



March 20, 2026

Mr. Scott Cameron  
Acting Commissioner  
Bureau of Reclamation  
Department of the Interior  
[scott\\_cameron@ios.doi.gov](mailto:scott_cameron@ios.doi.gov)

*Submitted electronically*

Re: Consideration of CVPIA Completion Determination – OPPOSITION

Dear Mr. Cameron,

We are writing on behalf of a coalition of conservation, fishing and regional interest groups and tribal communities to oppose the proposal to reduce collections for the Central Valley Project Improvement Act Restoration Fund (CVPIA Restoration Fund), Pub. L. No. 102-575, under CVPIA Section 3407(d)(2)(A) that would occur as a result of a completion determination by the Department of the Interior (DOI).

By law, CVPIA Restoration Fund collections may only be reduced “upon the completion of the fish, wildlife, and habitat mitigation and restoration actions mandated under section 3406 of this title.” CVPIA section 3407(d)(2)(A). Issuing a completion determination would ignore the unambiguous fact that the mandated restoration actions have not been completed. Reducing CVPIA Restoration Fund collections would therefore blatantly violate federal law.

Reducing collections would also harm important commercial, recreational and tribal fisheries on the West Coast – and the people whose livelihoods stem from those fisheries – that depend on the Central Valley ecosystem. A completion determination will undermine long-standing collaborative efforts to improve habitat for a broad range of listed and unlisted fish and wildlife species, and cost taxpayers money that will need to be raised to meet federal legal commitments that will no longer be funded by Restoration Fund collections.

Therefore, we strongly urge the U.S. Bureau of Reclamation (Reclamation) not recommend a completion determination for the CVPIA.

***The CVPIA Restoration Fund Was and Remains a Critical Tool to Repair Damage Caused by Operation of the Central Valley Project (CVP)***

A CVPIA completion determination would reduce collections from power and water CVP customers<sup>1</sup> and decrease annual funding for the program.<sup>2</sup>

The potential resulting effects could be diverse and profound, including but not limited to:

- Variability in water and power rates<sup>3</sup>
- Variability in water deliveries essential for refuges
- Budget shortfalls in federal agencies, e.g., Reclamation and the U.S. Fish and Wildlife Service (USFWS)
- Loss of funding for Reclamation legal obligations which would have to be met through other means
- Cause widespread economic and environmental impacts, including reducing the viability of commercially important coastal fisheries for anadromous species and for other protected and/or desirable species, degradation of estuary and wetland habitats, and exacerbation of water quality issues

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<sup>1</sup> In light of a completion determination, a 50% ceiling would be placed on the collection of Central Valley Project Improvement Act (CVPIA) fees for the CVPIA Restoration Fund from water and power customers. The current ceiling is about \$66 million per year. The reduced ceiling would be about \$33 million (in today's dollars), which would likely be reached every year.

<sup>2</sup> Funding would be reduced by about \$17 million per year on average, with some years seeing much greater reductions. CVPIA collections over the last eight years have averaged \$50 million. If collections were capped at \$33 million, this would reduce collections by \$17 million. In the most recent three years, collections were \$58 million, which would have equated to a \$25 million reduction in funding.

<sup>3</sup> CVPIA water fees are set at \$12 per acre-foot (AF) of agricultural water or \$24 per AF of Municipal and Industrial (M&I) water delivered, making up 65% of total CVPIA Restoration Fund collections. Power fees are based on a 2-year lookback on water deliveries, making up 35% of collections. Instead of fixed water rates and predictable power rates, CVPIA fees would be adjusted every year based on projected deliveries, then trued up later based on actuals, and adjusted over time to maintain a \$33 million ceiling on a 3-year rolling average. This will result in some years with much higher collections, not tied to hydrologic conditions. Reclamation may also adjust Operations and Maintenance (O&M) rates for CVP operations to cover its uncollected expenditures.

The CVP continues to have devastating impacts on our natural environment, requiring ongoing mitigation, as provided for by the CVPIA. Given the devastating population declines of salmon populations and wetlands going dry, among other impacts, the CVPIA-required and funded projects remain vitally important, and therefore the fundamental funding mechanism, the CVPIA Restoration Fund, remains critical.

The CVPIA Restoration Fund is used to meet all environmental compliance obligations of the CVP, including ongoing CVPIA obligations, Endangered Species Act biological opinion requirements, state requirements like Water Quality Control Plans, and contributions to the San Joaquin and Trinity River Restoration Programs.

With less funding for compliance, Reclamation would need to seek increased appropriations from Congress to meet its legal obligations. If not approved, Reclamation would need to divert funding from other programs to cover these costs. Regardless, reimbursements may be collected through operations and maintenance rates, and the likely economic impacts must be fully analyzed by both Reclamation and the state of California.

