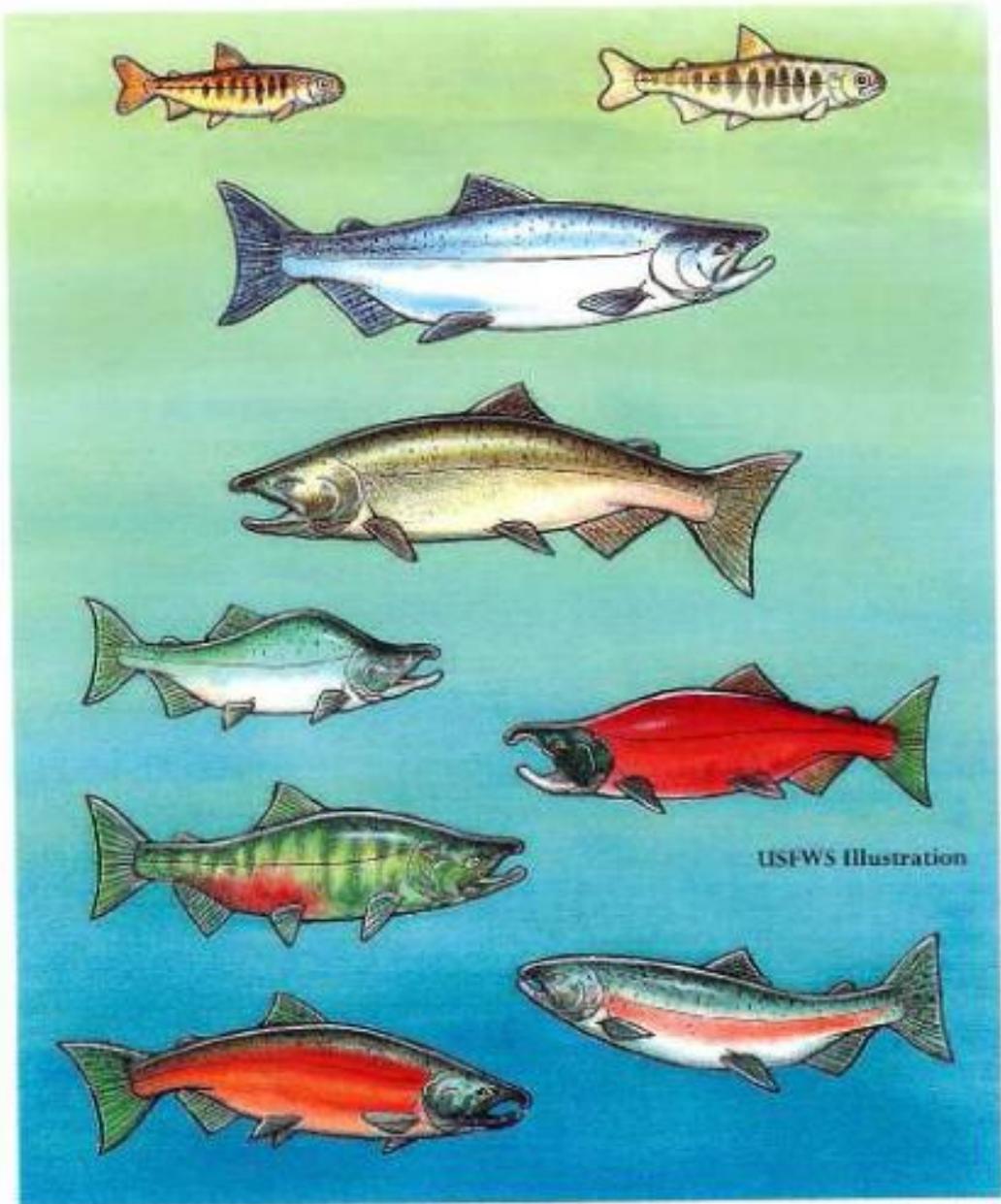


# SALMON COLLAPSE

NATURAL-PHENOMENON AND/OR A GOVERNMENT-INDUCED DISASTER?



PATRICK PORGANS & ASSOCIATES, INC.

