

Agreement on San Joaquin River Protection

Status Report

April 1997



D-023475

D-023475

The following is a list of the parties supporting this proposal to resolve environmental protection issues on the mainstem of the San Joaquin River

SAN JOAQUIN RIVER INTERESTS

- San Joaquin Tributaries Association
 - Modesto Irrigation District
 - Merced Irrigation District
 - Turlock Irrigation District
 - Oakdale Irrigation District
 - South San Joaquin Irrigation District

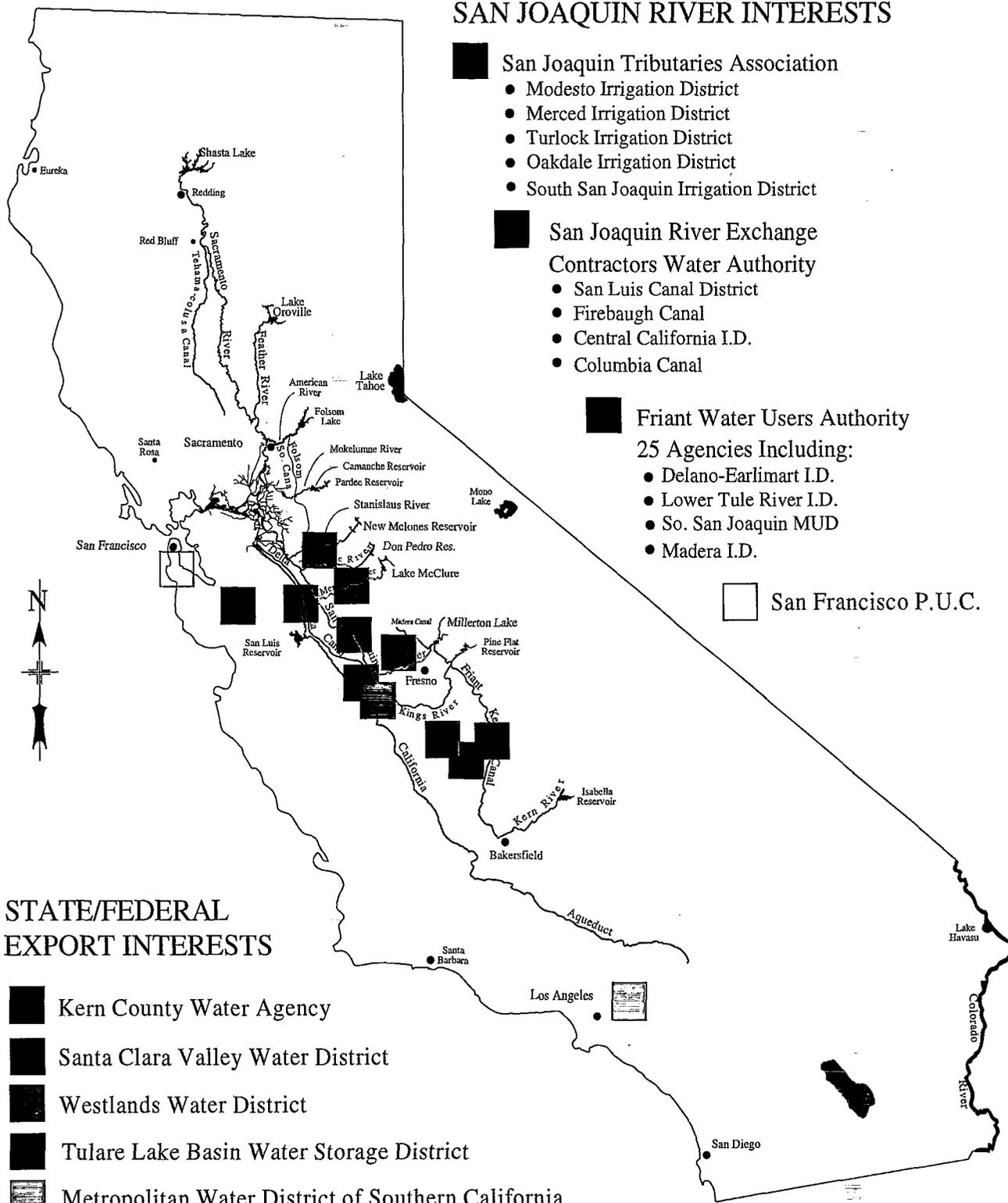
- San Joaquin River Exchange Contractors Water Authority
 - San Luis Canal District
 - Firebaugh Canal
 - Central California I.D.
 - Columbia Canal

- Friant Water Users Authority

25 Agencies Including:

 - Delano-Earlimart I.D.
 - Lower Tule River I.D.
 - So. San Joaquin MUD
 - Madera I.D.

□ San Francisco P.U.C.

