

The California Wild & Scenic Rivers Act

With National Wild & Scenic Rivers in California Included in the Chronology

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The California Wild & Scenic Rivers Act (Public Resources Code § 5093.50 et seq.) (“Act,” “California Act,” “State Act,” or “CAWSRA”) was passed in 1972 (SB-107, Behr R-Mill Valley) to preserve designated rivers possessing extraordinary scenic, recreation, fishery, or wildlife values. With its initial passage, the California system (“System”) protected the Smith River and *all* of its tributaries; the Klamath River and its major tributaries, including the Scott, Salmon, and Trinity Rivers; the Eel River and its major tributaries, including its tributary the Van Duzen River; and segments of the American River. The state system was subsequently expanded by the Legislature to include segments of the East Carson and West Walker rivers in 1989, segments of the South Yuba River in 1999, short segments of the Albion and Gualala Rivers in 2003, segments of Cache Creek in 2005, and segments of the North Fork and main stem of the Mokelumne in 2018. In addition, the McCloud River and Deer and Mill Creeks were protected under the Act in 1989 and 1995 respectively, although these segments were not formally designated as components of the system. As part of the reaction against the statute and the addition of the initial system to the national wild & scenic river system (absent many of the Smith River tributaries), major parts of the Smith River watershed-level designations were removed from the state system in 1982, although some continued to be accorded some of the protections of the Act.

The Act provides a number of legal protections for rivers included within the system, beginning with the following legislative declaration (§ 5093.50):

It is the policy of the State of California that certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state. The Legislature declares that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water within the meaning of Section 2 of Article X of the California Constitution.

The Act also provides legal protections consistent with the policy declaration for some rivers not included in the system. § 5093.61 requires that local governments comport their actions consistent with the *policies* and provisions of the Act.

Definitions

The Act defines “free-flowing” as “existing or flowing without artificial impoundment, diversion, or other modification of the river.” The existence of minor structures on the river, or even major dams located upstream or downstream of a specific segment, does not preclude a river from designation (§ 5093.52(d)). Several rivers, such as the Klamath, Trinity, Eel, Mokelumne, Cache Creek, and lower American, are included in the System despite substantial flow modifications by pre-existing upstream dams and impoundments.

The Act defines “river” as “the water, bed, and shoreline of rivers, streams, channels, lakes, bays, estuaries, marshes, wetlands, and lagoons, up to the first line of permanently established riparian vegetation” (§ 5093.52(c)). The latter phrase (“up to the first line of permanently established riparian vegetation”) was added in a 1982 amendment (AB-1349, Bosco, D-Occidental).

The Act defines the “immediate environments” contained in the policy declaration (§ 5093.50) as the land “immediately adjacent” to designated segments (§ 5093.52(h)). This definition was added in the 1982 amendments (AB-1349, Bosco, D-Occidentale).

The Act provides for certain responsibilities to the “Resources Agency.” The name of that cabinet-level agency is now the California Natural Resources Agency, and the Act has never been updated to change this anachronism. This memo, thus, continues to refer to the California Natural Resources Agency as the “Resources Agency.”

Classification

Rivers or segments included with the system are classified by the Legislature as “wild,” “scenic,” or “recreational” based on the level of existing development of adjacent land areas when designated (§ 5093.53). The river-segment-by-river-segment classifications are thus reproduced in the code (§ 5093.545). The Resources Secretary (now Natural Resources Secretary) may recommend classifications to the Legislature (§ 5093.546). “Wild” river segments are free of impoundment and generally are inaccessible except by trail, with primitive watersheds or shorelines and unpolluted waters. “Scenic” river segments are free of impoundment, with shorelines or watersheds still largely primitive and shorelines largely undeveloped but accessible in places by roads. “Recreational” river segments are readily accessible by road or railroad, may have some development along their shorelines, and may have been impounded or diverted in the past (§ 5093.53). The classification terms are consistent with the National Wild & Scenic

Rivers Act and represent the existing level of development at the time of designation, particularly shoreline development, not a description of any particular extraordinary values identified for the potential or designated river. For example, “recreational” river segments may not have any specific recreational extraordinary values. In addition, confusing to some, “recreational” components of the state’s wild & scenic river system are, indeed, components of the state’s wild & scenic river system. While the classifications remain in the statute, with passage of the 2004 CAWSRA amendments to the state’s Forest Practice Rules extending the rules to “scenic” and “recreational” components of the System and in cases where there is no adopted management plan in force or being implemented, classifications presently have little bearing on wild and scenic river management.

Act Style, or Where is What?

§ 5093.54 is the code section used to list the rivers and river segments designated as components of California’s wild & scenic rivers system. § 5093.545 contains river-segment-by-river-segment classifications. § 5093.548 is the traditional code section used to list potential additions (study rivers). § 5093.546, in addition to describing protections afforded to designated rivers, is usually used to describe interim protections given potential additions to the system. However, it has been Legislative practice to delete § 5093.548 when the Legislature acts on all pending study recommendations. It has also been Legislative practice to delete the interim protections provisions in § 5093.546 when there are no pending potential additions. However, in 2015, § 5093.548 was used instead to provide additional directions for the Secretarial study of portions of the Mokelumne River, as well as some specific interim protections for this river. § 5093.549 was then created and used to list segments of this river that were potential additions to the system. Both sections were deleted when the river was designated in 2018. From time to time, the Legislature has also used amendments to the Act enacted for other purposes as an opportunity to clean up obsolete portions of the Act or previous typographical errors.

Rivers protected by the Act, but not in the System

The California Wild & Scenic Rivers Act provides for specified protections of certain rivers or river reaches that are not included in the California Wild & Scenic Rivers System. The protections often parallel and sometimes expand the protections that would have applied if they were formal members of the System. Generally, these rivers were either once included in the System or considered by the Legislature as potential additions to the System. These streams include some Smith River watershed creeks: Dominie Creek, Rowdy Creek, South Fork Rowdy Creek, Savoy Creek, Little Mill Creek, Bummer Lake Creek, East Fork Mill Creek, West Branch Mill Creek, Rock Creek, Goose Creek, East Fork Goose Creek, Mill Creek (§ 5093.541). The also include the McCloud River (§ 5093.542) and Mill and Deer Creeks (§ 5093.70).

Amendment History

Significant amendments to the Act in 1982 were adopted by the legislature as part of the unsuccessful litigation strategy against the 1981 federal 2(a)(ii) north-coast-river wild & scenic river designations (also see “Andrus” Rivers section and 1980–1985 entries in the timeline below) and for other purposes. (As a compromise, the amendments had also stated that it was also the intent of the legislature to “expedite and improve the efficient administration...” of the CAWSRA and not to affect the litigation against the Secretarial designation or affect any Secretarial reconsideration of the decision (§ 19, AB-1349, Bosco, D-Occidentale). (Such is the nature of the legislative process.) The 1982 amendments eliminated the mandate for management plans of rivers (§ 5093.58 of the original 1972 Act) and “adjacent land areas” (original § 5093.48(b)) that the 1970s-era Resources Agency management plans considered to be subject to the Act’s management focus (the land within the “planning area boundaries,” which were often wider than potential national wild & scenic river corridors). The amendments eliminated the Secretarial responsibility for “administration of the system” (original § 5093.60) and instead making the Resources Agency responsible for coordinating state agency activities with other state, local, and federal agencies with jurisdiction that might affect “the rivers.” (present § 5093.60). The amendments eliminated the direction to the Resources Agency to cooperate with water pollution control agencies to eliminate or diminish water pollution in the “System” (original § 5093.61) The amendments sharpened the definition of “river” as various waterbodies “up to the first line of permanently established riparian vegetation” (§ 5093.52(c)) and defined “immediate environment” to the land “immediately adjacent” to designated segments (§ 5093.52(h)). The 1982 amendments also specified that the Legislature rather than the Resources Secretary (now Natural Resources Secretary) is responsible for classifying or reclassifying rivers by statute, although the Resources Secretary may recommend classifications or reclassifications (§ 5093.546). The amendments included the classifications for the rivers that stayed in the system (§ 5093.545). The nearly watershed-level Smith River system designations were redefined (§ 5093.54(c)), removing about 2,760 ill-defined miles of river from the state system (AB-1349, Bosco, D-Occidentale).

An amendment to the Act in 1986 established a study process modeled after the federal act to determine potential additions to the California System (§ 5093.547) (AB-3101, Sher, D-Palo Alto).

Amendments to the Act in 1986 (AB-3101, Sher, D-Palo Alto) eliminated authorization for DWR to investigate and study dams on the Eel River and its tributaries (amended § 5093.56). These amendments also sharpened the responsibilities of state agencies to protect the free-flowing characteristics and extraordinary values of designated rivers under any other provision of law (§ 5093.61).

In response to studies required by the Legislature (AB-3101, Sher, D-Palo Alto), segments of the East Carson and West Walker rivers were added to the system in 1989 (§ 5093.545(f)(1) & § 5093.545(f)(2) and the McCloud River was provided certain protections, although not formally included in the system (§ 5093.542) (AB-1200, Sher, D-Palo Alto). Also in response to studies mandated by the Legislature (AB-653, Sher), Deer Creek and Mill Creek were provided certain protections in 1995, although not formally included in the system (§ 5093.70) (AB-1413, Sher). The Legislature has, in addition to the initial system designations, clearly retained the *de facto* right to designate rivers outright since they added segments of the South Yuba in 1999 (§ 5093.54(g)(1)) (SB-496, Sher, D-Palo Alto), short segments of the Albion and Gualala Rivers in 2003 (§ 5093.54(h) & § 5093.54(i)) (AB-1168, Berg, D-Eureka), and segments of Cache Creek in 2005 (AB-1328, Wolk, D-Davis) to the state system without studies.

Amendments to the Act in 2004 (SB-904, Chesbro, D-Arcata) ensured that “Special Treatment Areas” under the Forest Practice Rules applied to river segments classified as “scenic” or “recreational” as well as river segments classified as “wild” (§ 5093.68). These amendments also sharpened the responsibilities of departments and agencies of the state to protect the free-flowing nature and extraordinary values of components of the system as they carry out their duties (§ 5093.61).

Water Impoundment Facilities

In general, no dam, reservoir, diversion, or other water impoundment facility may be constructed on any river segment included in the system, although see Water Diversion Facilities paragraph below. Similar provisions also apply to the rivers not included in the System but protected by the Act, although exceptions in these cases are not provided for (§ 5093.541) (§ 5093.542) (§ 5093.70) (§ 5093.61 2nd sentence) (§ 5093.50). Two exemptions to the dam prohibition are provided. The exemptions include temporary flood storage facilities on the Eel River (§ 5093.57) and temporary recreational impoundments on river segments with a history of such impoundments. The Resources Secretary cannot authorize these temporary recreational impoundments without first making a number of findings (§ 5093.67).