# GOVERNMENT-INDUCED SALMON CRISIS

## Filed a Sixty Day Notice Intent to Sue Officials for Killing Fish

❶ Government officials are driving Californians deeper in debt, after borrowing billions of dollars in a failed attempt to double fish populations. Conversely, Department of Water Resources (DWR) officials have killed tens-of-millions listed salmonid and other species, at the State Water Project (SWP) Delta export pumping plants, and got paid in the process and are not being held accountable for their actions.

❷ The Law Office of Joel C. Baiocchi formally notified federal and state officials of Porgans & Associates (P&A), Inc. intent to sue government officials, and nongovernmental (NGO's) culpable parties-collaborators, including environmentalists, fishing organization, water contractors, and others, directly or indirectly responsible for failing to provide water for fish and for violating the provisions of the federal Endangered Species Act "Take".

❸ Three years ago, P&A initiated an independent assessment of government's role in declining salmonid populations in California. P&A submitted a 79 page Sixty-Day Notice of intent to sue, outlining in detail, officials' collective and unrelenting failure to provide water for fish and reveals their inherent conflicting roles they play as regulators, water purveyors and Public Trustees.

❹ Patrick Porgans, a Solutionist, and long-time advocate of Public Trust protection and government accountability, stated, "Based on the information from "official" sources, the salmon collapse is not the result of natural phenomenon; it is the direct result of a government-induced disaster which has been in the making for decades. The crux of the matter is premised on the fact that government is required to provide water for fish; it has failed to do so, and is in violation of the federal Endangered Species Act and other laws that provide protection for listed species", Porgans said.

Ironically, the data also indicate that the salmonid populations and the Bay-Delta Estuary, a time immemorial-sustainable ecosystem, are being put to death so officials operating state and federal water projects can keep their unsustainable agricultural contractors in the San Joaquin Valley "alive" on an artificial-life-support system fueled by cheap subsidized publicly-owned water supply.

❺ Contrary to Governor Schwarzenegger's position, this is not about **people versus fish** (reminiscent of the *owl versus timber* script); rather it is about his administration's mismanagement of both financial and natural resources. The State Water Resources Control Board (Board) is responsible for the administration of water rights appropriations; its records show that it has over-appropriated the waters of the state by as much as 500 percent.

❻ Furthermore, neither the Board nor the Department of Fish and Game can provide a readily available accounting of the amounts of water provided for fish, primarily because, in most cases, they do not set a numerical flow value required to sustain fisheries --- even listed species. Even in rare cases when they have set a numerical flow requirement, they do not monitor water users diversions to ensure that the fish water needs are being met – that is the diverter's responsibility!

❼ In cases when the Board was fully aware of the fact that illegal diversions, such as the 1,771 illegal diversions in the North Coast Region, most of which are in "Wine Country", the Board simply failed to abate the unlawful diversions. The NOAA's National Marine Fisheries Service advised the Board that the unauthorized diversions in that area were responsible for the "Take" of listed species and violated the provisions of the ESA; the Board took no action. P&A, and others, pressured NOAA Office of Law Enforcement (OLE) to take an enforcement action against the diversions that resulted in the unlawful "take" of the federal Endangered Species Act, which carries both civil and criminal penalties. After several years of pressure, OLE opted to take an "enforcement action" against one small vintner, and only for a civil action. For more information refer to: Frostbite Enforcement Action – All Bark: No Real Bite; [www.indybay.org/newsitems/2010/05/19/18648366.php](http://www.indybay.org/newsitems/2010/05/19/18648366.php); [www.lloydgcarter.com/content/100520381\\_frostbite](http://www.lloydgcarter.com/content/100520381_frostbite).

❽ While officials are not providing water for fish, according to the California's Legislative Analyst's Office, since 1996, voters have approved more than \$19 billion in General Obligation Bonds for water and water-related programs, which included buying water for fish. More than \$5 billion of those funds have been expended on programs such as water supply reliability, fish-doubling and related-programs. Most of those funds were administered through CALFED, a consortium of

federal and state agencies, a number of whom are responsible for the disastrous decline in salmonid populations, such as the Department of Water Resource and Bureau of Reclamation. They are also major water purveyors, regulators, Public Trustees and unaccountable violators of the law.

