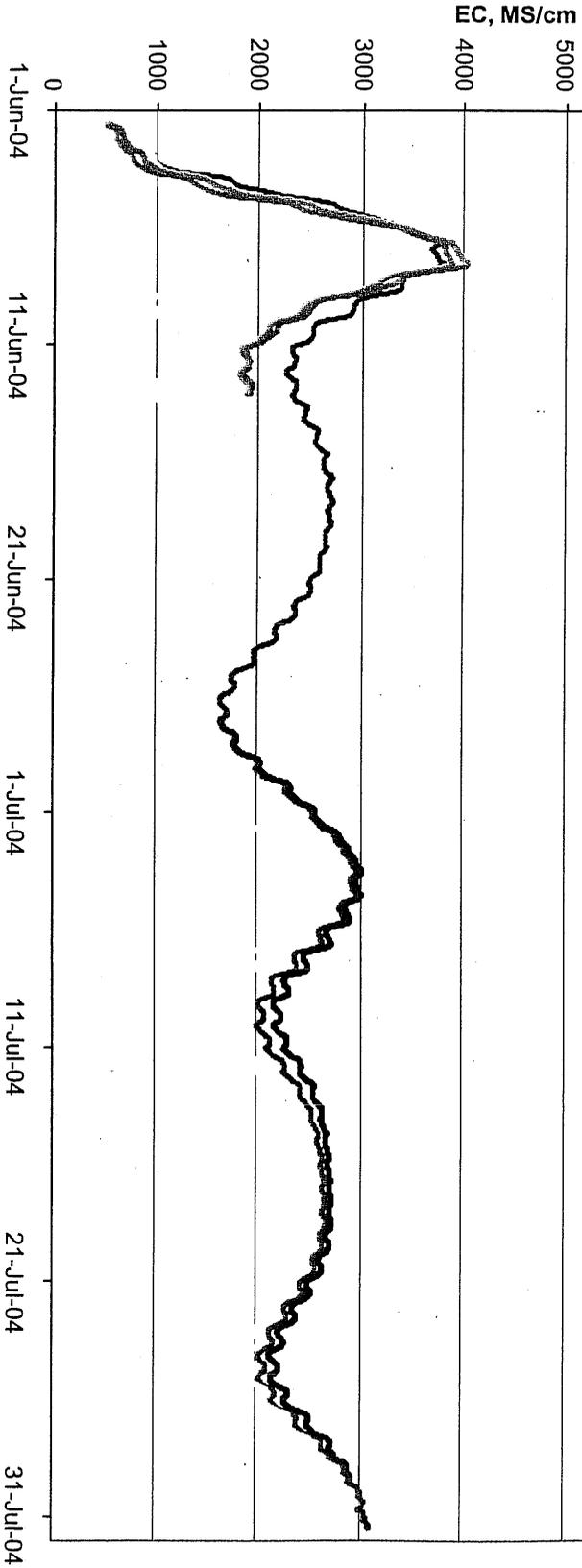
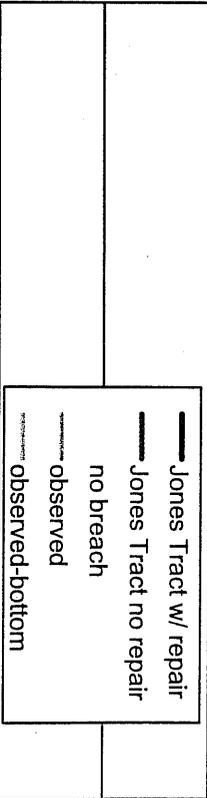


This graph suggests conditions at Mallard Island degraded to levels not likely to have occurred for six to seven weeks absent the levee break on Middle River. The simulations were commissioned by DWR to help estimate the magnitude of salinity degradation from the inundation of Upper & Lower Jones Tract. This graph is not intended to be a prediction of salinity conditions nor project operations for salinity objectives.

Antioch

This graph suggests conditions at Antioch degraded to levels not likely to have occurred for five to six weeks absent the levee break on Middle River.

The simulations were commissioned by DWR to help estimate the magnitude of salinity degradation from the inundation of Upper & Lower Jones Tract. This graph is not intended to be a prediction of salinity conditions nor project operations for salinity objectives.

