

**U.S. FISH AND WILDLIFE SERVICE AND U.S. BUREAU OF RECLAMATION**

**WATER YEAR 2014 FINAL ACCOUNTING  
FISHERY AND WATER QUALITY CONTROL PLAN ACTIONS**

**January 28, 2015**

**BACKGROUND**

Pursuant to section 3406(b)(2) of the Central Valley Project Improvement Act (CVPIA), the Secretary of the Interior must:

dedicate and manage annually eight hundred thousand acre-feet of Central Valley Project yield for [1] the primary purpose of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by this title; [2] to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and [3] to help meet such obligations as may be legally imposed upon the Central Valley Project under State or Federal law following the date of enactment of this title, including but not limited to additional obligations under the Federal Endangered Species Act.

The Department of the Interior (Interior) manages (b)(2) water consistent with its May 9, 2003 (b)(2) Policy and December 17, 2003 (b)(2) Guidance and relevant case law, including the Ninth Circuit Court's decision in Bay Inst. of San Francisco v. United States, 87 Fed. Appx 637 (2004) (hereinafter "2004 Decision"), confirming Interior's discretion to give effect to the "hierarchy of purposes" in Section 3406(b)(2), and the Ninth Circuit's recent decision in San Luis & Delta Mendota Water Authority v. United States, 672F.3d 676 (2012) (hereinafter "2012 Decision"), affirming the District's Court's memorandum opinion in San Luis & Delta Mendota Water Authority v. Dept. of the Interior, 1:97-cv-6140, 1:98-cv-5261 OWW DLB (E.D. Cal. Sept. 19, 2008) (hereinafter SLDMWA).

In SLDMWA, Judge Wanger stated that the "primary purpose" of CVPIA Section 3406(b)(2) "includes all those fish and wildlife restoration activities specifically described in section 3406(b)," including "water dedicated to accomplish the anadromous fish doubling goal set forth in section 3406(b)(1)" and "water needed to accomplish any of the other specifically enumerated programs listed in section 3406(b)(2). SLDMWA, at 43 (underline in original). Judge Wanger also recognized that some WQCP and/or ESA actions "may serve the primary purpose of the CVPIA." Id. at 47. Thus, "if an action taken under the WQCP and/or ESA predominantly contributes to one of the primary purpose programs (e.g., fish doubling), it must be counted toward the 800,000 AF limit." Id. at 48. In so doing, Judge Wanger recognized that there may be some "primacy" to section 3406(b)(1) in relation to other stated purposes of section 3406(b), but he did not rule on that question. Id. at 45.

As explained in Interior's May 2003 policy, "actions" in the context of (b)(2) accounting are computed increases in Central Valley Project (CVP) releases and decreases in CVP exports relative to hypothetical baseline operations. The hypothetical baseline operations reflect how the CVP would have been

operated experiencing WY 2014's hydrology under the regulatory environment that existed at the time CVPIA was passed.

The CVP began Water Year 2014 on October 1, 2013 with relatively low storage levels in Trinity, Shasta, Folsom, and New Melones reservoirs, ranging from 70% to 81% of the 15-year average. Subsequent precipitation in the winter and spring was well below average, and annual inflows to the CVP reservoirs ranged from 29% to 52% of the 15-year average. In January 2014, California Governor Edmund G. Brown proclaimed a drought State of Emergency which gave state and federal water officials more flexibility to manage water supply throughout California under drought conditions. Ultimately, the Sacramento River basin and the San Joaquin River basin were both classified as Critically Dry, using D-1641 year type classifications, for WY 2014. Consistent with Section 3406(b)(2) of the CVPIA and Interior's May 2003 (b)(2) Policy, the total (b)(2) water allocation was 600 thousand acre feet (TAF) during the 2014 water year. However, due to these historically dry hydrological conditions, Interior was only able to make approximately 400,000 AF of the 600,000 AF of CVPIA (b)(2) water available. The (b)(2) allocation was utilized for primary purpose fish actions, Endangered Species Act (ESA) requirements, and/or Water Quality Control Plan (WQCP) requirements.

CVP operations during the 2014 water year were subject to implementation of two biological opinions: (1) the United States Fish and Wildlife Service (FWS) Biological Opinion (BO) on the Coordinated Operations of the CVP and the State Water Project (SWP) for the protection of federally-listed delta smelt, issued in December 2008 (FWS BO), and (2) the National Marine Fisheries Service (NMFS) BO on the Long-term Operations of the CVP and SWP for the protection of listed salmonids and Green Sturgeon, issued in June 2009 (NMFS BO). Both biological opinions included a reasonable and prudent alternative (RPA) to avoid jeopardy to the subject species.