9 Government officials are not penalized when they curtail water exports from the Delta, as a result of killing listed species; up until 2007 they were paid and rewarded for purportedly not pumping and exporting water from the Delta. At times, when officials exceeded the “take” limits under the ESA, they got back together and increased the number of fish they could “legally” kill.

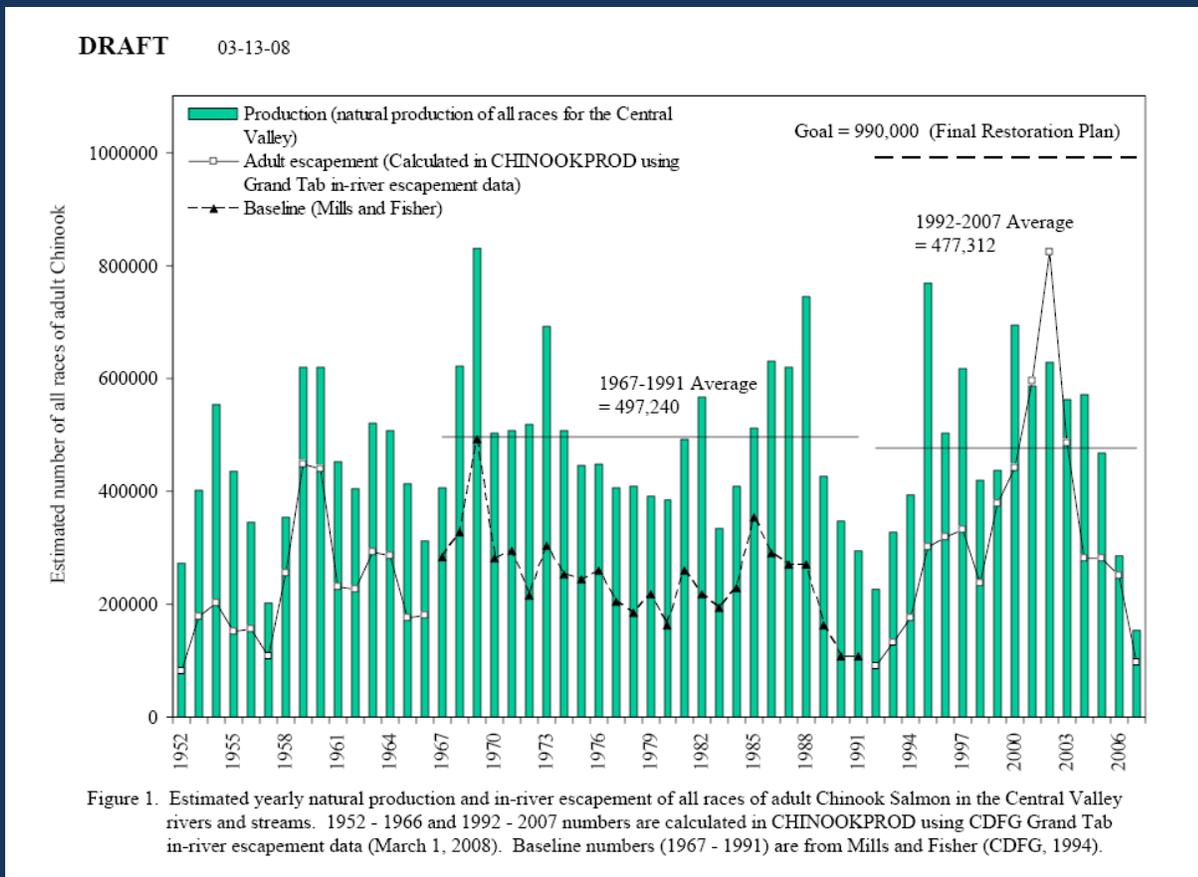
10 To date, the only so-called relief available to abate the carte blanche killing of fish, at the Delta pumps, is when a non-governmental entity files a lawsuit requesting judicial intervention. Ironically, this de facto action does not address the fundamental unaccountability of government officials’ business-as-usual kill and get paid for not killing fish. It simply affords officials more free press, public empathy and “public’s” money to ensure the water supply reliability of SWP and federal Central Valley Project contractors. Coincidentally, it is the project operators maintenance staff” who “count” the fish they kill and then they pass the “data” down the food chain to sister state and federal agencies “responsible” for fish and wildlife protection. P&A formally requested scientific proof from officials that would validate the effectiveness of the CALFED decade-in-the-making Delta improvement and fish-doubling effort.

