



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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September 11, 2020

Heather Casillas, Division Chief
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RECLAMATION'S PROPOSED REVISIONS TO THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT'S 1993 INTERIM GUIDELINES

Dear Ms. Casillas:

The California Department of Fish and Wildlife (CDFW) appreciates the opportunity to comment on the Bureau of Reclamation's (Reclamation) proposed revisions to the Central Valley Project Improvement Act's 1993 Interim Guidelines. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Cal. Fish & G. Code, § 1802.).

In response to the environmental impacts caused by the Central Valley Project (CVP), in 1992 Congress passed the Central Valley Project Improvement Act (CVPIA), Title 34 of Public Law 102-575, to change water management practices in the CVP and undertake restoration actions in order to mitigate the ecological impacts on the San Joaquin and Sacramento Rivers. CVPIA amends the previous authorizations of the CVP to include fish and wildlife protection, restoration, and mitigation as project purposes having equal priority with irrigation and domestic uses, and fish and wildlife enhancement as a project purpose equal to power generation.

CDFW is identified within the CVPIA, not only as it relates to its responsibilities for the State's natural resources, but also as a cost share partner. Some of the actions mandated by CVPIA include the release of more water to supply rivers and wetlands, funding for habitat restoration work (especially for anadromous fish spawning gravels), water temperature control, water conservation, fish passage, and making all reasonable efforts to double the production of naturally reproducing anadromous fish in Central Valley rivers. A Restoration Fund was established under CVPIA to collect revenue from the CVP water and power customers for carrying out the provisions of CVPIA.

On August 6, 2020, Reclamation proposed revisions to the CVPIA 1993 Interim Guidelines that govern the accounting requirements and rates paid by water and power customers. The stated objective of the proposed revisions was to update the guidelines consistent with the provisions of CVPIA and implement a recent court ruling on proportionality as it relates to Restoration Fund payments. Reclamation has been working with stakeholders on updates to the accounting treatment of expenditures for more than five years; however, CDFW has not been included in these discussions and was not made aware of the proposed changes to the accounting guidelines until the public news release. The limited coordination and lack of detailed information on changes to the guidelines has hampered CDFW's ability to provide a thorough review of these changes. The review and comments from CDFW are therefore based solely on the content of the 1993 Revised Interim Guidelines red-lined version Public-Comment 08.06.20.

As a cost share partner under CVPIA and a trustee agency over California's natural resources, CDFW offers the following comments and recommendations on the proposed revisions to the 1993 Interim Guidelines:

- CDFW is opposed to reductions in the Restoration Fund. Reductions in the Restoration Fund will significantly reduce the ability to restore and recover anadromous fish populations and meet the Refuge Water Supply Program water supply goals (Level 2 and Incremental level 4) in California. The proposed revisions to the guidelines significantly reduce the maximum amount of payments into the Restoration Fund, from \$50 million annually (October 1992 price levels) to \$35 million annually. Historically, the Friant Surcharge and M&R Payments have been the only substantial source of revenue to the Restoration Fund. CDFW's understanding is that Reclamation estimates that the proposed revisions, based on the proportionality ruling, would on average reduce M&R collections by \$10 million annually. This represents a substantial reduction in annual restoration spending in the Central Valley and limits the ability to pay for water acquisitions, conveyance to refuges, and construction of refuge water supply infrastructure. It is important to note that the benefits of federal spending from CVPIA in California can be amplified by matching this spending with state money through programs such as Proposition 1 and Proposition 68. In recognition of the ongoing influence the CVP has on California's fish and wildlife resources and in trying to achieve the goals of CVPIA, CDFW recommends that Reclamation identifies additional sources of funding that are not constrained by the proportionality ruling to supplement the proposed loss of revenue into the Restoration Fund.
- As part of the proposed reduction, Part H, section 3(d) of the redline changes also include language that implies a reduction in the M&R maximum

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contributions from \$30 million to \$15 million. CVPIA section 3407(d)(2)(A) states that this reduction cannot take place until “the completion of the fish, wildlife, and habitat mitigation and restoration actions mandated under section 3406” has occurred. CDFW does not think that these mandated actions have been completed and it is unclear what metrics, if any, were used to draw this conclusion. The doubling goal of naturally produced fish under CVPIA section 3406(b)(1) has not been met, with populations lower than when it was enacted. This uncertainty is troubling and CDFW urges close coordination and thoughtful deliberation with CDFW staff in evaluating current status and trends in species and habitat quality before drawing any conclusions.

- Including CVP mitigation obligations, as identified in the new Biological Opinion (National Marine Fisheries Service 2019), as potential actions to be funded out of the existing Restoration Fund further reduces the ability to meet CVPIA goals. There is a need to distinguish between CVPIA-related activities and actionable CVP mitigation obligations. Reclamation should use funds outside of the Restoration Fund to meet Biological Opinion requirements and allow the Restoration Fund to better meet the fish and wildlife restoration goals of CVPIA. CVP mitigation is reimbursable and should be a fully funded obligation that Reclamation fulfills regardless of Restoration Fund levels.

As a trustee agency and partner on habitat restoration and water supply in California, CDFW appreciates the opportunity to comment on the proposed revisions and would like to highlight our intention to foster a collaborative and productive relationship. If there are questions on this letter or interest in meeting to discuss our comments please contact Stafford Lehr, Deputy Director, at Stafford.Lehr@wildlife.ca.gov

Sincerely,



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CITATIONS

National Marine Fisheries Service. 2019. Biological Opinion for the Reinitiation of Consultation on the Coordinated Operations of the Central Valley Project and State Water Project.

U.S. Fish and Wildlife Service. 2001. Final Restoration Plan for the Anadromous Fish Restoration Program.