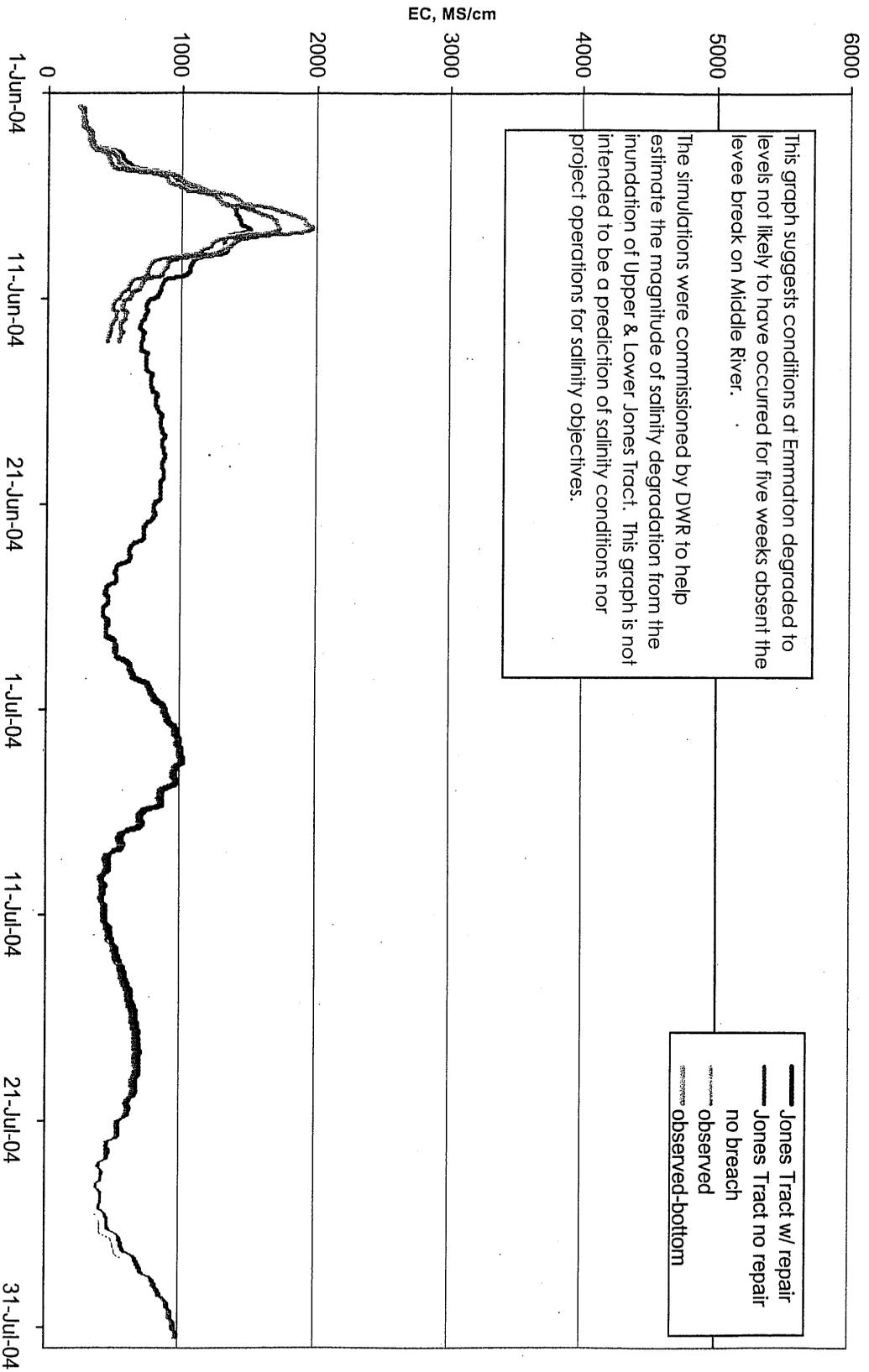


EC, MS/cm

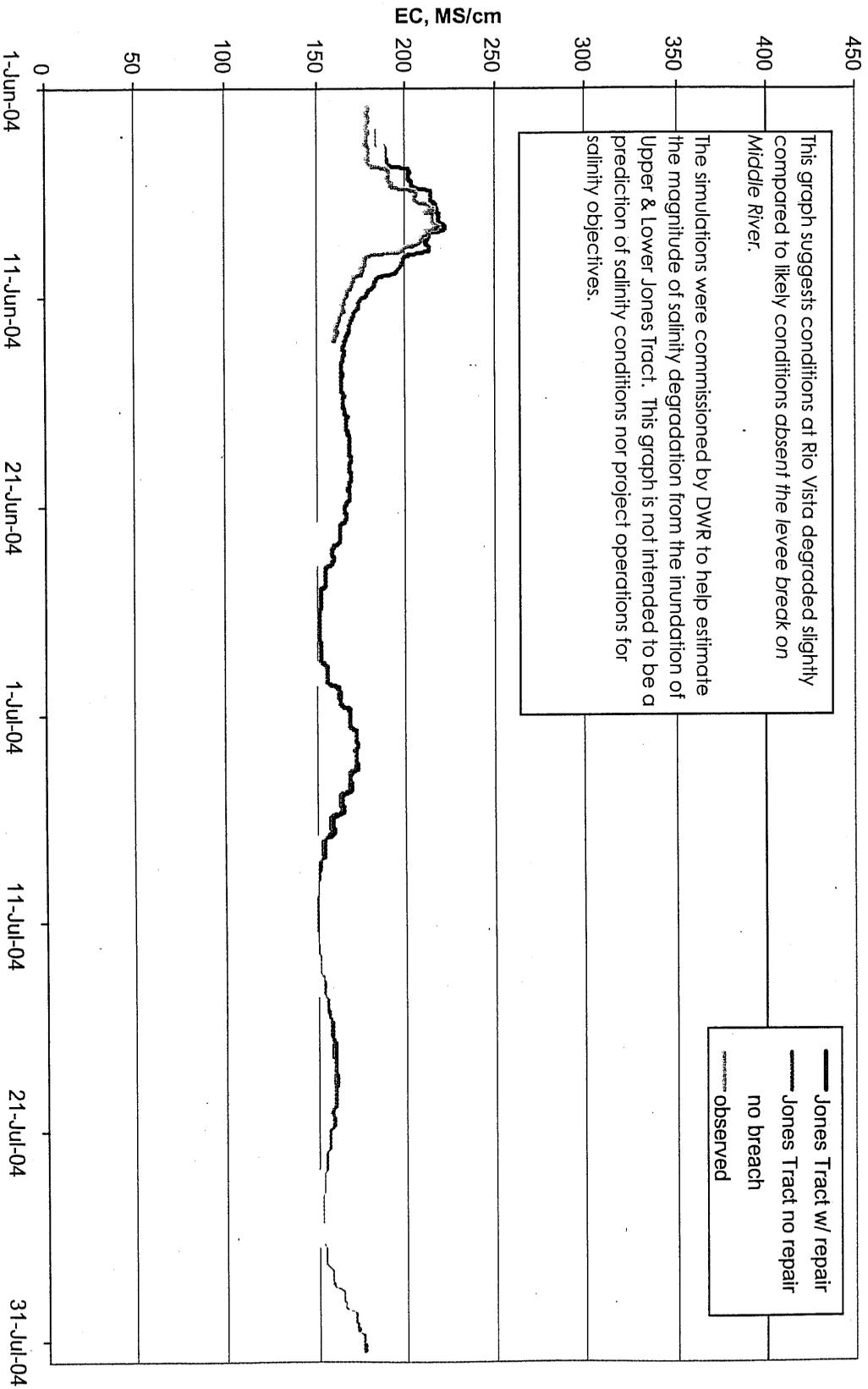
9000
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1-Jun-04 11-Jun-04 21-Jun-04 1-Jul-04 11-Jul-04 21-Jul-04 31-Jul-04