## Billions of Dollars Expended But No Scientific Data to Prove the Effectiveness of Fish-Doubling Efforts

Unfortunately, despite the plethora of studies conducted on fisheries and water-related issues, no “scientific” quantitative analysis has been done to validate the effectiveness of the programs or the fish-doubling effort. Conversely, officials admit that there is no apparent increase in the doubling of fish populations or that the water for fish is even working.

The \$345 million spent from the Environmental Water Account (EWA), for buying water for the fish to help achieve the fish-doubling goal, which was supposed to occur around the year 2002, and the other \$5 billion in related efforts, is another taxpayer subsidized disaster. In fact, based on the government’s data, which are dubious, salmonid populations are worse now than ever. Refer to Fish Doubling Graph below.

### FISH DOUBLING GRAPH - SALMONID DECLINE IN CENTRAL VALLEY STOCKS



1992 Central Valley Project Improvement Act: *Section 3406(b)(1) of the CVPIA. Develop within three years of enactment and implement a program which will make all reasonable efforts to ensure that, by the year 2002, natural production of anadromous fish in the Central Valley rivers and streams will be sustainable, on a long-term basis, at levels not less than twice the average levels attained during the period of 1967-1991.* Source: David Jones, Public Affairs, USBR, 916-972-5100.

Furthermore, an estimated two-million acre-feet of water “purchased” through the EWA, between 2001 and 2007, was not from water actually purchased for fish flows, rather, the majority of it was the result of what officials’ claimed was water they did not pump from the Delta. The SWP export rates, according to the Department, were in excess of three million acre-feet for the years 2003, 2004, 2005, and 2006; raising questions about their exporting pumping reduction while Delta exports increased! The hundreds of millions of dollars paid for not pumping were from General Obligation Bond funds, which are backed by the full faith and credit of the State, and are taken out of the deficit-ridden General Fund; currently, facing a \$19 billion shortfall. In other words, those funds used for fish and water supply reliability and wetlands restoration, which, at least in part, result in draconian cuts in safety-net programs (fire, police, emergency services and furloughs and layoffs).

Much of the water purchased through the EWA for fish protection also became available to state and federal water project contractors, which the Department and Bureau sucked out of the Delta, after the fish were done using the water. In addition, a substantial portion of the additional 800,000 acre-feet of water allocated for fish doubling purposes, from the federal Central Valley Project, can be sucked up at massive government Delta pumping plants and exported south to the project beneficiaries. The majority of the water goes to irrigate lands in the San Joaquin Valley, which are the primary cause of the extensive surface and groundwater contamination plaguing the region and making it unfit for humans and fish. Details on the Government-Agricultural Induced Drainage Crisis will be published on this website in the near future.

## **SWP and CVP High Delta Exports, Reduced Water Runoff to the Ocean While Contributing to the Decline in Salmon Populations**

A classic example of the enormity and complexities of ascertaining the relationship, between high exports, reduced runoff and declining salmonid populations are indicative in the data exhibited on the two graphics on the following pages. Runoff values, stated for a given water year type are, in most cases, for total river flows are above dams. Therefore, those runoff values do not accurately reflect the actual amount of water that flowed below the dams into the Delta. For example, in most water-year types when exports were high and runoff low, fish populations, appeared to decline. When one examines the graphs for the period of 1987 through 1992, a period of an extended drought, the increased rates of exports, which up until that period were the highest on record, correspond to the declining salmonid populations. In 1986, which was classified as a “wet year” (an estimated 25 million acre-feet of water runoff) was followed by a series of critical and dry years (six years of which five produced about nine (9) million acre-feet (MAF) or less of runoff annually. The ratio of water pumped/exported, at the governments’ Delta facilities, in 1987, 1988, 1989 and 1990, indicates that more than 50 percent of the “recorded” runoff was exported. Correspondingly, there was a continued decrease in salmonid populations for those years. Conversely, in 1991 and 1992, although salmon populations were still drastically down, the amount of water exported, in relation to “runoff” was significantly less, in those years there appears to be a slight increase in salmonid populations. Between 2003 and 2006 exports were at or above 6 million acre-feet, and salmonid returns (3-year cycles) for the years 2005, 2006 and 2007 declined dramatically.

