

CA Save Our Streams Council



May 3, 2020

Honorable Katie Porter
1117 Longworth Building
Washington, D.C. 20515

Re: Potential Fraud, Waste and Abuse in the Bureau of Reclamation’s Administration of the Central Valley Project Improvement Act

Dear Representative Porter:

In the course of monitoring the Bureau of Reclamation’s implementation of environmental restoration mandates in the Central Valley Project Improvement Act, Public Law 102-575 Title XXIV (1992) (CVPIA), we have reached the conclusion the Trump Administration caused the Bureau of Reclamation (Reclamation) to violate and otherwise manipulate government cost accounting standards and Reclamation’s longstanding criteria for allocating costs owed by Central Valley Project water and power contractors (Contractors).¹ [See Exhibit 1] These actions resulted in a Trump Administration decision to shift at least \$400 million in current debt from the Contractors to Federal taxpayers. That sum represents a significant component of funding required for the Biden Administration’s infrastructure initiative, and, correspondingly, an unconscionable financial windfall to the Contractors, whose activities continue to have severe and adverse impacts on California’s environment; such impacts to be magnified under the current drought.

One of the documents by which the Trump Administration decision would have been implemented is the “Business Practice Guidelines for Central Valley Project Improvement Act Receipts, Program

¹ https://calsport.org/news/wp-content/uploads/Trump_Bernhardt-CVP-Cost-Allocation-Contractor-Benefits-Fleeing-Taxpayers-April-2021.pdf

Accounting, Cost Allocation and Cost Recovery” (Guidelines), which was pending review in the Office of Management and Budget at the end of the Trump Administration. The Biden Administration suspended action on the Guidelines, but the accumulated debt remains uncollected. This failure to collect these costs and implement federally required mitigation and restoration measures violates the law and is causing untold environmental harm and additional harm to Tribal fishing and water rights.²

The purpose of this letter is to request that you, in your capacity as Vice Chair of the Subcommittee on Government Operations and Chair of the Subcommittee on Oversight and Investigations, open an investigation into Reclamation’s past actions and current intentions regarding this outstanding debt.

Briefly, the CVPIA made unprecedented changes to federal reclamation law. First, the CVPIA made environmental restoration a purpose of the Central Valley Project (CVP). Second, it mandated a comprehensive suite of environmental restoration actions, among them restoration of the rights of the Hoopa Valley Tribe in the Trinity River fishery, which the United States holds in trust, and which West Coast sport and commercial fishing enterprises, among others, have an interest. The CVPIA also established restoration measures for fisheries and wildlife refuges in the Sacramento and San Joaquin River watersheds of California’s Central Valley. Third, the CVPIA required the Contractors, not the taxpayers, to pay for restoration as their cost of doing business.

In addition to unlawful CPVIA cost accounting, in its last week the Trump Administration issued a series of Interior Department memoranda that wrongfully and unlawfully declared the environmental restoration mandates of the CVPIA to have been fulfilled.³ Those memoranda should be withdrawn, immediately. Further, the Trump Administration manipulated other federal reclamation law to circumvent the requirements of the CVPIA for the financial benefit of the Contractors, specifically, the Water Infrastructure Improvements for the Nation Act, Public Law 114-322 Subtitle J (2016) (WIIN Act). That Act established a five-year period during which Contractors could convert CVP water service contracts into repayment contracts and prepay their outstanding cost to Reclamation in exchange for a permanent water allocation. The Trump Administration entered into contracts that violate the CVPIA and other laws. The so-called WIIN Act contracts have not been validated, as required by Federal law, and can be voided at the discretion of the Biden Administration to avoid the financial effects of the Trump Administration’s decisions and ensure the financial integrity of the CVPIA’s environmental restoration mandate. Many of the undersigned along with the Hoopa Valley Tribe and non-governmental organizations have suits challenging those contracts pending in the United States District Court for the Eastern District of California.⁴

² <https://calsport.org/news/wp-content/uploads/Hoopa-4-8-21-Ltr-re-CVPIA-to-Congress.pdf>