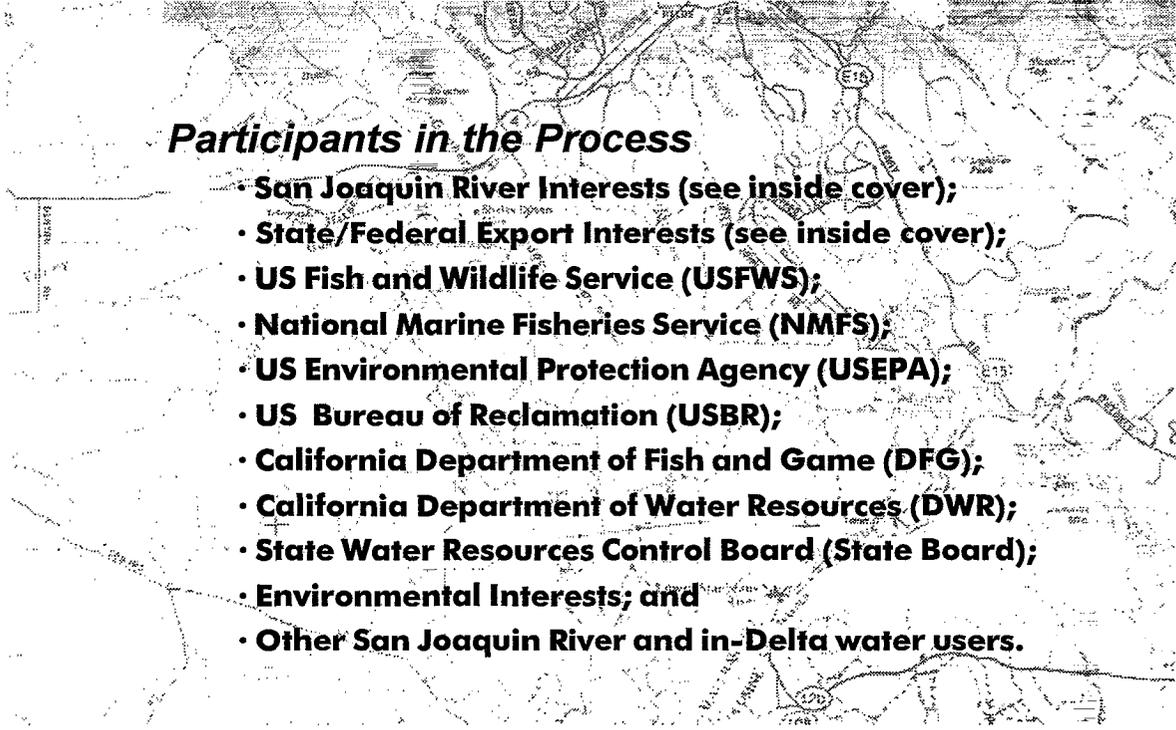


STATE/FEDERAL EXPORT INTERESTS

- Kern County Water Agency
- Santa Clara Valley Water District
- Westlands Water District
- Tulare Lake Basin Water Storage District
- Metropolitan Water District of Southern California
- San Luis Delta-Mendota Water Authority (31 Member Agencies)

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Participants in the Process

- **San Joaquin River Interests (see inside cover);**
- **State/Federal Export Interests (see inside cover);**
- **US Fish and Wildlife Service (USFWS);**
- **National Marine Fisheries Service (NMFS);**
- **US Environmental Protection Agency (USEPA);**
- **US Bureau of Reclamation (USBR);**
- **California Department of Fish and Game (DFG);**
- **California Department of Water Resources (DWR);**
- **State Water Resources Control Board (State Board);**
- **Environmental Interests; and**
- **Other San Joaquin River and in-Delta water users.**

Revised April 9, 1997

Executive Summary

Overview

Water agencies historically at odds with each other have developed a progressive approach to meeting environmental water requirements on the San Joaquin River in California. This briefing document seeks to educate the public and policy-makers about this emerging proposal.

In brief, the proposed program would:

- Increase freshwater flows and initiate non-flow habitat restoration actions to improve salmon survival in the San Joaquin River;
- Reduce Delta water exports during critical fish migration periods and provide for future export makeup pumping;
- Recommend and facilitate voluntary, market-based measures to meet remaining regulatory flow requirements on the San Joaquin River;
- Implement other water facilities operational measures, such as the installation of a fish barrier to increase salmon survival;
- Begin a cutting-edge adaptive fishery management program to better understand and respond to the various factors affecting fish in the San Joaquin River and its tributaries; and
- Earmark a portion of a federal environmental restoration fund to finance both biological monitoring and improvement activities, and infrastructure improvements needed to meet the program's flow and non-flow objectives.

Background

In May 1995, the State Water Resources Control Board adopted a Water Quality Control Plan for the Bay/Delta which included specific water quality and flow objectives for the San Joaquin River basin. Soon after, an association of water users on the San Joaquin River system filed suit against the State Board challenging the San Joaquin River objectives contained in the Water Quality Control Plan.

In an effort to settle this issue out of court, the SJR Interests and Bay/Delta water export interests began collaborating to identify feasible, voluntary actions to protect the River's fish resources. By spring 1996, these parties had agreed on a "Letter of Intent to Resolve San Joaquin River Issues" (see Appendix II). This agreement will provide additional flows (higher minimum base flows and significantly increased pulse flows), install a new facility for fish protection (fish barrier), establish new biological monitoring activities, and earmark federal restoration funds to cover costs associated with these measures. As part of the Letter of Intent, the SJR Interests agreed to dismiss their lawsuit against the State Board. Also, the State Board agreed to hold workshops on the status of the science underlying the Water Quality Control Plan's San Joaquin River objectives.

Discussions about the Letter of Intent with federal, state, and local agencies have been generally favorable. However, through these discussions it became apparent refinements were needed: 1) to broaden the range of interests participating in the process; and 2) to increase the level of scientific understanding of how activities within and immediately downstream of the San Joaquin River watershed affect anadromous fish habitat and survival.

Efforts are underway to facilitate these refinements through a comprehensive program involving a broader array of stakeholders. This new program is known as the Adaptive Management Program.

Scope of the Adaptive Management Program

Stakeholders are collaborating to finalize elements of the Adaptive Management Program which will further enhance environmental conditions on the San Joaquin River beyond the Letter of Intent. Program elements presently include a range of flow and non-flow habitat improvement actions throughout the watershed, and an experimental program designed to gather data to help identify scientifically sound fishery management options for the future (see "The Adaptive Management Program"). Additional actions including installation of the Old River fish barrier and providing enhanced flows as early as April/May 1997 are also being considered (see "Recent Milestones").

Regulatory Assurances Requested By Participating Water Users

This consensus effort to find an agreeable solution to improve flow conditions and fish habitat on the San Joaquin River depends on actions by the State Board to provide certain regulatory assurances to water users. The SJR Interests and the Export Interests are asking the State Board to recognize that the voluntary flow commitments made by the participating water users meet any flow obligations the State Board might otherwise have sought to impose on these parties with respect to the 1995 Water Quality Control Plan implementation.

The Letter of Intent will supplement San Joaquin River flows in a manner consistent with the Bay/Delta Accord and the Water Quality Control Plan objectives. However, should the State Board find that additional flows beyond those provided by the Letter of Intent are necessary, such flows should be procured on a "willing buyer-willing seller" basis.

The Letter of Intent and the Adaptive Management Program are dependent upon the establishment of a reliable funding source to cover the programs' costs. Under provisions of the Central Valley Project Improvement Act, a portion of San Joaquin water users (Friant Service Area) are assessed a water use surcharge of \$4.00 per acre-foot, which is collected into the CVPIA's Restoration Fund. This surcharge was established to allow Friant water users to meet CVPIA environmental obligations in ways other than flow releases from Friant Dam. Between 1993 and 1997, Friant water users have contributed an average of \$6.0 million per year to this fund. Stakeholders are seeking funding from this source, initially in the amount of \$3.75 million annually, to cover costs associated with the Letter of Intent's biological monitoring, habitat improvement activities, and the development of water supplies & non-flow actions to achieve the targeted flow levels. Additional resources may be necessary to support the Adaptive Management Program.

