

CENTRAL VALLEY PROJECT IMPROVEMENT ACT

Specific Fish and Wildlife Measures*¹ which are integral to the
CALFED Bay-Delta Ecosystem Restoration Program.

Section 3406

- (b)(4) Fishery mitigation at Tracy Pumping Plant**
- (b)(5) Fishery mitigation at Contra Costa Canal Pumping Plant No.1**
- (b)(6) Structural temperature control device at Shasta Dam**
- (b)(7) Meet flow standard and objectives and diversion limits set forth in all laws and judicial decisions that apply to CVP (no cost sharing specified)
- (b)(8) Short pulses of flows for migrating anadromous fish (no cost sharing specified)
- (b)(9) Reduction in flow fluctuations at CVP storage or re-regulating facilities (no cost sharing specified)
- (b)(10) Improve fish passage at Red Bluff Diversion Dam**
- (b)(11) Rehabilitate Coleman National Fish Hatchery (50% reimbursable, 50% nonreimbursable)* *
- (b)(12) Improvements in Clear Creek (Costs for flows to be allocated among project purposes, other costs 50% nonreimbursable, 50% State)**
- (b)(13) Restore spawning gravels in Upper Sacramento River, includes preventative measures such as meander belts and limitations on bank protection activities**
- (b)(14) Provide appropriate structures and operational changes at Delta Cross Channel and Georgiana Slough to protect bass eggs, larvae, and juveniles**

* Unless otherwise specified, cost sharing is 37.5% CVP reimbursable, 37.5% Federal nonreimbursable and 25% State.

** Not more than 33% of the Restoration Fund can be used to carry out the provisions of these sections.

(b)(15) Construct seasonal barrier at head of Old River for out-migrating San Joaquin Salmon in a way that does not significantly impair the ability of local entities to divert water**2

(b)(16) Carry out a comprehensive assessment program to monitor fish and wildlife resources in Central Valley**

(b)(17) Solve fish passage problems at Anderson Cottonwood Irrigation District Diversion Dam (50% nonreimbursable, 50% State)**

(b)(18) Management measures to restore Striped Bass (50% nonreimbursable, 50% State)**

(b)(19) Reevaluate carryover storage in Sacramento and Trinity Rivers (no cost sharing specified)

(b)(20) Solve fish entrainment and related problems at Glenn-Colusa Irrigation District's Pumping Plant (75% nonreimbursable, 25% State)**

(b)(21) Screen unscreened diversions (Secretary's share not to exceed 50%)**

(b)(22) Incentives for keeping fields flooded for waterfowl habitat and yield through 2002 (no cost sharing specified)**

(d)(2) Level 4 waterfowl habitat water

(g) Ecosystem and Water System Operations Models

1. Change in CVP Authorization. Sec. 3406(a).

Under existing law, CVP project purposes are listed in the following priorities:

(1) river regulation, improvement of navigation, and flood control; (2) irrigation and domestic uses; (3) power generation; (4) fish and wildlife purposes.

²* Unless otherwise specified, cost sharing is 37.5% CVP reimbursable, 37.5% Federal nonreimbursable and 25% State.

** Not more than 33% of the Restoration Fund can be used to carry out the provisions of these sections.

This act makes fish and wildlife mitigation, protection and restoration part of the general purposes of the Reclamation Act. It, then, places fish and wildlife mitigation, protection and restoration on a par with irrigation and domestic uses and places fish and wildlife enhancement on a par with power generation. Mitigation is required to be based on "replacement of ecologically equivalent habitat" and is to occur concurrently with future actions which adversely affect fish and wildlife populations or their habitat but is to have no priority over them.

2. Compliance with Federal and State law. Section 3406(b).

The act admonishes the Secretary to meet all obligations under State and Federal law including the Federal Endangered Species Act and decisions of applicable SWRCB permits for the CVP.

