SOUTH DELTA WATER AGENCY

4255 PACIFIC AVENUE, SUITE 2
STOCKTON, CALIFORNIA 95207
TELEPHONE (209) 956-0150
FAX (209) 956-0154
E-MAIL Jherrlaw@aol.com

Directors:
Jerry Robinson, Chairman
Robert K. Ferguson, Vice-Chairman
Alex Hildebrand, Secretary
Natalino Bacchetti
Jack Alvarez

Counsel & Manager
John Herrick

September 15, 2003

Via Fax (916) 227-7554

Ms. Delores Brown
Department of Water Resources
3251 S Street
Sacramento, CA 95816

Via Fax (916) 978-5114

Mr. Sammie Cervantes
U. S. Bureau of Reclamation
2800 Cottage Way MP-140
Sacramento, CA 95825

Re: Comments to EWA DEIR\EIS

Dear Ms. Brown and Mr. Cervantes:

Introduction

The DEIS/EIR is seriously inadequate and misleading in many respects. This imbalance appears to result from focusing on export and fishery issues to a degree that results in inadequate thought and examination of impacts on non-project water uses. These include the adverse consequences of shifting stream flow from summer to other months, and of ignoring the cumulative effect of EWA water acquisitions and water management on the overall efficient use of the State's water supply, and of ignoring compliance with the San Joaquin River Protection and Delta Protection statutes, San Joaquin River Protection Act, Delta Protection Statutes, Area of Origin Statues, CVPIA restrictions, and other California water law limitations.

Of particular importance to SDWA is how the DEIR/EIS examines the effect of EWA acquisitions on the Merced tributary's water supply while ignoring the associated effect on the San Joaquin main stem flow and quality, and also ignoring the resulting increased burden on the seriously over-committed New Melones facility. This and other inadequacies are discussed below.

1) The impacts of EWA acquisitions and operations must be addressed as impacts that exacerbate existing impacts by project operations including time of flow shifts by b(2) and b(3) releases. The EWA flow shifts can not just be dismissed as minor increases.

2) The State's Water Code 1000 4.6 (b)2 requires that the Department of Water Resources must propose measures that would provide a sustainable water supply to replace the unsustainable overdraft of groundwater. The DEIR/EIS proposes that Merced ID sell surface water to EWA and shift to groundwater for its own needs. See pages 2-46, and elsewhere. If this shift causes or exacerbates groundwater overdraft it is counter to the Water code.

3) Page 6-109 states that Merced ID will construct "additional recharge facilities" to protect the groundwater basin. Water for this recharge must necessarily be surface water that would otherwise come down the river at some point in time. Even if groundwater were recharged by percolation, the refill water would be provided by a reduction in surface water supply.

4) Pages 5-89 through 91 claim that as a result of Merced purchases the October-November flow in the main stem of the San Joaquin River will be increased by more than 200 cfs without any reduction in flow at other times! There is no explanation of where the water for this net increase in normal flow would come from.

5) The same lack of explanation would apply to EWA water taken from storage without replacement by groundwater, see page 2-36. Water will not come down the river if it is used to refill either groundwater or surface storage.

6) Merced ID's pre-1914 water rights are for water for its own use within its boundaries.

7) Whenever Merced water or other upstream water (page 2-17) is used for refill instead of river flow, it increases the burden on New Melones for water releases to meet the Vernalis salinity standard unless the standard is being met with natural flows. The yield of New Melones is already seriously over-committed.

8) The average salinity at Vernalis per page 5-25 is almost meaningless. It is difficult to accept the allegation that the maximum salinity at Vernalis and upstream of the inflow of Stanislaus water quality releases is not available. Also, table 5-27 only addresses an unrepresentative wet sequence of years.

9) The impacts of EWA on water quality in South Delta channels must be addressed as cumulative with existing impacts by CVP and SWP. The CVP imports very large loads of salt into the San Joaquin watershed via the Delta Mendota Canal, DMC. Several hundred thousand tons of this imported salt then drains into the river in most years from the wetlands and agricultural lands that are served with DMC water. Shifts in time of river flow from summer or other low flow periods to spring and fall exacerbate the impact of this salt load on salinity in the main stem of the river and in South Delta channels.

10) Page 4-13 alleges that local agricultural drainage causes salinity problems in the South Delta. It should be explained that the salt load in local drainage is only there because of the salt load in the river that derives from salt imported by the CVP to the west side of the San Joaquin watershed. It should also be explained that high salinity and inadequate dissolved oxygen in South Delta channels result because some channel reaches are made stagnant by inadequate river inflow combined with a lack of circulation resulting from the distortion of flows due to export pumping.