Recent Milestones

San Joaquin River Tributaries Association Dismisses Its Lawsuit Against State Board

As agreed in the Letter of Intent, the San Joaquin Tributaries Association dismissed its lawsuit against the State Board. As part of this compromise, the State Board agreed to meet its commitment to review the flow objectives for the San Joaquin River contained in the 1995 Water Quality Control Plan as well as the premises underlying these objectives. A workshop for this purpose is expected to be held in summer or fall 1997. Any amendments to the 1995 Water Quality Control Plan objectives (up or down) would occur during the triennial review process established by federal and state law and the Clean Water Act.

Policy Group Formed to Build Consensus and Engage a Wider Array of Interests

Parties to the Letter of Intent, CALFED representatives, and stakeholder representatives have formed the San Joaquin River Stakeholders Policy Group. Meetings have been held regularly since fall 1996. The objectives of the Policy Group are: 1) to identify viable mechanisms for increasing environmental protection on the San Joaquin River; 2) to gain a sound scientific understanding of how flow and non-flow factors affect fish resources; and 3) to address environmental and water supply problems affecting the San Joaquin River basin. Technical teams are collaborating to support these parallel and interactive tracks.

San Joaquin River Interests Reach Agreement on the Distribution of Flow Responsibilities

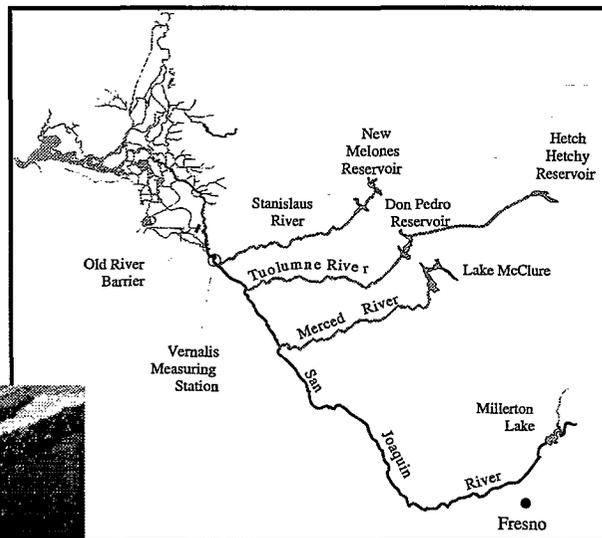
In the Letter of Intent, the SJR Interests committed to assist in implementing the Vernalis flow objectives of the Water Quality Control Plan by supplementing San Joaquin River flows, primarily from the Stanislaus, Tuolumne, and Merced Rivers. These additional flows, which are fixed by the terms of the Letter of Intent, will vary annually according to hydrologic conditions.

As consideration for these flows, the Letter of Intent recommended an annual payment of \$3.75 million to the SJR Interests from the CVPIA Restoration Fund's Friant Surcharge section. Of these funds, \$1 million annually is to be allocated to improve conditions for fish through non-flow measures, and to fund biological monitoring activities. The SJR Interests have established a Joint Powers Agency to administer these funds and oversee implementation of the Letter of Intent's flow provisions. The JPA will take into account Program benefits, other funding sources, and other ongoing programs when allocating these funds. Meetings of the JPA are open to the public.

Protective Measures Recently Implemented Within the San Joaquin River Basin

Several actions by the San Joaquin River Stakeholders Policy Group and other parties have been or are currently being implemented throughout the watershed. These have increased the level of protection to San Joaquin River resources since the Bay-Delta Accord. These actions include:

- Increased flow from the Tuolumne River, and implementation of non-flow programs through a settlement between the Federal Energy Regulatory Commission and numerous other parties (August 1996);
- An interim operating plan for the New Melones Project to provide additional flows on the Stanislaus River;
- New fishery response test programs on the Merced River;
- Actions by water users on the Stanislaus and Merced Rivers to sell water purchase options that would help meet Central Valley Project Improvement Act objectives;
- Salmon smolt out-migration studies conducted by Oakdale Irrigation District, South San Joaquin Irrigation District, USFWS, and DFG on the Stanislaus River;
- A two-year water purchase by USBR from Oakdale Irrigation District and South San Joaquin Irrigation District of up to 50,000 acre-feet to help implement fish-doubling objectives of the Central Valley Project Improvement Act; and
- Seasonal installation of a fish barrier at the head of Old River for a five-year period.

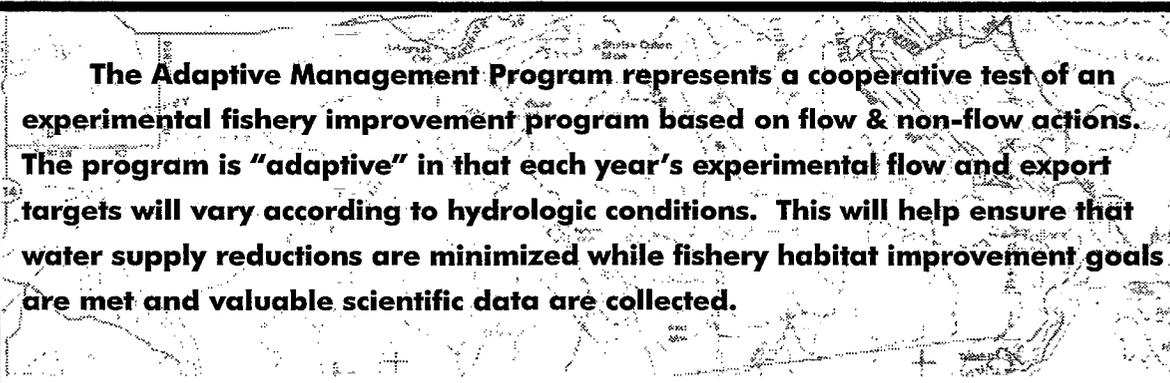


Major tributaries to the San Joaquin River.