³ <https://calsport.org/news/wp-content/uploads/SIGNED-Concurrence-to-ASWS-ASFWP-from-Secretary-CVPIA-Jan-19-2021.pdf>
<https://calsport.org/news/wp-content/uploads/ASFWP-ASWS-to-Secretary-re-CVPIA-completion-Wallace-AND-Petty-e-sign.pdf>
https://calsport.org/news/wp-content/uploads/BOR-CVPIA-Memo-Jan-15-2021_Date-Stamp.pdf
<https://calsport.org/news/wp-content/uploads/SOL-Memo-to-RD-Re-Completion-Jan-2021.pdf>

⁴ <https://calsport.org/news/wp-content/uploads/2020-07-08-NCRA-v.-DOI-SASC-with-3-Exhibits-1.pdf>
<https://calsport.org/news/wp-content/uploads/4-2-21-filed-1st-amend-compl-1.pdf>
https://www.biologicaldiversity.org/campaigns/san_francisco_bay_area_and_delta_protection/pdfs/CVP-Contract-Conversion-Complaint-Filed.pdf
<https://calsport.org/news/wp-content/uploads/Hoopa-4-8-21-Ltr-re-CVPIA-to-Congress.pdf>
<http://www.schlosserlawfiles.com/%7Ehoopa/ECF%201%20Complaint.pdf>

It is important to note that while the WIIN Act itself is an infrastructure initiative that would be funded by prepayment of Contractors' CVP costs, the Trump Administration appears to have severely discounted the Contractors' prepayment obligation by means of the cost accounting actions described above, as well as other actions yet to be identified.⁵ Moreover, while the WIIN Act expires in December 2021, legislation (H.R. 737) to extend it has been introduced in the 117th Congress. Thus the persistent effects of the Trump Administration's actions remain a serious threat to undermine the CVPIA and deny environmental justice to Californians throughout the State. For example, roughly twice the amount of water used by every household in Los Angeles in a year would be permanently allocated to Westlands Water District (Westlands), which has grown to be the size of Rhode Island and the largest federal contractor of Reclamation water.⁶ Among the other things addressed above, the Trump Administration positioned Westlands to market water to low-income communities within their reach, including El Porvenir and Cantua Creek at the cost of more than \$500 an acre foot even though the water is so degraded that those communities cannot safely use it to bath in or drink.⁷

The Biden administration has the ability, and in our view an obligation, to roll back the Trump administration abuses of water law. It can do that by rescinding the bad rules and unlawful water contracts and collecting the more than \$400 million dollars owed by Westlands and other contractors to the Treasury. We urge you to assist this effort by investigating these serious violations of federal law.

Please let us know if we can further brief you and your staff on these illegal and fraudulent actions.

Thank you for your consideration,



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⁵ https://calsport.org/news/wp-content/uploads/2021-02-16-PCFFA-CSPA-Haaland-Water-Contracts-CVPIA-BERNHARDT_RESCISSION_REQUEST.pdf
https://calsport.org/news/wp-content/uploads/Trump_Bernhardt-CVP-Cost-Allocation-Contractor-Benefits-Fleecing-Taxpayers-April-2021.pdf
<https://calsport.org/news/wp-content/uploads/2020-Coalition-Letter-Fitch-Rating-Re-Westlands-June-6-2020-final.pdf>

⁶ <https://www.latimes.com/business/story/2019-11-15/interior-secretary-westlands-water-deal>

⁷ <https://www.fresnobee.com/opinion/readers-opinion/article77013012.html>



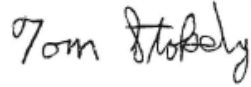
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Attachment: **Exhibit: Trump_Bernhardt CVP Cost Allocation Contractor Benefits Fleecing Taxpayers April 2021**

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Trump/Bernhardt Central Valley Project Improvement Act (CVPIA) Cost Allocation Process	
Lawful Actions Potentially Unlawful Actions Unlawful Actions	
1.	DOI Adopts Separable Costs Remaining Benefits (SCRB) for Central Valley Project (CVP) Cost Allocation (CAS) ¹
2.	DOI Segregates CVP and CVPIA mitigation cost allocation ²
3.	DOI Declares mitigation without CVP Project Purpose a Joint Cost ³
4.	DOI Declares CVPIA with CVP Mitigation Project Purpose a Separable Cost ⁴
5.	DOI Completes CAS for CVP Joint Costs
6.	DOI Declares CVPIA a separate program and defer allocating CVPIA Separable Costs in CAS. ⁵ CVPIA costs not allocated are \$340,872,120 ⁶
7.	DOI Determines CVPIA Separable Costs on trend to exceed CVP Restoration Fund (RF) income
8.	DOI Converts Separable CVPIA Costs for Specific Project Purpose to Joint Costs
9.	DOI Revises 1993 Business Practices and Guidelines (BPG) ⁸
10.	DOI Uses revised BPG to convert CVPIA Separable Costs to Joint Costs ⁹
11.	DOI Yields an "average" \$400M credit to water & power contractors. ^{10 11} In 2020, premanent water contracts were signed with Westlands WD and others without provision to collect these statutory cost obligations. ¹²