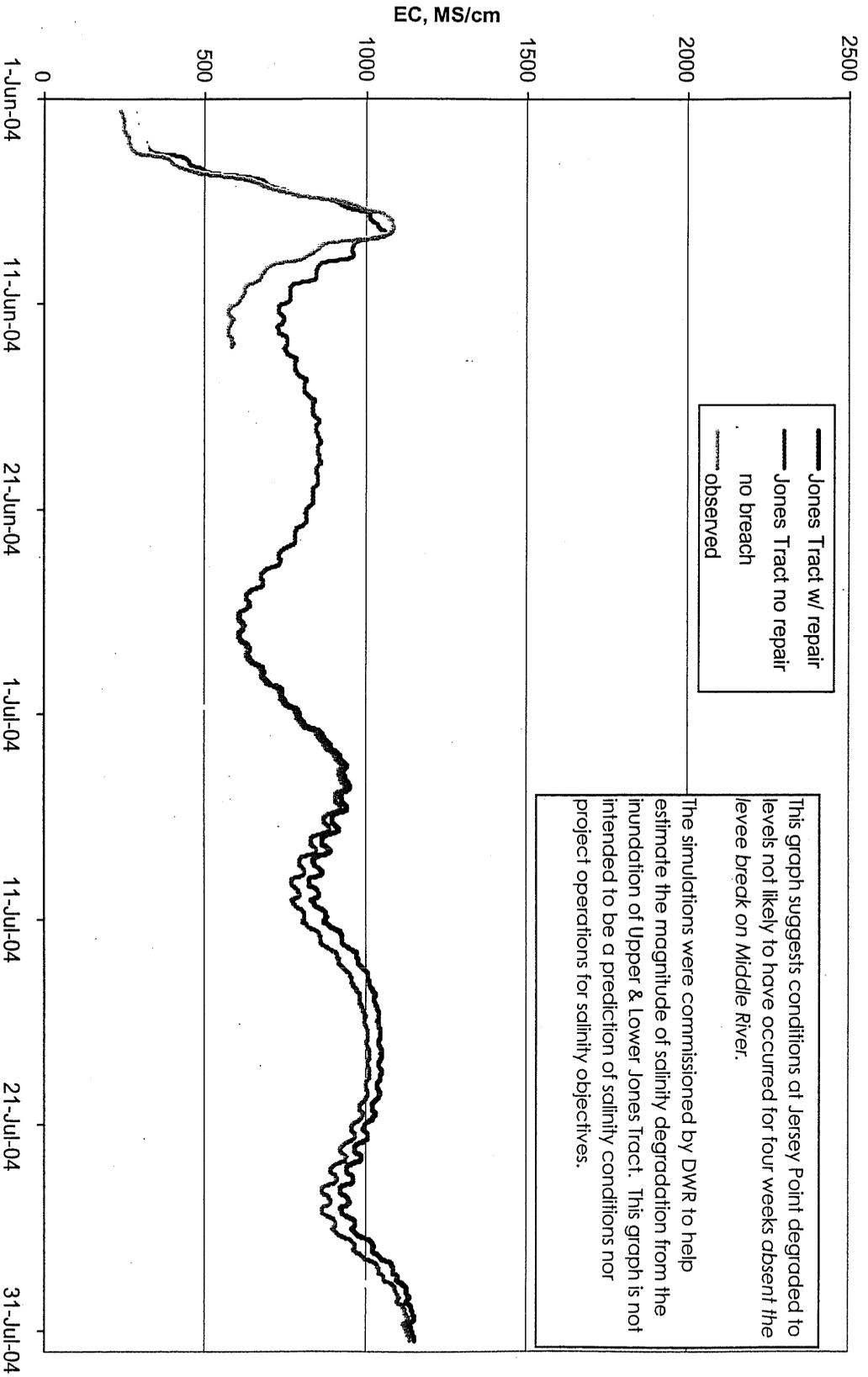
Emmaton



Rio Vista



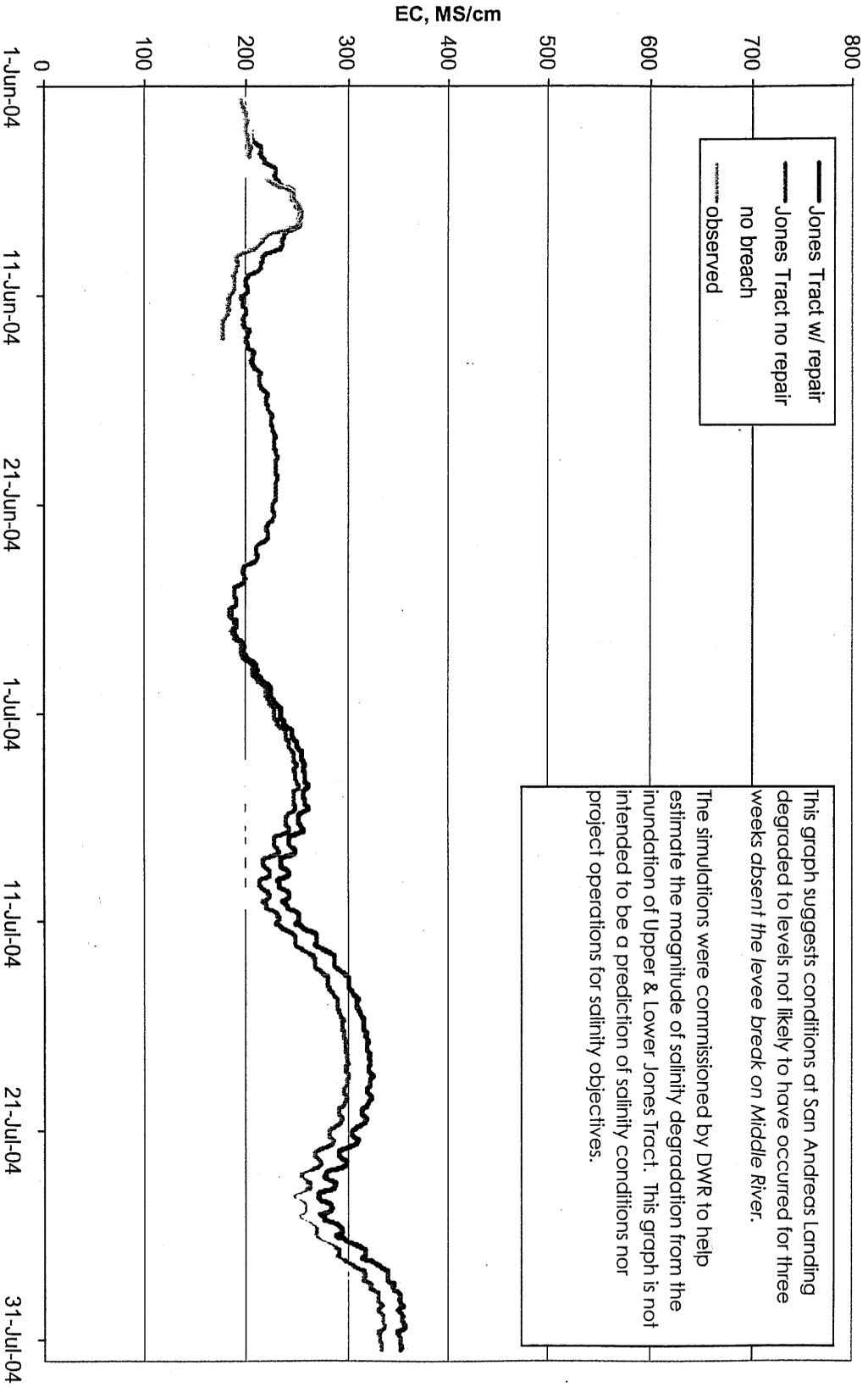
Jersey Point



— Jones Tract w/ repair
 — Jones Tract no repair
 observed

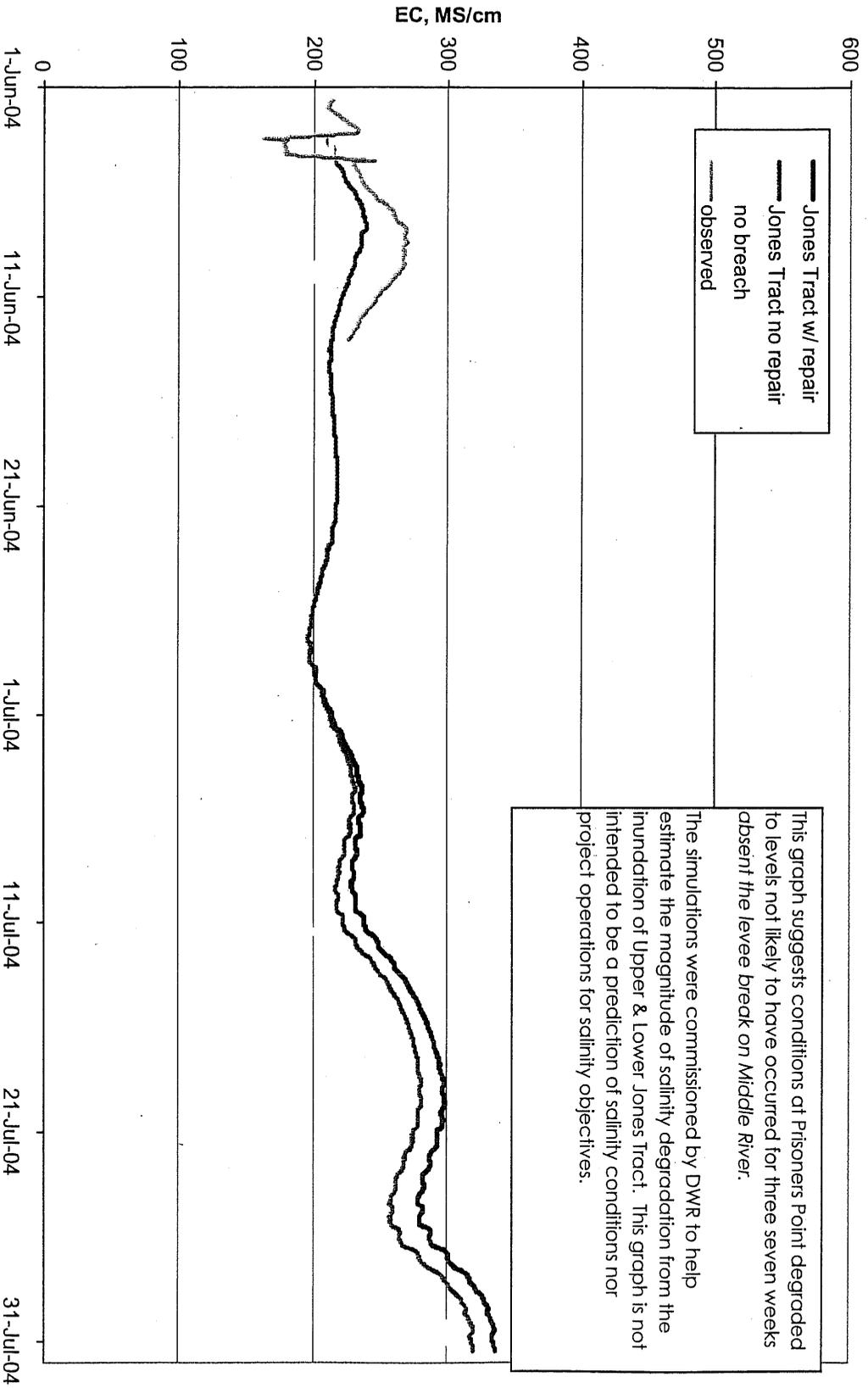
This graph suggests conditions at Jersey Point degraded to levels not likely to have occurred for four weeks absent the levee break on Middle River.
 The simulations were commissioned by DWR to help estimate the magnitude of salinity degradation from the inundation of Upper & Lower Jones Tract. This graph is not intended to be a prediction of salinity conditions nor project operations for salinity objectives.