Ironically, officials acknowledged, more than 30 years ago, that the impacts of water exports on anadromous species was significant; however, despite a plethora of studies and programs costing billions of dollars, it has yet to conduct a quantitative analysis as to the extent of that the Delta water exports are having on salmonid species populations and/or fluctuations in abundance associated with project operations! As stated herein, P&A have confirmed the absence of scientific verification “quantitative analysis” on CALFED, EWA and the Pacific Coast Salmon Recovery Fund Program. The lack of a “quantitative analysis” was recently brought up, at yet another government sponsored “Delta Vision - save

the Bay-Delta Estuary” CALFED science conference. Reportedly, there were 1200 scientists, from the government and private consulting sectors, in attendance. Dan Bacher, a writer and fisherman, asked if any of the scientists had conducted or knew of a quantitative analysis study pertinent to predation and related fish losses attributable to the governments’ Delta pumping exports. They conceded they knew of no such study. It is important to note, that the Bay-Delta Estuary is the most-intensively studied body of water on earth. Billions of dollars have been expended, from General Obligation Bond debt funds. in the past decade, conducting a plethora of studies; none of the studies dealt with such fundamental issues as the effectiveness of buying water for fish and/or quantifying the adverse impacts of water exports on aquatic species!

## **DWR and U.S. Bureau of Reclamation Resorted to Illegally Taking Water Designated for Fish and Other Beneficial Uses and Users in the Delta**

In the interim, DWR resorted to a myriad of tactics to get additional water to increase the SWP’s reliability; including stealing water. During the 1987-1992 drought DWR had to come to grips with a problem it created back in the 1960’s, when it contracted more water than the SWP would be able to provide. P&A monitored and review of the amounts of water both the SWP and CVP exported from the Delta during the 1987 to 1992 drought, and made public the fact that those two projects exported more water from the Delta, during the first four years of the drought, than in any other four years of the operation of those two projects. In addition, P&A established the fact that the DWR and the USBR illegally exported and/or failed to release water required for salmonid species flow requirements and other designated purposes in the Delta.<sup>1</sup> According to documents, generated by SWRCB staff, with the assistance of the authors, the 350,000 to 500,000 acre-feet of water illegally acquired by the DWR and USBR, was worth an estimated at more than \$29 million, and resulted in more than 289 violations of the terms and conditions of their permits.<sup>2</sup> The Board did not take an enforcement action against either the DWR or the USBR; they were not held accountable for the 289 violations. “*This is to advise you [DWR and USBR] that the Board will not take an enforcement action regarding the 1991 and 1992 exceedences of the D-1485 standards.*”<sup>3</sup> More than a dozen California legislators sent a letter to the Board stating that they were deeply distressed by the Board’s failure to enforce the provisions of Water Right Decision 1485.<sup>4</sup> P&A filed a lawsuit (*Porgans v Babbitt*) and the illegal exports stopped. Since then, the collaborators got in bed together and sold out the Delta, fish, tribes, and commercial and sports fishing; all of which were once supported by a sustainable way-of-life.

Detailed information will be provided in an upcoming Fact Sheet, entitled, ***Cracking California’s Water Code: Unholy Alliance – Forging Paper Water Into Liquid Gold***. Government officials, investment institutions, agribusiness, water districts, fishing and conservation organizations have forged an unholy alliance using the public’s credit rating, tax base, and natural resources to amass their fortunes and sustain their political connectivity, selling the public back its own water.

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<sup>1</sup> W. Don Maughan, Chairman, State Water Resources Control Board letter to Patrick Porgans, *Response to Your Request for Information on the 1991 and 1992 Decision 1485 Violations*, 30 September 1992.