11) The DEIR/EIS fails to address a much more water efficient way to increase flows for fishery benefit in the main stem of the river and at Vernalis. Whenever export rates are limited for fishery protection or because of dry years these river flows can be provided at low cost and without any new facilities by circulating Delta water down the DMC then into the river via the Newman Wasteway, and thence back down the river to the Delta for recapture of an equivalent amount of water. Refer to DWR report dated January, 1998, and to the SWRCB mandate that this water efficient proposal should be considered in place of the use of tributary water to provide Vernalis fishery flows such as was discussed on page 2-17, first bullet.

12) Page 4-43 suggests that reductions in water levels in the South Delta are a minor problem. However, this impact must be considered as a cumulative impact. Furthermore, the reduction in water level is caused not only by increased export rates as discussed on page 4-43 but also by the reduction in summer flow at Vernalis discussed above.

13) The discussion of bromides on page 5-30 acknowledges that bromides in South Delta channels derive largely from bromides which come from the San Francisco Bay and are then exported via the DMC and are therefore included in west side drainage into the river. These loads of bromides in the DMC are influenced by the extent to which Sacramento water flows across the Delta in eastern channels versus western Delta channels. This is affected by water

management such as the Delta Cross Channel closure discussed on page 5-30. These effects on bromide loads should be addressed.

14) Neither b(2) nor b(3) releases should be made from the Stanislaus watershed per page 2-23. The entire yield of New Melones was allocated to various uses when New Melones was built. First, the allocation for releases to dilute CVP salt (see item 10 above) to comply with the Vernalis salinity standard proved to be seriously inadequate to meet that SWRCB requirement. Then the allocation for fish flows was very substantially increased by a 1987 agreement between the Bureau of Reclamation and the Department of Fish and Game. Consequently the water yield of New Melones was seriously over-committed. The CVP-IA then required that the Bureau release 800,000 acre feet of water, known as b(2) water, for fishery benefit, but did not stipulated from which reservoirs the releases should be made. The Bureau should not release b(2) water from New Melones because New Melones fish releases were already substantially increased by the 1987 agreement, and because the reservoir yield is already substantially over-committed. The Bureau should also not acquire what is called b(3) water for the same reason.

15) The document identifies settlement contractors of the Bureau of Reclamation as being potential sellers. However, it then goes on to talk about purchasing water resulting from groundwater substitution. CVPIA Section 3403(f) defines "Central Valley Project water" as "all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the Central Valley Project and in accordance with the terms and conditions of water rights acquired pursuant to California law." Such a definition includes not only all contractors of the CVP but also includes all settlement contractors of the project notwithstanding recent Bureau interpretations.

CVPIA goes on to limit transfers of CVP water to only that water which would have been "consumptively used or irretrievably lost to beneficial use . . ." (CVPIA Section 3405(a)(1)(I)). Clearly, this means the proposed EWA purchases from groundwater substitution by settlement contractors is illegal. Even with the Bureau's incorrect interpretation of what CVP water is, why would it embark upon a program to purchase "paper water" from one set of suppliers when the federal statute precludes such purchases from other suppliers?

Similarly under State law, California Water Code Section 1726(e) requires that transfers which require permit changes shall be limited to water that "would have been consumptively used or stored pursuant to the (sellers') permit or license . . ." This statute also clearly sets forth a State policy to limit transfers so that they do not increase the total consumption of water and do not result in a reallocation of a shortage. Any transferor therefore that refills its reservoir or substitutes groundwater to make up for the transferred water is violating the statute.

16) The document on page 4-12 incorrectly suggests that Sacramento River water only reaches the South Delta pursuant to the operation of the export pumps. The tidal action in the Delta in combination with the Sacramento Rivers greater flow results in Sacramento River water reaching all Delta channels under normal circumstances. Because of this, Delta channels are riparian to the rivers on both the Sacramento and San Joaquin system.

17) The document incorrectly describes the Response Plan for JPOD under D-1641. The plan does identify water levels at three locations as being acceptable for JPOD operations, but that does not mean that those levels provide protection in all instances. [The document should note that SDWA objected to approval of this and prior response plans due to ongoing violations of the plan.] Of greatest concern is the fact that for the past two years the specified water levels have been generally met during the summer months but that a catastrophic decrease in water levels on Tom Paine Slough occurred in the last two years. Given this significant lack of water height, there is currently no basis in fact for accepting the specified water level heights as providing protection.