San Andreas Landing



This graph suggests conditions at San Andreas Landing degraded to levels not likely to have occurred for three weeks absent the levee break on Middle River. The simulations were commissioned by DWR to help estimate the magnitude of salinity degradation from the inundation of Upper & Lower Jones Tract. This graph is not intended to be a prediction of salinity conditions nor project operations for salinity objectives.

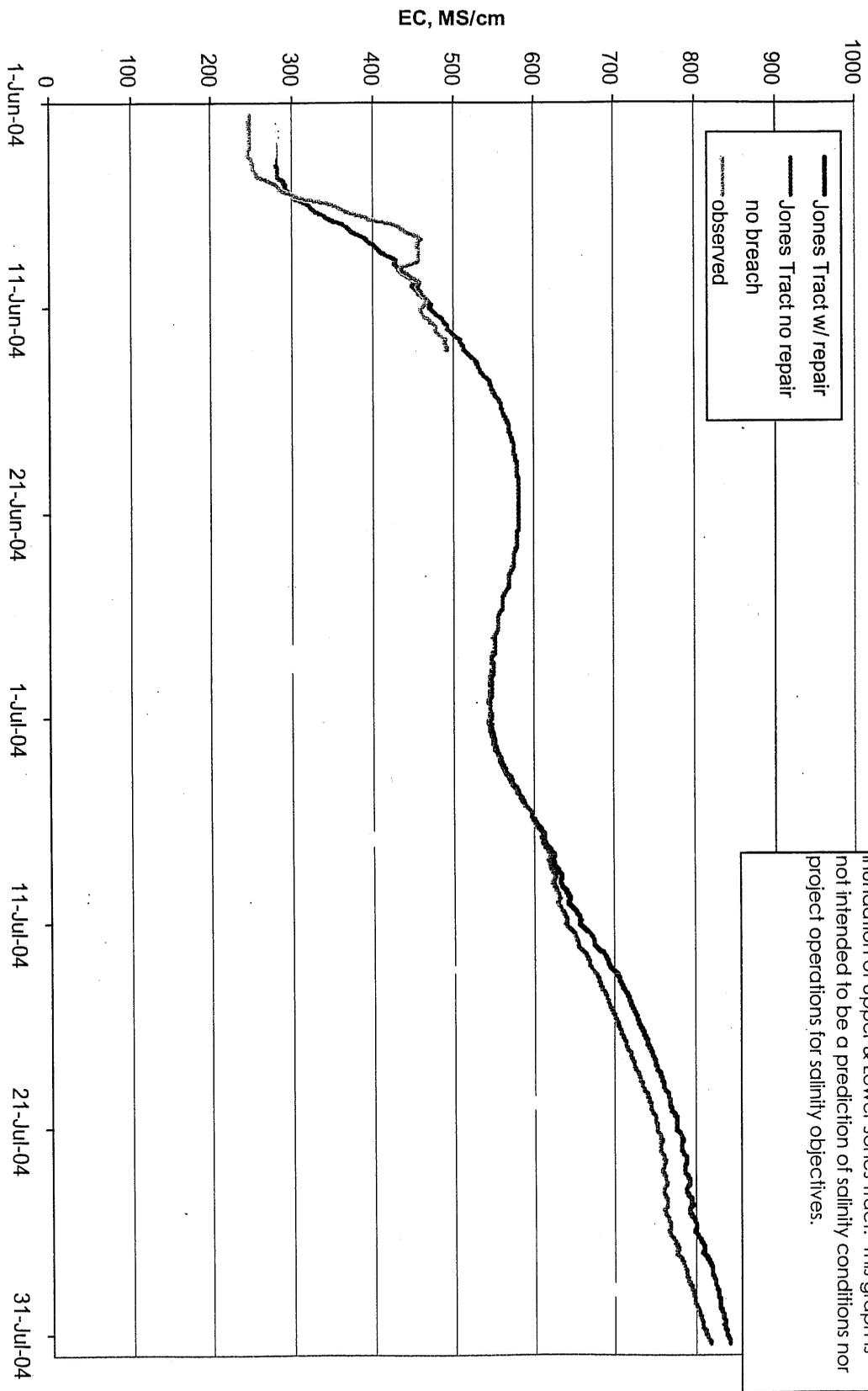
Prisoners Point



— Jones Tract w/ repair
- - Jones Tract no repair
... observed

This graph suggests conditions at Prisoners Point degraded to levels not likely to have occurred for three seven weeks absent the levee break on Middle River. The simulations were commissioned by DWR to help estimate the magnitude of salinity degradation from the inundation of Upper & Lower Jones Tract. This graph is not intended to be a prediction of salinity conditions nor project operations for salinity objectives.