Water Diversion Facilities

No water diversion facility may be constructed on any river segment included in the system unless the Resources Secretary determines that the facility is needed to supply domestic water to local residents of the county or counties in which the river flows and that the facility will not adversely affect the river’s free-flowing condition and natural character (§ 5093.55). Similar provisions also apply to the rivers not included in the System but protected by the Act, although exceptions in these cases are not provided for (§ 5093.541) (§ 5093.542) (§ 5093.70) (§ 5093.61 2nd sentence) (§ 5093.50).

Restrictions on project proposals that affect free-flowing and extraordinary values ("nondegradation standard")

Agencies of the State of California may not assist local, state, and federal agencies in the planning and construction of any dam, reservoir, diversion, or other water impoundment facility that could adversely affect the free-flowing condition and natural character of river segments included in the system (§ 5093.56) or of rivers otherwise protected under the Act (§ 5093.542, § 5093.70). In addition, departments and agencies of the state are required to protect the free-flowing character and extraordinary values of designated state rivers (§ 5093.61). Local government agencies are required to exercise their duties consistent with the policy and provisions of the California Wild & Scenic Rivers Act (§ 5093.61 and see § 5093.50 for policy). Similar, but not identical, provisions apply to waterways protected in the Act but not added to the system. The provisions that apply to them are customized for these waterways (§ 5093.541) (§ 5093.542) (§ 5093.70) (§ 5093.61 2nd sentence) (§ 5093.50).

Water Rights

Designation does not affect existing water rights and facilities. Proposed changes in existing rights or applications for new water rights and facilities on designated segments are subject to the in-county domestic-use restriction and the nondegradation standard. Special specific provisions on this matter affect certain designated reaches: These include the Carson River (§ 5093.46(f)(2)(A)), South Fork Yuba River (§ 5093.46(g)(2)), and Cache Creek (§ 5093.46(j)(2)-(4)), and Mokelumne River (§ 5093.46(k)(2)).

While the Act does not speak directly to the fully appropriated streams procedures of the California State Water Resources Control Board, the Board has administratively decided to consider rivers in the state system to be fully appropriated streams (SWRCB Water Rights Order 98-08). There are procedures, however, to consider proposed new water rights consistent with the provisions of the Act:

Any declaration that a stream system is fully appropriated encompasses all upstream sources that contribute to the stream system if, and to the extent that, such upstream sources are hydraulically continuous to the stream system. The Board is unable to accept applications for new water rights in a stream system designated as fully appropriated unless the designation allows new applications under specified conditions. California Code of Regulations, title 23, section 871, sets procedures by which parties can petition to revise a declaration that a stream system is fully appropriated to allow the acceptance of an application for a new water right. The revision to the declaration must occur before submission of the application.

(https://www.waterboards.ca.gov/waterrights/water_issues/programs/fully_appropriated_streams/)

Agency Responsibilities & Authority

Land Use – The Act does not change the land use regulatory powers or authorities of state and local agencies granted by other laws (§ 5093.58). However, the Legislature, by act of law, has adopted the American River Parkway Plan, a wild & scenic river management plan that provides for regulatory powers, authorities, and responsibilities in land use for the Parkway corridor and environs (AB 889, Jones, D Sacramento). (https://regionalparks.saccounty.gov/Parks/Documents/Parks/ARPP06-092617_sm.pdf)

Fish & Wildlife – The Act does not affect the State’s jurisdiction or responsibility over fish and wildlife (§ 5093.62).

Forestry – Special treatment areas identifying significant resource features are established along rivers in the system (§ 5093.68) and are further defined in California’s Forest Practice Rules as a 200-foot wide area on each side of the designated river (14 CCR 895.1). One of the 2004 amendments (SB-904, Chesbro (D-Arcata) clarifies that “special treatment areas” are applied to designated rivers that are classified as “recreational” or “scenic,” as well as designated rivers that are classified “wild” (§ 5093.68). Although the Act includes provisions for the temporary suspension of timber operations in special treatment areas, the Forest Practice Rules do not specifically prohibit or restrict forest practices in special treatment areas.

Eminent Domain – The Act specifically prohibits the taking of private property for public uses without just compensation (§ 5093.63). The Act grants no additional eminent domain authority to State or local agencies. The Act has never been used in its 49-year history (at this writing) to condemn or otherwise take land.

Studies – The Legislature may direct the Resources Agency to study and submit recommendations concerning the suitability of designating specified rivers (§ 5093.547). However, the Legislature may directly designate rivers without a study. The Resources Agency may also conduct studies funded by the Legislature and may make recommendations to the Legislature for protection and enhancement of the system (§ 5093.69).

Management – The 1982 amendments eliminated the requirement for Secretarial preparation of management plans for designated rivers and their adjacent land areas and provisions for Secretarial classification of river segments (original § 5093.58). The amendments eliminated management plan preparation consultative requirements with

local counties and their political subdivisions and public hearing requirements (original § 5093.59). The amendments also eliminated legislative guidance on the emphasis of such plans (original § 5093.60).

However, before the management plan requirement was repealed, the following plans were published by the California Resources Agency and Department of Fish & Game (now the California Natural Resources Agency and Department of Fish & Wildlife): *North Fork American Waterway Management Plan*, July 1977; *Lower American River Waterway Management Plan*, July, 1977; *Van Duzen River Waterway Management Plan*, July 1977; *Salmon River Waterway Management Plan*, November 1977; *Scott River Waterway Management Plan*, December 1979; *Salmon River Waterway Management Plan (Revised)*, December 1979; *Smith River Draft Waterway Management Plan*, April 1980. It appears that these plans developed “planning area boundaries,” the area of focus of these management plans and presumably defining the “adjacent land areas” of § 5093.58 in 1972 Act. These planning areas were not restricted to the 320-acres per mile corridors of the National Wild & Scenic Rivers Act and in these state plans were larger and defined more to accomplish management needs. At the time of preparation of these plans, the Secretary was to submit them to the Legislature for approval, which would give the plans the force of law (see discussion in *North Fork American River Waterway Management Plan*, p. 7) (§ 5093.58(c) in 1972 Act). It does not appear that the legislature adopted any of them. In contrast to these pre-1982 plans, the Legislature has twice adopted wild & scenic river management plans prepared by Sacramento County for the Lower American River, which established land use management direction and defined the wild and scenic river corridor boundaries (the American River Parkway) and extraordinary values (see *American River Parkway Plan 2008*, Sacramento County, pp. 89-92 https://regionalparks.saccounty.gov/Parks/Documents/Parks/ARPP06-092617_sm.pdf). This was done most recently in 2009 (AB-889, Jones, D-Sacramento).

The Resources Agency is required to coordinate activities affecting the system with other federal, state, and local agencies (§ 5093.69), and departments and agencies of the state are required to protect the free-flowing character and extraordinary values of designated rivers, and similar responsibilities exist for local government agencies (§ 5093.61).

Special Management Provisions for the “Andrus” Rivers

For California’s state wild & scenic rivers that are also national wild & scenic rivers under section §2(a)(ii) of the National Wild & Scenic Rivers Act, the principal wild & scenic river management responsibility is the state’s. However, there are federal management responsibilities as well. Water resources project reviews that are also federal responsibilities are to take place under a subsequently updated November 5, 2007, interagency agreement among the National Park Service, Bureau of Land Management, and Forest Service. Federal lands continue to be managed by the federal

land managers. Under federal law, to the extent that a state management plan exists, is relevant, and in force, these plans are intended to provide guidance to federal wild & scenic river managers (see *American River Parkway Plan*, Sacramento County, 2008, p. 91). Corridor management widths are defined for these rivers by the state and can exceed 320-acres per mile, the generic maximum size established for congressionally designated rivers under §3(a) of the federal act. With the creation of the Smith River National Recreation Area (NRA) in 1990, which redesignated the 2(a)(ii) rivers that were upstream of the Six Rivers National Forest external boundary as §3(a) rivers, state responsibilities under the federal act are necessarily reduced in favor of the federal wild & scenic river manager. The Smith River federal wild & scenic river plans are to be accomplished in the National Recreation Area plans. State §§2(a)(ii) responsibilities downstream of the national forest (and to some degree private lands within the National Forest) remain unaltered by the Smith River §3(a) and NRA designations.

Wild and Scenic River Boundaries (highlights)

Boundaries in the State System are established legislatively in § 5093.54, a section that after the 1982 amendments (which, in part, established more limited and precise boundaries for the Smith River system) is rather lengthy. To see the descriptions of the boundaries in the state system, see § 5093.54. This memo also describes, at least in general – and often in precise terms – the boundaries of the rivers added by the U.S. Congress to the national wild & scenic rivers system, which in some cases deferred the final boundary determinations to the federal wild & scenic river manager. There are some generally overlapping federal and state designations that may differ. They are highlighted here and in the subsequent sections describing the designations.

The legislature established boundaries for rivers protected by the State Act that have segments below dams (Klamath River - 100 yards below Iron Gate Dam; Trinity River - 100 yards below Lewiston Dam; Eel River - 100 yards below Van Arsdale Dam; Lower American River - Nimbus Dam; McCloud River - 0.25 miles below McCloud Dam); NF Mokelumne River - 0.5 miles downstream of Salt Springs Dam, 1,000 feet below the Tiger Creek afterbay dam, 400 feet below small regulating dam downstream of the West Point Powerhouse; Mokelumne River 100 yards below small regulating dam downstream of the Electra Powerhouse.

With the projected removal beginning in 2024 of four dams and associated facilities on the Klamath River in California and Oregon (Iron Gate, Copco 1 & 2, and J.C. Boyle), the legislature may choose to revisit the boundaries of the Klamath River state designation as Iron Gate Dam will not exist.

The legislature's 1982 amendments stripped the watershed-level designations of the Smith River in the original Act, confining the system designations to the main stem and its named river forks and dam-prohibition-level protections for twelve named creek

tributaries of the Smith River removed from the state system. The 1990 Smith River Congressional §3(a) designations are limited to the Smith River 2(a)(ii) segments within the external boundaries of the Six Rivers National Forest and Hardscrabble Creek, making system boundaries in the Smith River watershed complex – with state-only, federal §2(a)(ii)-only, state/federal §2(a)(ii), and federal §3(a)-only.

Governor Jerry Brown's 1980 approved request for Secretary of the Interior Cecil Andrus to add, in part, the state-designated Klamath River to the national wild & scenic rivers system under §2(a)(ii) of the federal act included a different boundary for the upper end of the §2(a)(ii) Klamath River: 3,600 feet instead of 300 feet below the Iron Gate Dam.

The overlapping North Fork American state and §3(a) federal designation boundaries also differ. In comparison to the longer State designation, the federal designation is truncated on both ends: it goes from 1,000 feet upstream of the Iowa Hill Bridge to near The Cedars. The State designation goes from the Iowa Hill Bridge to the source, Needle Lake and Mountain Meadows Lake, approximately six or seven miles further upstream than the federal designation.

