Sacramento-San Joaquin Valley Emergency Water Delivery Act

Historical Background

Since the construction of the federal Central Valley Project (CVP), California's water needs have grown dramatically while supplies have hardly risen. Meanwhile, in recent years, the capricious curtailment of water deliveries through regulatory restrictions has inflicted extensive economic damage on Central Valley[1] communities, costing thousands of farmworkers their jobs. Farmers now face far worse conditions due to California's failure to capture excess water in wet years and store it in reservoirs for use in drought years. Despite this dire situation, draconian regulations remain in place that divert water from farms to a three-inch fish – the Delta smelt.

The Sacramento-San Joaquin Valley Emergency Water Delivery Act promotes water policies that facilitate the delivery of California's abundant supply of water. This document provides a historical background.

California Water History

Like much of the western United States, the State of California has serious water supply/demand issues. Since the northern part of the State contains over two-thirds of the water resources and the southern portion of the State has two-thirds of the human population, Californians rely on a complex water delivery system designed to export water from one region to the other. Much of that water is conveyed through the Sacramento-San Joaquin Rivers Delta. In terms of understanding, the distance water can travel from source to tap in California is equivalent to transporting water from Pennsylvania to Georgia along the eastern seaboard.

According to hydrologic records, California has experienced drought twelve times since 1850. These drought periods and the need to provide water to a rapidly growing population and farms led to an innovative and complex water storage and delivery system. The system is a combination of two projects called the Central Valley Project (CVP), first authorized by the federal government in 1935 and the State Water Project (SWP), authorized by the State of California in 1960. Since 1986, as a result of Public Law 99-546, both projects have conducted coordinated operations[2] (*See: Map of California Federal and State Water Projects*).

[1] The Central Valley is comprised of the Sacramento Valley and the San Joaquin Valley.

[2] Before 1986, there continued to be uncertainty about the Secretary of the Interior's duty to operate the federal Central Valley Project to meet water quality objectives for the Sacramento – San Joaquin Rivers Delta. This uncertainty existed because under California law, operations of the California State Water Project are junior to operations of the federal Central Valley Project. It was the Bureau of Reclamation's position that under California's water right priority system, the California State Water Project had to operate to meet these water quality objectives before conditions could be imposed on the Central Valley Project. To avoid the potential implications of the application of these state laws to operations of the State Water Project, the State of California proposed the sharing of obligations to meet Delta standards through the coordinated operations of the two projects. In 1986 Congress passed Pub. Law 99-546 which authorized the Secretary to execute and implement the "Agreement Between the United States of America and the Department of Water Resources of the State of California for Coordinated Operations of the Central Valley Project and the State Water Project," ("COA").

The CVP is a federal multi-purpose system of reservoirs and canals that collects and delivers water from northern California and the Sierra Nevada Mountains to water deficit areas of the state. It consists of twenty dams and reservoirs, eleven hydropower plants and approximately 500 miles of canals and other distribution systems. In normal water years, the CVP can deliver a total of seven million acre feet (an acre foot is approximately 326,000 gallons) of water. The CVP can annually generate five billion kilowatt hours of electricity under normal water conditions and irrigates over three million acres of farmland[3]. That value multiples several times in the local and regional economies. However, about 15% of CVP water is used to serve over two million urban and industrial customers[4].

The SWP serves similar purposes and includes thirty four water storage facilities, twenty pumping stations, five hydroelectric power plants, and about 700 miles of canals and pipelines. It provides supplemental water to approximately 25 million Californians and about 750,000 acres of irrigated farmland.

Water from both the CVP and SWP delivered to southern portions of the State is conveyed through the Sacramento-San Joaquin Delta Rivers (Delta) through two massive pump systems near Tracy, California. Since northern California contains over two-thirds of the water resources and southern California has two-thirds of the human population and needs irrigation water, these two projects deliver water to over 27 million people south of the Delta pumps and around the San Francisco Bay area.

More locally, the San Joaquin Valley (the area between Sacramento and Bakersfield which includes eight counties) is dependent on an adequate water supply delivered from the CVP, the SWP and groundwater pumping. Agriculture is the number one industry in the region, accounting for $26 billion in total sales[5] and 38% of the Valley's employment. The CVP and the SWP projects have not only helped Californians get through periods of extended drought, but have helped create a massive agricultural economy that supplies the Nation with the vast majority of specialty crops. More than half of the country's vegetables, fruits and nuts are grown in the Golden State - a majority of that is located in the San Joaquin Valley (Seven of the top ten agriculture production counties are located in the San Joaquin Valley.). Of the 400 different crops grown in California, the percentage of the nationwide crop production is as follows: Artichokes 99%, Asparagus 44%, Broccoli 92%; Carrots 65%, Celery 95%; Garlic 91%; Lettuce 78%; Cantaloupe 61%; Honeydew 73%; Onions 35%; Bell Peppers 51%; Spinach 72%; Processing Tomatoes 93%; Almond 99%; Apricots 94%; Avocados 85%; Strawberries 92%; Dates 82%; Figs 96%; Grapes 89%; Kiwi 97%; Lemons 91%; Nectarines 98%; Olives 96%; Peaches 76%; Pistachios 98%; Plums 94%; Walnuts 99%; Honey 11%; Milk and cream 22%[6].