*Fish barrier at head of Old River
(Photo courtesy of DWR).*

The Adaptive Management Program



The Adaptive Management Program represents a cooperative test of an experimental fishery improvement program based on flow & non-flow actions. The program is "adaptive" in that each year's experimental flow and export targets will vary according to hydrologic conditions. This will help ensure that water supply reductions are minimized while fishery habitat improvement goals are met and valuable scientific data are collected.

Salmon Population Restoration Objectives

The CVPIA and the Water Quality Control Plan establish objectives for enhancing fall-run chinook salmon populations. However, it is generally recognized that new strategies are needed to balance two primary restoration actions: 1) improving spawning and rearing habitat throughout the San Joaquin River tributaries; and 2) increasing passage of salmon smolts from the San Joaquin River to and through the Delta.

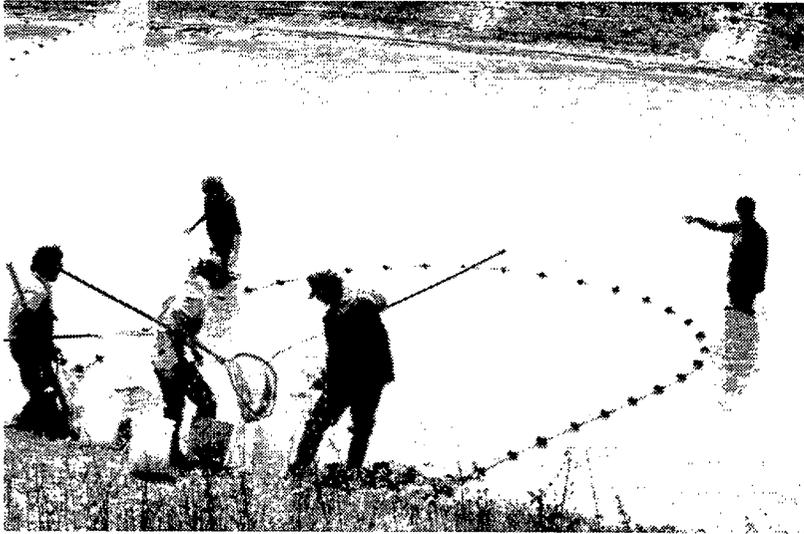
Collaborative Development of the Adaptive Management Program's Objectives

Scientists from USEPA, USFWS, DFG, and other stakeholder groups are collaborating to develop the Adaptive Management Program. The program is being designed with the benefit of experience gained from past salmon smolt studies to achieve two primary objectives.

First, it will gather scientific data on the effects of two of the major factors which impact the survival and passage of salmon smolts to and through the Delta: 1) the level of San Joaquin River flow relative to State Water Project (SWP) and CVP export pumping rates; and 2) the operation of a fish barrier at the head of Old River.

Secondly, the Adaptive Management Program is designed to immediately enhance environmental conditions on the San Joaquin River to benefit its salmon populations. This will be accomplished through experimental operational targets (flow levels, export-rate reductions, and fish barrier operations) which will provide greater protection than has historically been required. Results will help determine whether varying operational conditions increase salmon survival during their migration to the Delta. The combined operational targets are expected to achieve salmon survival improvements consistent with the Water Quality Control Plan's objectives.

Additionally, the Adaptive Management Program includes an intensive fish-monitoring element, and an element to gather data on non-flow factors (e.g., water temperature). These elements will be conducted in coordination with other ongoing programs. New scientific protocols, jointly developed by scientists from several agencies, will govern these experiments. Implementation of this program will generate critical data that will be used to guide future decisions on San Joaquin River resources.



The Adaptive Management Program will increase biological monitoring activities throughout the San Joaquin River basin. -- Fish sampling in a Delta channel.



Non-flow measures such as gravel restoration support improved salmon spawning on tributaries to the San Joaquin River. -- The Tuolumne River (Photo courtesy of DWR).

Institutional Issues

Overview

The feasibility of implementing the Letter of Intent and the Adaptive Management Program (as well as a durable long-term Bay/Delta solution through the CALFED process), is related to the level of water supply reliability afforded to water users.

The Letter of Intent and the Adaptive Management Program envision actions that are expected to significantly improve survival of fall-run chinook salmon stocks and other fish. In recognition of this, the Letter of Intent provides that a condition precedent to its implementation is a State Board determination that such implementation will satisfy the requirements of the Water Quality Control Plan with respect to the San Joaquin River Interests.

Additionally, successful implementation will require adequate funding and availability of necessary resources from the responsible agencies.

Some of the Bay/Delta planning and regulatory processes that have a direct bearing on the implementation of the Letter of Intent and the Adaptive Management Program are listed below.

Water Quality and Water Rights Processes

The State Board is currently developing an Environmental Impact Report (EIR) for a water rights decision to implement, as appropriate, the 1995 Bay-Delta Water Quality Control Plan. The State Board plans to issue a draft EIR and initiate water rights hearings within the next year. A water rights decision is expected by December 1998.

The SJR Interests and Export Interests submitted the Letter of Intent for the State Board's consideration at a June 1996 workshop. It is currently being evaluated as flow Alternative 7 in the State Board's EIR process. A condition to the voluntary implementation of the Letter of Intent is the State Board's acknowledgment that the flows provided by the San Joaquin River Interests through the Letter of Intent satisfy any flow obligation that the State Board might seek to impose on these parties with respect to Water Quality Control Plan implementation. Parties to the Letter of Intent have requested that, during the water rights process, the State Board hold further implementation of the Water Quality Control Plan in abeyance with respect to the San Joaquin River Interests, so long as the Letter of Intent is being implemented.

Furthermore, should the State Board find that additional San Joaquin River flows are necessary to implement the Water Quality Control Plan, these should be procured on a "willing buyer-willing seller" basis.

CALFED Bay-Delta Program

The CALFED Bay/Delta Program is a cooperative effort involving the major state and federal agencies with planning and regulatory responsibilities in the Bay/Delta Estuary. The CALFED Program is charged with developing a long-term solution to the environmental and water resource problems affecting the Estuary. It is developing solutions to these problems through a consensus-driven approach.

The processes to develop the Letter of Intent and the Adaptive Management Program are following a similar consensus-driven approach. Funding for habitat restoration will be coordinated with the CALFED Program's Ecosystem Restoration component.

It is expected that "adaptive management" will be a cornerstone of CALFED's long-term Bay/Delta solution. The level of resource coordination built into the Letter of Intent and the Adaptive Management Program provide an ideal opportunity to test the adaptive management approach on a large scale.

