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# United States Department of the Interior



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## Memorandum

**To:** Central Valley Operations Manager, Bureau of Reclamation  
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Field Supervisor, Sacramento Fish and Wildlife Office  
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**From:** Regional Director, Bureau of Reclamation  
Sacramento, California

Manager, California/Nevada Operations Office  
Sacramento, California

**Subject:** Guidance for Implementation of Section 3406(b)(2) of the CVPIA

This memorandum provides guidance and direction regarding modeling and planning of the annual implementation of Section 3406(b)(2) of the Central Valley Project Improvement Act (hereinafter, "Section 3406(b)(2)" or "(b)(2)"). This guidance concerns Interior's annual dedication and management of Central Valley Project yield pursuant to Section 3406(b)(2), in accordance with the "Department of the Interior Decision on Implementation of Section 3406(b)(2) of the Central Valley Project Improvement Act May 9, 2003 Decision" ("the May 9, 2003 Decision") and with the June 3, 2003 ruling by United States Court of Appeals for the Ninth Circuit. The Ninth Circuit held that the "non-mandatory language of [Section 3406(b)(2)] gives Interior the discretion to allocate the 800,000 acre-feet among fish and wildlife, water quality, and endangered species obligations, as long as Interior's allocation gives effect to the hierarchy of purposes established in Section 3406(b)(2)." This guidance supplements the May 9, 2003 Decision, in light of the June 3, 2003 Ninth Circuit ruling.

The October 1 through September 30 accounting period described in the May 9, 2003 Decision allows Interior to implement actions that effectuate the "hierarchy of purposes" referred to in the June 3, 2003 Ninth Circuit decision. The May 9, 2003 Decision specifically provides for a target of up to 200,000 acre-feet of use in the October through January period, primarily for high priority fish and wildlife uses. Moreover, actions taken pursuant to the 1995 Water Quality Control Plan and State Water Resources Control Board Decision D-1641 ("the 1995 WQCP") involve the dedication and management of Central Valley Project yield for long-term fishery beneficial use and protection. Such actions are not taken to help meet agricultural or municipal and industrial water quality standards that are set forth in the 1995 WQCP. Most of the fishery

beneficial uses and objectives under the 1995 WQCP and in Reclamation's water right permits help fulfill the fish, wildlife, and habitat restoration purposes and measures authorized by Section 3406(b). Consistent with the June 3, 2003 Ninth Circuit decision, much of the (b)(2) water that is dedicated and managed annually to help meet fishery beneficial use and protection objectives of the 1995 WQCP serves Section 3406(b)(2)'s "primary purpose" of fish, wildlife, and habitat restoration. Therefore, the implementation of Section 3406(b)(2) in accordance with the May 9, 2003 Decision and with this supplemental guidance effectuates the "hierarchy of purposes" in Section 3406(b)(2).

Reclamation and the Service agree to start each year with targets of up to 300,000 acre-feet of (b)(2) water annually for high priority fish and wildlife actions. These may include fish actions on Clear Creek; the Sacramento, American, and Stanislaus Rivers; and in the Delta. Reclamation and the Service further agree with targets of up to 500,000 acre-feet of (b)(2) water annually to help meet WQCP and ESA obligations. The 300,000 acre-feet for fish and wildlife actions will include the target in the May 9 Decision of up to 200,000 acre-feet of use in the October through January period. (Exceeding 200,000 acre-feet can only occur after the Service and Reclamation confer and the Manager of the Service's California Nevada Operations Office and the Director of Reclamation's Mid-Pacific Region concur in writing). Additionally, if the projected and/or realized WQCP/ESA costs for the accounting year exceed the 500,000 acre-feet of (b)(2) water, the Service and Reclamation will confer to determine the best course of action. That conference will address the most beneficial use of the remaining (b)(2) water for fish and wildlife management actions that year, whether they are for fish, wildlife, and habitat restoration purposes or to help meet WQCP standards and ESA obligations. Exceeding 500,000 acre-feet of (b)(2) water used for the WQCP/ESA costs when there are other unmet high priority fish actions, as specified by the Service in coordination with NOAA Fisheries and California Department of Fish and Game, will require written concurrence of both the Manager of the Service's California Nevada Operations Office and the Director of Reclamation's Mid-Pacific Region to allow for proper planning and coordination with project operations.

This guidance does not establish caps but assures that priority actions are carefully weighed against the standards in the WQCP designed for fish and wildlife benefits. These targets should be used in developing assumptions in the modeling. Actions and priorities can be assessed to generally follow this direction. Modeling results will be reviewed to project situations in which adjustments to the targets may be desirable.

The seasonality of actions fits into the accounting period and the time dependent order for determining the priority of actions and need for adjustments to allocations, in general. Fall flow improvements, impacts to export due to Delta Cross Channel gate closures, some wintertime export reductions during fishery migration windows, some wintertime and spring flow and export costs to fishery beneficial uses of the WQCP, Vernalis Adaptive Management Plan (VAMP), and some other spring export reductions during the sensitive estuarine species periods are examples of actions that reflect the seasonality of decisions and operations. Some of the CVP Delta fish actions that cannot be incorporated into the (b)(2) allocations may fall into the Environmental Water Account (EWA) needs.

In annual implementation we can use existing teams and processes to continue to determine priorities of actions and evaluate the consistency with the guidance provided in this memorandum. The May 9 Decision recognizes the considerable coordination that is critical to the implementation of many actions with (b)(2), and implementation of the EWA. The B2IT will advise Reclamation, the Service, the EWAT Team and other members of the Water Operations Management Team (WOMT) when the implementation is varying from the targets and make recommendations for shifting (b)(2) water between such uses. Reclamation and the Service can use input from the WOMT to make informed decisions on priorities of (b)(2) water, although the Directors of Reclamation and the Service will continue to retain final responsibility for such decisions as outlined in the CVPLA, Interior's May 9 Decision and herein.

Reclamation and the Service understand that we must wisely use the discretion provided in the CVPLA and implementation policy in the dedication and management of (b)(2) water each year, taking into consideration fishery conditions, hydrology, reservoir storage, and other associated actions.



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