The current California water storage and delivery system was designed to serve 22 million people. Currently, the State has 38 million residents and the population is expected to nearly

[3] http://www.usbr.gov/projects/Project.jsp?proj_Name=Central+Valley+Project

[4] In an average year, the entire state of California receives about 200 million acre-feet of water through precipitation. More than 50% evaporates into the atmosphere, percolates into the soil or is used by native vegetation. The remaining water, approximately 82 million acre-feet, flows into rivers. Of this amount, California dedicates 48% to the environment – the single largest use of water in California. The remaining water is used by agriculture (41%) and cities (11%). Of the water that reaches the Delta the vast majority, approximately 76%, flows into the San Francisco Bay.

[5] http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_2_County_Level/California/st06_2_002_002.pdf

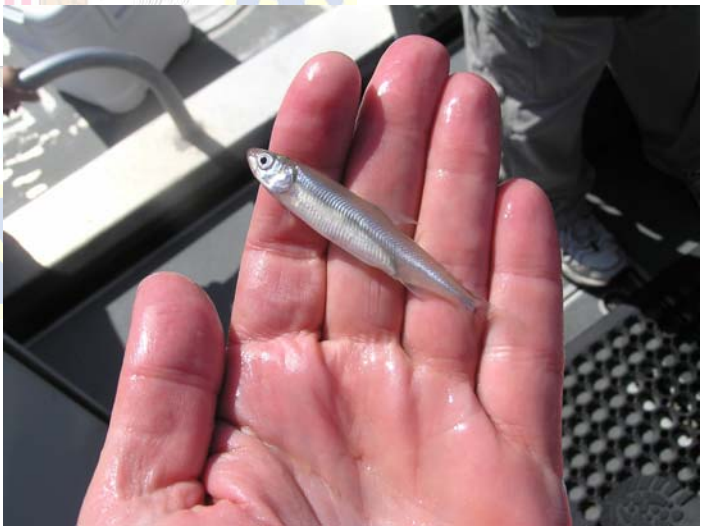
[6] California Department of Food and Agriculture: California Agricultural Statistics, 2008 (http://www.cdfa.ca.gov/statistics/PDFs/ResourceDirectory_2009-2010.pdf)

double by 2050. In addition, there are multiple, competing demands for water. With a few local exceptions, a new major reservoir has not been built in three decades. In fact, the last federal storage project built was the New Melones Dam in 1978. While urban and rural communities have pursued efficiency improvements, such as drip-irrigation, the planting of higher value permanent crops and water re-use, most analysts believe that conservation will not come close to resolving water supply issues nor will it address environmental needs.

Environmental Mandates and Litigation

Environmental statutes and related litigation supposedly aimed at protecting species and Delta water quality have led to serious water conflicts in California. The federal Endangered Species Act (ESA), in particular, has been the major environmental driver in water supply conflicts. Specifically, the federal court system has been the environmental community's primary means to curtail historic water operations over the last decade. Many of these lawsuits and resulting decisions have been over the interpretation of the Endangered Species Act (ESA) as it relates to salmon, Delta smelt or other species.

The ESA has a major impact in California. Of the 1,320 species listed in the United States, there are 309 animal and plant species listed by the U.S. Fish and Wildlife Service as "threatened" or "endangered" in the State of California. During the past ten years, millions of acres of land have been designated as critical habitat for a variety of species and trillions of gallons of water has been diverted from human use to environmental purposes. In addition, farmers have been prosecuted for disturbing the habitat of a Kangaroo rat, a public hospital had to be moved because of the Delhi Sands Flower-Loving Fly and significant property damage resulted from a flood because the State was unable to maintain earthen levees due to the presence of the Elderberry Longhorn beetle.



Delta smelt

The most vocal and recent controversy has involved litigation and federal plans on protecting Delta smelt, a three-inch fish. Environmental organizations have consistently blamed the Delta pumps as the main cause for smelt decline. Scientists and water users south of the Delta, on the other hand, pin the blame on numerous factors, including predation by nonnative fish, invasive species, in-delta diversions, the discharge of toxic chemicals as well as the pumps. To date, hundreds of millions of taxpayer and ratepayer dollars have been spent to investigate the specific causes of smelt declines and to protect the species from the operation of the pumps. In addition, over one million acre feet of water – enough to irrigate 300,000 acres or a land area roughly half the size of Rhode Island -- annually has been dedicated to protecting this and other species. However, there is no consensus on what is causing the continual decline. Water users maintain that the pumps should stay at operational efficiency until a science driven process yields results.