Comparison with the National Wild & Scenic Rivers Act

The California Act was patterned after the 1968 National Wild & Scenic Rivers Act. The state and federal acts share similar criteria and definitions in regard to the purpose of protecting rivers, the identification of free-flowing rivers and extraordinary (state) or outstanding (federal) values suitable for protection, establishing a study process to include rivers in the system, as well as an identical classification system. The primary purpose of both the state and federal acts is to prohibit new water impoundments on designated rivers.

However, the federal act establishes a river corridor for purposes of management focus, which (for congressionally designated rivers) has a maximum average width of 320 acres per mile (approximately ¼ mile on each side of the river). Subject to valid existing rights, it makes mining on federal lands within the boundaries of the corridor subject to rules prescribed by the relevant Secretary (Interior or Agriculture) to effectuate the purposes of the federal act (no mining regulations specific to wild & scenic rivers were ever really done, however). Within the corridor, mine-patenting is not accompanied by a transfer of land title but only mineral rights. The federal act establishes a ½-mile-wide mining withdrawal (no new claims) for federal lands around river segments classified as "wild." It requires federal agencies to manage the federal lands in the corridor and to a more limited extent outside the corridor to protect the river's free-flowing character, water quality, and outstanding values, as well as a river's esthetic, scenic, historic, archeologic, and scientific features. The federal act presumes that corridor boundary

establishment, identification or restatement of outstandingly remarkable values, and classification are duties of the federal wild & scenic river manager.

In contrast, the State Act no longer contains a river-corridor concept (unless otherwise specified, such as on the Lower American River), especially one that would extend to adjacent lands, and classification is a duty of the Legislature, not the river manager. And in practice, in the absence of state management plans or Natural Resources Agency study recommendations, extraordinary values tend to be poorly documented or inaccessible for the State system. (Friends of the River and the California Wilderness Coalition, however, keep a database, and the creation of a better state database should be an example of a recommendation from the state Natural Resources Agency pursuant to § 5093.569.) In contrast, in the federal system, outstandingly remarkable values tend to be documented in agency recommendations (made frequently because of mandates in the federal act to review wild & scenic river potential in the course of regular planning), Congressional committee reports, and, most importantly, the federal wild & scenic river management plans, which can be updated over time.

The federal act also provides for more programs, encouragement, and financial resources to manage corridor and watershed federal lands and to some extent non-federal rivers and adjacent lands. In addition, the managing federal agency for federally designated rivers is required to develop and implement a management plan that will ensure the protection of the river and adjacent lands. In contrast, the State Act no longer requires a management plan or contain procedures making them. Thus, in practice, although the Natural Resources Agency is responsible for wild & scenic river management (or, more specifically, coordination activities) of most state-designated rivers, there is little to no involvement by the Natural Resources Agency in California's wild & scenic river system, aside from reviewing grant applications, state projects, and water rights applications on the designated rivers.

The study process is substantially the same, although the state process conflates some of the federal assessments and definitions. For example, the Federal study process and definitions are illustrative:

Eligibility and classification represent an inventory of existing conditions. Eligibility is an evaluation of whether a candidate river is free-flowing and possesses one or more outstandingly remarkable values (ORVs). If found eligible, a candidate river is analyzed as to its current level of development (water resources projects, shoreline development, and accessibility) and a recommendation is made that it be placed into one or more of three classes – wild, scenic or recreational. The final procedural step, suitability, provides the basis for determining whether or not to recommend a river as part of the National System. A suitability analysis is designed to answer the following questions:

- (1) Should the river's free-flowing character, water quality, and ORVs be protected, or are one or more other uses important enough to warrant doing otherwise?
- (2) Will the river's free-flowing character, water quality, and ORVs be protected through designation? Is it the best method for protecting the river corridor? In answering these questions, the benefits and impacts of WSR designation must be evaluated and alternative protection methods considered.
- 3) Is there a demonstrated commitment to protect the river by any nonfederal entities who may be partially responsible for implementing protective management? (*emphasis added*) ("The Wild & Scenic River Study Process," Technical Report Prepared for the Interagency Wild & Scenic River Coordinating Council, *Wild & Scenic River Reference Guide*, 1999, p. 2.)

The State Act study-report language concentrates on suitability and thus can conflate (with sometimes unclear results) what, in the federal process, would be eligibility and suitability findings and assessments into one report on suitability.

§ 5093.547. (a) The secretary shall study and submit to the Governor and the Legislature reports on the suitability or nonsuitability for addition to the system of rivers or segments thereof which are designated by the Legislature as potential additions to the system. The secretary shall report to the Legislature his or her recommendations and proposals with respect to the designation of a river or segment.

(b) Each report, including maps and illustrations, shall show, among other things, the area included within the report, the characteristics which do or do not make the area a worthy addition to the system, the current status of land ownership and use in the immediate environment, and the reasonably foreseeable potential uses of the land and water which will be enhanced, foreclosed, or curtailed if the river or river segment were included in the system.

Unless otherwise provided for, State-designated rivers may be added to the federal system upon the request of the state's Governor and the approval of the Secretary of the Interior under §2(a)(ii) of the federal act, although no requests have been made since 1980. Adding state wild & scenic rivers to the federal system under this section does not require the approval of the Legislature or Congress. The state has the principal responsibility for wild & scenic river management of rivers added to the federal system under this section of the federal act. Portions of the river segments initially protected in the state system when it was established in 1972 – the Smith, Klamath, Scott, Salmon, Trinity, Eel, Van Duzen, and American – were added to the federal system in 1981 under this method. But later additions to the state system (including segments of the East Carson, West Walker, South Yuba, Albion, Gualala Rivers, Cache Creek, and Mokelumne Rivers) have not been subsequently added to the federal system. There is no similar provision in the state system to provide for federal-executive to state-

executive dual designations, and the Legislature has so far failed to add important congressionally designated rivers to the state's wild & scenic rivers system — although in 2018 it provided an emergency mechanism for the California Natural Resources Secretary to do so in the event of federal threats to federal wild & scenic rivers. This authority sunsets in 2025. (§5093.71) As discussed elsewhere in this memo, the Congress has redesignated some rivers in the state system that were accepted by the Secretary of the Interior into the federal system as Congressionally designated national wild & scenic rivers.

In reaction to the 1981 2(a)(ii) federal designations of the lower American River and the north-coast rivers, some subsequent state designations attempt to preclude Gubernatorial requests to include state wild & scenic rivers in the national wild & scenic rivers system under § 2(a)ii of the federal Act. See the 2005 Cache Creek (§ 5093.46(j)(7)(A)), and the 2018 Mokelumne River (§ 5093.46(k)(7)(D) designations.

Brief History of the California Wild & Scenic Rivers Act

1951 - Legislature authorizes what would become elements of the State Water Project.

1957 - California Water Plan (Bulletin 3) published. The Plan envisions construction of many dams, reservoirs, and diversions on California's north coast rivers (among many other locations). Construction of the State Water Project (Feather River) facilities begins in 1957.

1959 - First State Water Project contracts are signed, including 2-million acre-feet per year to the Metropolitan Water District of Southern California (MWD). The legislature passes the Burns-Porter Act, authorizing the State Water Project and providing for the issuance of general obligation bonds to finance the project.

1960 - With MWD and LA Times' support, California voters narrowly approve the Burns-Porter Act Bonds (\$1.75 billion).

1961 - The Department of the Interior's Outdoor Recreation Resources Review Commission issues *Outdoor Recreation for America* stating, "Certain rivers of unusual scientific, esthetic, and recreation value should be allowed to remain in their free-flowing state and natural setting without manmade alterations."

1962 - Contracts for 4.23 million acre-feet of State Water Project deliveries had been signed. Roughly half the deliveries could be made with the Burns-Porter Act facilities; the rest would have to come from planned facilities and reservoirs on the Eel River and the Glenn Complex diverting inner coast range Stony Creek Basin waters and from the Trinity and potentially Klamath River sources. The Complex, near the currently

proposed Sites reservoir, was also envisioned to serve as an off-stream storage reservoir for Sacramento River flows.

1964 - First national wild & scenic rivers bills are introduced in the U.S. Congress.

1965 - Cedar Grove and Tehipite Valley are added to Kings Canyon National Park (P.L. 89-111, 79 Stat. 446). These valleys had been the site of interest by Los Angeles and local irrigation districts for reservoir sites. Sites upstream of Cedar Grove and Tehipite Valley in the national park had been foreclosed by the Park's creation in 1940 (54 Stat. 41, 16 USC 80a).

1966 - California Senate Concurrent Resolution (SCR-20) requests that California Governor Edmund G. (Pat) Brown's Resources Agency offer comment and recommendations regarding the concept of reserving wild rivers. The resolution was authored by Senate Natural Resources Chair, Fred Farr (D-Carmel) and coauthored by State Senators Rodda (D-Sacramento), Short (D-Stockton), and Teal (D-Railroad Flat). In December 1966, the Agency reported to the Legislature that the concept be broadened to all special waterways: lakes, marshes, coastal lagoons, and estuaries.

1968 - California Governor Ronald Reagan signs into law State Senator Robert Lagomarsino's (R-Ojai) Protected Waterways bill (SB-830), which required the Department of Water Resources to investigate California's rivers and develop a list of rivers needing protection and a plan to protect them. In some ways, this was a predecessor of the California Wild & Scenic Rivers Act. Four years later, State Senator Lagomarsino would co-sponsor State Senator Peter Behr's (R-Mill Valley) bill establishing the State wild & scenic rivers system.

On October 2, the National Wild & Scenic Rivers Act (P.L. 90-542) became law. The Middle Fork of the Feather was the one California waterway included in the original system. Added to the system as the somewhat ambiguous "entire Middle Fork," today's boundaries for the designated river encompass 77.6 miles from the confluence of its tributary streams one kilometer south of Beckwourth and then down to Oroville Reservoir. *For histories of the national wild & scenic rivers system, see Tim Palmer's "The Wild & Scenic Rivers" of America, Earth Island Press; "Endangered Rivers and the Conservation Movement," UC Press and Roman and Littlefield; and "Wild & Scenic Rivers: An Enduring Legacy", Oregon State University Press.*

1969 - On May 13, Governor Ronald Reagan directs California's Department of Water Resources "to work with the U.S. Corps of Engineers to make further analyses of possible water development plans on the Eel River watershed," in effect shelving the proposed giant Dos Rios dam on the Eel River. Reagan had expressed reluctance to flood tribal lands here. *The story of the effort to save the Eel River is documented in "The River Stops Here..." published by UC Press.*

1970 – The Oregon Scenic Waterways System is created by Oregon voters as a result of a citizen-initiated ballot measure.