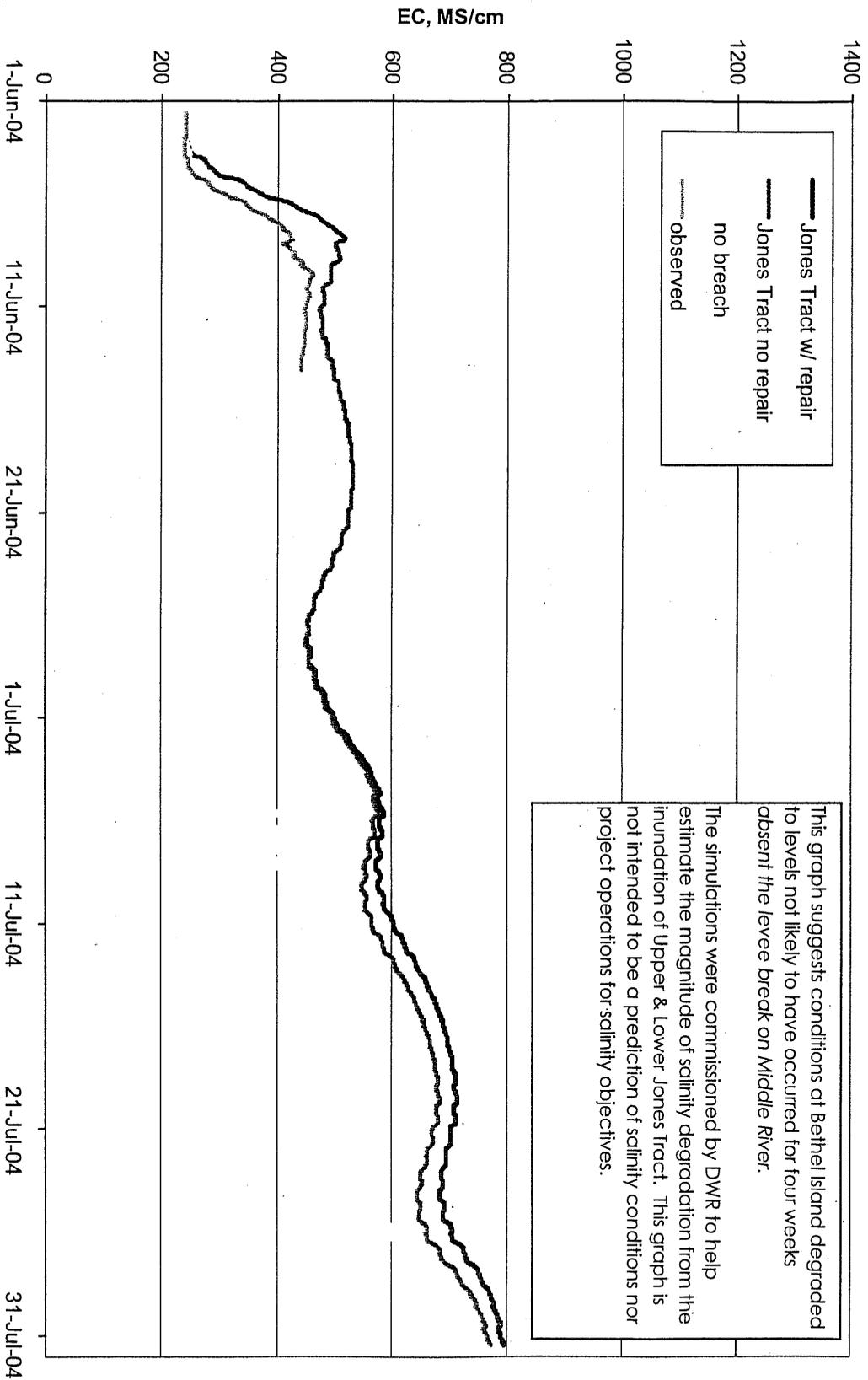
Farrar Park



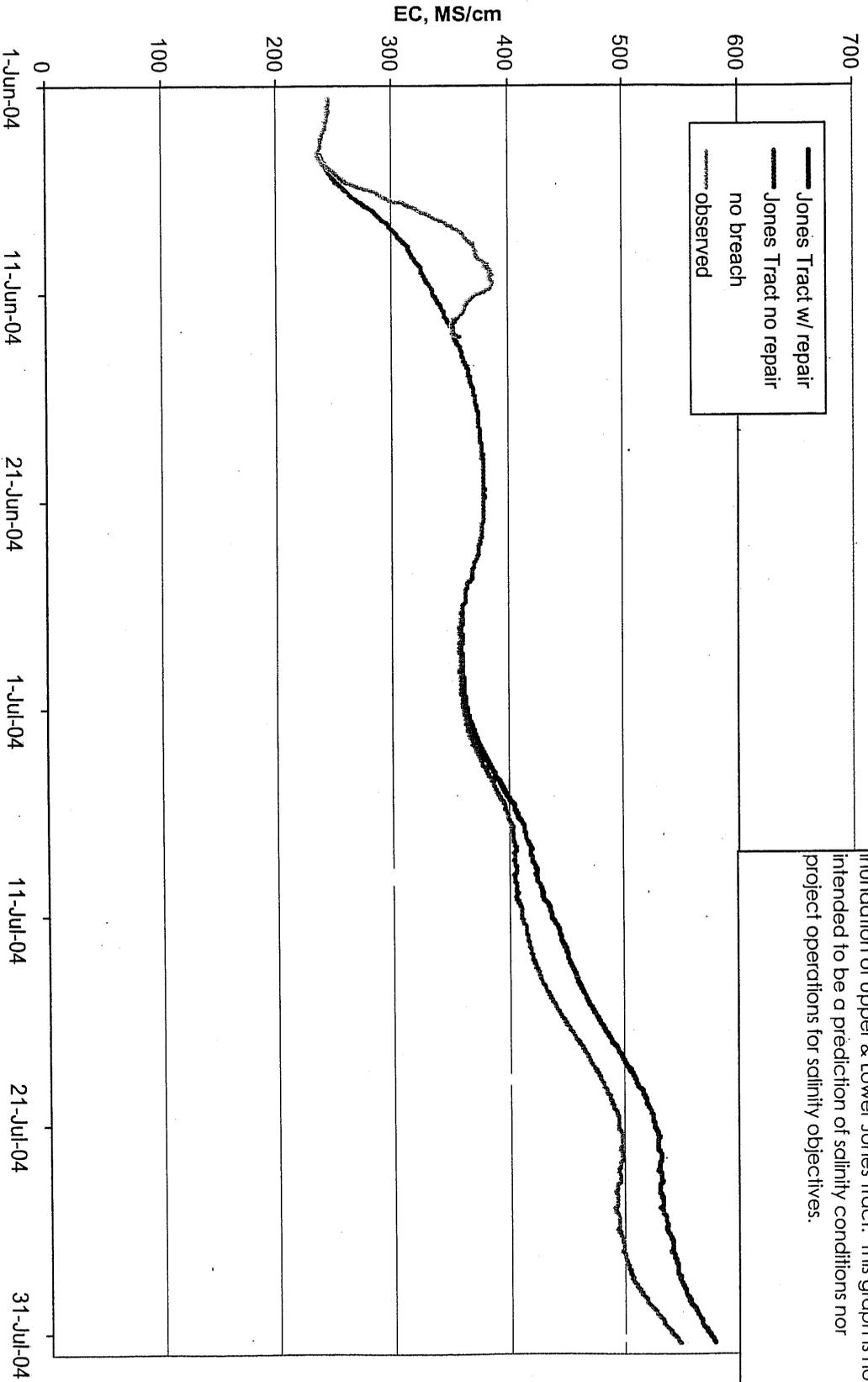
This graph suggests conditions at Farrar Park degraded to levels not likely to have occurred for four weeks absent the levee break on Middle River.

The simulations were commissioned by DWR to help estimate the magnitude of salinity degradation from the inundation of Upper & Lower Jones Tract. This graph is not intended to be a prediction of salinity conditions nor project operations for salinity objectives.

