

Water Quality Standards for the Lower San Joaquin River & Tributaries

**Doug Obegi
Natural Resources Defense Council**

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Main Points

1. The SED fails to demonstrate that it is likely to achieve the salmon doubling objective in the Plan, contrary to law.
2. The SWRCB cannot “balance away” achievement of the salmon doubling objective and must consider water supply alternatives and habitat restoration in any balancing.
3. The Program of Implementation is substantially flawed; it provides too much discretion regarding flow volumes, shaping, and shifting, and an unworkable governance scheme.

1995 Plan Adopted the Salmon Doubling Narrative Objective

“Water quality conditions shall be maintained, together with other measures in the watershed, sufficient to achieve doubling of natural production of chinook salmon from the average production of 1967-1991, consistent with the provisions of State and federal law.”

The Program of Implementation Must Achieve Salmon Doubling

- The Program of Implementation must demonstrate how the plan will achieve the water quality objectives. (See Cal. Water Code §§ 13050(j)(3), 13242(a)).
- “Determining what actions were required to achieve the narrative salmon protection objective was part of the Board's obligation in formulating the 1995 Bay–Delta Plan in the first place.”
 - *In re State Water Resources Control Board Cases*, 136 Cal.App.4th 674, 775 (2006)

Current Standards are Failing to Achieve Salmon Doubling Objective

- Vernalis Adaptive Management Plan (VAMP) implemented lower flows than required by the 1995 Plan.
- CDFW commented in 2006 that Plan was failing to achieve salmon doubling, and that there was substantial evidence the declines were due to inadequate spring flows.
- Biological objectives must ensure maintenance of conditions in the tributaries and lower river sufficient to achieve salmon doubling

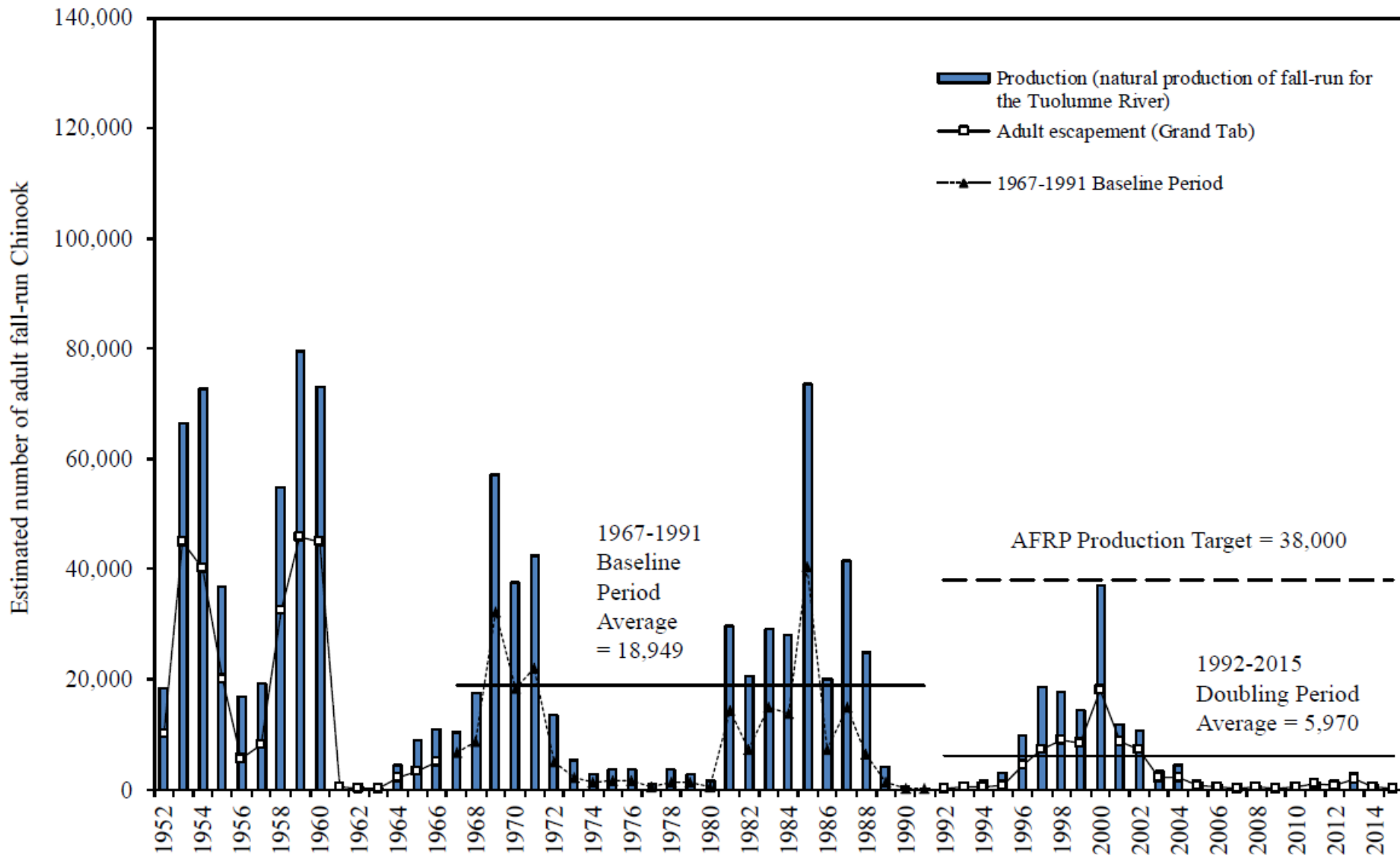


Figure 33. Estimated yearly natural production, and in river escapements of Tuolumne River adult fall-run Chinook salmon. 1952-1966 and 1992-2015 numbers are from CDFG Grand Tab (Apr 11, 2016). 1967-1991 Baseline Period numbers are from Mills and Fisher (CDFG, 1994).

SED Must Show it is Likely to Achieve the Salmon Doubling Objective

- Need to revise the draft Water Quality Objective and the Adaptive Management program to be consistent with the existing salmon doubling objective in the Plan.
- SED fails to demonstrate that flow and nonflow measures required in the Program of Implementation provide conditions in the tributaries and lower river that are adequate to achieve the salmon doubling objective.

SWRCB's Balancing of Beneficial Uses is Limited

- Cannot “balance” away meeting the salmon doubling objective and other legal requirements.
- Balancing must consider:
 - economic and social benefits of reduced diversions, such as water quality and fisheries benefits.
 - improved water use efficiency, water recycling, and other water supply alternatives for ag & urban use.
- SWRCB **can** require water users to invest in habitat restoration and other measures to achieve the Plan objectives.

Balancing and Water Transfers

- SED ignores history of extensive water transfers out of basin (including VAMP)
- Upstream water rights holders can prevent export of flows by the SWP and CVP under Water Code § 1707(c), or may reach agreements to transfer some water to the exporters

Program of Implementation is Substantially Flawed

- Decisions on implementation are not sufficiently tied to achieving the salmon doubling objective and biological objectives
 - Annual decisions on percentage of unimpaired flow
 - Decisions on flow shaping
 - Shifting flow to the fall months
- SED fails to analyze the adverse environmental effects of this excessive discretion.
- Governance proposal will result in gridlock

Conclusion

- Revise the SED to explicitly incorporate salmon doubling into the new Plan objective and Program of Implementation
- Revise SED to limit discretion on flow range and flow shaping, and eliminate flow shifting to the fall
- Ensure that final SED demonstrates that the Program of Implementation is likely to provide adequate conditions in the Tributaries and Lower River to achieve the salmon doubling objective