National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA)

Environmental review required by CEQA and NEPA will be carried out by the appropriate agencies prior to implementation of the Letter of Intent and the Adaptive Management Program. The State Board, USBR, and DWR are among those agencies who may have review responsibility under CEQA and NEPA.

Endangered Species Act (ESA)

The Letter of Intent and the Adaptive Management Program are currently being evaluated by federal and state agencies with ESA jurisdiction to determine potential effects on endangered species in the Bay-Delta estuary. USFWS, NMFS, and DFG are participants in the Program and informal consultation on the implementation of these programs will ensure that endangered species are protected. Any formal consultation required will be conducted by the appropriate agencies under the state and federal ESA.

Central Valley Project Improvement Act (CVPIA)

The CVPIA plays a pivotal role in both the near-term implementation of the Letter of Intent and the Adaptive Management Program, and the long-term restoration of San Joaquin River resources. The CVPIA contains funding provisions to improve water systems within the San Joaquin River basin. For San Joaquin River interests to provide the flows called for in the Letter of Intent, they must improve their water supply infrastructure and implement new conservation programs. As stated earlier, funding initially in the amount of \$3.75 million per year, will be sought from the CVPIA Restoration Fund.

Appendix I: Chronology of Events

Bay/Delta Accord - December 1994

In December 1994, key federal and state officials signed an historic accord on Bay-Delta environment protection. The aim of the Bay/Delta Accord was twofold: 1) to allow near-term changes in the operations of the CVP and the SWP to better protect the environment; and 2) to assure water users that environmental regulatory requirements would stabilize over a reasonable planning horizon (Secretary of Interior Babbitt's "a deal is a deal" policy). The Bay-Delta Accord contained the following provisions for San Joaquin River actions:

- Higher flow objectives at the Vernalis Measurement Station on the San Joaquin River;
- Provisions to reevaluate and adjust flow objectives within three years, based on data generated by biological monitoring and analysis;
- Flow releases by USBR from New Melones Reservoir to help meet these interim flow objectives; and
- Installation of an operable fish barrier at the head of Old River.

Bay/Delta Water Quality Control Plan - May 1995

In May 1995, the State Water Resources Control Board adopted a Water Quality Control Plan for the Bay/Delta Estuary, containing objectives for flow, operations, and water quality throughout the Bay/Delta estuary. The Water Quality Control Plan incorporated the same San Joaquin River flow objectives contained in the Bay-Delta Accord.

The State Board is currently developing a draft Environmental Impact Report to support a water rights decision to implement the Water Quality Control Plan, as appropriate. One of the alternatives under the SWRCB's consideration is the Letter of Intent to Resolve San Joaquin River Issues (see Appendix II). The State Board expects to adopt a water rights decision by December 1998.

San Joaquin River Litigation - June 1995

In June 1995, the San Joaquin River Tributaries Association filed a lawsuit over the State Board's adoption of the Water Quality Control Plan. The lawsuit challenged, among other things, the scientific basis underlying the new San Joaquin River flow objectives. Several parties intervened on both sides of the litigation. This legal action was later dismissed as a result of the adoption of the Letter of Intent agreement with Export Interests, and the State Board's agreement to hold workshops to review the science underlying the San Joaquin River flow objectives.

Letter Of Intent To Resolve San Joaquin Issues - May 1996

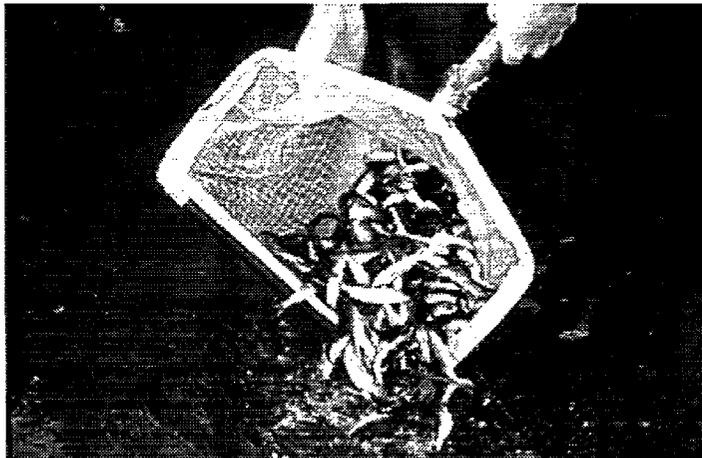
In May 1996, a group of major agricultural and urban water interests agreed on a Letter of Intent to Resolve San Joaquin River Issues. The Letter of Intent provides voluntary environmental enhancements to benefit fish and other environmental resources in the San Joaquin River basin. The Letter of Intent proposes flow and non-flow actions that, when combined with other current and proposed federal, state and local habitat restoration programs, are expected to achieve a comprehensive level of

environmental protection on the San Joaquin River. Key benefits of the Letter of Intent are that it:

- Increases flow and non-flow measures on the San Joaquin River;
- Halts divisive litigation (the SJR Interests court action against State Board was dismissed as a result of the Letter of Intent) and averts potential litigation over water rights;
- Engages a broad range of participants to seek consensus;
- Produces immediate and voluntary flow and non-flow measures to improve environmental conditions on the San Joaquin River;
- Calls for installation of an operable fish barrier at the head of Old River;
- Enhances the prospects for resolving long-term environmental and water supply issues;
- Does not preclude obtaining additional flows;
- Supports an improved environmental monitoring program; and
- Continues support for implementing non-flow elements in the 1994 Bay-Delta Accord, the CVPIA, and Proposition 204.

Adaptive Management Program - Fall 1996

Since fall 1996, representatives from a wide array of stakeholder groups have been collaborating on the development of an experimental study program that builds on the Letter of Intent, as described in this book.



Adaptive Management Program will increase biological monitoring activities in the San Joaquin River basin -- Salmon smolt production at a fish hatchery (Photo courtesy of DWR).