### **If DOI Declares the CVPIA's Restoration Actions Complete, it Will Trigger a Need for Significant Additional Federal Funding**

If the DOI unlawfully declared CVPIA requirements under Section 3406 complete, and thus reduced collections to the CVPIA Restoration Fund, the federal government must – as a part of that action – provide additional federal funds to undertake legally required restoration actions. Many of the actions required by the CVPIA have not been completed. Even if the DOI were to reduce collections to the CVPIA Restoration Fund, those legal obligations would remain. For example, the CVPIA requires Reclamation to build needed refuge water conveyance infrastructure, purchase Level 4 wetlands supplies, and pay required water wheeling costs to deliver refuge water. Many other CVPIA restoration obligations would also continue, even with a reduced CVPIA Restoration Fund. As a result, a CVPIA completion determination would require Reclamation to immediately commit additional federal funds to replace lost water and power user funds. The result of such a decision would be that federal taxpayers, rather than the beneficiaries of the CVP, would bear the cost of repairing the damage caused by the CVP.

### **The CVPIA is Not Complete Because Anadromous Fish Have Been Devastated, not Doubled, Since 1992**

The CVPIA established a goal of doubling naturally produced anadromous fish production in the Central Valley, compared to the period from 1967-1991. That goal requires the production of an average of 990,000 naturally produced adult Chinook Salmon from Central Valley rivers. The Act requires additional doubling goals for other anadromous fish.

The clearest reason why the restoration work required by Section 3406 of the CVPIA is not complete is that naturally producing anadromous fish have not doubled.

The Sacramento River provides an important example, among many, of this failure. The Sacramento is the largest Central Valley river, and its flow is controlled by the CVP's Shasta Dam – the largest reservoir in California. As a result, it is perhaps the most important single river to focus on to evaluate Interior's record in implementing the CVPIA's doubling mandate.

Rather than doubling naturally produced anadromous fish, the CVP has played a major role in the collapse of naturally production of each of the four runs of Central Valley Chinook Salmon. For example, returns of spawning adult fall-run Chinook salmon to the upper Sacramento River averaged 76,292 fish for the period from 1967-1991. However, this number declined to an average of 5.095 in 2023 and 2024, the most recent years for which we have records.<sup>4</sup> This represents a 93 percent decline in returns of in-river spawning Sacramento River fall-run Chinook salmon since the passage of the CVPIA.

From the perspective of the CVPIA's doubling goal, the decline is far worse. First, the numbers above reflect the massive subsidy of Central Valley River hatcheries, which are not included in the CVPIA mandate to restore "natural production." Second, the above reflect the return of adult salmon, not CVPIA's production metric. Production is a measure of fish available to the fishery in the ocean (i.e., pre-harvest). When fish harvested in the increasingly constrained recreational and commercial fisheries are included, the decline is far greater than the decline in salmon returning to the river. For example, for the decade from 1981-1990, California commercial and ocean recreational Chinook landings averaged over 900,000 fish per year.<sup>5</sup> Adding the harvest of naturally produced fish to the in-river returns for those years reflects "natural production". Because of the closure of the commercial salmon fishing seasons, there was no commercial or recreational harvest during 2023 or 2024. Thus, the returns of salmon have declined precipitously even as the fishery was restricted and closed.

Another sign of Interior's incomplete and inadequate implementation of the CVPIA's doubling program is the decline of California's salmon fishing industry. As a direct result of Reclamation's failure to fully meet the CVPIA's restoration requirements, compounded by the State Water Resources Control Board's acquiescence to ecosystem crisis and the devastating impacts of the CVP and State Water Project, the California commercial salmon fishing season was closed in 2008, 2009, 2023, 2024 and 2025. Ocean recreational fishing was closed for the first four of these years, and in 2025, ocean recreational fishing was allowed for a mere 6 days.

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<sup>4</sup> See the California Department of Fish and Wildlife (CDFW) GrandTab.

<sup>5</sup> See PFMC 2010 Review of Ocean Salmon Fisheries. This average includes landings of both naturally produced and hatchery fish. This average also excludes landings from in-river recreational fishing. <https://www.pcouncil.org/documents/2011/02/review-of-2010-ocean-salmon-fisheries.pdf/>

Similar failures have occurred in the implementation of the CVPIA salmon doubling program on the American and Stanislaus Rivers, in the Delta, and with regard to other anadromous fish, including Central Valley Steelhead, Green Sturgeon and White Sturgeon. The White Sturgeon population in particular has crashed since the passage of the CVPIA, leading to California Endangered Species Act protections starting in 2024, a federal ESA listing petition in 2023, and severe restrictions on the sturgeon fishery.