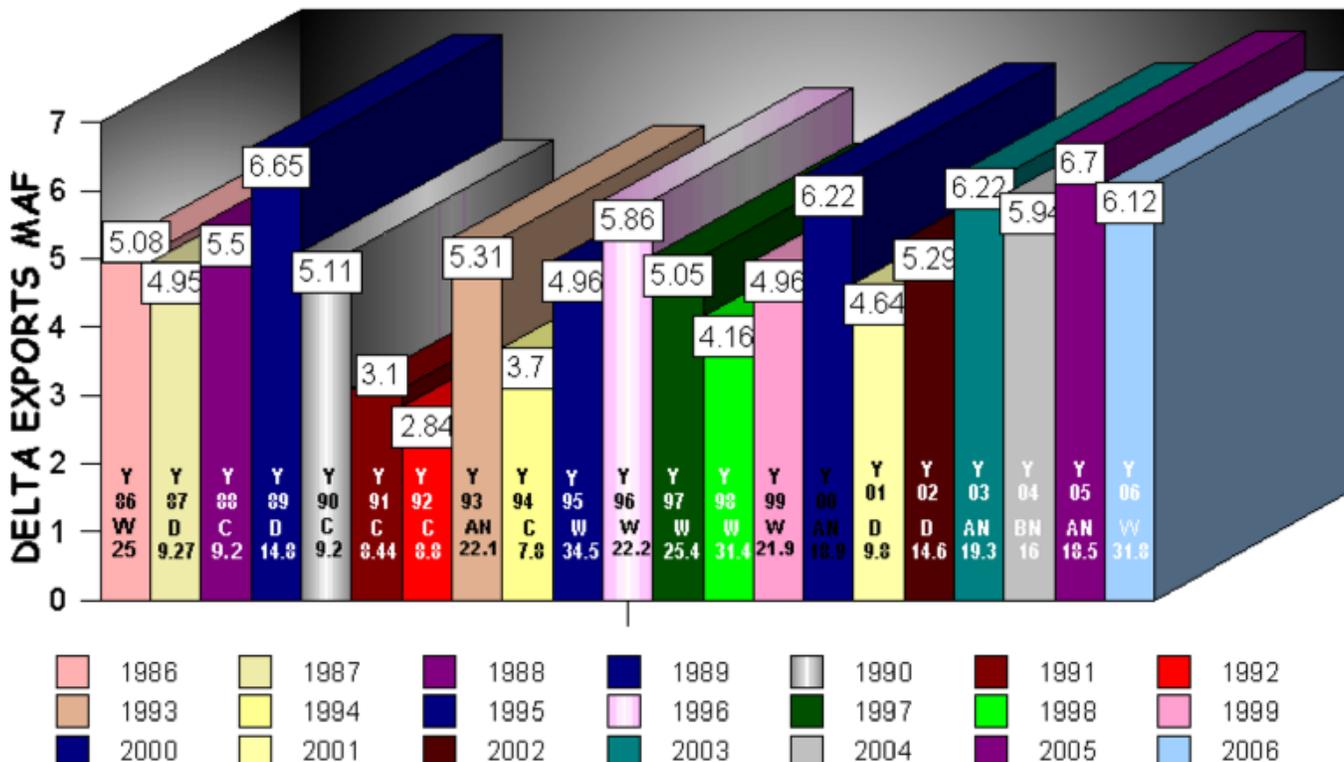
<sup>2</sup> State Water Resources Control Board’s *Public Hearing, Subject: Consideration of Compliance with Water Right Requirements for the Sacramento-San Joaquin Delta and Suisun Marsh*, SWRCB Exhibits 19 and 20, November 30, 1992.

<sup>3</sup> Walt Pettit, Executive Director, SWRCB letter to David Kennedy, Director, Department of Water Resources and Roger Patterson, Regional Director, U.S. Bureau of Reclamation, *Re: Compliance During 1991 and 1992 with Water Right Decision 1485*, June 11, 1993.

<sup>4</sup> Senator Milton Marks, et al, letter to John Caffrey, Chairman, State Water Resources Control Board, 12 July 1993.