3. Doubling of Anadromous Fish Goal. Sec. 3406(b)(1).

The act requires the Secretary to develop within three years and implement a program which makes all reasonable efforts to ensure that, by the year 2002, natural production of anadromous fish in CVP rivers will be sustainable, on a long term basis, at levels not less than twice the average levels attained during the period of 1967-1991. (The San Joaquin River between Friant Dam and Mendota Pool is excepted and subject to a separate program described later). The Secretary is also required to address other adverse impacts of the CVP not specifically enumerated. Full implementation of the programs and activities authorized in the section on fish and wildlife shall be deemed to meet the mitigation, protection, restoration and enhancement purposes established under the authorizing Section 3406(a). The plan is to be reviewed every five years [Section 3406(b)(1)(A)].

4. Achieving Environmental Goals. Section 3406(b)(1)

Priority is to be given to protecting and restoring natural channel and riparian habitat values. CVP operations are to be modified to provide flows of "suitable quality, quantity, and timing to protect all life stages of anadromous fish". The amount of water shall be provided from the quantity of water dedicated to fish and wildlife purposes under Section 3406(b)(2), from the supplemental environmental water supplies the Secretary is to develop to meet the obligations of the act under Section 3406(b)(3) or from other sources which do not conflict with the Secretary's remaining contractual obligations to provide CVP water for other purposes. In stream flow needs for all CVP controlled streams are to be determined by the Secretary based on recommendation of USFWS after consultation with DFG.

The Secretary is directed to work with the State to ensure that, to the greatest extent practicable, specific quantities of yield dedicated and managed for fish and wildlife under the act are credited against additional obligations imposed on the CVP by the SWRCB after enactment and that the programs and plans required by the act are developed and implemented

in a way that avoids inconsistent or duplicative obligations from being imposed on CVP contractors.

5. Dedicated Water and Requirements to Develop Water.

Sec. 3406(b)(2) requires the Secretary, upon enactment, to dedicate and manage 800,000 acre feet of CVP yield for the primary purpose of implementing the fish and wildlife purposes and measures of the act and to help California protect the Bay-Delta estuary and to help meet legal obligations imposed on the CVP under state and federal law, including the Federal Endangered Species Act. Yield is defined as the delivery capability of the CVP during the 1928-34 drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the CVP under applicable State or Federal law existing at enactment are met.

The water is in addition to the water needed to meet level 2 waterfowl habitat quantities under Section 3406(d)(1) and water allocated for release to the Trinity under Section 3406(b)(23). It is supplemented by all water that comes under the Secretary's control, through efforts to develop supplemental environmental water, land retirement, water conservation and other measures consistent with Section 3406(b)(1)(B), the section requiring CVP operations to be modified to provide needed flows. The water is to be managed pursuant to conditions specified by USFWS after consultation with the USBR and DWR and in cooperation with DFG. This environmental water supply may be reduced up to 25% (600,000 acre feet) in years when CVP agricultural deliveries are cut back as long as the reductions do not exceed in percentage terms the reductions imposed on agricultural contractors. Nothing in the subsection shall require the Secretary to operate the project in a way that jeopardizes human health and safety.

Under Section 3406(b)(3), the Secretary is to implement a program to develop supplemental environmental water in conformance with the doubling plan and to fulfill the Secretary's obligations under 3406(d)(2) [Level 4 waterfowl habitat measures]. The program is to identify how the Secretary intends to utilize improvements in or modifications of operations, water banking, conservation, transfers, conjunctive use, and land fallowing.

Under Section 3408(j), within 3 years of enactment, the Secretary is to produce a 15 year least-cost plan to replace yield dedicated to fish and wildlife under the act. The plan is to include a description on how the Secretary will use various options to achieve the goal. All of the measures listed above for the supplemental environmental water are included, except water banking. The section also includes improvements, modifications or additions to facilities of the project.