The Response Plan also states that an adverse effect is defined as a decrease in the low tide level. To the contrary though, it appears that export operations which decrease the height and duration of the high tide may be the likely cause of the problem on Tom Paine Slough.

18) Section 4.2.4 of the document states that in the absence of EWA, actions to protect fisheries would only be in response to ESQ take limits. This is of course untrue, such things as the AFRP, CVPIA, SWRCB decisions and orders, as well as other State and Federal Laws require numerous actions be undertaken to protect, maintain, and enhance fisheries.

19) The document incorrectly suggests that carriage water accompanying EWA releases increases Delta outflow. Although such a situation is possible, the carriage water calculation is an attempt to offset system losses in order to result in no change in Delta outflow resulting from the transfer/export.

20) The document states that increased export pumping would not exacerbate the circulation problems in the South Delta and thus water quality and therefore does not evaluate this impact. To the contrary, increased export pumping have and will continue to decrease the height and duration of high tides resulting in insufficient water being trapped behind the tidal barriers. This situation results in null zones and an exacerbation of the poor water quality condition. Last year, a diverter off Grant Line Canal had significant crop damage and was forced to remove orchards because of this adverse effect on circulation resulting from increased exports.

21) It is not clear to what extent the document examines actual impacts to water levels in the South Delta as it references charts which represent "monthly mean averages." The charts

given show a misleading picture of the situation. Included herewith are examples of DWR modeling for recent JPOD operations. As can be seen, the measuring point near Coney Island shows significantly lower levels than contained in the DEIR/EIS.

22) With regard to mitigation measures for the effects on South Delta Water Levels, the document refers to temporary pumps and dredging. The dredging of a channel has no effect on the height of the water level in light of the tidal action and incoming flows. Thus, dredging in any particular location would not affect the situation where a pump or syphon is not low enough to divert water.

Temporary pumps have been used in certain circumstances to substitute for adversely impacted siphons; however, such a general reference cannot be considered adequate mitigation under CEQA or NEPA. Water levels in Middle River are sometimes nonexistent at times when barriers are inoperative or removed and therefore cannot be mitigated by a temporary pump. Similarly, there is no permit in place or application thereof in progress which would allow temporary pumps to put water over the temporary barriers to improve water levels upstream.

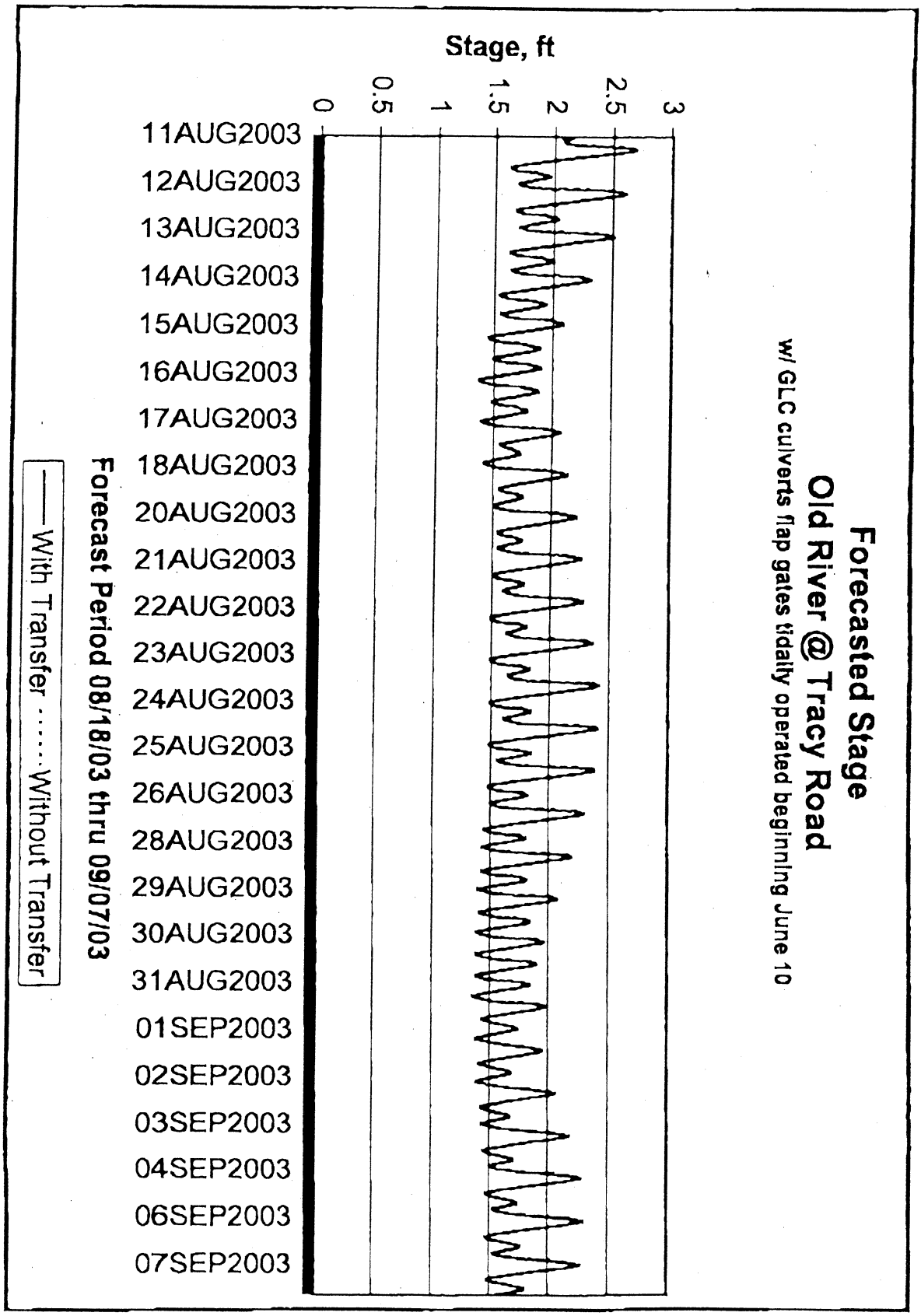
23) The document's examination of water quality does not seem to reference the existing permit terms and conditions of the projects which require a 0.7/1.0 EC at Vernalis and three other South Delta measuring points.