# SWP & CVP PUMPED-EXPORTS IN MILLION ACRE-FEET BETWEEN 1986-2006

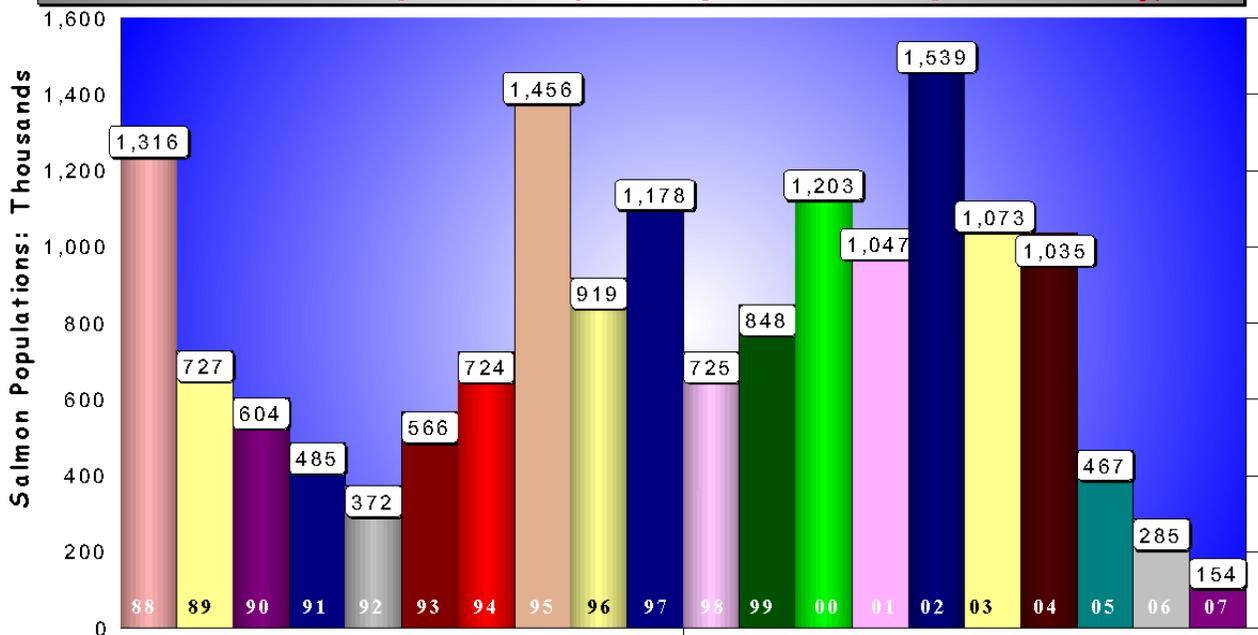
Calendar Year Jan 1 -- Dec 31



**NOTE:** Number values at base of columns are "Official Year Classifications" based on May 1 Runoff forecast — Sacramento Valley Index (W) Wet (AB) Above Normal (BN) Below Normal (D) Dry (C) Critical in (MAF) Million acre-feet. [Color of column on this graph coincide with Chinook Prod, Graph — Cohort 3-Year Cycle of Returning Salmon.]

Graph Produced by Patrick Porgans & Associates, Inc. Updated: April 2008 © DWR/USBR Data

## CHINOOK PROD: Yearly Salmon Population [Total-All Races] Central Valley, CA



**NOTE: Why Have Salmon & Steelhead Declined?** California's anadromous salmon and steelhead are widely distributed throughout coastal and inland watersheds, as well as the marine environment and rely on a complex array of ecosystems to complete their life-cycle. Consequently, many factors can affect their successful reproduction and survival. Some of these factors include: Watershed Modifications... Channel Modifications... Water Developments... Hatcheries... Fishery Harvest... Ocean Conditions, Climate Cycle, and Climate Change... [Source: NOAA, National Marine Fisheries Service, Southwest Region, Pacific Salmon and Steelhead Recovery in California, undated, p. 4.] The drastic declines in salmon populations in California are not the result of any one particular cause. Albeit, there are also other factors significantly impacting salmon and steelhead populations, Delta exports from government water projects, water runoff in the Sacramento River Basin, water quality and quantity, government's conflicting role as water purveyor and public trustee, under staffing and under funding of enforcement programs, selective enforcement policies, the absence of a cohesive salmon protection plan and/or a commitment to carry such a plan. The numbers compiled by the government for this graph are rife with qualifiers, assumptions and caveats. The reader is advised to visit the following website to get more information about the numbers ([www.delta.dfg.ca.gov](http://www.delta.dfg.ca.gov)). The salmon population numbers were obtained by P&A from the U.S. Fish and Wildlife Service's Anadromous Fish Restoration program from Rick Burmester, Biologist, at 209-334-2988, ext. 407. They were taken from Chinook Prod; some are still classified as preliminary numbers. This graph in unison with P&A's graph depicting Delta water exports from the CVP and the SWP indicate a relationship between high export rates and low fish populations. However, actual fish losses attributed to Delta project exports have yet to be scientifically quantified of qualified. Graph by Porgans & Associates, 26 March 2008 ©. Email: [porgans@steelhead.net](mailto:porgans@steelhead.net)

