

Trump/Bernhardt Central Valley Project Improvement Act (CVPIA) Cost Allocation Process	
Lawful Actions	Potentially 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 ⁷	
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.

⁵ January 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; Mémorandum pages 15, 19, and 21.

⁸ August 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.

¹⁰ December 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

¹¹ August 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.schlosserlawfiles.com/~hoopa/CVPIA-True-up_August-Workshop_08.25.20%20\(002\).pdf](http://www.schlosserlawfiles.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.)]