It is incumbent upon those persons proposing and eventually approving the project to explain the purpose and operation of the EWA. In large part, EWA purchases are to replace water that would have been exported but was lost due to reductions in export operations to benefit fisheries. That replacement water is then by definition delivered to those export contractors who would have received it absent the decrease in exports for fisheries. The purpose of EWA is to insure that deliveries to the export contractors do not decrease as a result of the fishery actions. However, EWA then turns around and repurchases that same water from the export contractors at an elevated price. In short, the project is to pay the export contractors to transfer water to the projects so that they can continue to deliver that same water to the export contractors. This raises serious questions with regards to the propriety and legality of such a program which results in an export contractor buying water from the SWP at less that $100 per acre foot and then reselling it back to the SWP (for future delivery to the same seller) in excessive of $400 per acre-foot. This situation also raises concerns with regard to Water Code sections prohibiting the profit on the transfer of water rights and area of origin laws.

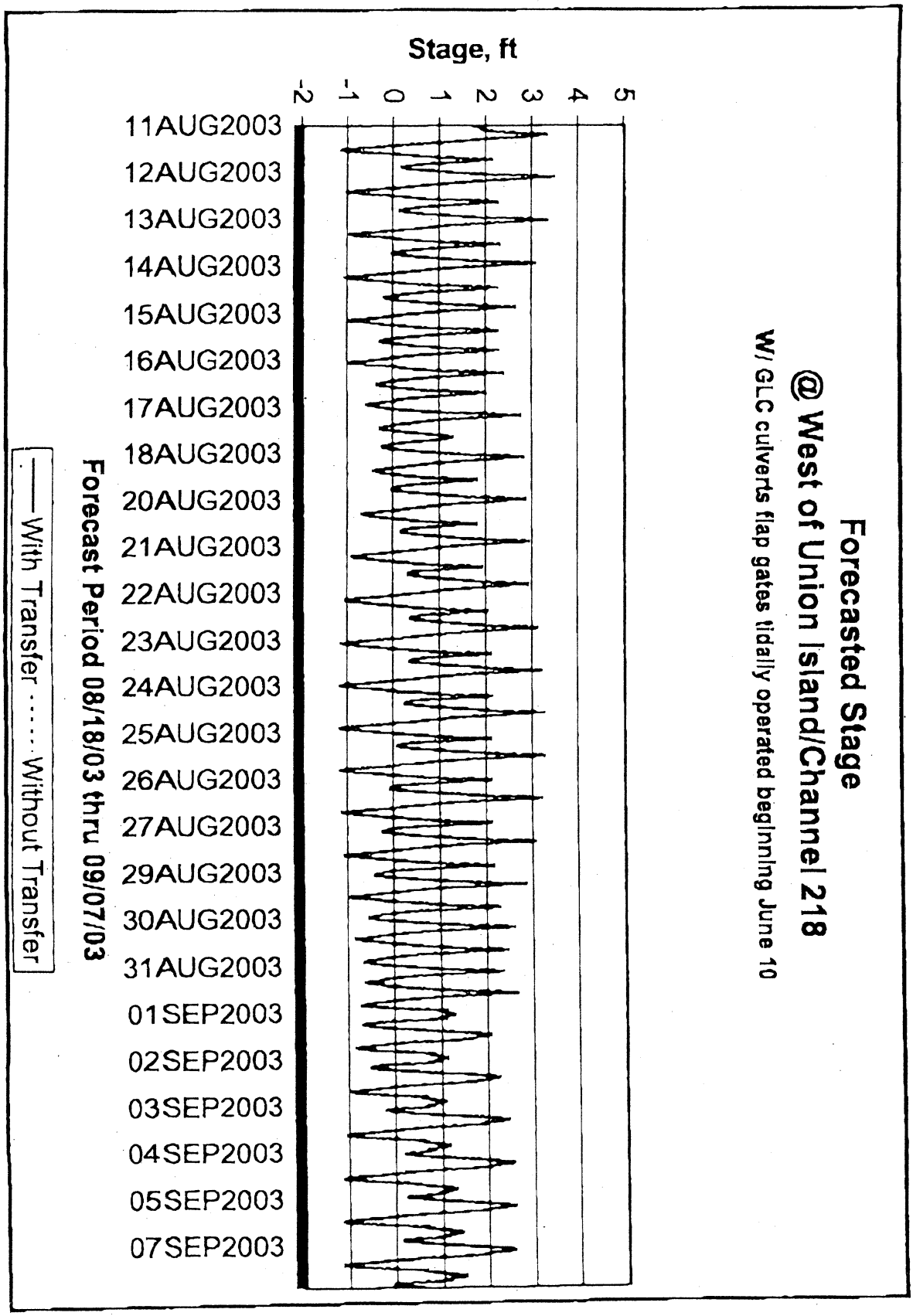
The SDWA believes the DEIR/EIS does not adequately examine the effects of the project on water users in the South Delta and the legality of the proposed transactions.