Environmental organizations blaming the pumps as the main cause of Delta smelt declines successfully used the federal court system to achieve many of their objectives. In May 2007, Federal District Court Judge Oliver Wanger ruled in *Natural Resources Defense Council vs. Kempthorne* that the Interior Department's Biological Opinion on Delta smelt was "arbitrary, capricious and contrary to law." This eventually led to a revised Biological Opinion that is the main source of controversy today. Under the current Biological Opinion, increased amounts of water are re-allocated towards Delta smelt during the time farm communities in the west-side of the San Joaquin Valley need it most.

Despite the disaster of the Delta smelt Biological Opinion, the Obama Administration proceeded forward with the release of a June 4, 2009 Biological Opinion in an attempt to protect salmon, steelhead, green sturgeon and even killer whales. The National Marine Fisheries Service issued the sweeping Biological Opinion, saying the species face dire environmental conditions unless irrigation from the federal Central Valley Project and the California State Project -- already at historic lows -- are curtailed even further. This Biological Opinion reduced Delta pumping by another 330,000 acre feet of water annually – this is on top of the water reductions included in the Delta-smelt Biological Opinion. There is disagreement about the causes of the salmon fisheries declines in California rivers, but a 2010 report by the National Marine Fisheries Service determined that poor ocean conditions were by far the most important factor causing the decline.

The results of the water restrictions have been devastating. In 2010, over one million acre feet of water were lost due to the smelt and salmon biological opinions. Although jobs estimates differ, thousands of jobs were lost and hundreds of thousands of acres of arable land were fallowed in 2010. The City of Mendota experienced an unemployment rate of 40% and in resulting food lines, imported Chinese-produced food was distributed to those unemployed by the "man-made drought." While regional unemployment remains around 15%, nearly double the national average, low precipitation levels and further federal water restrictions can easily return unemployment rates to 2009 levels.

Even though California experienced substantial precipitation and snowpack in 2011 (165% of normal), some irrigation districts south of the Delta only received 80% of their water allocation. The Bureau of Reclamation, the federal agency operating the CVP, maintained that this allocation was normal for this type of above average water year, but farmers that received the water counter that in a year like 2011, their allocation should be at 90%, at a minimum. The farmers' assertion is correct in light of recent history. In 2006, a water year that was much like the 2011 water year, the farmers received a 65% allocation in February, but by April they were at 85% and in May went to a 100% allocation. In 2005, a year that was actually drier than the 2011 water year, these farmers received an initial allocation of 65% in February and ultimately went up to an 85% allocation. There is only one difference between now and then: in 2005 and 2006 the operations of the CVP were not constrained by Biological Opinions issued in December 2008 and May 2009 by the U.S. Fish and Wildlife Service (smelt) and the National Marine Fisheries Service (salmon), respectively.

In late 2010, the United States District Court for the Eastern District of California held that the revised biological opinions are unlawful and illogical and the National Academy of Sciences has said those opinions are not supported by science. Specifically, the Court found that the Fish and Wildlife Service failed to comply with its own regulations that govern the development and evaluation of reasonable and prudent alternatives (RPA). The Court held that "the RPA Actions manifestly interdict the water supply for domestic human consumption

and agricultural use for over twenty million people who depend on the Projects for their water supply," and commented that, "`Trust us' is not acceptable. The Fish and Wildlife Service has shown no inclination to fully and honestly address water supply needs beyond the species, despite the fact that its own regulation requires such consideration."

Even though the Delta smelt Biological Opinion was remanded back to the agency for redrafting, the water pumping restrictions remained in place. Water users subsequently filed a Motion to Stay on environmental regulations designed to protect the Delta smelt and return to normal pumping levels while the Obama Administration corrects their mistakes. The Motion to Stay was granted for that water year and the September 14, 2011 hearing for the motion exposed politically motivated and illegal actions by the Obama Administration. The transcript from the Motion to Stay hearing on the Delta smelt cases reads in part:

> *"[The federal government] haven't just violated the Endangered Species Act in producing an unlawful BiOp and unlawful and reasonable and prudent alternatives, they've also violated NEPA, which, in effect, prevented any rational, any what the Court would believe to be informed, competent and considerate reflective analysis of the human health and safety impacts, impacts on the State of California water supply and related impacts by not performing a NEPA analysis, not preparing an EIS and not following the law in any regard to that extent."*

The court went on to challenge the credibility of the federal government's expert witnesses. These are the same witnesses the Obama Administration relied on to cut-off water supplies to the families in the San Joaquin Valley.