### **The Bureau of Reclamation Has Not Exhausted All Reasonable Efforts to Restore Anadromous Fish**

The CVPIA requires the Department of Interior to:

develop within three years of enactment and implement a program which makes all reasonable efforts to ensure that, by the year 2002, natural production of anadromous fish in Central Valley rivers and streams will be sustainable, on a long-term basis, at levels not less than twice the average levels attained during the period of 1967-1991.<sup>6</sup>

Many specific restoration actions remain to be completed, and Reclamation agrees that “all reasonable efforts” have not been made to achieve the CVPIA’s doubling goal.

Reclamation is a signatory to the proposed Bay Delta Voluntary Agreements (VAs).<sup>7</sup> That proposal includes a commitment to significant habitat restoration work, including instream rearing habitat, spawning habitat, floodplain habitat and habitat for fish food production.<sup>8</sup> These restoration actions closely parallel the restoration projects funded for the past 30+ years by the CVPIA Restoration Fund. They also reflect the habitat restoration mandate in the CVPIA, including “measures which protect and restore natural channel and riparian values through habitat restoration actions.”<sup>9</sup>

Further, the budget for the VAs promises \$740 million in new federal funds – *above and beyond* existing CVPIA Restoration Fund money – specifically to support habitat restoration.<sup>10</sup> The VAs also include “CVPIA funding for VAs’ [eight-year] term.” Thus, Reclamation has specifically indicated that the CVPIA Restoration Funds are necessary, yet insufficient, to support further promised restoration work. Indeed, Reclamation has agreed that additional federal funds are required for this purpose.

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<sup>6</sup> CVPIA § 3406(b)(1).

<sup>7</sup> Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and other related actions. March 2, 2022.

<[https://waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/docs/2023/revised-va-mou-swrbc-copy.pdf](https://waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/2023/revised-va-mou-swrbc-copy.pdf)>

<sup>8</sup> *Ibid.* Appendix 2.

<sup>9</sup> CVPIA § 3206(b)(1)(A).

<sup>10</sup> *Ibid.* Appendix 3, Table 4.

The 34 year-old CVPIA Restoration Fund is not an appropriate source of funding for the VAs, given the uncompleted actions that the Act mandates, as detailed below. Further, in no credible way can redirecting money from the CVPIA Restoration Fund be said to represent “new” contributions to salmon restoration or doubling. However, Reclamation’s commitment to the VAs clearly demonstrates that Reclamation believes additional anadromous fish restoration work is appropriate, required, feasible, and reasonable. The CVPIA Restoration Fund should continue to support that work.

Many Specific CVPIA Restoration Actions Have Not Been Completed.

Many specific restoration actions required by the CVPIA have not been completed. The following is a partial list.

The CVPIA requires Reclamation to develop and implement a program to purchase additional water to restore anadromous fish.<sup>11</sup> The VA MOU discussed above also calls for the purchase of additional environmental water.<sup>12</sup> Given these requirements and commitments, Reclamation has demonstrated that its obligation to purchase water for the environment under 3406(b)(3) is not complete.

The CVPIA requires Reclamation to “implement modifications in CVP operations as needed to assist in the Secretary’s efforts to control water temperature in the upper Sacramento river in order to protect anadromous fish in the upper Sacramento River.”<sup>13</sup> Temperature management on the Sacramento River continues to be a major problem, and is one of the primary reasons Sacramento River salmon populations have crashed in recent years. Reclamation does not comply with Water Rights Order 90-5, regularly seeks waivers of regulatory requirements related to water temperatures impacted by CVP operations, and consistently proposes Temperature Management Plans that are not protective of salmon, and regularly damage the population.<sup>14</sup>

The CVPIA requires Reclamation to “develop and implement a program to eliminate, to the extent possible, losses of anadromous fish due to flow fluctuations caused by the operation of any Central Valley Project storage or re-regulating facility.”<sup>15</sup> Reclamation’s operation of Shasta Dam continue to result in the dewatering of fall-run Chinook Salmon redds and the death of salmon eggs and juveniles, impeding efforts to double natural production of anadromous fish.

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<sup>11</sup> CVPIA § 3406(b)(3).

<sup>12</sup> VA MOU Op Cit. Appendix 1.

<sup>13</sup> CVPIA §§ 3506(b)(6), 3406(b)(19).

<sup>14</sup> See the State Water Resources Control Board’s tracking of Order 90-5 compliance. Available online: <[https://www.waterboards.ca.gov/drought/sacramento\\_river/#:~:text=2023,Plan%20for%20Water%20Year%202022](https://www.waterboards.ca.gov/drought/sacramento_river/#:~:text=2023,Plan%20for%20Water%20Year%202022)>; see also associated CVP/SWP requested Temporary Urgency Change petitions. Available online: <[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/tucp/index.html](https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/tucp/index.html)>.