Bethel Island



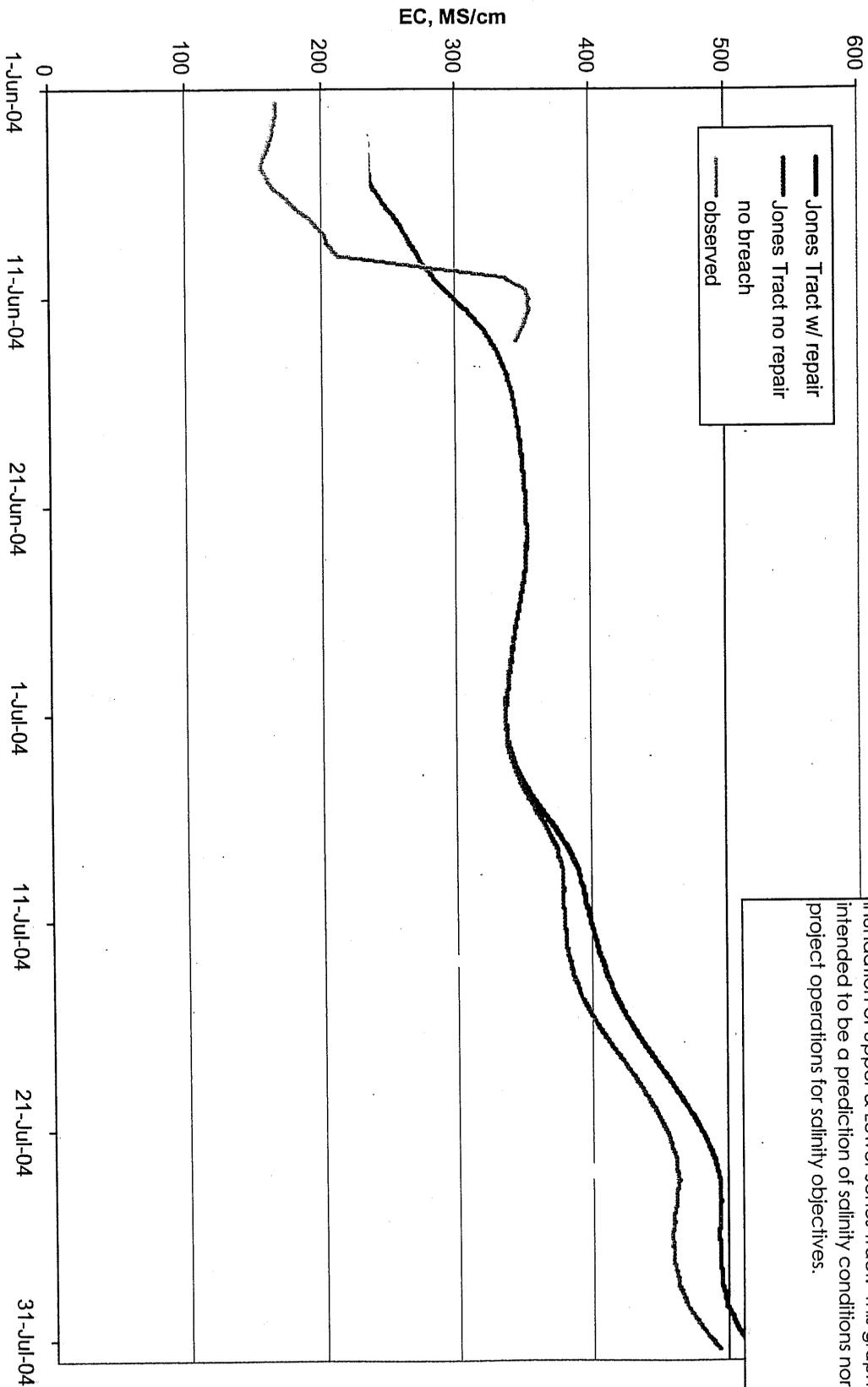
Holland Tract



This graph suggests conditions at Holland Tract degraded to levels not likely to have occurred for four weeks absent the levee break on Middle River.

The simulations were commissioned by DWR to help estimate the magnitude of salinity degradation from the inundation of Upper & Lower Jones Tract. This graph is not intended to be a prediction of salinity conditions nor project operations for salinity objectives.

Old River at Bacon Island



This graph suggests conditions at Bacon Island degraded to levels not likely to have occurred for four weeks absent the levee break on Middle River.

The simulations were commissioned by DWR to help estimate the magnitude of salinity degradation from the inundation of Upper & Lower Jones Tract. This graph is not intended to be a prediction of salinity conditions nor project operations for salinity objectives.

Notice of Exemption

Form D

To: Office of Planning and Research
PO Box 3044, 1400 Tenth Street, Room 212
Sacramento, CA 95812-3044

From: (Public Agency) Department of Water Resources
SWP Operations Control Office

County Clerk
County of _____

3310 El Camino Ave, Sacramento, CA 95821
(Address)

Project Title: Temporary Urgency Change Petition to SWRCB regarding western ag water quality standards

Project Location - Specific:

Sacramento River at Emmaton and San Joaquin River at Jersey Point

Project Location - City: n/a

Project Location - County: Sacramento/San Joaquin

Description of Project:

DWR seeks relief from the water quality standards imposed by the SWRCB. As a result of the levee failure on Upper Jones Tract, salinity intrusion into the Delta and therefore compliance with western ag quality standards will likely prove costly or problematic. DWR (in conjunction with the U.S. Bureau of Reclamation) are seeking alternate standards to minimize water costs.

Name of Public Agency Approving Project: State Water Resources Control Board

Name of Person or Agency Carrying Out Project: Department of Water Resources

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: _____
- Statutory Exemptions. State code number: _____

Reasons why project is exempt:

Project is in response to conditions created as a result of levee failure, a declared emergency.

Lead Agency
Contact Person: Curtis Creel

Area Code/Telephone/Extension: 916-574-2722

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: John With A Eric C. Creel

Date: 7-6-04

Title: Acting SWP Ops Planning Chief

Signed by Lead Agency

Date received for filing at OPR: _____

Signed by Applicant

January 2004

**CENTRAL DELTA WATER AGENCY**

235 East Weber Avenue • P.O. Box 1461 • Stockton, CA 95201
Phone 209/465-5883 • Fax 209/465-3956

DIRECTORS

*George Biagi, Jr.
Rudy Mussi
Edward Zuckerman*

COUNSEL

*Dante John Nomellini
Dante John Nomellini, Jr.
Thomas M. Zuckerman*

July 6, 2004

Via Facsimile (916) 341-5400

Victoria Whitney
Chief, Division of Water Rights
P. O. Box 2000
Sacramento, CA 95812-200

Re: Temporary Urgency Change Petition: Response to Water Quality
Conditions in the Sacramento-San Joaquin River Delta Caused By
Levee Failure in the Southern Delta on June 3, 2004

Dear Ms. Whitney:

We have reviewed a copy of the June 24, 2004, Petition which we were able to obtain on July 1, 2004. It would be helpful if we could be placed on the notification mailing list for future changes to the Delta Water Quality Standards.

The violations of the standards caused by the levee break although not totally unexpected are sufficiently unusual that we have no objection for a reasonable period of time required to bring the system back into balance. We are uncomfortable with the proposal for changing the standards with the result that salt will be loaded into the land and system with adverse consequences in the future to all interests using Delta waters. In our view, the export contractors are only entitled to water which is surplus to the needs in the Delta and accommodation of their needs should not result in detrimental impacts to the Delta. The emergency should not be a basis for make-up pumping or increased pumping.

On June 30, 2004, the Upper Jones Tract levee break was closed to the passage of water. We understand the contractor will open and close the break a couple of times during outgoing tides to reduce the level of the water within the Jones Tracts which will ultimately be pumped back into the channels. The flow of water through the break into the tracts, barring some unanticipated event, is effectively stopped.

Water which has been passing into adjoining islands and tracts by way of seepage and boils is being returned to the Delta channels by way of the customary float controlled drainage pumps and dewatering of the Jones Tracts is expected to start this week. It is our understanding that the salinity of the water within the Jones Tracts is about 300 ms/cm. The salinity

Victoria Whitney
Chief, Division of Water Rights

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July 6, 2004

concentration will obviously increase somewhat due to evaporation but should still be much better than the standards. The added supply from the Jones Tracts and surrounding areas should be taken into consideration when balancing the desire to reduce water supply impacts with the adverse consequences of adding salt throughout the system.

A straight-up comparison of water supply impacts with and without the levee break which recognizes the reduced diversions into Clifton Court Forebay due to the regularly scheduled maintenance activities should be required. Additionally, there should be some evaluation of the water supply impacts associated with increasing the salt in the system by reason of the proposed change in the standards. The impact on Delta crops will be due to buildup of salts in the soil which depending upon the natural leaching from rainfall will likely have the greatest effect in subsequent crop years. Depending upon the current level of soil salinity, there could also be damage to this year's crops. There are obviously water supply impacts to Contra Costa Water District by reason of the increased salinity and possible adverse impacts to the contractors of those making the request. Although the water pumped from the Jones Tracts should help maintain adequate salinity at the Tracy and Banks export pumps, it may not be sufficient to avoid degradation due to the proposed change in standards. Degradation of salinity at such export pumps will reduce the opportunity for reuse and could add salt to the San Joaquin River which would require additional releases of stored water for dilution.

As to the use of JPOD, our primary concerns are that in-Delta channel water levels not be adversely impacted and that salinity in the Delta and the San Joaquin not be increased.