JPOD

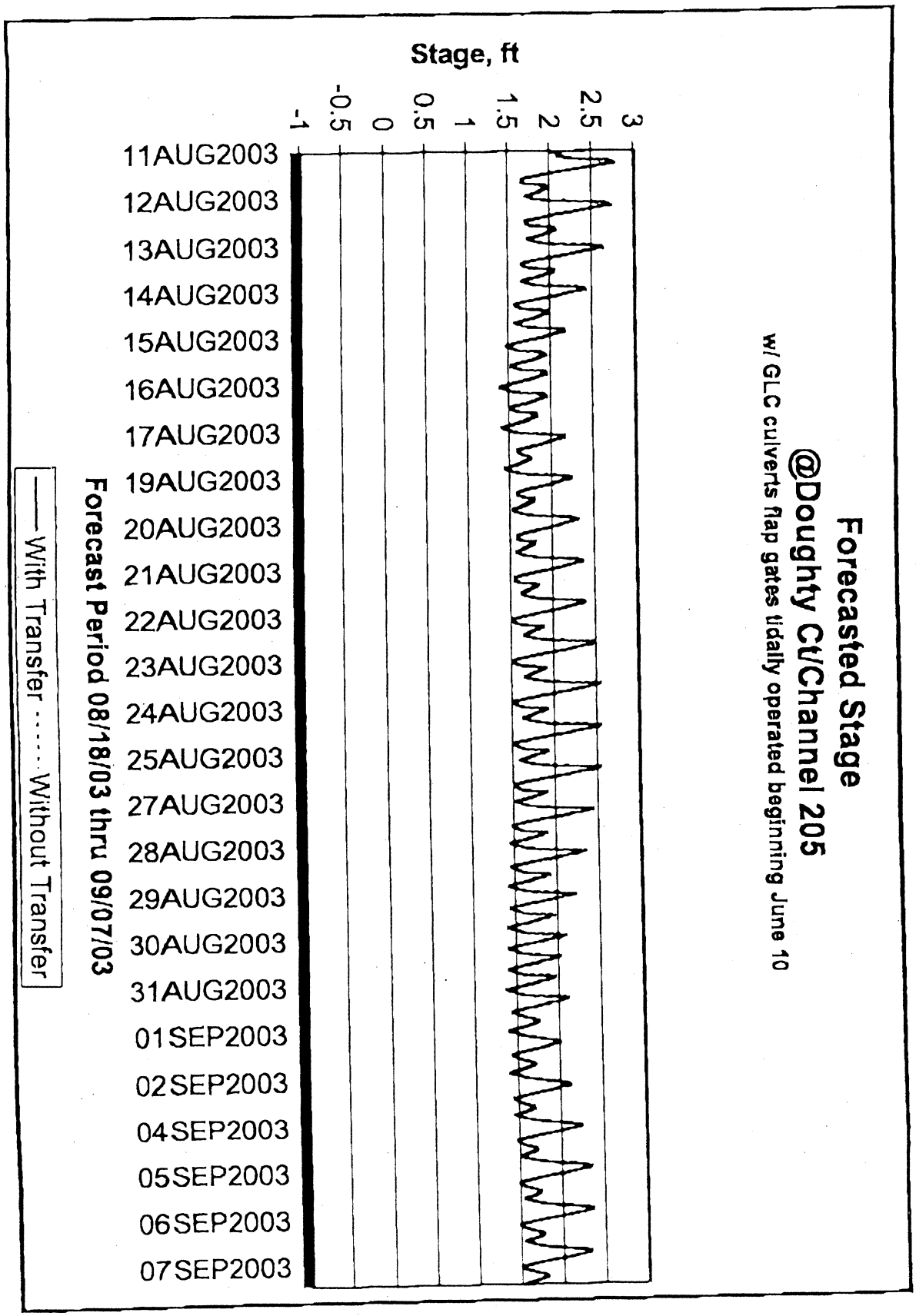
8/20/03


Forecasted Stage
Old River @ Tracy Road
w/ GLC culverts flap gates tidally operated beginning June 10
Stage, ft
0
0.5
1
1.5
2
2.5
3
11AUG2003
12AUG2003
13AUG2003
14AUG2003
15AUG2003
16AUG2003
17AUG2003
18AUG2003
20AUG2003
21AUG2003
22AUG2003
23AUG2003
24AUG2003
25AUG2003
26AUG2003
28AUG2003
29AUG2003
30AUG2003
31AUG2003
01SEP2003
02SEP2003
03SEP2003
04SEP2003
06SEP2003
07SEP2003
Forecast Period 08/18/03 thru 09/07/03
With Transfer
Without Transfer