Appendix II: Letter of Intent

LETTER OF INTENT AMONG EXPORT INTERESTS AND SAN JOAQUIN RIVER INTERESTS TO RESOLVE SAN JOAQUIN RIVER ISSUES RELATED TO PROTECTION OF BAY-DELTA ENVIRONMENTAL RESOURCES

Preamble

In May, 1995, the State Water Resources Control Board (SWRCB) adopted a Water Quality Control Plan (1995 WQCP) to protect beneficial uses of water in the Bay Delta watershed. The 1995 WQCP has been challenged in litigation entitled *San Joaquin Tributaries Association v. SWRCB*. In an effort to reach an agreement to avoid that litigation and contested proceedings before the SWRCB regarding the allocation of responsibility to the San Joaquin tributary parties who are signatory to this Letter of Intent for meeting the 1995 WQCP standards related to the San Joaquin River, a variety of urban and agricultural water agencies which rely on water exported from the Delta (Export Interests) and San Joaquin River interests have met extensively in recent months. This Letter of Intent outlines the recommendation of this broad-based group to resolve as to these San Joaquin tributary parties the San Joaquin River flow allocation issues related to the protection of Bay-Delta environmental resources.

1. Parties:

The Parties executing this Letter of Intent are Metropolitan Water District of Southern California, Kern County Water Agency, State Water Contractors, Tulare Lake Basin Water Storage District, Santa Clara Valley Water District, Westlands Water District and San Luis-Delta-Mendota Water Authority (such parties are hereinafter referred to collectively as "Export Interests"), San Joaquin Tributaries Association, Modesto Irrigation District, Turlock Irrigation District, Merced Irrigation District, South San Joaquin Irrigation District, Oakdale Irrigation District (collectively "SJTA"), City and County of San Francisco, San Joaquin River Exchange Contractors Water Authority ("Exchange Contractors"), and Friant Water Users Authority ("Friant"), all of whom, are collectively referred to as "Parties".

2. Program Coordination and Implementation:

a. The actions proposed and agreed to by the Parties include flow and non-flow measures, which when integrated will improve the San Joaquin basin fall-run chinook salmon natural spawning population consistent with the 1995 WQCP.

b. The Parties intend to enter into an implementation agreement (the "Implementation Agreement"), which will identify specific flow and non-flow measures consistent with those in this Letter of Intent. These measures will be based upon best available science.

c. The flow and non-flow measures identified in the Implementation Agreement shall be coordinated to the maximum extent possible with other related programs, including, but not limited to, activities to implement the Restoration Fund and San Joaquin River provisions of the CVPIA, the CALFED process, the SWRCB Bay-Delta process, SJRMP, Category III provisions of the December 1994 Bay-Delta Accord, the Four Pumps Agreement, purchases of additional water to augment the flows agreed to by the Parties, habitat improvements, and the provisions of any similar agreement among Sacramento River interests and Export Interests. The specific non-flow measures to be undertaken in the Implementation Agreement and these related programs will be identified through a broadly-based stakeholder process.

d. The Parties recognize that, to be successful, the flow measures to be undertaken in the Implementation Agreement will require coordination with the United States Bureau of Reclamation regarding the operation of New Melones Reservoir on the Stanislaus River.

3. Vernalis Flows:

a. The SJTA and Exchange Contractors will, in conjunction with the flows to be provided by the United States Bureau of Reclamation (the "Bureau") described in Paragraph 3.c., provide flows which, when added to all other flows at Vernalis (except those which may be provided by purchases from willing sellers) will achieve at a minimum the following: 1) in all years, a base flow of 1,000 cubic feet per second (cfs) for the period February 15 through May 31, and 1,000 cfs during the month of October, and 2) an out-migration pulse flow volume, inclusive of the base flow, during the period April through May, equivalent to 31 days of 2,000 cfs in Critical years, 3,000 cfs in Dry years, 4,000 cfs in Below Normal years, and 5,000 cfs in Above Normal and Wet years (San Joaquin Valley Water Year Hydrologic Classification - 60/20/20).

b. The Vernalis flows will consist of: 1) a base flow component in terms of a minimum monthly average flow that has a 7-day running average flow not less than 250 cfs below the monthly average, and 2) the pulse flow component which includes the base flow. The pulse flow at Vernalis will result from the coordinated pulse flow operations on the San Joaquin River and the tributaries upstream of Vernalis, and may occur as a single-sustained pulse flow or a combination of several shorter-duration pulse flows during the April through May period. Operation of the fishery barrier(s) will be coordinated with the pulse flows.

c. The water to be provided by SJTA and the Exchange Contractors to achieve the targeted Vernalis flows described by Paragraph 3.a. will be based on the condition that instream fishery flows below Goodwin Dam to be provided by the Bureau through New Melones Project operations will be 155,700 acre-feet in Critical years, 180,700 acre-feet in Dry and Below Normal years, and 205,700 acre-feet in Above Normal and Wet years. Specifically, during the October and February through May period, it is expected that Stanislaus River fishery flows will be at least the following:

Stanislaus River Minimum Fishery Release Schedule

| Month | Critical Years | Dry & BN Years | AN & Wet Years |
|----------|----------------|----------------|----------------|
| October | 225 cfs | 225 cfs | 250 cfs |
| February | 225 cfs | 240 cfs | 275 cfs |
| March | 225 cfs | 240 cfs | 275 cfs |
| April | 225 cfs | 240 cfs | 275 cfs |
| May | 225 cfs | 240 cfs | 275 cfs |

| Additional Pulse Flow Volume During April-May | Critical Years | Dry & BN Years | AN & Wet Years |
|---|------------------|------------------|------------------|
| | 26,300 acre-feet | 44,700 acre-feet | 49,000 acre-feet |

d. In addition to the fishery flows described in Paragraph 3.c., it is also expected that the Bureau will release from the New Melones Project 70,000 acre-feet per year for downstream water quality purposes, when needed.

e. It is also expected that to the extent that additional water may be released from New Melones for water quality or other authorized project purposes, such water releases will be made in a manner which will not impair the Bureau's ability to meet the flows set forth in Paragraph 3.c and 3.d.

f. The flows to be provided pursuant to Paragraph 3.a., when coupled with the nonflow measures in Paragraph 2.c., including installation and operation of a permanent fish barrier at the head of Old River, new habitat improvements, and extensive monitoring, are expected to result in substantial environmental benefits and substantial improvement in the native San Joaquin Basin chinook salmon population consistent with the goals of the 1995 WQCP. This program will be coordinated with other actions within the Basin and the Delta as set forth in Paragraph 9, below.

g. On-going monitoring will be implemented to confirm that the anticipated benefits are derived from the actions to be taken under the Implementation Agreement.