Yours very truly,



DANTE JOHN NOMELLINI
Manager and Co-Counsel

DJN:ju

cc: Carl A. Torgersen, DWR via facsimile
Chester V. Bowling, USBR via facsimile

VAW

Memorandum

To : Ms. Victoria Whitney, Chief
Division of Water Rights
State Water Resources Control Board

Date : June 30, 2004

From : Department of Fish and Game

Subject : June 24, 2004 Temporary Urgency Change Petition from the Bureau of Reclamation and
Department of Water Resources

The Department of Fish and Game does not expect any unreasonable adverse impacts to fish in the Sacramento-San Joaquin Delta as a result of the proposed changes to water quality standards depicted in the June 24, 2004 Temporary Urgency Change Petition. The current conditions are the result of the levee break in the Delta and not recent water project operations. As such, the changes in upstream reservoir operations (increased releases) needed to reduce salinity in the Delta to comply with the agricultural water quality standards in the coming weeks, if such compliance could be achieved, would likely have adverse consequences for anadromous fish by increasing water temperature upstream in the rivers below Shasta, Oroville and Folsom dams later in the water year. On balance, the operations proposed by the projects may be the best option for anadromous and resident fish at this time.

Concerns over listed fish species in the Delta are relatively low at this time. The Data Assessment Team has suspended regular meetings until further notice; however, the Department of Fish and Game will continue scheduled monitoring throughout the summer.

If you have any questions regarding this matter, please contact James Starr at (209) 942-6070. Thank you for your consideration.

Sincerely,



Perry L. Herrgesell
Chief

Central Valley Bay-Delta Branch

Ms. Victoria Whitney
June 30, 2004
Page Two

cc: Bureau of Reclamation
Sacramento, California
Mr. Chet Bowling

Department of Water Resources
Sacramento, California
Mr. Carl Torgersen

Department of Fish and Game
Sacramento, California
Mr. Jim White

Stockton, California
Mr. James Starr

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**CONTRA COSTA
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June 30, 2004

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Chief, Division of Water Rights
State Water Resources Control Board
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Sacramento, California 95812-2000

Walter J. Bishop
General Manager

Re: Projects' Temporary Urgency Change Petition in Response to Jones Tract Levee Break

Dear Ms. Whitney:

This letter is in response to Temporary Urgency Change Petition (Petition) submitted jointly by the Department of Water Resources (DWR) and the Bureau of Reclamation (Reclamation) to the State Water Resource Control Board (SWRCB) on June 24, 2004. The major levee failure on the west side of Upper Jones Tract on June 3, 2004 immediately and dramatically impacted all Delta water users, including Contra Costa Water District (CCWD). CCWD commends the DWR and Reclamation for the positive response to the levee failure in their water operations. The quick action taken by those agencies in response to the rapidly changing conditions helped prevent far more serious degradation of Delta water quality.

CCWD understands that the SWRCB is currently considering the Petition. CCWD is submitting this letter to provide additional information on some of the potential impacts and interrelationships of the actions now under consideration, particularly on how these actions might affect conditions next year.

The SWRCB is considering a discretionary action that would temporarily change water quality standards in the Delta. This discretionary action is in response to an emergency situation, but like the levee failure itself, the action could have consequences to Delta water users that extend well beyond the period for which the changes are being considered. These consequences include potential impacts to fish, wildlife, water quality and water supply. At the same time, there is an opportunity to take these actions in a way that can offset some of the impacts all users have suffered and minimize the potential future impacts in a fair and balanced way.

CCWD understands that in response to water supply impacts due to the levee failure, the Projects have requested that the SWRCB approve the following:

- Temporary change to the CVP/SWP water right permits to allow operations consistent with meeting targets of 1.35 mS/cm at Emmaton and 1.0 mS/cm at Jersey Point (on a 14-day running average) through August 15.
- Immediate use of Stage 1 JPOD to manage South Delta water level concerns.

CCWD's comments are based on its understanding that all other water quality objectives set forth in D-1641 would remain in effect if the Petition were to be granted.

Impacts of the Levee Break on CCWD

On June 3, 2004, CCWD was in the process of filling Los Vaqueros Reservoir. Due to immediate drinking water quality concerns, and after communicating with the Department of Health Services, CCWD temporarily shutdown its reservoir filling operations at its Old River intake to perform water quality monitoring. A few days later, the inundation of Jones Tract degraded the salinity of Suisun Bay and the western Delta and increased salinity at CCWD's intakes to a point that caused CCWD to prematurely cease all filling operations of the Los Vaqueros Reservoir on June 12, 2004. Absent the levee failure, CCWD would have been able to divert an additional 6,000 acre-feet of water to achieve full storage in the reservoir. The water supply impacts are being compounded because the deteriorating water quality in the Delta forces CCWD to protect the drinking water quality of its customers by releasing more water from the reservoir for blending sooner than would have otherwise been required, and to release such blending water in greater quantities. CCWD estimates that the levee breach combined with relaxation of water quality standards will cause an additional reduction in the end-of-year storage in the Los Vaqueros Reservoir by up to 15,000 to 20,000 acre-feet.

CCWD's water quality concerns are not limited to salinity. Plans are currently being made to pump the water from Jones Tract through the summer and early fall. Water quality monitoring suggests that organic carbon concentrations in the discharge water could exceed 20 mg/l. This could have additional significant impacts on the operation of every municipal supplier because organic carbon is a precursor for the formation of disinfection byproducts such as trihalomethanes. An increase at CCWD intakes could mean increased blending requirements from Los Vaqueros, additional treatment costs, and increased public health risk for CCWD's customers.

Impacts extend beyond the present period

Relaxation of the water quality standards may have the additional effect of additional adverse impacts on CCWD, other Delta water users and on fisheries later this year and next year. CCWD requests that the SWRCB recognize that a discretionary action that includes relaxation of water quality objectives in the summer of 2004 has potential implications for CCWD's operations and ability to refill Los Vaqueros reservoir in the 2005 water year. In the event of a dry or below normal year next year, coupled with the 15,000 to 20,000 acre feet deficit in storage, CCWD may not be able to refill Los Vaqueros Reservoir, which could affect drinking water quality and emergency water supply reliability for CCWD's customers next year, in addition to CCWD's ability to provide fishery benefits next year and in

subsequent years. Furthermore, depending on water supply conditions, particularly in November and December, fishery protection actions may result in additional water quality impacts beyond those that would have occurred in the absence of the levee failure. This would increase the impact to CCWD beyond that estimated here.

CCWD's ability to provide fishery benefits from Los Vaqueros Reservoir is dependent upon the presence of sufficient water in the reservoir and this ability may be adversely affected by a relaxation of standards. Due to the impacts of the Jones Tract Levee failure, CCWD will potentially be requesting the U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (DFG), and the National Marine Fisheries Service (NMFS) to consider one-time modifications to CCWD's operations for Los Vaqueros Reservoir next year. CCWD would like to work with the SWRCB, DWR, Reclamation and the fishery agencies to ensure that if this is necessary, it can be done in a way that best protects fisheries and helps minimize impacts of the levee break on CCWD and other Delta water users.

Because the Delta is an interconnected system, salt that is exported in the summer returns to the Delta the next winter when water is released from wildlife refuges and from agricultural drains. The levee breach and subsequent actions that affect salt-loading now will have implications beyond summer 2004 and can affect the ability to meet water quality standards at another period, adversely affecting Delta water users, particularly those in the South Delta.

Emmaton and Jersey Point water quality objectives

CCWD believes that the particular water quality objectives suggested in the Petition (1.35 and 1.0 mS/cm) do not appear to be unreasonable under the current circumstances. However, CCWD requests that if the SWRCB finds the proposed relaxation of western Delta water quality objectives is necessary and reasonable, that the new temporary objectives be enforceable objectives, rather than merely operational targets. CCWD and other water users in the Delta need some degree of water quality certainty in order to plan their operations and to operate with efficiency. The use of "targets" would not provide the necessary certainty. Use of "targets" also sets a poor precedent for managing water quality conditions in the Delta.