Note-Last line reads: Losses attributed to Delta project exports have yet to be scientifically quantified of qualified. Graph by Porgans & Associates©

## Contrary to Government Rhetoric the Delta is not “Broken” -- However Its Deplorable Condition is the Result of a Litany of Government’s Broken Promises

Contrary to the government-media-industry rhetoric, the Sacramento-San Joaquin Delta is not “broken”, that is simply a misnomer. The Delta has been and continues to be grossly mismanaged and exploited, and the only thing that has been broken, is the government’s failure to fulfill its Public Trust and regulatory mandates.

### Delta Water Supply to Southern Californians Grossly and Intentionally Overestimated

Government and media contend that 25 million Southern Californians depend on State Water Project (SWP) Delta exports for their water supply. However, that figure appears to be grossly overestimated. In the Annual Report of the Metropolitan Water District of Southern California (MWD), it states, on average, it delivers about 2.2 MAF of water to its 19 million customers. MWD is the largest SWP contractor, however, according to the California Department of Water Resources, the maximum amount it delivered to MWD via the SWP Delta exports was around 1.7 MAF.

More importantly, MWD concedes that *only about 30 percent of Southern California’s overall water supply comes across the Delta and is delivered to Metropolitan through the state water system. The Metropolitan Water District of Southern California is a cooperative of 26 cities and water agencies serving 19 million people in six counties. The district imports water from the Colorado River and Northern California to supplement local supplies, and helps its members to develop increased water conservation, recycling, storage and other resource-management programs.*

[http://www.mwdh2o.com/mwdh2o/pages/news/press\\_releases/2010-01/supply\\_challenges.pdf](http://www.mwdh2o.com/mwdh2o/pages/news/press_releases/2010-01/supply_challenges.pdf)

### According to MWD Claims It Has Enough Water for Next 20 Years

Furthermore, according to MDW’s **“Report on Metropolitan Water Supplies: A Blueprint for Water Reliability”**, with its existing sources and supplies, it will have enough water to meet 100 percent of its member agencies’ *projected supplemental demands (consumptive and replenishment) over the next 20 years” in average, wet, multiple dry- and single dry years.* <http://cityplanning faculty.org/EIR/OccidentalCollege/DEIR/Chapters/Appendix%20G%20Water%20Supply.pdf>

Lastly, according to MWD’s reports, its gross annual water supply capacity is almost 7 million acre-feet of water, which includes, but is not limited to its annual entitlements from the State Water Project and Colorado River Compact allocations, surplus deliveries from the Colorado River, water transfers, acquisitions, carryover storage, recycling, conservation, surface and groundwater storage capacity.

## No One Stepped Up to the Plate to Join In the Sixty-Day Notice of Our Intent to Sue to Protect Endangered Fish or Hold Government Accountable

Porgans & Associates spent three years and a significant sum of its own funds to prepare the 79-page Sixty-Day Notice (SDN), which is prefaced almost entirely on government documents, reports, correspondences and related exhibits. The SDN is accompanied by 15 volumes of appendix reports, comprised of thousands of pages of supporting data.

P&A and the Law Offices of Joel Baiocchi made an open appeal to all interested parties to participate in a legal action to hold the government, and other culpable parties, responsible for the deplorable decline in salmonid populations and destruction of public trust resources; however, although there was some interest expressed no one step up to the plate. To its credit, the **Center for Biological Diversity** responded to the request for assistance, stating it was impressed with the comprehensive research and sympathetic to the

goals, but declined to join the effort to save the dying Delta. Yet, it assured us that it would continue to be actively engaged in getting new endangered species listed. **Earth Justice's** attorneys commended us for the effort, but said it was to "big picture" and it would be difficult to get a court to understand the complexities of the case let alone have it rendered a favorable ruling. We are still eagerly awaiting a so-called protector of the environment to champion this cause. If you have any suggestions, please advise us accordingly. 🌍