4. River Barriers:

The success of the Implementation Agreement is contingent, in part, upon construction of a permanent, operable Old River fish barrier constructed by the Bureau and the California Department of Water Resources and operated in a manner that will protect San Joaquin River chinook salmon smolts. Until such time as the permanent barrier is constructed, a temporary barrier shall be installed each year, except in years when flood flows would prevent installation. Any negative impacts of a permanent, operating Old River barrier should be mitigated consistent with CEQA and NEPA by the State and federal entities that are responsible to operate the Old River fish barrier.

5. Water:

a. The Implementation Agreement shall provide that water be supplied by the SJTA members and the Exchange Contractors to meet the Vernalis flows set forth in Paragraph 3.a.

b. The manner in which such water is made available shall be at the sole discretion of the SJTA and the Exchange Contractors.

c. Nothing in the Implementation Agreement shall be construed to require the release of water from Friant Dam into the San Joaquin River. Friant's obligations under the Implementation Agreement shall be met through the payment of monies pursuant to Paragraphs 8 and 9.

6. Water Rights Security¹:

a. It shall be a condition precedent for the effectiveness of the Implementation Agreement that the State Board and all other relevant regulatory bodies provide assurance satisfactory to the Parties that (i) the water rights proceeding relative to implementation of the 1995 WQCP will be held in abeyance with respect to the Parties to this Letter of Intent and the Implementation Agreement as to the San Joaquin River and its tributaries, so long as the Implementation Agreement is in effect and is being implemented, and (ii) subject to subparagraph 6 (b) and 6 (c), the implementation of the Implementation Agreement satisfies the requirements of the 1995 WQCP with respect to the signatories to the Implementation Agreement relative to the San Joaquin River and its tributaries.

b. This Letter of Intent and the Implementation Agreement shall not be interpreted to affect (i) the obligations of the SWP or CVP with regard to meeting water quality objectives or any other requirements established for the Bay-Delta and/or San Joaquin River under the 1995 WQCP or (ii) the obligation of any Party to mitigate the impacts on water quality resulting from the Party's activities.

c. Notwithstanding the provisions of subparagraph 6(b), Parties hereto shall have no further obligation under the 1995 WQCP to mitigate the impacts on water quality resulting solely from any reduction in flows in the San Joaquin River or its tributaries.

7. Jurisdiction of SWRCB¹:

Nothing contained in this Letter of Intent or the Implementation Agreement shall constitute the acknowledgment by a Party of any jurisdiction of the SWRCB over the Party, nor does participation in this Letter of Intent or the Implementation Agreement waive any defenses that a Party may have concerning the SWRCB's jurisdiction. Further, participation in the Letter of Intent and the Implementation Agreement shall not, in and of itself, give rise to jurisdiction of the SWRCB over the Parties.

8. Payments:

a. In recognition of the cost to develop new supplies, the value of water and other costs

¹ For the purposes of paragraphs 6 & 7, the protections afforded to the Parties also extend to members of the Parties' organization, subsidiaries or customers, as applicable.

necessary to implement the Implementation Agreement, the SJTA or other entity, as appropriate, shall receive \$3.75 million annually escalated after the fifth year (and annually thereafter) to reflect the GDP Deflator index maintained by the United States Department of Commerce for the most recent twelve calendar months.

b. One Million Dollars of the funds paid to SJTA or others pursuant to Paragraph 8.a. shall be set aside annually for implementation of nonflow fish improvement measures, fish and environmental monitoring, and administration of the Implementation Agreement. Such amount shall be escalated in the same manner as set forth in Paragraph 8.a. Disposition of the remainder of such funds shall be at the sole discretion of the recipient entity, so long as operations are maintained to fully comply with the Vernalis flows under the Implementation Agreement.

9. Source of Funds:

Consistent with the objectives of the Central Valley Project Improvement Act, all funds required under Paragraph 8 shall be obtained from the surcharge levied pursuant to Section 3406(c)(1) of the Central Valley Project Improvement Act.

10. Legislative/Regulatory Issues:

The Parties agree to pursue jointly all regulatory approvals and any necessary legislative or administrative changes required for the effective implementation of this Letter of Intent and/or the Implementation Agreement.

11. Term:

a. The Parties shall use their best efforts to finalize, execute and begin implementation the Implementation Agreement within not more than 18 months after the effective date of this Letter of Intent.

b. The term of the Implementation Agreement shall be until 2035.

c. The Parties agree to develop mechanisms for the revision, termination and renewal, as appropriate, of the terms and conditions of the Implementation Agreement in the event of changes in the 1995 WQCP, flow requirements to implement the 1995 WQCP, ESA listings, or other events that result in changes to the basic water supply facts, rights, assumptions and circumstances envisioned by the Parties at the time this Letter of Intent was executed.

12. Dispute Resolution:

a. The Parties agree to develop mutually acceptable mechanisms to resolve legal and technical disputes arising from the implementation of the Implementation Agreement.

b. Trial in the litigation entitled *San Joaquin Tributaries Association v. SWRCB* shall be stayed and the action shall be dismissed when this Letter of Intent and the Implementation Agreement are executed and the conditions specified in Paragraph 13 have been satisfied.

13. Conditions:

Implementation of this Letter of Intent and the Implementation Agreement among the Parties is subject to the following conditions:

a. Agreement by the appropriate federal and state agencies to fund, install and operate a permanent fish barrier at the head of Old River for the protection of fall run chinook salmon;

b. Agreement by the United States regarding funding sources as specified in Paragraphs 8 and 9.

c. Agreement by the United States regarding operation of and the use of water from New

Melones Reservoir in a manner consistent with Paragraph 3 and the goals and objectives of this Letter of Intent and the Implementation Agreement;

d. Agreement by the SWRCB that implementation of this Letter of Intent and the Implementation Agreement shall be deemed as compliance with all relevant requirements of the 1995 WQCP consistent with Paragraphs 2, 3, 4, 5, 6 and 7;

e. The development of mutually acceptable mechanisms for the revision, termination and renewal, as appropriate, of the terms and conditions of the Implementation Agreement in the event of changes in the 1995 WQCP, flow requirements to implement the 1995 WQCP, ESA listings or other events that result in changes to the basic water supply, rights, assumptions, facts or circumstances upon which this Letter of Intent is based, or which affect the implementation of the Implementation Agreement.