The Court on the Fish and Wildlife Service's expert witness:

> *"The Court finds that Dr. Norris' testimony, as it has been presented in this courtroom and now in her subsequent declaration, she may be a very reasonable person and she may be a good scientist, she may be honest, but she has not been honest with this Court. I find her to be incredible as a witness. I find her testimony to be that of a zealot. And I'm not overstating the case, I'm not being histrionic, I'm not being dramatic. I've never seen anything like it. And I've seen a few witnesses testify."*

The Court on the Bureau of Reclamation's expert witness:

> *"I'm going to start with Mr. Feyrer…There can be no acceptance by a court of the United States of the conduct that has been engaged in in this case by these witnesses. And I am going to make a very clear and explicit record to support that finding of agency bad faith because, candidly, the only inference that the Court can draw is that it is an attempt to mislead and to deceive the Court into accepting what is not only not the best science, it's not science. There is speculation. There is primarily, mostly contradicted opinions that are presented that the Court not only finds no basis for, but they can't be anything but false because a witness can't testify under oath on a witness stand and then, within approximately a month, make statements that are so contradictory that they're absolutely irreconcilable with what has been stated earlier."*

At this point water users are in an ambiguous situation and as a result of drought conditions and restrictive environmental regulations they are expected to see a zero water allocation for 2014.

The Bay-Delta Accords of 1994

The term "California water wars" originated from conflict over CVP and SWP resources during the six year drought between 1987 and 1992. During that time, the implementation of the Clean Water Act (CWA) by the Environmental Protection Agency (EPA) and the enactment of CVPIA generated controversy between the State of California, the federal government, environmentalists, and users of the state and federal water systems. After years of conflict between state and federal regulators and lawsuits by environmentalists on the implementation of water quality standards, the State of California brought all "warring" parties to the negotiating table to try and find a solution which would benefit all users – environmentalists, agriculture, and urban.

At the table was California Governor Pete Wilson, Interior Secretary Bruce Babbitt, Commerce Secretary Ron Brown, EPA Director Carol Browner, various local water agencies, and key environmental interest groups. The result was the 1994 "Principles for Agreement on Bay-Delta Standards between the State of California and the Federal Government" – better known as the Bay-Delta Accord[7]. This landmark agreement, universally praised, was intended to begin the process of improving water quality in the Delta and increasing water reliability for users.

According to the Congressional Research Service the Accord included the following elements: provisions to regulate springtime flow and export limits to benefit fish species; operational flexibility to comply with provisions of the ESA that address water supply and species monitoring issues among others; and measures to improve environmental conditions in the Bay-Delta Estuary.

The Accord also spawned a process which became known as CALFED[8]. The initial authorization of federal funding for the CALFED Program came in 1996 with the enactment of Public Law 104-208. The goal was to improve water quality standards, coordinate federal and state project operations, and develop a joint federal-state process for long-term solutions to environmental, water supply, and water quality problems in the Bay-Delta. The CALFED Program was substantially retooled and reauthorized in 2004.

The general consensus is the CALFED process, not the Bay-Delta Accord, was a failure. According to the Little Hoover Commission, "CALFED is costly, underperforming, unfocused and unaccountable." While support for CALFED has evaporated, the ideals vested in the Bay-Delta Accord remain alive and many want to renew the commitments made in 1994.

[7] *Bay-Accord Signatories:* Douglas B. Wheeler, Secretary, California Resources Agency; James M. Strock, Secretary for Environmental Protection California Environmental Protection Agency; Bruce Babbit, Secretary of the Interior; Ronald H. Brown, Secretary of Commerce; Carol M. Browner, Administrator, Environmental Protection Agency; Walter J. Bishop, Contra Costa Water District; Stephen K. Hall, Association of California Water Agencies; Anson K. Moran, California Urban Water Agencies; David R. Schuster, Kern County Water Agency and Tulare Lake Basin Water Storage District; Gary Bobker, The Bay Institute; John Krautkraemer, Environmental Defense Fund; Daniel G. Nelson, San Luis-Delta Mendota Water Authority; John R. Wodraska, Metropolitan Water District of Southern California. http://www.calwater.ca.gov/content/Documents/library/SFBayDeltaAgreement.pdf

[8] The California Bay-Delta Program (CALFED) was initiated in 1995 to resolve water resources conflicts in the Sacramento/San Joaquin Rivers Delta and San Francisco Bay (Bay-Delta) in California. The program planning effort focused on developing a plan to address three main problem areas in the Bay-Delta: ecosystem health, water quality, and water supply reliability. (CALFED Bay-Delta Program: Overview of Institutional and Water Use Issues -- Congressional Research Service)

The Central Valley Project Improvement Act of 1992

Water curtailments are not a recent problem. In fact, since 1992, when the Central Valley Project Improvement Act[9] (CVPIA) was enacted and the first Delta endangered species was listed, farmers on the west-side of the San Joaquin Valley have experienced more restrictions placed on CVP operations. Indeed, prior to 1992, these farmers could expect to receive 100% of their contract supplies, year-in and year-out, except in years of extremely dry hydrologic conditions. But since 1992, more than 1.2 million-acre feet of water have been reallocated on an annual basis from irrigation to fish and wildlife uses. As a result, in an average water year, these farmers can expect to receive only a 40–45% allocation under current regulations and biological opinions.