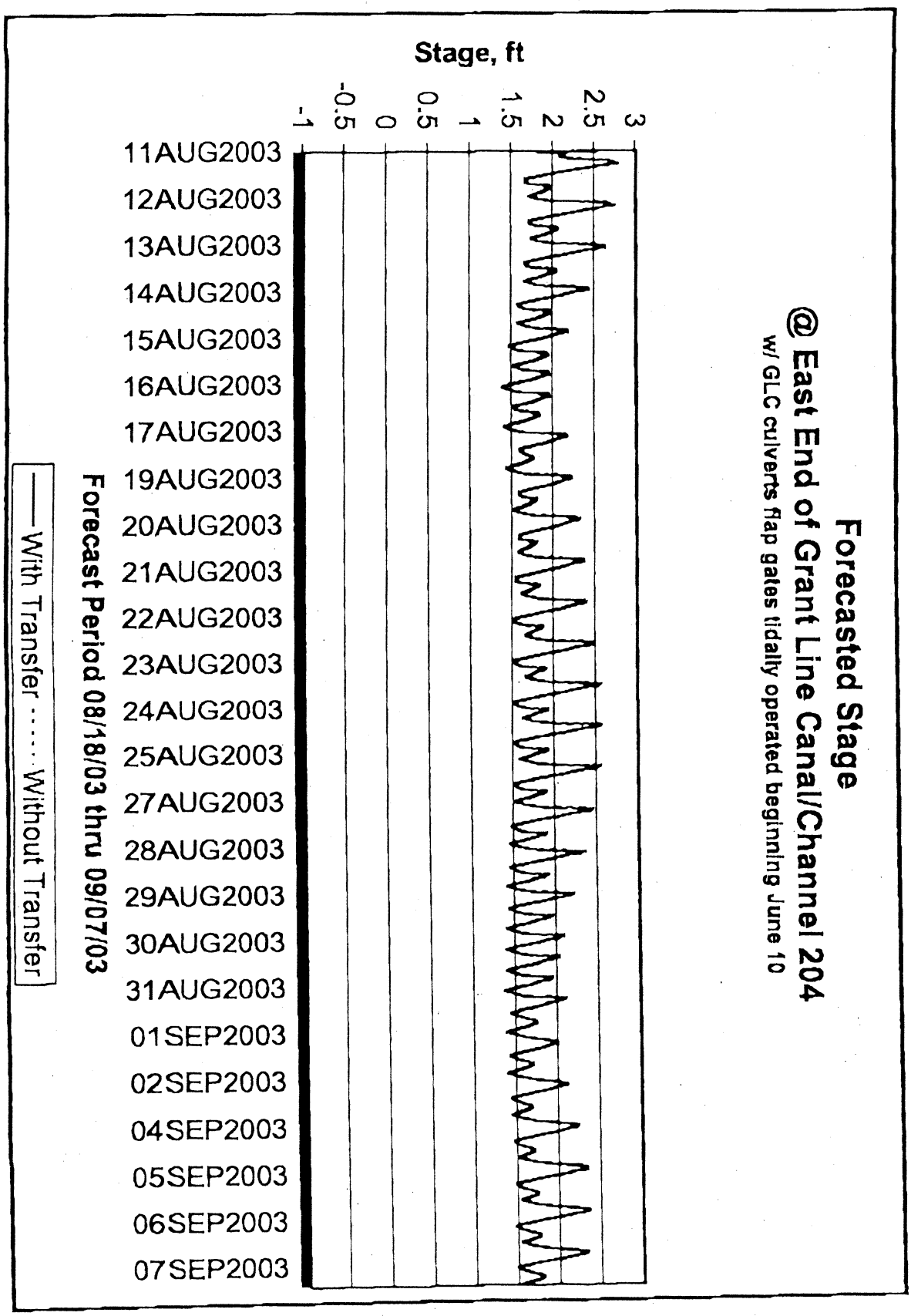
8/20/03


Forecasted Stage
@ West of Union Island/Channel 218
W/ GLC culverts flap gates tidally operated beginning June 10
Stage, ft
-2
-1
0
1
2
3
4
5
11AUG2003
12AUG2003
13AUG2003
14AUG2003
15AUG2003
16AUG2003
17AUG2003
18AUG2003
20AUG2003
21AUG2003
22AUG2003
23AUG2003
24AUG2003
25AUG2003
26AUG2003
27AUG2003
29AUG2003
30AUG2003
31AUG2003
01SEP2003
02SEP2003
03SEP2003
04SEP2003
05SEP2003
07SEP2003
Forecast Period 08/18/03 thru 09/07/03
With Transfer
Without Transfer