CCWD will not object to the temporary relaxation of standards proposed by DWR and Reclamation to recover from the effects of the levee failure provided it is part of an overall set of actions that help minimize impacts to all Delta water users, including impacts to Delta water quality and fisheries, and that there is a plan developed and implemented to help *all* parties recover from the impacts of the levee failure (see comments below).

Use of Stage 1 JPOD

CCWD does not object to the immediate use of stage 1 JPOD for the management of South Delta water levels under the conditions requested in the Petition (i.e., that it does not result in export of additional water supplies or increase the authorized rates of diversion under either project's current water right permit). CCWD suggests that the SWRCB, DWR and

Reclamation consult with the South Delta Water Agency regarding the plans to maintain water levels in the South Delta.

Use of Stage 2 JPOD

CCWD is aware that Westlands Water District has requested immediate use of stage 2 JPOD to increase exports in order to recover 30,000 acre-feet of lost pumping due to the levee breach. CCWD will not object to this use of JPOD by DWR and Reclamation to help recover from the effects of the levee failure provided it is part of an overall set of actions that help minimize impacts to all Delta water users, including impacts to Delta water quality and fisheries, and that there is a plan developed and implemented to help *all* parties recover from the impacts of the levee failure (see comments below).

Water Balance Accounting

The Petition does not fully describe the current accounting of the water balance. While it is clear that water export opportunity was lost and additional releases were made as a result of the levee break, the water accounting does not appear to include the water now impounded on Jones Tract. That water may well be used to alleviate or reduce supply impacts of concern to the DWR and Reclamation, and it can also be used to help reduce impacts to all Delta users and fish and wildlife resources depending upon how it is used.

Additional Actions Required

The purpose of the requested changes as stated in the Petition is to reduce the amount of water released to meet the standards, thereby reducing the impacts of the levee failure on water supplies. As demonstrated above, the consequences of the levee failure and the requested actions have already and will in the future adversely affect drinking water quality in the Delta, CCWD and its customers and all other Delta water users. Therefore it is reasonable that this burden be fairly shared. CCWD will not object to the temporary change proposed by DWR and Reclamation to recover from the effects of the levee failure provided it is part of an overall set of actions that help minimize impacts to all Delta water users, including water quality and fisheries impacts and that a plan is developed and implemented to help *all* parties recover from the impacts of the levee failure. CCWD believes that this can be done in a way that is not burdensome and that will help all parties fairly.

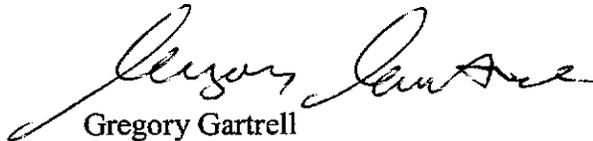
As discussed above, it appears that the levee failure and the impacts of the Petition will cost CCWD 15,000 to 20,000 acre-feet of high quality water. CCWD requests that, in addition to helping the DWR and Reclamation, and their contractors, to recover from the effects of the levee failure and avoid additional impacts, that the SWRCB include requirements in any order that DWR and Reclamation work with CCWD, other Delta water users and the USFWS, DFG and NMFS to develop and implement a plan, to be approved by the SWRCB, to ensure impacts resulting from the levee break and subsequent actions minimize impacts to all parties, so that the burden is fairly shared. CCWD believes a reasonable plan could be developed over the next 30 days and implemented starting August 15 (i.e., it would be ready to implement following the

Victoria Whitney
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period during which the standards are proposed to be relaxed). An example of something that might be considered in the plan would be storing a portion of the water that is currently on Jones Tract (which is estimated to be between 120,000 and 170,000 acre-feet) for later use to offset impacts in a way that helps CCWD refill its reservoir next year. CCWD estimates that trading 3,000 to 5,000 acre-feet of stored water during some periods for an additional refill capacity of 15,000 acre-feet in Los Vaqueros Reservoir at other periods would help CCWD recover from the levee break and water quality standard relaxation, while still providing a net benefit for fisheries and without harming other water users. CCWD would like to work with the relevant agencies to develop a plan that works in the best interests of all parties and is prepared to make this a priority.

Water quality, water supply, and fisheries in the Delta have all been impacted by the levee breach. These impacts must be managed in a fair and equitable manner. CCWD appreciates the open communication the SWRCB has maintained during this urgent situation and is eager to work with the SWRCB, the DWR and Reclamation, the fisheries agencies, and other stakeholders to find a way to fairly balance the impacts of the levee breach in a manner that addresses the concerns of all stakeholders. If you have any questions, please contact me at (925)688-8100 or Samantha Salvia at (925)688-8057.

Sincerely,



Gregory Gartrell
Assistant General Manager

GG/SAS

Victoria Whitney
Temporary Urgency Petition due to Levee Break
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Page 6

cc:
Diane Riddle, SWRCB
Gita Kapahi, SWRCB
Kathy Mrowka, SWRCB
Russ Kanz, SWRCB
Chester V. Bowling, USBR
Carl A. Torgersen, DWR
Michael Aceituno, NMFS
Bruce Oppenheim, NMFS
Wayne White, USFWS
Ryan Olah, USFWS
Diana Jacobs, DFG
Jim White, DFG
Tom Birmingham, Westlands Water District
Alex Hildebrand, South Delta Water Agency
Dante Nomellini, Central Delta Water Agency



GK

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Sacramento Area Office
650 Capitol Mall, Suite 8-300
Sacramento, California 95814-4706

July 2, 2004

In Reply Refer to:
151422SWR99SA133:BSK

Ms. Victoria Whitney
Chief, Division of Water Rights
State Water Resources Control Board
1001 I St., 16th Floor
P.O. Box 2000
Sacramento, California 95814

Dear Ms. Whitney,

The National Marine Fisheries Service (NOAA Fisheries) is responding to the State Water Resources Control Board regarding the June 24, 2004 Temporary Urgency Change Petition from the Bureau of Reclamation.

NOAA Fisheries has worked closely with the Bureau of Reclamation (Bureau), California Department of Fish and Game, California Department of Water Resources, and the U.S. Fish and Wildlife Service regarding the potential impacts to fishery resources of concern following the failure of the levee at the Jones Tract. The coordination between these agencies has been timely and productive. As a consequence, NOAA Fisheries is able to support the Bureau's request for the Temporary Urgency Change Petition. Further, we concur that the operations undertaken by the Bureau and the California Department of Water Resources since the levee break have not adversely affected listed salmonids and are supportive of ongoing operations that forego reservoir draw-downs to chase a salinity objective that may not be achievable. Indeed, we concur with the California Department of Fish and Game letter of June 30, 2004 that the operations proposed by the projects may be the best option for anadromous and resident fish at this time.

We will continue to coordinate closely with the agencies listed above to assure that fishery resource needs are fully considered as project operations respond to this event. If you have any questions regarding our participation or support for the Petition, please contact Mr. Brian Kinnear, 650 Capitol Mall, Suite 8-300, Sacramento, CA 94815, or call him at 916-930-3609. Thank you for your consideration.

Sincerely,

Michael E. Aceituno
Supervisor, Sacramento Area Office



cc: NMFS-PRD, Long Beach, California
Chet Bowling, USBR, 3310 El Camino Avenue, Sacramento, CA 95821
Wayne White, USFWS, 2800 Cottage Way, Suite W-2605, Sacramento, CA 95825
Carl Torgersen, DWR, 3310 El Camino Avenue, Sacramento, CA 95821
Perry Herrgesell, CDFG, 1416 9th St., 12th Floor, Sacramento, CA 95814