The CVPIA was enacted while California was experiencing the effects of a long-term drought. As a result, many of the provisions in the Act were aimed at conserving water, increasing the use of water transfers, and providing additional water for fish and wildlife purposes. Environmental organizations, some recreationalists, and some urban water users viewed the changes as environmentally sound while many farmers, project irrigators, and other water users viewed many of the CVPIA provisions as unduly restrictive, punitive, and costly.

One of the most controversial aspects of the CVPIA was the dedication of 800,000 acre-feet/year[10] of CVP water for fish and wildlife purposes. This provision reallocated water that had been delivered to farmers and cities. This reallocation has led some to ask whether the fish and wildlife flows have had meaningful impact and whether the accounting of the flows has been properly documented. In addition, others point out that the reallocation has created water-use uncertainty.

The CVPIA also authorized the CVP Restoration Fund[11] to help pay for the vast majority of the actions taken to implement this law. To date, over $1.5 billion in taxpayer funds have been expended through CVPIA authority[12]. Many water and power customers have cited a lack of transparency over funding expenditures. Moreover, there continues to be consternation over the wild fluctuations of CVPIA Restoration Fund charges to CVP hydropower operators. Restoration Fund assessments that averaged less than $10 million per year from 1993 through 2007 have exploded to $25 million per year from 2008 to 2011.

[9] In 1992, Congress passed the Central Valley Project Improvement Act (CVPIA). The provision was part of an omnibus legislative package, signed into law by President George H.W. Bush and shepherded through the Congress by Rep. George Miller (D-CA) and former Sen. Bill Bradley (D-NJ), with a controversial goal to refocus the purpose and management of the CVP towards environmental mitigation. Specifically, the legislation amended the authorized purposes of the CVP to include the protection, restoration, and mitigation of fish and wildlife. Water supply for this new authorized purpose was given equal priority to agriculture and other original uses. Other major and controversial provisions include contracting reform, revised water pricing, water entitlement for fish and wildlife, and establishment of a water and power user-financed restoration fund.

[10] This 800,000 acre-feet of water is commonly known as "b2 water" in reference to CVIPA Section 3406(b)(2).

[11] Section 3407(c)(2) of CVPIA (P.L. 102-575) (Restoration Fund): "(2) The payment described in this subsection shall be established at amounts that will result in collection, during each fiscal year, of an amount that can be reasonably expected to equal the amount appropriated each year, subject to subsection (d) of this section, and in combination with all other receipts identified under this title, to carry out the purposes identified in subsection (b) of this section; *Provided*, That, if the total amount appropriated under subsection (b) of this section for the fiscal years following enactment of this title does not equal $50,000,000 per year (October 1992 price levels) on an average annual basis, the Secretary shall impose such charges in fiscal year 1998 and in each fiscal year thereafter, subject to the limitations in subsection (d) of this section, as may be required to yield in fiscal year 1998 and in each fiscal year thereafter total collections equal to $50,000,000 per year (October 1992 price levels) on a three-year rolling average basis for each fiscal year that follows enactment of this title."

[12] According to the Bureau of Reclamation Funding Obligations and Requests FY 1993-2012: The Program has obligated approximately $1.475 billion for Program implementation; $825 million (Restoration Fund); $336 million (Water and Related Resources); $80 million (State of California cost-share); $133 million (American Recovery Reinvestment Act); $100 million (California Bay-Delta Restoration); $1 million (donated funds). Since 2012, another $100 million has been expended on this program.

This resulted from ambiguity drafted into CVPIA and hydropower operators have expressed an interest in leveling future Restoration Fund payments.

The San Joaquin River Restoration

For decades, controversy has surrounded construction of the Friant Dam which was built in the 1940s on the Upper San Joaquin River forming Millerton Lake (*See: Hydrological Map of the San Joaquin Valley*). Friant Dam diverts San Joaquin River flows to provide much of the water for the Friant Division of the CVP. The Friant Division provides irrigation and municipal water to farms and communities along the southern San Joaquin Valley's east side. Nearly one million acres have been irrigated with Friant water and several cities and towns receive all or a major part of their water supply from the Friant Dam and related structures. As a result of the water diversion at the Dam, the 153-mile stretch of the San Joaquin River below Fraint Dam to the confluence of the Merced River was virtually dry. In 1955, the federal Bureau of Reclamation signed 40-year water delivery contracts with water users which determined the allocation and price of Friant water.

In 1987, the Friant water users started to negotiate the renewal of the water contracts with Reclamation. On December 20, 1988, the Natural Resources Defense Council (NRDC) and a coalition of conservation and fishing groups filed *Natural Resources Defense Council, et al. vs. Kirk Rodgers, et al.* to challenge the contract renewals. Subsequent amendments to the lawsuit alleged that Reclamation violated California Fish and Game Code Section 5937[13], the National Environmental Protection Act (NEPA), and the Endangered Species Act (ESA). Section 5937 requires dam owners to "allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam." On May 31, 1995, federal Judge Lawrence K. Karlton, a Carter Administration appointee who decreed the Pledge of Allegiance to be unconstitutional, ruled that Reclamation did not violate NEPA but was in technical violation of the required impact studies on listed species under the ESA. The Ninth Circuit Court of Appeals affirmed much of Karlton's opinion, but sent the Section 5937 challenge back to Karlton for further consideration.