1971 – The Resources Agency submits its Protected Waterways report to the legislature. State Senator Randolph Collier (D-Yreka) introduces SB-1285, accepting the report and requires further development of the Protected Waterways plans. It becomes law.

On January 14, State Senator Peter Behr (R-Mill Valley) introduces SB-107, creating the California Wild & Scenic Rivers Act. The measure fails by one vote on the Senate floor due to the opposition of State Senate Finance Committee Chairman Senator Randolph Collier (D-Yreka). In December, when asked about the SB-107 in a meeting before a Weaverville professional women’s club, State Senator Collier promises to introduce a bill to more definitively protect California’s north-coast rivers, including the Trinity River, than SB-1285.

1972 – State Senator Randolph Collier (D-Yreka) introduces SB-4, a measure to protect the north-coast rivers. On January 24, State Senator Peter Behr (R-Marin) re-introduces SB-107, the California Wild & Scenic Rivers Act.

Fresno State Senator George Zenovich (D-Fresno) introduces SB-1028, a measure to designate the South and Middle Forks of the Kings River between Kings Canyon NP and Pine Flat Reservoir as a “wild” river in any future California “wild” river system. This is the river reach that would be substantially inundated by the proposed Rogers Crossing dam and reservoir. Senator Zenovich’s measure is defeated.

The Environmental Defense Fund, Save the American River Association, and others file a complaint in Alameda Superior Court against East Bay Municipal Utility District’s plans to take deliveries of its federal water-supply contract from the Folsom-South Canal upstream of the soon-to-be-designated lower American wild and scenic river. Sacramento County intervenes supporting plaintiffs.

On December 15, *NRDC v. Stamm* is filed challenging the 16-page EIS for the federal Auburn Folsom-South Unit (Auburn dam and the Folsom South Canal). The canal, located just upstream of the state designated lower American River, would divert a substantial portion of its flows. Joining NRDC were the Environmental Defense Fund and the Save the American River Association.

On December 20, SB-107, the California Wild & Scenic Rivers System is signed into law by Governor Reagan in a measure carried by State Senator Peter Behr (R-Mill Valley). Reagan vetoed a similar measure, SB-4 (Collier, D-Yreka), which also passed the legislature. The new system includes the Smith River and its tributaries, portions of the Klamath River and its major tributaries, the Eel River and its major tributaries

(including the Van Duzen River), the lower American River, and the NF American River from the maximum pool of the proposed Auburn dam reservoir to the headwaters of the north fork.

Perhaps most consequentially, the new system would protect the Eel River and many of its tributaries from dams and diversions, starting with the giant proposed Dos Rios dam. In the preceding years (and for some time afterwards), both DWR and the U.S. Army Corps of Engineers had plans to dam the Eel River system and deliver Eel River waters to the Central Valley and north San Francisco Bay and adjacent counties. More than 16 million acre-feet of reservoirs were planned, with a hoped-for reliable annual yield of more than 2 million acre-feet. Half the planned yield of the state water project was to come from the Eel River. DWR Director Bill Gianelli favored veto of Senator Behr's and Collier's bills, but the California Resources Secretary Ike Livermore supported the measure. Governor Ronald Reagan signed the measure.

The Eel River projects weren't the only reservoirs and interbasin transfers contemplated for California's north-coast rivers for which the wild & scenic rivers designations would prove to be an impediment. The 1957 California Water Plan called for "the conservation of some 8,000,000 acre-feet of water per season for export to areas of deficiency elsewhere in the state" from the "Klamath-Trinity Group." Earlier, in 1951, the U.S. Bureau of Reclamation had proposed (or at least examined) the Ah Pah dam on the Klamath River as part of its "United Western Investigation Study." It was envisioned to hold 15-million acre-feet of water for delivery to the same "areas of deficiency" in the state. The Ah Pah reservoir would have dwarfed the reservoir capacity of the 4.5 million acre-foot Shasta Reservoir, then and still the state's largest. It would have inundated 40 miles of the Trinity River and 70 miles of the Klamath River.

1973 - In February, Congressman Biz Johnson (D-Roseville) and U.S. Senator Alan Cranston (D-California) introduce HR 4326 and S. 2386, respectively, to designate some of the NF American that was in the state wild & river system (the segment from the proposed Auburn dam reservoir upstream to "the Cedars") as a federal wild & scenic river study river and for the Secretary of the Interior to conduct the study.

The California Wild & Scenic Rivers Act is amended to prohibit construction of dam projects on the South and Middle Forks of the Kings River and its tributaries on the Sierra and Sequoia National Forests for five years (SB-623, Zenovich, D-Fresno). It is signed by Governor Ronald Reagan on September 17.

1974 - The Federal District Court rules in *NRDC v Stamm* that the U.S. Bureau of Reclamation's EIS for the Auburn Folsom-South Unit is inadequate. When the supplemental EIS is completed, the plaintiffs drop objection to the Auburn dam portion of EIS. Court approves agreement between Reclamation and plaintiffs that no additional construction of, or contracts from, the Folsom-South Canal can be

undertaken without notice, and the court retains jurisdiction (*Natural Res. Def. Council v. Stamm*, 4 ELR 20463 (E.D.Cal. Apr. 26, 1974)). No construction of the canal has ever resumed. The canal travels passed the Cosumnes River, to the closed Rancho Seco Nuclear Generating Station and ends a little south of Twin Cities Road in southeastern Sacramento County, and only relatively minor deliveries of lower American River are made from the canal (the canal now primarily serves as a partial conduit for Sacramento River deliveries to the East Bay Municipal Utility District from the Freeport Regional Water Facility). The Auburn dam project on the NF American River, delayed because of a seismic-safety redesign, has never been completed, largely as a result of later federal cost-sharing requirements.

On June 27, Friends of the River submits 348,000 valid signatures to the Secretary of State, successfully placing a statewide initiative (Proposition 17, the "Stanislaus River Protection Act of 1974") on the ballot. It would have added two segments of the Stanislaus River to the state system (from the bridge at Camp Nine to the Parrot's Ferry Bridge and from 100 yards below Goodwin Dam to the confluence with the San Joaquin River). The initiative is narrowly defeated at the polls in the November election. *The campaign is documented in "Stanislaus: Struggle for a River" by UC Press.*

1975 - Congress passes S. 1506, an omnibus bill by U.S. Senator Metcalf (D-MT), making a portion of the NF American River a federal wild & scenic study river. § 5(a)(28), P.L. 94-486 (S. 1506) makes 40 miles of the State-designated North Fork American a "study" river under §5(a) of the National Wild & Scenic Rivers Act from the high-water mark of the proposed Auburn dam reservoir (Iowa Hill Bridge) to where the North Fork canyon broadens near "The Cedars." It does not specify the Secretary responsible for the study. The study is to be completed within two years of the enactment of S. 1506.

1976 - State Senator Behr (R-Mill Valley) introduces legislation to add a portion of the Stanislaus River to the state system. The bill dies (SB-1482). State Senator Dixon Arnett (R-San Mateo) does the same. The bill also dies.

1978 - Much of the state-designated segment of the North Fork American River is also added to the national wild & scenic rivers system as a §3(a) river through an act of Congress (S. 791, Church, D-Idaho, P.L. 95-625, §706, National Parks and Recreation Act of 1978). Rep. Biz Johnson (D-Roseville) championed the federal bill in the House of Representatives along with U.S. Senator Alan Cranston (D-California) in the U.S. Senate. In comparison to the longer State designation, the federal designation is truncated on both ends: it goes from 1,000 feet upstream of the Iowa Hill Bridge to 0.3 miles upstream of Heath Springs, near The Cedars (the section line between Sections 15 and 16, T16N, R14E), with a more-than-320-acres-per-mile bulge to encompass some of the Gold Run hydraulic mining watershed, consistent with the Forest Service study recommendation for the North Fork designation. The State designation goes from the Iowa Hill Bridge to the source, Needle Lake and Mountain Meadows Lake,

approximately six or seven miles further upstream than the federal designation. (*North Fork American River Waterway Management Plan*, p. 9, figure 4, and concluding maps).

1980 – Assemblyman Doug Bosco (D-Occidental) introduces a measure to amend the state Wild & Scenic Rivers Act. The *Sacramento Bee* reports that his bill “is generally conceded to be the reason Gov. Brown pushed the Carter administration to place portions of five Northern California rivers in the federal Wild and Scenic Rivers Act [sic.] in the final hours of the Carter presidency.”

On July 1, Rep. Robert Matsui (D-Sacramento) introduces a bill (H.R. 7711) to make the state-designated lower American River a national wild & scenic river and to authorize acquisitions in the American River Parkway. Opponents such as Rep. Norman Shumway (R-Stockton) seek to guarantee that the Folsom-South Canal upstream can function as conceived in Reclamation’s 1965 Auburn Folsom-South Unit authorization, with large volumes of the lower American River being diverted south upstream of the lower American River, projects effectively enjoined in *NRDC v. Stamm*. By December, U.S. Senator S.I. Hayakawa (R-California) announces his opposition to federal designation. Matsui’s federal bill is later combined with an Omnibus Wild Rivers Bill (H.R. 8096-Burton), which does not become law.

On July 18, California Governor Edmund G. (Jerry) Brown Jr. petitions Secretary of the Interior Cecil Andrus to include nearly all of the California’s state-designated north-coast and lower American wild & scenic rivers into the national wild and scenic rivers system under §2(a)(ii) of the federal act (16 U.S.C. 1273(a)(ii)) (FR August 7, 1980 p. 52549). Lawsuits in state and federal courts are filed. The federal §2(a)(ii) designation draft EIS is prepared and submitted to the EPA on September 16.

During the summer/fall of 1980, major timber companies and water interests such as the Metropolitan Water District of Southern California lobby the appropriators in the U.S. Congress to include an appropriations rider prohibiting Secretary Andrus from including Governor Brown’s 2(a)(ii) rivers into the federal wild and scenic rivers system. The House will eventually pass such a rider.

In late summer, the California State Senate voted 23–6 for a measure to gut the state wild and scenic river system (perhaps a measure similar to the 1980 Bosco bill). The measure was not enacted into law in this session of the legislature, but it did demonstrate the fragility of the California wild & scenic river system in the legislature.

On September 17, by a 20–19 vote, the House Interior Committee removed the federal wild & scenic river 3(a) designation language for the Stanislaus River from San Francisco Democrat Phil Burton’s Omnibus Wild Rivers Bill (H.R. 8096). The measure had included language from San Jose Democrat Rep. Don Edward’s H.R. 4223, which would have designated a segment (segments?) of the Stanislaus River as a national wild

and scenic river. State wild & scenic river protection for the Stanislaus River had previously failed by ballot initiative and within the legislature. The omnibus bill does not become law.

