PORGANS 322 USFWS RESPONSE 800,000 AF CVPIA QUESTION AND ANSWERS

To: Roger Guine, Chief, Division of Water Operations, USFWS, Sacramento Office 24 July 2008
email: Roger_Guinee@fws.gov Telephone No: (916) 414-6537
From: Patrick Porgans & Associates, Inc.

Re: Questions Pertaining to the CVPIA 800,000 Acre-feet Appropriation, How It Is Used/Applied, Accounted for and Any Amounts That May Be Picked Back Up and Used for Other CVP Purposes

Roger, the following is a list of questions that P&A is seeking answers, some of which may or may not be within your purview. Perhaps you can make suggestions as to the contact persons for those questions that are not within your purview. Thank you.

Question 1: Do you have a report, paper, electronic file or a website that provides information regarding the November 1997 administrative proposal as to how USFWS/USBR accounts for the 800,000 acre-feet of water? If so, please provide me with that information.

The November 1997 Administrative Proposal has been replaced by Interior's May 9, 2003 Decision on Implementation of (b)(2), and was further clarified by Interior's December 17, 2003 Guidance Memo. Both are attached.

Question 2: Do you have details on the October 1999 "base case" pertinent to the (b)(2) water use, which would also include the 800,000 acre-feet? If so, please provide me with that information.

Questions pertaining to the details of the October 1999 base case should be directed to Paul Fujitani (USBR, Central Valley Operations). Email: pfujitani@mp.usbr.gov.

Question 3: Is there a difference if the 800,000 acre-feet come from CVP yield or CVP supply? If so, please provide me with an explanation and/or a report, electronic file or a website that provides that information.

It's our understanding there is a difference between CVP yield and CVP water supply. The term "yield" has been used ambiguously in recent history. If we define CVP yield as the CVP's delivery capability in any given year, then its yield varies depending on precipitation, antecedent conditions, temperature, prevailing regulatory requirements. If CVP releases are increased or CVP exports are decreased relative to a hypothetical operation using the same precipitation, antecedent conditions, temperature, but with 1992 regulatory requirements, then DOI's current accounting policy would GENERALLY charge the 800,000 account. If those actions reduced CVP's delivery capability by X amount in that water year, then one could rightly argue that X amount of the 800,000 acre-feet came from CVP yield. Often, at least some of the actions taken in a given year, do not impact CVP's delivery capability in that year (or beyond if carryover is not affected), in which case one could rightly argue that CVP water supply was used, but CVP yield was not. In 2002, the Federal District Court instructed DOI to count uses of CVP water supply as (b)(2), even if those uses don't impact the CVP's delivery capability.

Hence, the metrics contained in DOI's May 2003 Decision on Implementation of (b)(2) generally count (b)(2) as uses of CVP water and not CVP yield.

Question 4: Does the USBR and USFWS work together to account for the amounts of water provided from the 800,000 acre-feet. Is there an up-to-date report I can obtain or a website that I can go to and review the monthly and annual application of the 800,000 acre-feet. If so, please provide me with the report, electronic file or a website that provides that information. If not, please advise me as to how I can obtain that information.

Yes, the USFWS and USBR work together to account for the 800,000 acre-feet of (b)(2) water. The b2 Interagency Team meets weekly to discuss real-time fishery needs and CVP operational issues, (b)(2) accounting, and forecasted CVP operations in future months. The team includes agency staff from the USFWS, USBR, NOAA Fisheries, CA Fish and Game, and CA Dept of Water Resources.

For copies of the annual b2 daily accounting from 2002 through 2007, please request that information from Paul Fujitani (USBR, Central Valley Operations). Email: pfujitani@mp.usbr.gov, or go to the USBR-CVO website at: http://www.usbr.gov/mp/cvo/

Question 5: Once water is applied from the 800,000 acre-feet and its serves its intended purpose(s) for fish and/or wildlife, as required by the CVPIA, can that water be picked up and used for other CVP purposes; i.e., used by agricultural or municipal water contractors and/or pumped by CVP of SWP delta facilities? If so, how much of that water can be picked up under water balanced conditions in the Delta?

When (b)(2) water is released upstream of the Delta for instream fish purposes it is generally available for other purposes and can be picked up at the export facilities if pumping capacity is available. One notable exception occurs when (b)(2) water is used to help the CVP meet WQCP requirements for Delta outflow, in those instances it is not available for other project uses. See Interior's May 2003 Decision for more details.

Question 6: In an "average" year how much of the 800,000 acre-feet has been applied for fish and/or wildlife?

In an average year approximately 800,000 acre-feet of (b)(2) water is used for the primary purpose of implementing fish, wildlife, and habitat restoration, assisting in meeting the State WQCP, and helping to meet post-1992 ESA obligations.