After the Supreme Court declined to hear the NEPA and ESA portions of the case in 1999, Friant water users went to the NRDC in an attempt to reach a settlement. The parties were unable to reach an agreement by the settlement deadline in April 2003. Without a settlement, NRDC and its legal allies filed a seventh Amended Complaint in August 2003, alleging violation of Section 5937 because salmon runs were not restored. The Complaint sought to force the release of water down the San Joaquin River channel from Friant Dam. In August 2004 and July 2005, Karlton ruled in NRDC's favor, finding that Reclamation was in violation of Section 5937. Karlton threatened to act as a "meat cleaver" to restore the River as a way of pushing the litigants to agree on restoration means and goals.

A new series of settlement negotiations began and all negotiating parties agreed on a final settlement on June 30, 2006. The settlement was then reviewed by some third party stakeholders and approved by the U.S. Justice Department. Karlton approved the settlement agreement on October 23, 2006. After three years of controversial disputes on the merits of the settlement, the Democrat Congress enacted Title X of P.L. 111-11, which codified the

[13] California Fish and Game Code 5937: "The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. During the minimum flow of water in any river or stream, permission may be granted by the department to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam, when, in the judgment of the department, it is impracticable or detrimental to the owner to pass the water through the fishway.

settlement agreement and directed the Bureau of Reclamation to carry out the following activities in the settlement: 1) restoring the dry part of the San Joaquin River through a series of interim and permanent flows that divert, on average, more than 200,000 acre feet per year from farms to fish; 2) re-introducing Chinook salmon into the River and; 3) mitigating water user impacts associated with river restoration and salmon re-introduction.

At time of enactment of Title X, the Congressional Budget Office estimated that the law and settlement agreement would increase net direct spending by $190 million over the 2009-2018 period and $200 million over the 2019-2040 period. In addition, implementation would increase discretionary spending by $271 million over the 2009-2018 period. However, recent estimates by the Bureau of Reclamation peg the overall cost at approximately one billion dollars[14]. In the current budgetary environment, many are asking if this is a reasonable use of taxpayer dollars.

The enacting of the San Joaquin River Settlement was the focus of national organizations. The National Taxpayers Union called it "another dubious (not to mention expensive) salmon project"[15] and Citizens Against Government Waste called it "Extreme Makeover: San Joaquin River … Watch your wallets"[16]. It was all featured on CNBC's Pork Watch[17].

The House of Representatives has voted twice to eliminate all funding for the project – the Fiscal Year 2012 Budget and the Fiscal Year 2012 Energy and Water Appropriations.

Sacramento Valley Water Rights

Many water users north of the Delta in the Sacramento Valley (*See: Hydrological Map of the Sacramento Valley*) have water rights that pre-exist the authorization to build the Central Valley Project (CVP) in 1935. These water rights are known as pre-1914 water rights and post-1914 appropriative water rights[18]. At the time of the construction of the CVP, these water rights were acknowledged and the rights holders were assured their legitimate water rights would be secured. However, it became clear over time that the CVP could not be successfully operated without impacting such water rights. After decades of fights and negotiations, common ground was found to allow the CVP to operate while providing for pre-CVP water rights. Today, many northern California water contracts are based on agreements made nearly five decades ago.

[14] http://restoresjr.net/program_library/02-Program_Docs/2013/FY%2013%20Final%20AWP.pdf

[15] http://blog.ntu.org/main/post.php?post_id=3121

[16] http://swineline.org/?p=368

[17] http://video.cnbc.com/gallery/?video=731976641

[18] "Although the legislature had addressed water rights in the Civil Code in 1872, that statute did little more than codify (with minor changes) the common law rules of prior appropriation developed by the gold miners and the courts. In the Water Commission Act of 1913, however, it endeavored to devise a comprehensive system for regulating water rights. The act created a State Water Commission with the power to issue permits and licenses to govern the exercise of water rights. Unfortunately, because of political pressure from various vested interests, the legislature exempted more uses of water than it included in the new regulatory scheme. Pueblo rights, riparian rights, and groundwater rights were completely exempt. Only water appropriations beginning after the effective date of the statute were included. Because the Water Commission Act was put to referendum, it did not pass the vote of the electorate until December 19, 1914. To this day, surface water appropriations initiated after this date must be authorized by a water rights permit or license; appropriations existing before this date do not require a permit or license and are commonly known as "pre-1914 rights." As a result of these statutory exemptions, the State Water Resources Control Board (SWRCB) or "the board"—the successor to the Water Commission—regulates through the permit and license system less than half of the water used by agricultural and urban interests in California today." (Managing California's Water – From Conflict to Reconciliation, Public Policy Institute of California, 2011)

Since the construction of the CVP, other northern California water users have entered into contracts with the Bureau of Reclamation to receive CVP developed water. While these users do not have pre-CVP water rights, they claim they have more senior water rights to other CVP users based on area-of-origin rights[19].