In the November 4 state election, California voters pass Proposition 8, limiting the power of the legislature to reduce environmental, water rights, or water quality protections in SB 200 (the peripheral canal authorization). It further prevents appropriations for storage in, or direct diversions from, the then existing California wild & scenic rivers to areas in another hydrologic basin without a vote of the people or a two thirds vote of the legislature. However, this protection was double-joined with SB 200. This statute went to referendum, and the Proposition 8 protections were paused until the June 1982 election.

In the November 4, federal election, President Jimmy Carter is defeated by former California Governor Ronald Reagan. Election results in U.S. Senate races would put the Republicans in charge of the U.S. Senate, while the Democrats hold the House of Representatives.

On November 12, the Congress begins a “lame duck” session with a considerable number of appropriations bills left over from before the election. Remaining on the agenda for the state’s timber companies and the Metropolitan Water District of Southern California and other State Water Project contractors were appropriation bill riders to prevent Secretary Andrus from acting on Governor Brown’s petition to add the then California wild & scenic river system to the federal system as 2(a)(ii) rivers.

On November 14, a temporary restraining order is granted to extend the §2(a)(ii) designation draft EIS comment period. The order is dissolved on December 1 for lack of jurisdiction.

On December 5, a state court rules that it did not have the power to require that Governor Brown withdraw his federal designation request (*County of Del Norte v. Brown*, (Super. Ct. Sacramento County, 1981, No. 292019). The court does opine that under state law California would be unable to discharge its management duties contemplated in Section 2(a)(ii) of the National Wild & Scenic Rivers Act. The lawsuit had been filed by such noteworthys as the Association of California Water Agencies, Kern County Water Agency, the Metropolitan Water District of Southern California, and other southern California water districts, plaintiffs against the Secretarial designation/finding that would appear many times in the coming months and years.

On December 5, the *Sacramento Union* reported that, on the previous day, the Senate Appropriations Committee adopted dozens of riders to the proposed continuing resolution, including a hefty pay raise for the Congress and a prohibition on Secretary Andrus findings that would accept the wild & scenic rivers into the federal wild &

scenic river system until the action was approved by the relevant committees of the Congress. The wild & scenic river amendment was offered by the incoming chair of one of the relevant committees, the Senate Energy and Natural Resources Committee, James McClure (R-Idaho). The amendment was offered with the support of U.S. Senator S. I. Hayakawa (D-California). However, when considered on the Senate floor, the outgoing majority Senate Democrats did not wish to displease the incoming majority leader Senator Bob Dole (R-Kansas) with non-germane riders, so at passage the Senate continuing resolution was a “clean bill.” Among the politically troublesome riders, was the rider granting a Congressional pay raise. Back in the House, which has to reconcile its bill with the Senate, then three-term Congressman George Miller (D-Martinez) worked to remove the House rider package. In the end, late in the evening of December 16, just before adjournment, the House accedes to the Senate, and a “clean” bill, without riders (including the rider for a controversial Congressional pay raise), is adopted instead. In the end, no rider prevents Secretary Andrus from acting.

On December 12, the completed final federal §2(a)(ii) designation EIS is filed with the Environmental Protection Agency. (Final Environmental Impact Statement, *Proposed Designation of Five California Rivers in the National Wild and Scenic Rivers System*, U.S.D.I., Heritage Conservation and Recreation Service, December 1980). On December 17, the publication of the final EIS is noticed in the Federal Register. The final EIS found that 1,246 miles of the state-proposed 4,006 miles were eligible for the federal system and included them in the preferred alternative. (The state’s wild & scenic Smith River included every minor tributary – essentially the entire watershed; the federal preferred alternative winnowed the eligible river segments to named tributaries important for anadromous fisheries. Nearly all the excluded river/stream miles were, therefore, on the Smith River system. The rest was a fraction of a mile on the Klamath River: a 3,300 ft. segment below where the state wild and scenic river designation begins (300 ft. downstream of Iron Gate Dam) and 3600 ft. downstream of Iron Gate where the Federal 2(a)(ii) reach begins. This lack of full 2(a)(ii) designation for the state-designated Klamath River was done at the request of the Federal Energy Regulatory Commission.

1981 - Secretary Andrus, by law, is required to wait 30 days from the date of the December 16, 1980, Federal Register notice before accepting Governor Brown’s request. In January of 1981, after the release of the final EIS, plaintiffs seek injunctions from District courts in San Jose and Portland to prevent Secretary Andrus from making the 2(a)(ii) findings and EIS record of decision. The Portland District Court issues a temporary restraining order on January 15 until a January 22/23 hearing can be held on the permanent injunction. The San Jose federal court issues a similar temporary restraining order. On January 16, an emergency request to overturn the temporary restraining orders is filed with the 9th Circuit Court of Appeals. Inauguration Day is on January 20, 1981.

As part of the transition planning for the new Presidential administration, the White House Chief of Staff directs the Carter Administration cabinet secretaries to turn in their resignations by the close of business on January 19, 1981. Secretary Andrus ignored the direction, instead honoring his promise to President Carter to serve for the *entire* Carter term of office. After the close of business at the Interior Department, Secretary Andrus attends a White House farewell party for the cabinet that evening.

On January 19, 3:30 p.m. Pacific Time, the 9th Circuit Court of Appeals reverses the preliminary injunctions on ripeness grounds. While plaintiffs attempt to reach U.S. Supreme Court Associate Justice William Rehnquist to initiate actions to overturn the 9th Circuit ruling, DWR legal staff inform the Administration. Secretary Andrus is reached through the White House switchboard, and he returns to his office (now well after regular office hours) and signs the Record of Decision and findings to support Governor Brown's request for 2(a)(ii) designation. The signing is witnessed by a federal janitor.

On January 21, the day after Inauguration Day, a federal holiday in the capital, Interior staff discover the signed document. The next day James Gaius Watt is confirmed as Secretary of the Interior and sworn in the following day.

The Record of Decision/findings added the rivers in the federal EIS preferred alternative (minus Hardscrabble Creek) to the national wild & scenic rivers system as §2(a)(ii) rivers (FR Vol 46. No. 14, Friday, Jan. 23, 1981, p. 7484).

On February 2, plaintiffs resumed litigation in the District Courts, this time against the merits of the §2(a)(ii) designation. The Portland and San Francisco/San Jose cases are soon consolidated in the Northern District Court for California in the court of Judge Ingram.

On February 19, Secretary of the Interior James Watt announces the abolishment of the Heritage Conservation and Recreation Service (HCERS), the federal agency responsible for the 2(a)(ii) north-coast rivers EIS. HCERS staff scatters.

1981 - The legislature amends the State Act to correct a typographical error. Assemblyman Richard Lehman (D-Fresno) introduces AB-392, a bill to remove the Eel River from the State System. It dies next year? in the Assembly Energy and Natural Resources Committee. Assemblyman Doug Bosco (D-Occidentale) introduces AB-1349, a measure to amend the California Wild & Scenic Rivers Act.

1982 - Proposition 8, passed by the voters in 1980, providing for a two-thirds majority requirement for legislative dedesignation of the then existing state wild & scenic rivers, becomes permanently null and void when voters reject the peripheral canal, Proposition 9 (SB 200), in a statewide referendum on the June ballot.

In response to the §2(a)(ii) designations and to support (or not support) the plaintiff's litigation against the designation, the California Legislature makes changes to the state system, eliminating the mandate for management plans, focusing on the area to be preserved as the river and the land immediately adjacent to the river, eliminating classification by the Resources Agency, and classifying rivers then in the system by statute (AB-1349, Bosco, D-Occidentale). The watershed-level, every-tributary designations for the Smith River system are eliminated, and named major tributaries are substituted (§ 5093.54(c)). Twelve named western Smith River tributaries (Dominie Creek, Rowdy Creek, SF Rowdy Creek, Savoy Creek, Little Mill Creek, Bummer Lake Creek, EF Mill Creek, WB Mill Creek, Rock Creek, Goose Creek, EF Goose Creek, and Mill Creek) are removed from the state system, but the dam prohibition is continued (§ 5093.541) (AB-2214, Bosco, D-Occidentale). The National Wild & Scenic Rivers Act does not contain provisions for removing §2(a)(ii) wild and scenic rivers from the federal system in the event of state de-designation. Another Smith tributary, Hardscrabble Creek, is also removed from the state system to provide for the mining of strategic metals (AB-2214, Bosco, D-Occidentale). It had not been included in the federal system by Secretary Andrus. AB-2214 classifies Smith River tributary Copper Creek and its tributaries as "Recreational." AB-2214 also prohibits any mining activity within a quarter mile of the North Fork of the Smith River that would have an adverse effect on scenic, recreational, fishery, or wildlife values of that waterway.

The Chief of the U.S. Forest Service directs that in the preparation of Forest Land and Resource Plans, Forests shall identify and evaluate rivers potential inclusion in the national wild & scenic rivers system. Forest Plan appeals by 1986 sharpened and clarified the Forest Service's (and, by extension, other federal agency) responsibilities under §5(d) of the National Act to undertake these eligibility and suitability findings, assessments, and recommendations. The existence of such consistent planning responsibilities has considerably enriched a continuing candidate pool and interest in additions to and the management of national wild & scenic rivers.

1983 - With the governorship of George Deukmejian, the state's interest in defending the 2(a)(ii) designation wanes. The Environmental Defense Fund is granted intervenor status in the court proceeding.

The District Court overturns Secretary Andrus's decision to accept Governor Jerry Brown's §2(a)(ii) request (*Cnty. of Del Norte v. U.S.*, 19 ERC 1138 (N.D.Cal. 1983)). A stay of the order is requested by the Environmental Defense Fund and granted pending appeal to Ninth Circuit Court of Appeals.

1984 - Ninth Circuit reverses the District Court decision that overturned the §2(a)(ii) designation (*Cnty of Del Norte v U.S.* 732 F. 2d. 1462 (9th Cir. 1984)). Plaintiffs immediately petition for a Writ of Certiari with the U.S. Supreme Court.

Congress designates large portions (83 miles) of the Tuolumne River upstream of Don Pedro Reservoir as a national wild & scenic river (H.R. 1437, Burton, D-San Francisco - P.L. 98-425).

1985 - U.S. Supreme Court denies Writ of Certiari in the “Andrus decision” case (*Cnty. of Del Norte v. U.S.*, 469 U.S. 1189 (1985)). Litigation against designation ends.

1986 - The National Wild & Scenic Rivers Act is amended (in part) to require federal agencies with lands and rivers designated before 1986 (including 2(a)(ii) rivers) to review boundaries, classifications, and plans within ten years for conformity with the 1986 comprehensive plan requirement in their regular planning process. This amendment does not affect presumption that the principal management responsibility for 2(a)(ii) rivers is the state’s, although the federal land manager retains management responsibilities for federal lands. (*Wilderness Society et. al. v. Tyrell et. al.* 918 F.2d 818 (9th Cir. 1999)).