6. San Joaquin River Plan and Surcharge. Sec. 3406(c).

Requires the Secretary to develop, by September 30, 1996, a comprehensive plan which is "reasonable, prudent and feasible" in regard to fish and wildlife on the San Joaquin River, including streamflow and other measures needed to reestablish where necessary and sustain naturally reproducing anadromous fisheries from Friant Dam to the Bay Delta. The plan is to be developed in cooperation with DFG and in coordination with SJRMP. Until such a plan is implemented, the Friant Division is assessed an additional surcharge of \$4.00 per acre foot which increases to \$7.00 after 1999. A specific Act of Congress is required to implement any plan to make releases from Friant Dam to restore flows between Gravelly Ford and the Mendota Pool as a measure to implement the act.

7. Refuges and Wildlife Habitat Areas. Sec. 3406(d).

The Secretary is directed to immediately provide firm water supplies at "Level 2" for Central Valley units of the National Wildlife Refuge System, state wildlife management areas, and Grasslands Resource Conservation District as set forth in the USBR Refuge Water Supply Report and 2/3 of the water supply needed for full habitat development for those areas included in the USBR San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report. In ten years, the requirement changes to "Level 4" and 100%. The Secretary is directed to construct or acquire from non-federal entities conveyance facilities and wells, although conveyance in or around the Delta is expressly not authorized.

If other sources of water are not available, Level 2 water may come from project yield [3406(b)(2)] and can be reduced up to 25% in years when agricultural deliveries are reduced as long as such reductions do not exceed in percentage terms the reductions imposed on agricultural contractors. Level 4 water is to be acquired in increments of not less than 10% per year from voluntary measures which do not require involuntary allocations of project yield. Level 4 water and conveyance facilities and wells are cost shared with 75% being nonreimbursable and 25% State. Priorities for Level 4 water are the priorities which applied prior to the water's transfer.

8. Supporting Investigations.

The Secretary shall conduct several studies on the need for water for additional waterfowl habitat by September 30, 1997. Section 3406(d)(6). During the same time, the Secretary is also to conduct studies and report on a variety of other measures, including temperature control by releasing discharge flows and by restoring riparian forests, hatcheries to reestablish or supplement natural production, elimination of barriers to migration, temperature control devices at Trinity Dam, and modified operations of the Delta Cross Channel and Georgiana Slough. Section 3406(e).

Two years after enactment, the Secretary is to report on all effects of the CVP on anadromous fish populations and the communities and other entities that have had an association with those resources. Section 3406(f).

The Secretary, in cooperation with the State and other relevant interests is also to develop ecosystem and water system operations models. 75% of these costs are nonreimbursable, 25% are State. Section 3406(g).

9. Restoration Fund. Sec. 3407.

This section establishes a Central Valley Project Restoration Fund and authorizes up to \$50,000,000 annually to be appropriated from the Fund for CVP fish and wildlife restoration activities.

An annual charge of up to \$30,000,000 would be imposed on CVP contractors, subject to a \$6.00 per acre foot cap for agriculture and a \$12.00 per acre foot cap for M&I contractors. The agricultural water charge shall be reduced, if necessary, to an amount within the probable ability of the water users to pay. Assessments between water and power users shall, to the greatest degree practicable, be in the same proportion as they are for repayment of the CVP.

Monies donated to the Fund by non-federal entities for specific purposes shall be expended for those purposes only and are not subject to appropriation. Funds paid into the fund by CVP contractors which are used to pay for 3406(b) projects and facilities shall act as an offset against CVP cost sharing otherwise required by the act. No more than 33% of the fund can be used for specified projects. These are identified in Attachment 2.

The Secretary is required to impose a \$25.00 per acre foot annual charge on CVP water sold or transferred to non-CVP entities who use the water for M&I purposes. Other sources of funding for the Restoration Fund include donations, the O&M penalty for late renewal of contracts, funds from transfers of water, tiered water pricing, and the Friant surcharge.

When all the actions mandated under 3406 are completed, the Fund would be reduced to \$35 million and the CVP contractors ceiling to \$15 million.

The Secretary is authorized to provide funding to the State or other entities to assist in implementing any action authorized by the act.