14. Enforceability:

Any action to enforce the recommendations identified in this Letter of Intent shall be pursuant to the Implementation Agreement which shall be binding on the Parties and their respective successors and assigns.

15. Support for Letter of Intent and Implementation Agreement:

The Parties recognize that this Letter of Intent and the Implementation Agreement will, when implemented, resolve a number of difficult issues between them in a manner that is fair and reasonable, and which also achieves substantial environmental benefits. Therefore, the Parties shall use their best efforts to support all provisions of this Letter of Intent and the Implementation Agreement, and to support the efforts of one another with respect to pursuing approval and implementation of this Letter of Intent and the Implementation Agreement before the public and all regulatory, legislative and judicial bodies. Further, the Parties will take no action, whether formal or informal, which impairs the effectiveness of this Letter of Intent or the Implementation Agreement or any of their terms, or the ability of a Party to meet its obligation hereunder.

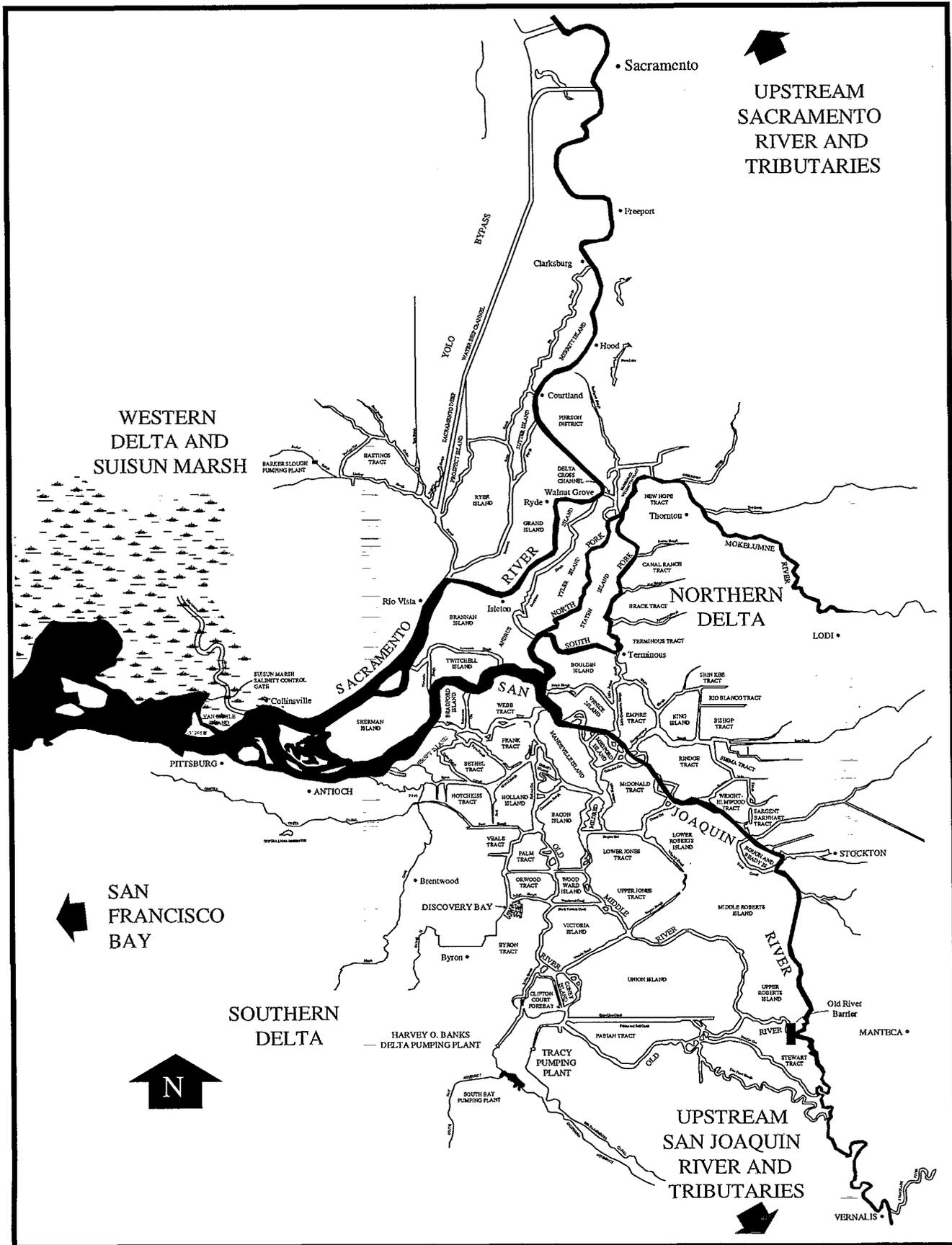
16. Non-precedential Actions:

The parties agree that neither the discussions related to the development of this Letter of Intent, nor the Letter of Intent itself, shall be used as precedence or evidence in any proceeding for attributing or be the basis for any allegation of responsibility on the part of any Party for providing any resource or taking any action for the protection of the Bay-Delta ecosystem, including, but not limited to the requirement for flows from the San Joaquin basin as set forth in the WQCP.

ORIGINAL SIGNED BY:

Metropolitan Water District of Southern California, John R. Woodraska, General Manager
Kern County Water Agency, Thomas Clark, General Manager
State Water Contractors, Steve Macaulay, General Manager
Tulare Lake Basin Water Storage District, Thomas Hurlbutt, Director
Santa Clara Valley Water District, Stanley M. Williams, General Manager
Westlands Water District, David Orth, General Manager
San Luis & Delta Mendota Water Authority, Daniel Nelson, Executive Director
San Joaquin Tributaries Association, Allen Short
Modesto Irrigation District, Allen Short, General Manager
Turlock Irrigation District, Paul D. Elias, General Manager
Merced Irrigation District, Ross Rogers, General Manager
South San Joaquin Irrigation District, Richard Martin, General Manager
Oakdale Irrigation District, Barrett Kehl, General Manager
City and County of San Francisco Public Utilities Commission, Anson B. Moran, General Manager
San Joaquin River Exchange Contractors Water Authority, Steve Chedester, Executive Director
Friant Water Users Authority, Richard M. Moss, General Manager

The Sacramento-San Joaquin Delta



The San Joaquin River and Major Tributaries