The State Act is amended to provide for studies of potential additions to the system (§ 5093.547) and to designate portions of the East Carson, West Walker, and McCloud Rivers as potential additions to the system. Provisions to permit and authorize DWR to study dams on the Eel River are repealed. (AB-3101, Sher, D-Palo Alto).

1987 - Large portions of the Kings River upstream of Pine Flat Reservoir (81 miles) are protected by Congress as national wild & scenic rivers or a special management area (H.R. 799, Lehman, D-Fresno, P.L. 100-150)). Portions of the Kings River upstream from the reservoir had been protected from dams by the California Wild & Scenic Rivers Act from 1973 to 1978 (SB-623, Zenovich, D-Fresno). In addition, portions of the Merced (111.5 miles) and Kern Rivers (181 miles) are added to the national wild & scenic river system (H.R. 317, Coehlo, D-Merced - P.L. 100-149 & S. 247, Cranston, D-California - P.L. 100-174). In all three bills, boundaries, classifications, and management plans within the national park portions of the designations is to be accomplished through updates to the park general plans.

1988 - On November 8, 1988, an eleven-mile segment of the Klamath River below the J.C. Boyle Power house and reaching to the Oregon border with California (along with 10 other rivers) is added to the Oregon State Scenic Waterways System with the passage of Ballot Measure #7, a citizen-initiated ballot measure. The Oregon Scenic Waterways Act is a statewide law for river conservation established by popular vote put on the statewide ballot by voters for the general election of 1970 (measure #9).

1989 - In response to studies and recommendations conducted by the Resources Agency, the East Fork Carson from the Hangman’s Bridge crossing of State Route 89 to the Nevada border (§ 5093.54(f)(2)) and the West Fork Walker from its source to the

confluence with Rock Creek near Walker (along with a short segment of Leavitt Creek, Leavitt Falls to the Walker River confluence) are added to the state system (§ 5093.54(f)(1)). New dams, diversions, and reservoirs are prohibited on the McCloud River (from Algoma to the confluence with Huckleberry Creek, and 0.25 mile downstream from the McCloud Dam to the McCloud River Bridge – the latter boundary protecting 5,440 feet of the upper McCloud Arm of a full Shasta Reservoir) and Squaw Valley Creek (from the confluence with Cabin Creek to the confluence with the McCloud River), but the McCloud River is not formally designated as part of the system. The legislation also prohibits departments and agencies of the state (for example, special districts and state agencies) from cooperating with federal, state, or local agencies to undertake projects that could adversely affect the free-flowing status or the wild trout fishery of the McCloud. State agencies are also directed to use existing powers to protect and enhance the fishery. (§ 5093.542) (AB-1200, Sher, D-Palo Alto). Local governments are to use their powers consistent with the policies and provisions of the CAWSRA (§ 5093.561). Among the Act policies are that certain rivers are to be protected in their free-flowing state (§ 5093.50).

1990 – On February 9, 1990, San Joaquin County files water right application #29657 to appropriate up to 620 cubic feet per second and 197,000 acre-feet per year from the South Fork American River. The diversion would take place either at the Folsom South Canal or the South Fork at or near the proposed Salmon Falls dam upstream of Folsom Reservoir. These waters would not be available to flow down to the state and federal wild & scenic lower American River.

In March 1990, the U.S. Bureau of Land Management finds the Klamath River segments from the J.C. Boyle Powerhouse in Oregon to Copco Lake (Reservoir) in California to be eligible and suitable for designation in the national wild & scenic river system. 11 miles are within Oregon; 5.3 miles are within California.

Oakland Superior Court Judge Richard Hodge rules in *EDF et. al. v. EBMUD et. al.* that the East Bay Municipal Utility District is enjoined from diverting lower American River via the Folsom-South Canal under its federal Reclamation contract during times of low flows. The decision is based on the state's Public Trust Doctrine and Wild & Scenic River Act. It is not appealed (*Envntl. Def. Fund v. E. Bay Mun. Util. Dist.*, 5 ERC 1295 (Super. Ct. Alameda County, 1973, No. 425955)).

The Smith River system §2(a)(ii) segments upstream of the National Forest boundary are redesignated by the Congress as §3(a) national wild & scenic rivers (S. 2566, John McCain, R-Arizona - P.L. 101-612). Smith River tributary Hardscrabble Creek, not a §2(a)(ii) river, was added as a §3(a) designated river. The §3(d) wild & scenic river management plan is required to be accomplished within plans for accompanying National Recreation Area (NRA) (S. 2566, P.L. 101-612). The Smith was one of the original state wild & scenic rivers that was subsequently added to the national system

as a §2(a)(ii) wild & scenic river. The federal designations do not change the river's status as a state wild & scenic river. The Smith River and Rowdy Creeks segments outside the exterior boundary of the NRA (the Six Rivers NF) remain §2(a)(ii) rivers. There are special provisions in the Act concerning mining in the North Fork Smith River watershed. (§ 5093.66)

1992 - Legislature makes changes to state forestry provisions of the State Act.

Congress adds 31.5 miles of Sespe Creek, 33 miles of the Sisquoc River, and 19.5 miles of the Big Sur River (H.R. 2566, Lagomarsiono, R-Ojai - P.L. 102-301) and 11 miles of the Merced River (H.R. 2431 102-432, Condit, D-Modesto) to the national wild & scenic rivers system.

1993 - On April 22, 1993, Oregon Governor Barbara Roberts petitions Secretary of the Interior Bruce Babbitt to add the eleven-mile reach of the Klamath River from the J.C. Boyle Powerhouse in Oregon to the California border under section 2(a)(ii) of the National Wild and Scenic Rivers Act.

The State Act is amended to designate Mill, Deer, Antelope, and Big Chico Creeks as potential additions to the system. State studies are initiated. The obsolete dam moratorium on the Kings River is repealed (AB-653, Sher, D-Palo Alto). (In 1987, large portions of the Kings River upstream of Pine Flat Reservoir had been protected by Congress as national wild & scenic rivers or a special management area (H.R. 799, Lehman, D-Fresno, P.L. 100-940).

The U.S. Bureau of Reclamation, in the course of undertaking a study that might recommend a dam at Auburn on the North Fork of the American River, undertakes a National Wild & Scenic Rivers Act §5(d) study and finds many of the potential reservoir inundation zones on the North and Middle Forks of the American River to be eligible for wild & scenic river designation. This may have been Reclamation's first §5(d) study. The upstream state and federal wild & scenic river designations on the NF American River begin immediately upstream of the Auburn dam authorized by the Congress in 1965.

1994 - On September 22, 1994, the Secretary of the Interior adds the eleven-mile reach of the Klamath River immediately upstream of the California/Oregon border to the national wild & scenic rivers system under section 2(a)(ii) of the federal act.

1995 - The National Park Service, U.S. Forest Service, Bureau of Land Management, and the U.S. Fish and Wildlife Service form the Interagency Wild and Scenic Rivers Coordinating Council to improve the administration of wild and scenic rivers. This federal council also can offer help for state wild and scenic river systems.

In response to legislatively mandated studies, dams on Deer and Mill creeks are prohibited, but the creeks are not formally designated (§ 5093.70(a)). The provisions are similar to the 1989 McCloud River provisions (§ 5093.542(b)). The code section containing Mill, Deer, Antelope, and Big Chico Creeks as potential additions to the system is repealed. (AB-1413, Sher, D-Palo Alto).

1999 - The Legislature adds the South Fork Yuba River from Lang Crossing to its confluence with Kentucky Creek below Bridgeport to the state system (§ 5093.54(g)(1)). (SB-496, Sher, D-Palo Alto).

2000 - Sacramento Water Forum Agreement is signed. It established limitation agreements on diversions from the lower American River (within the state system and a 2(a)(ii) national wild & scenic river) and Folsom South Canal for various local water purveyors, in part based on Judge Richard Hodge's ruling in *EDF et. al. v. EBMUD et. al.* Some of these limitations on diversions are later incorporated into water rights permits and EIR mitigation responsibilities.

The expansion of Shasta Reservoir is one of five surface water storage studies recommended in the CALFED Bay-Delta Program (CALFED) Programmatic Environmental Impact Statement/Report (PEIS/R) and Programmatic Record of Decision (ROD) of August 2000. The 1989 McCloud River amendment to the California Wild & Scenic Rivers Act permits DWR to participate in technical and economic studies of the proposed reservoir expansion but otherwise makes the raise illegal (§ 5093.542(b)) and cooperation with the planning and construction of the project with Reclamation by departments and agencies of the state (including special districts) also illegal § 5093.542(c).

2003 - On August 31, 2003, San Joaquin County amends their South Fork American River water right application #29657 to take their diversion at the Freeport diversion facility on the Sacramento River instead of the Folsom South Canal upstream of the designated lower American River. They also reduced their 1990 application diversion amounts down to 350 cfs and 147,000 acre-feet per year. The County would make minor amendments to their application in 2007 and 2014.

Short segments of the Albion (one fourth mile above confluence with Deadman Gulch downstream to the ocean) (§ 5093.54(h)) and Gualala (confluence with north and south forks to the ocean) (§ 5093.54(i)) Rivers are added to the state system by the Legislature in response to a scheme to divert large amounts of water for export to Southern California (AB-1168, Berg, D-Eureka).

2004 - PacifiCorp, the owner of three dams and powerhouses on the Klamath River in California immediately above the boundaries of the state and federally designated Klamath River wild & scenic river (and the J.C. Boyle dam and powerhouse facilities

upstream in Oregon), files to relicense (in part) the four dams with the Federal Energy Regulatory Commission (FERC). Their previous fifty-year license is slated to expire in 2006 and is running on annual licenses at present.

The State Act is amended to require state agencies to sharpen the use their existing powers to protect the free-flowing character and extraordinary values of designated rivers and to clarify that Special Treatment Areas under the Forest Practices Rules are applied to rivers classified as “recreational” or “scenic” as well as those classified as “wild” (SB-904, Chesbro D-Arcata).

On October 25, 2004, H.R. 2828, The “Water Supply, Reliability, and Environmental Improvement Act.” P.L. 108-361, becomes law. §103(d)(1)(A)(i)(I) authorizes the CALFED program (which includes the U.S. Department of the Interior) to conduct planning and feasibility studies for the expansion of Shasta Reservoir. The expansion would violate the California Wild & Scenic Rivers Act (§ 5093.542(b)). The State Act, with certain narrow exceptions for the CA Department of Water Resources, also prohibits agencies of the state from cooperating in the planning and construction of the expansion with the federal government (§ 5093.542(c)).

2005 - The Legislature adds portions of Cache Creek to the state system (AB-1328, Wolk D-Davis). The designation on Cache Creek is from one-fourth mile below Cache Creek Dam to Camp Haswell. On the North Fork Cache Creek, the designation extends from the Highway 20 bridge to the confluence with the main stem (§ 5093.54(j)(1)). Other special provisions apply.