Since the beginning of the CVP, there has been a constant struggle to ensure a balance between water needs in other parts of the state and honoring pre-existing water rights.

Environmental Regulation Duplication

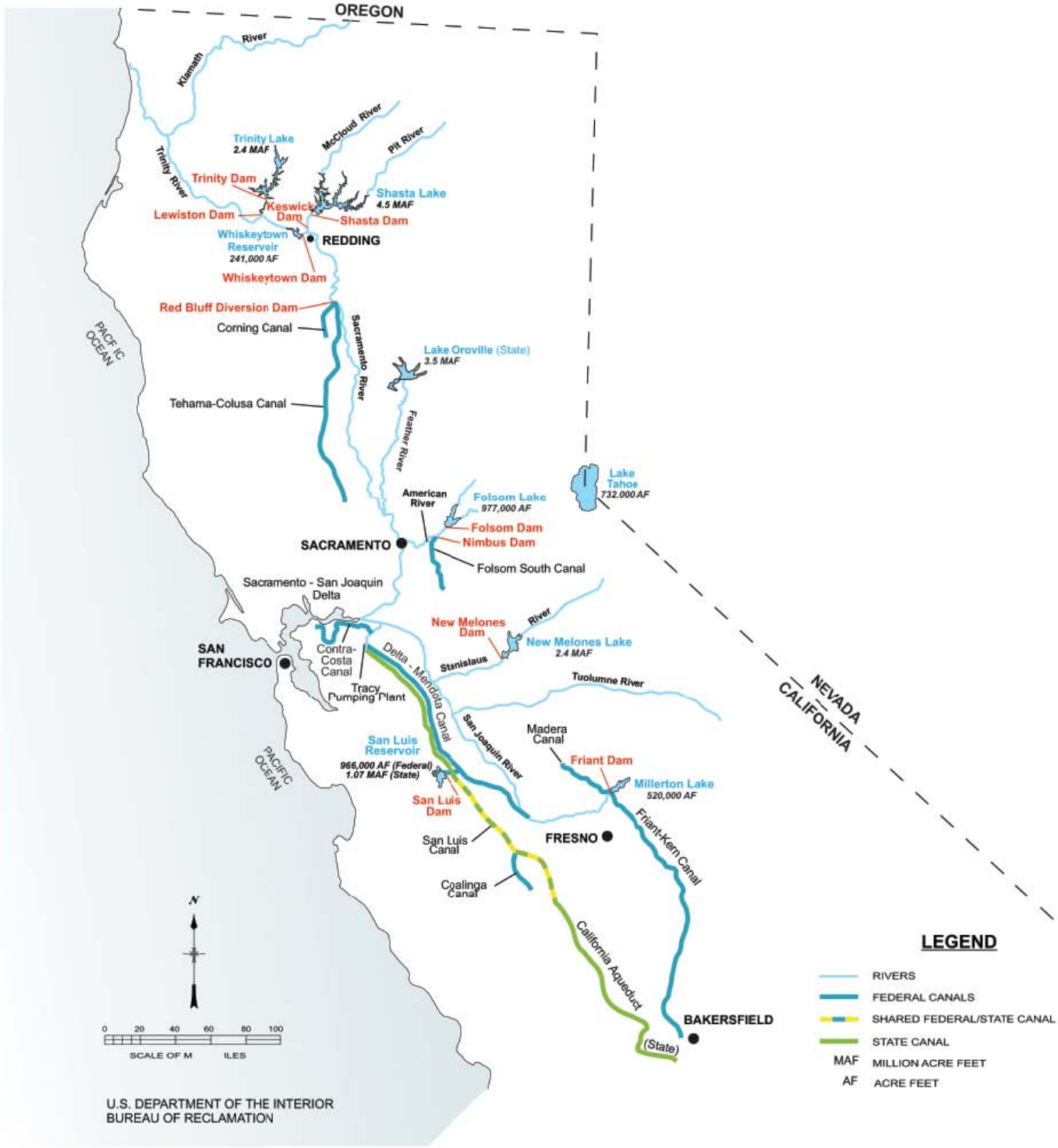
In 1970, shortly after the Federal government passed the National Environmental Policy Act (NEPA), the State of California enacted the California Environmental Quality Act (CEQA) to institute a statewide policy of environmental protection. CEQA does not directly regulate land uses, but instead requires state and local agencies within California to follow a protocol of analysis and public disclosure of environmental impacts of proposed projects and adopt all feasible measures to mitigate those impacts.

The CEQA and NEPA processes are similar and rather extensive. From the initial public notice to the final environmental statements and reports, both processes track nearly the same path. In doing so, the developers of water reliability projects in California spend years and large amounts of taxpayer dollars to comply with the duplicative laws.