We're currently engaged in an Office of Management and Budget review of the CVPIA Program. In May and June of this year we presented relevant information to an Independent Panel Review, which included the AFRP, b2, b3, and Refuge Water

Program (among others). Please see the website for more information: http://www.cvpiaindependentreview.com/

Question 7: Does the 800,000 acre-feet appropriation applied during drought periods? If so, please explain?

Please refer to the May 2003 Decision, which describes the shortage provisions that apply to (b)(2) water in dry and critical years.

Question 8: Who pays for the 800,000 AF, level two (2) and level four (4) water? — CVP contractors or the taxpayers?

The annual amount of (b)(2) water, usually 800,000 acre-feet, comes from CVP project supplies. Level 2 water primarily comes from CVP yield and the only cost to the refuges is for conveyance charges. Incremental Level 4 is acquired from other sources, usually willing sellers, on the spot market - -this acquisition money, and the money used to cover conveyance of both Level 2 and Level 4 supplies comes from the Restoration Fund. Level 2 is generally reimbursable, but Incremental Level 4 is not.

Question 9: Does any of the level (2) or level (4) water get picked back up, once it is used for its intended purposes? If so, can that water be used for other CVP purposed; i.e., used by agricultural or municipal water contractors? I have no idea if any of the CVPIA refuge water is actually picked up by other CVP users once it's back in the system, but it could be.

Question 10: In an "average" year how much water is used for level two (2) and level four (4) purposes?

In an average year, about 390,000 acre-feet of Level 2 water is utilized by CVPIA refuges, most of it from CVP yield. We have to acquire the Incremental Level 4 supplies and have enough funding to, on average, purchase about 53,000 acre-feet. However, our ability to meet that Incremental Level 4 average is becoming more and more difficult as the price of water escalates and exceeds the amount by which the Restoration Fund increases over time.

Question 11: Is any of the aforementioned water intended for the purposes of "doubling" the fish populations as referenced in the CVPIA? If so, please explain?

In most years, many of the (b)(2) fish actions are intended to help contribute toward the anadromous fish doubling goal. In some instances (b)(2) water is used to provide flows required by the WQCP, or to curtail CVP pumping to protect listed delta smelt.

Question 12: How much progress has been made, if any, for "doubling" the salmon populations as a results of the water made available through the CVPIA, EWA and/or other water for fish programs?

The progress toward doubling salmon varies on a stream by stream basis. For more information, please see pre- and post-CVPIA salmon production data and graphs which can be found on the Anadromous Fish Restoration Program (AFRP) website: http://www.delta.dfg.ca.gov/afrp/

Question 13: Does your office keep records of how much EWA water has been used for fish purposes on an annual basis and are the funds used to pay for water not pumped from the Delta by CVP/SWP to save fish from being taken at the pumping facilities?

We have attached the most recent USFWS report on the EWA. Detailed questions pertaining to the EWA accounting and funding should be directed to Andy Chu at California Dept of Water Resources. Email: **andychu@water.ca.gov**, or go to the EWA Program Archive at: **www.calwater.ca.gov/calfed/library/archive_EWA.html**. Annual accounting can also be found at the Calfed Operations Group website: http://wwwoco.water.ca.gov/calfedops/

Question 14: It appears that EWA water in the early years of the project was used to provide protection for salmon; however, in the latter years it has been used for Delta smelt. Do you know how much water was made available via the EWA for the different species, since the inception of the program? Who can provide P&A with the annual amounts of water provided for fish via the EWA?

See the attached USFWS report on the EWA, which provides information regarding the use of EWA for salmon and delta smelt protection. Detailed questions pertaining to the EWA accounting should be directed to Andy Chu at California Dept of Water Resources. Email: **andychu@water.ca.gov**, or go to the EWA Program Archive at: **www.calwater.ca.gov/calfed/library/archive_EWA.html**. Annual accounting can also be found at the Calfed Operations Group website: http://wwwoco.water.ca.gov/calfedops/

Question 15: How effective has the EWA program been for actually protecting fish? Has your agency or any other agency/department conducted a scientific quantative study that quantifies the actual benefits to fish from either the EWA or the CVPIA programs? Have you been notified that funding for the EWA program may be running out? If so, please provide me with a report, electronic file or a website that provides that information

The EWA program has been the focus of rigorous analysis, but quantitative benefits (in terms of population response) have not been quantitatively shown. The EWA Program Archive contains a great deal of information compiled for annual reviews (investigations, reports, presentations, white papers). Email: www.calwater.ca.gov/calfed/library/archive_EWA.html.

We are aware that future funding for the EWA program is highly uncertain. The EWA Program Plan for Year 9 is a good source regarding the current status of the program. Email: http://www.calwater.ca.gov/calfed/plans/index.html