2006 - The Congress adds 19 miles of the Black Butte River and 2 miles of its tributary, Cold Creek, to the national wild & scenic rivers system (H.R. 233, Thompson, D-St. Helena - P.L. 109-362).

2007 - FERC issues a final EIS with a preferred alternative of relicensing the Klamath River Hydroelectric Project, including for dams and associated powerhouses among and upstream of various Klamath River state and federal wild & scenic river segments.

2008 - The State Water Resources Control Board revokes the U.S. Bureau of Reclamation’s water rights for the Auburn Dam. As authorized in 1965, the dam and the downstream Folsom-South Canal would have diverted a million acre-feet annually upstream of the state and federally designated lower American River. The dam would have inundated river reaches that Reclamation had found to be eligible for national wild and scenic river status in 1993. The dam remains a federally authorized but unconstructed federal facility that has likely exceeded its authorized cost ceiling.

2009 - The Legislature adopts the American River Parkway Plan, the wild & scenic river management plan for the Lower American River prepared by Sacramento County

(AB-889, Jones, D-Sacramento). In addition to being a detailed plan, the plan includes a wild & scenic river corridor that includes the boundaries of adjacent land areas (the parkway) as envisioned in the 1972 State Act and redocuments the river's extraordinary values.

The Congress adds 19.1 miles of the Owens River Headwaters, 21.5 miles of Cottonwood Creek, 26.3 miles of Amargosa River, 10.2 miles of the North Fork San Jacinto River, 3.5 miles of Fuller Mill Creek, 8.1 miles of Palm Canyon Creek, 9.8 miles of Bautista Creek, and 7.3 miles of Piru Creek to the national wild & scenic rivers system (H.R. 146, Rush Holt, D-New Jersey – P.L. 111-11).

2010 – On March 5, 2010, PacifiCorp files the Klamath Hydroelectric Settlement Agreement (KHSA) with the Federal Energy Regulatory Commission. Settling parties included the licensee, the states of Oregon and California, federal agencies, some relevant tribes and counties, environmental and fishing groups, and irrigators in Reclamation's Klamath Basin Project. The agreement proposed to seek Congressional authorization to transfer ownership of PacifiCorp's four hydroelectric dams and related facilities around the California/Oregon to a dam-removal entity, probably the Department of the Interior. The Agreement proposed that FERC and state water quality certification agencies would put the relicensing proceeding in abeyance. Congress would choose not to ratify the agreement.

On October 19, 2010, the State Water Resources Control Board Division of Water Rights cancels San Joaquin County's Application 29657 to divert water from the Freeport facility on the Sacramento River from the South Fork of the American River (the latter location upstream of the Lower American River state and federal national scenic river).

2011 – The Freeport Regional Water Facility is completed, an East Bay Municipal Utility District (EBMUD) and Sacramento County diversion project on the Sacramento River below its confluence with the American River. The diversion facility enables EBMUD to take deliveries under its revised Reclamation contract (or other contracts) downstream of the state and federal wild & scenic lower American River. Sacramento County is a partner in the facility. EBMUD takes its first deliveries here in 2014.

On June 10, 2011, the State Water Resources Control Board, on reconsideration, reinstates San Joaquin County's application for a South Fork American River water diversion right (Application 29657).

2012 – In June, the U.S. House of Representatives passes H.R. 2578 (Denham, R-Modesto), a measure, in part, to de-designate a portion of the Merced national wild and scenic river. The measure was intended to allow the Merced Irrigation District to expand McClure Reservoir onto a protected river reach of the Merced. If enacted into law, it would have been the first time a national wild and scenic river would be de-

designated for the purposes of putting a reservoir on it. H.R. 2578 was not taken up by the U.S. Senate.

2013 - On April 4, 2013, Secretary of the Interior Ken Salazar determines that removal of the four KHSA dams and associated powerhouses on the Klamath River near the California/Oregon border (Iron Gate, Copco 1 & 2, and J.C. Boyle) is in the public interest. These dams and associated facilities are upstream and among various Klamath River segments in state and federal wild and scenic river systems. The determination under the KHSA is necessary for the Department of the Interior to act as a dam-removal agency or accept transfer of the Pacific Corps dams to the Department.

2014 - State Senator Loni Hancock (D-Berkeley) introduces legislation to add portions of the North Fork and main stem Mokelumne River upstream of Pardee Reservoir to the state system. The bill dies in the Assembly Appropriations Committee (SB-1199) after being approved by the California State Senate.

In February, the U.S. House of Representatives passes H.R. 3964 (Valadao, R-Hanford), a measure, in part, to dedesignate a portion of the Merced national wild and scenic river. This provision adopted the earlier de-designation language of H.R. 934 (McClintock, R-Elk Grove). H.R. 3964 was not taken up by the U.S. Senate.

California voters approve Proposition 1, the California Water Bond. Chapter 8 sets aside \$2.7 billion in California taxpayer funds for water storage projects. The Act does prohibit storage facilities in conflict with the state or federal wild & scenic rivers acts (§79710(e)).

In December 2014, the U.S. Bureau of Reclamation (Reclamation) completes its final EIS for raising Shasta Dam. A preferred alternative is selected, an 18.5-foot dam raise resulting in a 20.5-foot higher reservoir. They concede that “[t]he impact [of the dam-raise alternatives] will be significant” on the free-flowing characteristics of the McCloud River above current gross pool and periodically when the reservoir is above the bridge but below gross pool—and “in conflict with the PRC” (Public Resources Code, California Wild and Scenic Rivers Act chapter) (*SLWRI FEIS 25-40*). There is no recommended alternative for the project.

2015 - Assemblyman Frank Bigelow (R-O’Neals) introduces, the Legislature amends and passes, and Gov. Jerry Brown signs legislation (AB-142, Bigelow), to add, as potential additions to the state system, sections of 37 miles of the North Fork and main stem of the Mokelumne River from Salt Springs Dam on the North Fork downstream to a point seventeen feet of vertical elevation upstream of the gross (normal/full) pool of Pardee Reservoir on the main stem, with gaps where PG&E hydroelectric facilities and afterbays and forebays exist on the river and to require the state to study the sections’ suitability for designation. The bill provides temporary wild & scenic-comparable

protections for the river that would last until the end of 2021 or until the recommendations from the study are implemented, whichever occurs first. There was little formal opposition to the bill after it passed its first committee.

In July 2015, Reclamation releases its final feasibility report for the SLWRI (Shasta Reservoir expansion project). It asserts that the National Economic Development (NED) plan (one of the 18.5'-foot dam-raise alternatives) is feasible from technical, environmental, economic, and financial perspectives. The SLWRI feasibility report has no recommended alternative because of unresolved issues. It also reports that the California Wild & Scenic Rivers Act prohibits the state from participation in the construction and planning of the project (other than technical and economic studies) – here an incomplete characterization of the statute.

2016 - In recognition of the failure of the U.S. Congress to adopt the Klamath Hydroelectric Settlement Agreement (KHSA), the settling parties amend the agreement to propose a FERC license transfer and surrender process to remove the four dams and associated Klamath River facilities previously proposed in 2010 for removal. The removal would be accomplished by a non-federal entity (presently the Klamath River Renewal Corporation).

Congress enacts the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN), to revitalize the dam-building and water supply mission of the U.S. Bureau of Reclamation. Among the projects that would be considered WIIN projects and receive planning or pre-construction engineering and design funds would be the proposed Temperance Flat dam on the San Joaquin River Gorge (recommended by the Bureau of Land Management for national wild & scenic river status) and the proposed Shasta Reservoir expansion onto the McCloud River protected by the California Wild & Scenic Rivers Act. The WIIN requires compliance with state law (WIIN §§ 4007(j) & 4012, also referring to existing federal law, including Section 8 of the Reclamation Act and CVPIA §3406(a) and (b)).

2017 - A.B. 975 is introduced by Assemblymember Laura Friedman (D-Glendale). It is a measure to expand and clarify wild & scenic river extraordinary values and re-include the river corridor concept in the state system. The bill meets wide opposition led by the California Forestry Association, passes the Assembly Natural Resources Committee, but is shelved (moved to the inactive file).

2018 - In January the California Natural Resources Agency publishes a draft wild and scenic river study report for the North Fork and main stem of the Mokelumne River, as required by AB-142 in 2015. It recommends designation and proposes classification for five river segments from 0.5 miles downstream of Salt Springs Dam to a point upstream of Pardee Reservoir (leaving gaps for intervening small dams and small reservoirs and seventeen feet of vertical elevation of river upstream of Pardee Reservoir not

recommended for designation). Public hearings are held, and the final study report released in mid-April. With broad support and no formal opposition, the recommendations were taken up in a budget trailer bill, SB 854, passed by the Assembly and Senate on June 14 and signed into law by Gov. Jerry Brown on June 27 (5093.54(k)(1)). As traditional, the measure also repeals the provisions of AB 142, the 2015 study Mokelumne River bill so that dated “potential addition” (study) language no longer clutters the code. The measure also corrected a typographical error in §5093.546.

AB 2975 (Friedman, D-Glendale) is introduced. It would include in the California wild and scenic river system any national wild and scenic river not already in the California system if Congress de-designates such river or the Congress or the President by statute or executive order weakens the protections in the National Wild and Scenic Rivers Act enjoyed by these rivers from adverse effects of water resources projects. Amendments on the Assembly floor make the Secretarial designation discretionary, applies the statute only to national wild and scenic rivers designated before January 1, 2018, and sunsets such Secretarial designations and the power to do so on December 31, 2025. Passed out of the Assembly on May 31. Passes the Senate on August 9, 2018. Signed by Governor Jerry Brown on August 27, 2018 (§5093.71).

In January, under authority of the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN), the Trump Administration issued a “Secretarial Determination for Commencement of Construction” regarding the Shasta Dam raise and proposed to sign up cost-sharing partners for the Shasta Dam raise (the raise is illegal under provisions of the California Wild and Scenic Rivers Act) and begin construction in 2019. WIIN projects are required to comply with state and federal law. The Administration does not notify Congress that such construction would be out of compliance with these WIIN provisions, although, as noted earlier in this chronology, the U.S. Bureau of Reclamation’s 2015 final EIS determined that the project would be “in conflict” with state law.

In February, the Board of Directors of the Westlands Water District “authorize the General Manager or his designee to submit a request to the Secretary of the Interior for the enlargement of Shasta Dam and Reservoir, indicating a willingness to potentially share the costs of the enlargement.” On March 9, the San Luis and Delta Mendota Water Authority (SLDMWA) board of directors authorized staff to send a letter to Reclamation stating the following, in part, “the Water Authority is willing to consider becoming a local partner, entering into an MOU and ultimately a formal agreement for the sharing of costs for the Shasta Dam and Reservoir Enlargement.”