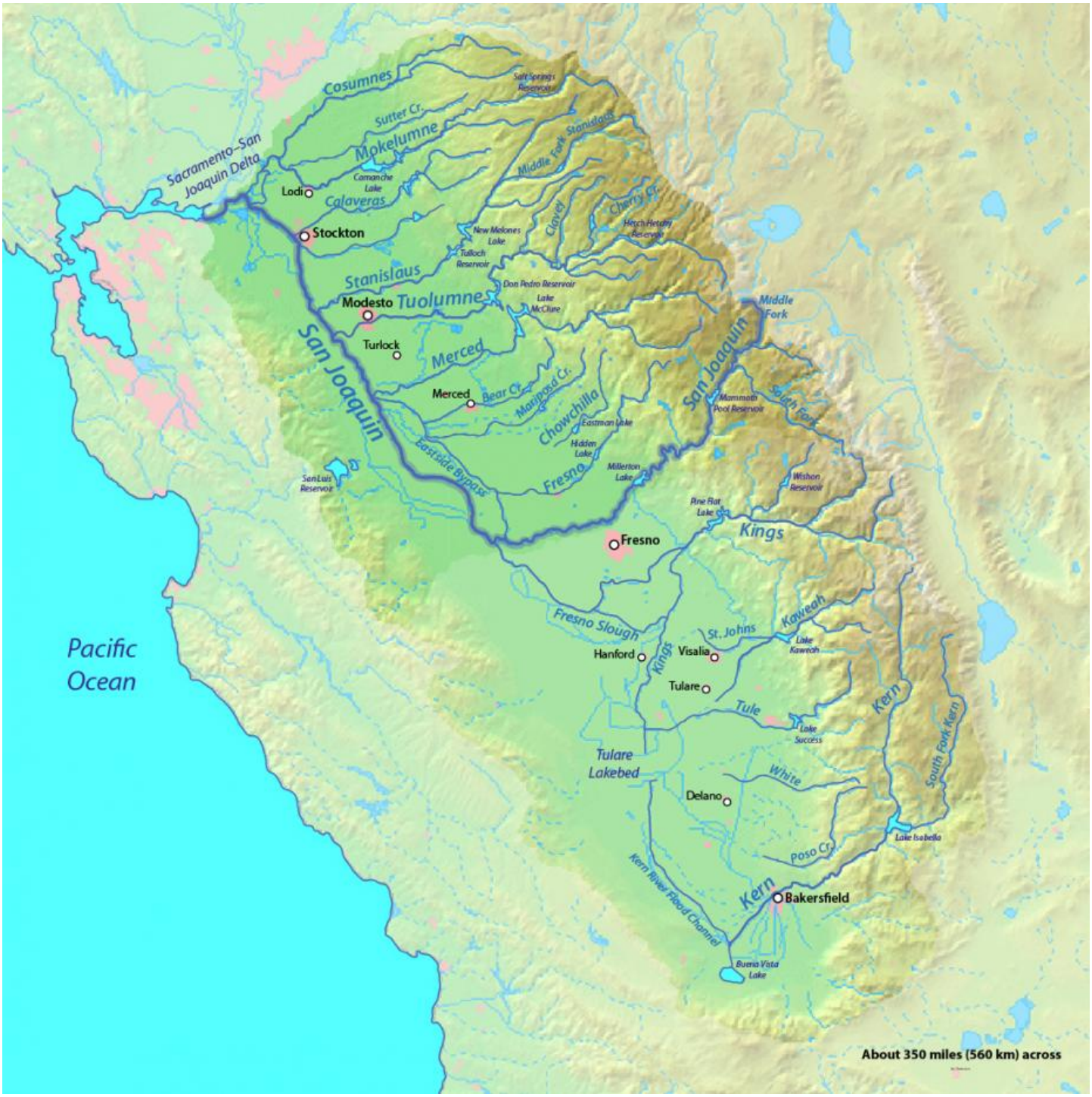
Many in California have expressed an interest to allow the CEQA process to be used in place of the NEPA process. This would reduce regulatory burdens, reduce project development time, and save taxpayer dollars.

[19] "The California Legislature has created a variety of Water Code provisions to protect the area of origin water rights of Californians living in the state's wet areas. These area of origin rules include the Watershed Protection Act, Water Code sections 11460 through 11463; the County of Origin protection, Water Code section 10500; the Delta Protection Act, Water Code sections 12201 through 12204; and the protected area provisions, Water Code sections 1215 through 1222. Generally speaking, these statutes mandate that large-scale water transport systems, like the CVP, not deprive an area where water originates of the prior right to all water reasonably required to adequately meet the beneficial needs of the area and its inhabitants." (Protecting the Source: The Impact of California's Area of Origins Protections on Federal Exports of Water from Northern California to Southern California, Gregory H. Gallo, UC Davis School of Law, 2011)

California Federal and State Water Projects



Hydrological Map of the San Joaquin Valley



Hydrological Map of the Sacramento Valley