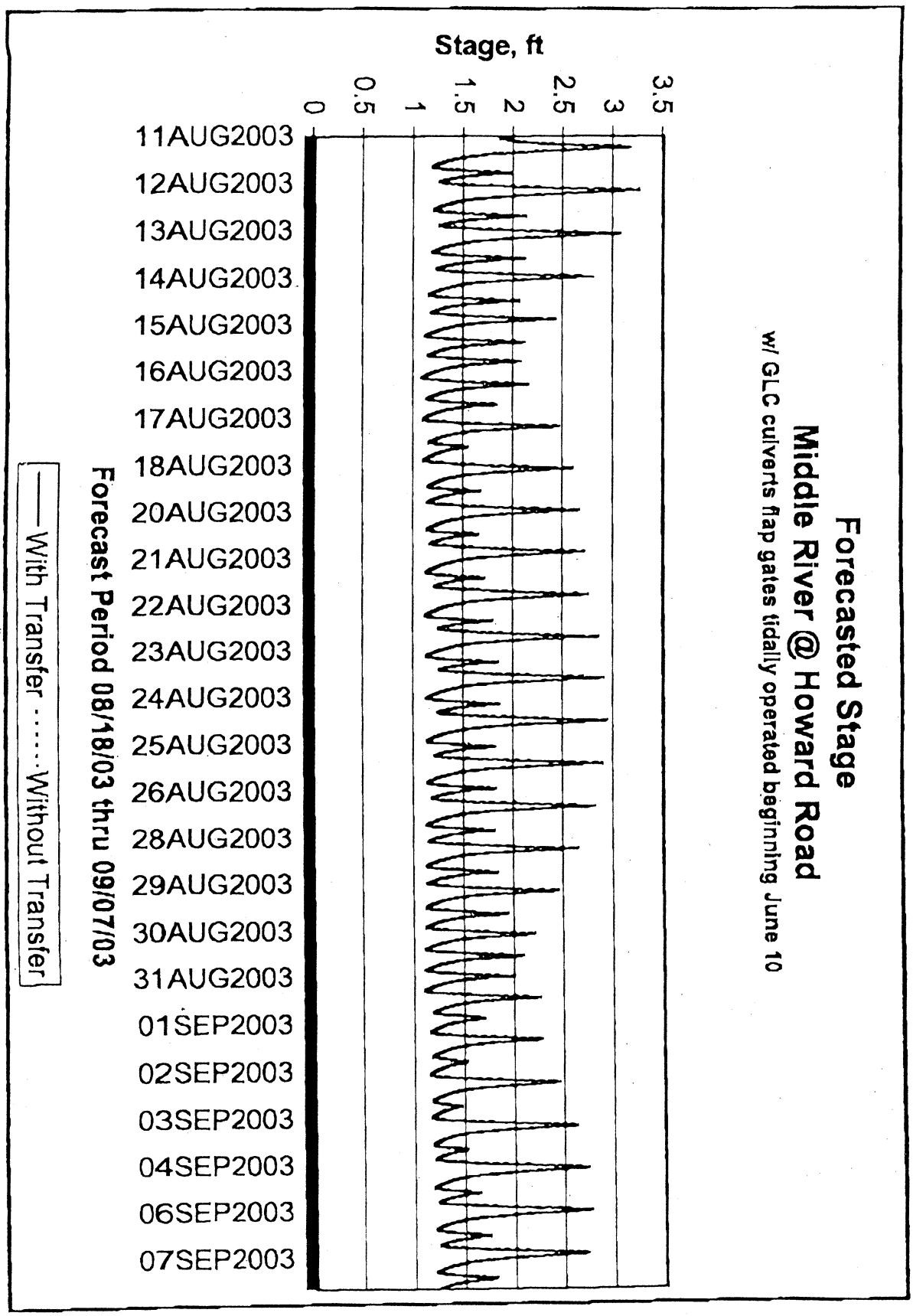
8/20/03


Forecasted Stage
@Doughty Cu/Channel 205
w/ GLC culverts flap gates tidally operated beginning June 10
Stage, ft
-1
-0.5
0
0.5
1
1.5
2
2.5
3
11AUG2003
12AUG2003
13AUG2003
14AUG2003
15AUG2003
16AUG2003
17AUG2003
19AUG2003
20AUG2003
21AUG2003
22AUG2003
23AUG2003
24AUG2003
25AUG2003
27AUG2003
28AUG2003
29AUG2003
30AUG2003
31AUG2003
01SEP2003
02SEP2003
04SEP2003
05SEP2003
06SEP2003
07SEP2003
Forecast Period 08/18/03 thru 09/07/03
With Transfer
Without Transfer

8/20/03


Forecasted Stage
@ East End of Grant Line Canal/Channel 204
w/ GLC culverts flap gates tidally operated beginning June 10
Stage, ft
-1
-0.5
0
0.5
1
1.5
2
2.5
3
11AUG2003
12AUG2003
13AUG2003
14AUG2003
15AUG2003
16AUG2003
17AUG2003
19AUG2003
20AUG2003
21AUG2003
22AUG2003
23AUG2003
24AUG2003
25AUG2003
27AUG2003
28AUG2003
29AUG2003
30AUG2003
31AUG2003
01SEP2003
02SEP2003
04SEP2003
05SEP2003
06SEP2003
07SEP2003
Forecast Period 08/18/03 thru 09/07/03
With Transfer
Without Transfer

8/20/03


Forecasted Stage
Middle River @ Howard Road
w/ GLC culverts flap gates tidally operated beginning June 10
Stage, ft
0
0.5
1
1.5
2
2.5
3
3.5
11AUG2003
12AUG2003
13AUG2003
14AUG2003
15AUG2003
16AUG2003
17AUG2003
18AUG2003
20AUG2003
21AUG2003
22AUG2003
23AUG2003
24AUG2003
25AUG2003
26AUG2003
28AUG2003
29AUG2003
30AUG2003
31AUG2003
01SEP2003
02SEP2003
03SEP2003
04SEP2003
06SEP2003
07SEP2003
Forecast Period 08/18/03 thru 09/07/03
With Transfer
Without Transfer