¹January 14, 2020. Central Valley Project Cost Allocation Study (CAS) <https://www.usbr.gov/mp/cvp/docs/cvp-final-cost-allocation-study-2020.pdf>.

²*Ibid.* CAS @ pdf pg17

³*Ibid.* CAS Section 4.2

⁴*Ibid.* CAS pdf pg 17, footnote 3.

⁵January 2020. "Central Valley Project Final Cost Allocation Study Frequently Asked Questions" at <https://www.usbr.gov/mp/cvp/docs/faq-cvp-01-13-20.pdf> See also CAS section 5.12 & section 5.11 whereby "activities are specifically authorized under CVPIA and have specific cost recovery assignments" (emphasis added) CAS section 12.6 that states the Business Practices Guidelines, not the CAS would specify the allocation of CVPIA mitigation costs.

⁶ CAS pdf page 13.

⁷ CAS Section 12.6; Memorandum pages 15, 19, and 21.

⁸August 6, 2020 "1993 Revised interim Guidelines red-line_version_Public_Comment." See https://calsport.org/news/wp-content/uploads/1993-Revised-Interim-Guidelines-red-line-version_Public-Comment_08.06.20.pdf by Spencer Walden. Also see this link for the BPG PDF revisions including appendices: https://calsport.org/news/wp-content/uploads/Business-Practice-Guidelines_11-21-2019.pdf

⁹*Ibid.* August 6, 2020 revised BPG at pg 10, deletes text referencing reimbursable functions from 'unlimited exposure to environmental mitigation costs and CVPIA's specific mitigation purpose as a separable, not joint costs. Also the revised BPG concludes if the CVPIA does not declare that the mitigation activity is 100 percent reimbursable the cost is declared nonreimbursable. Reclamation has no basis to circumvent Congressional direction which made 15 of the 37 mitigation activities partially reimbursable with specific percentages assigned to the contractors. Further a number of CVPIA statutory provisions under Section 3406 are 100% reimbursable with no cap on expenditures. The CVPIA made mitigation a project purpose and made funding for it a cost of doing business for the water and power contractors, instead of a taxpayer subsidy.

¹⁰December 23, 2020 Westlands WD urges OMB to adopt BPG changes <https://calsport.org/news/wp-content/uploads/WWD-OMB-12-23-2020-White-Paper-re-CVPIA-True-Up-final.pdf> & https://calsport.org/news/wp-content/uploads/Supplemental-White-Paper-re-CVPIA-True-UP_final.pdf

¹¹August 25, 2020. The Trump Administration devised a revised methodology relying upon Appendix B of the withdrawn BPG and revised CAS to change nearly a quarter century old administrative precedent in determining

how CVPIA expenditures, credits and costs are determined. Under the new device, water and power contractors jump from owing hundreds of millions to obtaining a credit from the US Treasury for hundreds of millions of dollars. See CVPIA True Up August Workshop see slide # 10.

[http://www.schlusserlawfiles.com/~hoopa/CVPIA-True-up_August-Workshop_08.25.20%20\(002\).pdf](http://www.schlusserlawfiles.com/~hoopa/CVPIA-True-up_August-Workshop_08.25.20%20(002).pdf)

February 14, 2020 Westlands WD pushes to limit mitigation costs to just Restoration Fund payments despite statutory obligations to the contrary. <https://calsport.org/news/wp-content/uploads/WWD-Response-to-CVPIA-BPG.pdf>

¹² August 13, 2020, the Hoopa Valley Tribe (Hoopa) sued the Trump Administration for failure to protect Hoopa's fishing & water rights in the Trinity River. [*Hoopa Valley Tribe v. United States Bureau of Reclamation*, No. 1:20-cv-01814-DAD-EPG (E.D. Calif.)]