In March, House of Representatives Majority Leader Kevin McCarthy (R-Bakersfield) attempts to insert a rider in the federal FY 2019 Omnibus Appropriations bill exempting Reclamation from the provisions of the WIIN waiving non-federal cost-sharing requirements for the Shasta Dam raise. California Natural Resources Secretary Laird

objects, noting that “the Shasta Dam enlargement project would violate California law due to the adverse impacts that project may have on the McCloud River and its fishery.” There are successful objections from the Democratic Congressional leadership. However, the FY 2019 Omnibus Appropriations bill provides Reclamation \$20 million in pre-construction design funds (and funds the final EIS for the Temperance Flat Dam on the San Joaquin River Gorge, where the Bureau of Land Management has recommended the river be added to the national wild and scenic rivers system).

Also in March, NRDC, Friends of the River, Defenders of Wildlife, Sierra Club California, Golden Gate Salmon Association, the Bay Institute, the Pacific Coast Association of Fishermen’s Associations, and the Institute for Fisheries Research send SLDMWA a letter stating that the “proposed cooperation with the Bureau of Reclamation (‘Reclamation’) regarding the expansion of Shasta Dam violates California law” and requests the Authority “notify Reclamation that SLDMWA will not cooperate or provide any assistance with Bureau’s proposal to raise Shasta Dam.”

In April in a Fresno Bee op. ed., the Authority disputes California Natural Resources Secretary Laird and the conservation and fishery groups’ conclusion that the dam raise would violate the California Wild and Scenic Rivers Act.

In August, it was learned that Interior reports that they have signed a cost-sharing agreement in principle with the Westlands Water District for the proposed Shasta Dam raise (they had not, although they had signed two earlier agreements that had expired). Interior also reports that it is actively working with stakeholders to identify cost-sharing partners and alternative sources of funding.

On November 30, 2018, the Westlands Water District becomes the lead agency for its Shasta Dam Raise Project environmental impact report (EIR). It holds a well-attended scoping meeting in December in Redding. Comments from the public and state agencies raise legal issues about the participation of Westlands in the project.

2019 – On May 13, 2019, in separate lawsuits, the California Attorney General, representing the people of California, and Friends of the River et al. (Friends of the River, Golden Gate Salmon Association, Pacific Coast Fishermen’s Association, Institute for Fisheries Resources, Sierra Club, Defenders of Wildlife, and the Natural Resources Defense Council), represented by Earthjustice, file complaints against Westlands. On June 12, 2019, the California Attorney General sought a preliminary injunction against Westlands’ continued violations of the California Wild & Scenic Rivers Act, including its preparation of an EIR. On June 20, 2019, the North Coast Rivers Alliance and the San Francisco Bay Crab Boat Owners Association, represented by the law office of Stephen Volker, filed a complaint against Westlands Water District for violation of the California Wild & Scenic Rivers Act, the Public Trust Doctrine, and the Delta Reform Act. On July 29, the Shasta County Superior Court granted a preliminary injunction against the

EIR or other project planning actions. On November 8, 2019, the parties announced a tentative settlement that would ask the court to forbid Westlands from initiating an EIR, signing a cost-sharing agreement with Reclamation, or acquiring any real property to facilitate the reservoir expansion – to the extent that this would violate the California Wild & Scenic Rivers Act, a matter disputed by Westlands. On November 20, 2019, the court accepted the settlement.

2019 – On February 4, 2020, House Minority Leader McCarthy (R-Bakersfield) announces a Secretarial “additional distribution of funding” for FY 2020 of \$8 million for pre-construction engineering and design for the Shasta Dam raise.

The Congress adds 7.1 miles of Surprise Canyon Creek, 20 miles of Deep Creek, 13.5 miles of Holcome Creek, and 28.1 miles of the Whitewater River to the national wild & scenic rivers system and adds 3.4 miles to the Amargosa River national wild & scenic river (S. 47, Lisa Murkowski, R-Alaska – P.L. 116-9).

2020 – On February 18, 2020, Secretary of the Interior David Bernhardt announced that Reclamation was making progress daily on the Shasta Dam Reservoir Expansion Project (SDREP) (not mentioning that it would inundate a portion of the McCloud River protected by the CA Wild & Scenic Rivers Act) and to expect an announcement shortly.

On August 6, 2020, Reclamation issues a draft supplemental environmental impact statement (DSEIS) for the SLWRI. The purpose of the DSEIS is to provide Reclamation with a Clean Water Act 404(r) exemption from certain state water quality permits and to omit some statements in Chapter 25 of the SLWRI that the dam raise was in conflict with state law. As part of that latter effort, Reclamation also appeared to adopt an aberrant reading of the California Wild & Scenic Rivers Act that the statute’s language protecting the McCloud River did not apply to their proposed Shasta Dam raise.

The draft supplemental drew comments from the State Water Resources Control Board that the state’s wild and scenic rivers act did, indeed, require that state agencies not provide required permits and other approvals for the dam raise project. The Board also reminded Reclamation that the 404(r) exemption sought in the supplemental EIS does not apply to all needed state permits, including a change in Reclamation’s CVP water rights permits or state Porter-Cologne Act water quality permits. The California Department of Fish & Game provide some considerable discussion correcting Reclamation’s misunderstandings about the “Act” and re-emphasized their conclusion that “[t]he Department finds this project’s impacts are in conflict with California Public Resources Code section 5093.542.” The California Attorney General’s comments also emphasized this conflict. Environmental groups also offered critical comments. They asked for a public update of the 2014–2015-era SLWRI Feasibility Report. Environmental groups also surfaced redacted internal but not final Reclamation documents obtained under the Freedom of Information Act of a 2019 Reclamation

analysis that suggested that Shasta Dam required seismic upgrade work that would delay the dam-raise construction start to 2028.

Reclamation announces the completion of the Final Supplemental EIS on November 19, 2020. The Supplemental FEIS did not favorably respond to state agency or environmental group comments.

In December 2020, E&E News reports the U.S. House of Representatives Minority Leader Kevin McCarthy (R-Bakersfield) was attempting to hold the FY 2020/21 omnibus appropriations bill hostage for moving Reclamation's Shasta Dam and Reservoir Expansion Project (SDREP) forward. That was apparently not successful, and the bill, instead, prohibited funds from being expended on construction. In a December 20, 2020, post-omnibus-bill-passage webpage, Reclamation complained that "[d]espite previously approving \$20 million, Democratic leaders in Congress blocked \$115 million in additional requested funding for this project, one of the smartest and most cost-effective opportunities California has to create additional water storage."

On December 16, 2020, the Federal Energy Regulatory Commission issues a notice for application of surrender of license of the four KHSA PacifiCorps dams.

2021- Reclamation "transmitted" its Shasta Dam raise supplemental FEIS to the ranking member of the Subcommittee on Water Oceans, and Wildlife of the House Committee on Natural Resources, Rep. Tom McClintock (R-Elk Grove), on January 12, 2021. The transmittal letter notes that "Reclamation determined that it was appropriate and necessary to provide supplemental analysis in order to proceed with the SLWRI under the authority of the Water Infrastructure Improvements for the Nation Act (P.L. 114-322), Section 4007." The transmittal letter is silent on whether there had been a Secretarial feasibility determination letter before January 1, 2021, a determination that would be necessary for the project to be undertaken under the authority of the WIIN. (However, a January 28, 2021, Congressional Research Service memo did include the project on the list of feasible projects, implying a Secretarial determination.) The Reclamation transmittal letter did not describe how the Secretary's apparent 2018 WIIN "determination for commencement of construction" had been undertaken since it was contrary to WIIN statutory requirements.

In early 2021, Rep. Salud Carbajal (D-Santa Barbara) reintroduces legislation to protect 158 miles of Wild & Scenic Rivers and 289,000 acres of wilderness in the Central Coast region. Rep. Judy Chu (D-Monterey Park) reintroduces legislation to protect 45.5 miles of Wild & Scenic Rivers and 31,000 acres of wilderness in the San Gabriel Mountains (H.R. 693). Rep. Jared Huffman (D-San Rafael) reintroduces the Northwest California Wilderness, Recreation, and Working Forests Act with 684.5 miles of wild and scenic rivers (H.R. 878). These bills to add rivers to the national wild & scenic river system are the same as those introduced in the previous Congress. On February 26, 2021, these

bills, consolidated in the “The Protecting America’s Wilderness and Public Lands Act,” are passed by the House of Representatives. Subsequently, California U.S. Senator Padilla introduced a companion measure in the U.S. Senate.

As of the day after Inauguration Day 2021, Reclamation’s website had not announced the issuance of a Record of Decision for the SLWRI environmental impact statements, a Secretarial feasibility determination, or the status of the Secretarial “determination for commencement of construction.”

On February 23, 2021, the Federal Energy Regulatory Commission (FERC) issues a four-year renewal of a preliminary permit to GreenGenStorage, LLC, for a pumped-storage project concept between PG&E’s Upper or Lower Bear Reservoirs and Salt Springs Reservoir. Salt Springs Reservoir is located upstream of segments of the state-designated North Fork Mokelumne River. The previous preliminary permit was issued in early 2018. Preliminary permits give their recipients priority over subsequent, competing license applications.

On March 9, 2021, San Joaquin County and the City of Stockton informed the Administrative Hearings Office of the State Water Resources Control Board that “[i]t is our intention to further investigate use of the South Folsom Canal as the original and cheaper alternative for taking the American River water right under Application 29657;” This would be a diversion upstream of a designated state and federal wild and scenic river. This announcement was prompted by the renewed attention to this application because of the pending Administrative Hearing Office hearing on a proposed cancellation of the application. The hearing was held for September 29, 2021. Friends of the River put on a witness and a case in chief arguing that cancellation was required by the Water Code. The California Sportfishing Protection Alliance was also an active party in the hearing and submitted a closing brief.

On May 4, Oregon’s U.S. Senators Merkley and Wyden introduced a bill to add 58,000 acres of the North Fork Smith watershed in Oregon to the existing Smith River National Recreation Area (NRA) in California. The bill would also contain 74 miles of new wild & scenic river designations and a mining withdrawal. California’s U.S. Senators Feinstein and Padilla are cosponsors. The bill is similar to the measure introduced in the previous Congress that did not pass.

On November 15, 2021, the Infrastructure Investment and Jobs Act, HR 3684, Title IX (Western Water Infrastructure), the 2021 bipartisan infrastructure bill was signed by the President (P.L. 117-58). The measure continues many Western water projects features of the WIIN but prohibits construction funding for the expansion of Shasta Reservoir, a project that would inundate a portion of the McCloud River protected by the California Wild & Scenic Rivers Act.

2022 - On May 27 the State Water Resources Control Board Administrative Hearings Office forwards to the Board its proposed order cancelling Application #29657 to divert South Fork American River water to San Joaquin County.

On June 7, 2022, GreenGenStorage on submits its Pre-Application Document (PAD) to FERC for its proposed pumped storage project upstream of the Mokelumne River state wild and scenic river.