The purpose of this document is to explain Interior's final accounting of fish actions covered by CVPIA Section 3406(b)(2) in water year 2014. The attached table, "Water Year 2014 Final CVP Accounting of (b)(2) Actions in TAF," summarizes the fishery actions, including WQCP and ESA actions (relative to the hypothetical baseline operations) covered by CVPIA Section 3406(b)(2) in water year 2014. The table is based on the final daily accounting for water year 2014. This narrative, together with the attached table, constitutes Interior's final accounting of fishery actions, including ESA and WQCP actions, covered by CVPIA Section 3406(b)(2) during water year 2014 and explains how Interior exercised its authority and discretion under CVPIA Section 3406(b)(2) during that same period.

### **Water Year 2014 Fish Actions Covered By (b)(2) Water**

#### **October 2013:**

On the Stanislaus River, flows were augmented above the hypothetical baseline using approximately 28.5 TAF of (b)(2) water. Approximately 250-1700 cfs was maintained as specified in the flow schedule contained in the NMFS BO RPA III.1.3 for adult steelhead migration and to help meet AFRP flow

objectives for fall-run Chinook migration and spawning. These releases predominantly contributed to the primary purpose of Section 3406(b)(2).

**November 2013:**

On the Stanislaus River, flows were augmented above the hypothetical baseline using approximately 3.5 TAF of (b)(2) water. Approximately 250-350 cfs was maintained as specified in the flow schedule contained in the NMFS BO RPA III.1.3 for adult steelhead migration and spawning and to help meet AFRP flow objectives for fall-run Chinook migration and spawning. These releases predominantly contributed to the primary purpose of Section 3406(b)(2).

In the Delta, from November 20-30, CVP exports were curtailed to an average of approximately 1,014 cfs to assist in meeting the Net Delta Outflow Index (NDOI) requirements in the WQCP. During that period, CVP exports were reduced below hypothetical baseline pumping levels by approximately 12.8 TAF. Interior exercised its discretion and accounted for these export reductions as (b)(2) debits this year.

**December 2013:**

In the Delta, from December 1-31, CVP exports were curtailed to an average of approximately 983 cfs to assist in meeting the NDOI requirements in the WQCP. During that period, CVP exports were reduced below hypothetical baseline pumping levels by approximately 102.5 TAF. Interior exercised its discretion and accounted for these export reductions as (b)(2) debits this year.

**January 2014:**

On the Stanislaus River, flows were augmented above the hypothetical baseline using approximately 0.7 TAF of (b)(2) water. Approximately 600 cfs was released as specified in the flow schedule contained in the NMFS BO RPA III.1.3 to simulate natural variability in the winter hydrograph and to enhance access to varied rearing habitats for CV steelhead. These releases predominantly contributed to the primary purpose of Section 3406(b)(2).

**February 2014:**

On Clear Creek, flows were augmented above the hypothetical baseline using approximately 2.4 TAF of (b)(2) water. Approximately 200 cfs was maintained to help meet AFRP flow objectives for fall-run Chinook salmon incubation, emergence, and rearing and steelhead spawning, incubation, and emergence. These releases predominantly contributed to the primary purpose of Section 3406(b)(2).

On the Stanislaus River, flows were augmented above the hypothetical baseline using approximately 0.8 TAF of (b)(2) water. Approximately 600 cfs was released as specified in the flow schedule contained in the NMFS BO RPA III.1.3 to simulate natural variability in the winter hydrograph and to enhance access to varied rearing habitats for CV steelhead. These releases predominantly contributed to the primary purpose of Section 3406(b)(2).

In the Delta, from February 9-11 and February 20-28, CVP exports were restricted to an average of approximately 1072 cfs and 1168 cfs, respectively, to assist in meeting the NDOI requirements in the WQCP. During those periods, CVP exports were reduced below hypothetical baseline pumping levels by approximately 15.2 TAF and 20.3 TAF, respectively. Interior exercised its discretion and accounted for these export reductions as (b)(2) debits this year.

Additionally in the Delta, from February 12-19, CVP exports were restricted to an average of approximately 2,556 cfs to assist in meeting the Old and Middle River (OMR) flow requirement included in NMFS RPA IV.3. During that period, CVP exports were reduced below hypothetical baseline pumping levels by approximately 25.2 TAF to reduce the vulnerability of emigrating juvenile winter-run Chinook salmon and yearling spring-run Chinook salmon within the lower Sacramento and San Joaquin rivers to entrainment into the channels of the South Delta and at the pumps. These export reductions predominantly contributed to the primary purpose of CVPIA 3406(b)(2).

#### **March 2014:**

On Clear Creek, flows were augmented above the hypothetical baseline using approximately 4.7 TAF of (b)(2) water. Approximately 200 cfs was maintained to help meet AFRP flow objectives for fall-run Chinook salmon rearing and steelhead incubation and emergence. These releases predominantly contributed to the primary purpose of Section 3406(b)(2).

On the American River, flows were augmented above the hypothetical baseline using approximately 0.8 TAF of (b)(2) water. Approximately 1100 cfs was released to serve as an outmigration pulse for both fall-run Chinook salmon and CV steelhead juveniles and for CV steelhead spawning egg incubation and juvenile rearing consistent with the NMFS BO and the American River FMS. These releases predominantly contributed to the primary purpose of Section 3406(b)(2).

In the Delta, from March 1-4 and March 21-26, CVP exports were restricted/curtailed to an average of approximately 1700 cfs and 1076 cfs, respectively, to assist in meeting the NDOI requirements in the WQCP. During those periods, CVP exports were reduced below hypothetical baseline pumping levels by approximately 17.5 TAF and 8.0 TAF, respectively. Interior exercised its discretion and accounted for these export reductions as (b)(2) debits this year.

Additionally in the Delta, from March 5-20 and March 27-31, CVP exports were curtailed to an average of approximately 3,191 cfs and 816 cfs, respectively, to assist in meeting the OMR flow requirements contained in the NMFS BO RPA IV.2.3. During that period, CVP exports were reduced below hypothetical baseline pumping levels by approximately 25.7 TAF and 9.3 TAF, respectively, to reduce the vulnerability of emigrating juvenile fall-run and late fall-run Chinook salmon and CV steelhead within the lower Sacramento and San Joaquin rivers to entrainment into the channels of the South Delta and at the pumps. These export reductions predominantly contributed to the primary purpose of CVPIA 3406(b)(2).

**April 2014:**

On Clear Creek, flows were augmented above the hypothetical baseline using approximately 3.6 TAF of (b)(2) water. Approximately 200 cfs was maintained to help meet AFRP flow objectives for fall-run Chinook, late fall-run Chinook, and steelhead juvenile rearing and outmigration. These releases predominantly contributed to the primary purpose of Section 3406(b)(2).

On the American River, flows were augmented above the hypothetical baseline using approximately 6.5 TAF of (b)(2) water. Approximately 1500 cfs was released to serve as an outmigration pulse for both fall-run Chinook salmon and CV steelhead juveniles and for CV steelhead egg incubation and juvenile rearing consistent with the NMFS BO and the American River FMS. These releases predominantly contributed to the primary purpose of Section 3406(b)(2).

On the Stanislaus River, flows were augmented above the hypothetical baseline using approximately 61.4 TAF of (b)(2) water. Approximately 2500 cfs was maintained as specified in the flow schedule contained in the NMFS BO RPA III.1.3 for steelhead juvenile outmigration and to help meet AFRP flow objectives for fall-run Chinook rearing and outmigration. These releases predominantly contributed to the primary purpose of Section 3406(b)(2).

In the Delta, CVP exports on April 1<sup>st</sup> averaged 2746 cfs to assist in meeting the OMR flow requirements contained in the NMFS BO RPA IV.2.3. During that day, CVP exports were reduced below hypothetical baseline pumping levels by approximately 2.0 TAF to reduce the vulnerability of emigrating juvenile fall-run and late fall-run Chinook salmon and CV steelhead within the lower Sacramento and San Joaquin rivers to entrainment into the channels of the South Delta and at the pumps. These export reductions predominantly contributed to the primary purpose of CVPIA 3406(b)(2).

**May 2014:**

On the Stanislaus River, flows were augmented above the hypothetical baseline using approximately 41.7 TAF of (b)(2) water. Approximately 2100 cfs was maintained as specified in the flow schedule contained in the NMFS BO RPA III.1.3 for steelhead juvenile outmigration and to help meet AFRP flow objectives for fall-run Chinook rearing and outmigration. These releases predominantly contributed to the primary purpose of Section 3406(b)(2).

**June 2014:**

On Clear Creek, flows were augmented above the hypothetical baseline using approximately 8.9 TAF of (b)(2) water. Approximately 800 cfs was released for 2 days to help meet AFRP flow objectives for fall-run Chinook, late fall-run Chinook, and steelhead juvenile rearing and outmigration, as well as for spring-run Chinook attraction flows in accordance with NMFS RPA I.1.1. These releases predominantly contributed to the primary purpose of Section 3406(b)(2).

**July 2014:**

No (b)(2) actions

**August 2014:**

No (b)(2) actions

**September 2014:**

No (b)(2) actions