<sup>15</sup> CVPIA § 3406(9).

The CVPIA requires Reclamation to “meet flow standards and objective and diversion limits set forth in all laws and judication decisions that apply to the Central Valley Project facilities.”<sup>16</sup> That includes complying with State Water Resources Control Board requirements for the CVP, including in the Bay-Delta Plan. However, Reclamation has either violated existing regulatory requirements or sought a waiver of them in more than half of years since 2014. Furthermore, in clear contradiction of the CVPIA mandate, Reclamation contended, in a recent letter to the State Water Board, that “Reclamation has neither the legal authority, nor the legal obligation to implement the State Board's Water Quality Control Plan.”<sup>17</sup>

The CVPIA requires the use of “increased water flows to increase the survival of migrating anadromous fish.”<sup>18</sup> This remains a key need. Neither the CVPIA requirements nor the consistent implementation of these outmigration flows have been “completed” in any sense of the word.

The CVPIA requires the Department of the Interior to “rehabilitate and expand the Coleman National Fish Hatchery.”<sup>19</sup> The Coleman Hatchery continues to require rehabilitation and expansion. Needed actions include the completion of Parentage Based Tagging programs and the construction of a new water intake facility, to facilitate needed dam removal on Battle Creek.

The CVPIA requires a program to restore and replenish spawning gravel “lost due to the construction and operation of Central Valley Project dams.”<sup>20</sup> Given the inability of gravel to pass naturally through CVP facilities, this is a permanent, ongoing need. There is no permanent, reliable mechanism to ensure that this need is met over the long-term. It is not, therefore, “complete.”

The CVPIA also requires an ongoing (e.g., permanent) program to monitor fish and wildlife resources in the Central Valley.<sup>21</sup> Reclamation eliminated funding and support for much of the Interagency Ecological Program as part of the 2025 Annual Work Plan, including the adult sturgeon tag monitoring survey. Funding for this latter monitoring work was eliminated despite a dramatic White Sturgeon population decline, leading to the filing of an ESA listing petition.

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<sup>16</sup> CVPIA § 3406(b)(7).

<sup>17</sup> Bureau of Reclamation comment letter to the State Water Resources Control Board on the Bay-Delta Water Quality Control Plan Update Phase 2, February 2, 2026. <https://drive.google.com/file/d/1J18CYZTHp-hf4AjlSd9qNk8YypKDjDc1/view>

<sup>18</sup> CVPIA § 3406(b)(8).

<sup>19</sup> CVPIA § 3406(b)(11).

<sup>20</sup> CVPIA § 3406(b)(13).

<sup>21</sup> CVPIA § 3406(b)(16).

The CVPIA requires a program to address fish, wildlife and habitat concerns on the San Joaquin River.<sup>22</sup> But actions to remove barriers to fish passage, rehabilitate degraded river habitat, and maintain river releases that Reclamation committed to under the subsequent San Joaquin River Restoration Settlement in 2006 have not been completed on schedule, and are expected to require several more years to be fully implemented.

Clearly all of these, and other, anadromous fish related requirements of the CVPIA are not complete.

Further, Interior has not responded to the 2008 Listen to the River scientific peer review of the CVPIA.<sup>23</sup> That review called for improvements in CVPIA implementation, some of which would clearly be required for Interior to “complete” the CVPIA’s restoration requirements.

### **A CVPIA Completion Finding Would Fatally Undermine the Credibility of the Bay-Delta Voluntary Agreements**

Reclamation is a signatory and necessary participant in the proposed VAs. Regardless of our views of the sufficiency of the VAs, reducing CVPIA Restoration Fund collections would directly contradict and undermine the very approach Reclamation is proposing in the VA process. The 2022 VA MOU specifically calls for the use of *both* CVPIA Restoration Fund money and \$740 million in new federal funding to support anadromous fish habitat restoration in the Central Valley. If Reclamation were to conclude that the habitat restoration and environmental flow acquisition efforts required by the CVPIA are complete and then use that conclusion to reduce collections for the CVPIA Restoration Fund, the result would be either to call into question Reclamation’s commitment to implementing the terms of the MOU or would require Reclamation to identify additional funds to make up the VA shortfall. Further, a conclusion in a CVPIA completion determination that all reasonable anadromous fish restoration efforts to achieve the CVPIA’s anadromous fish restoration requirements have been completed, would conflict with the extensive habitat restoration proposals in the VA MOU.

A CVPIA completion finding could also lead Reclamation to claim that a reduced CVPIA Restoration Fund represents a “new” habitat restoration contribution to the VAs. Reclamation staff have indicated that they plan to count habitat restoration projects funded by the CVPIA Restoration Fund as contributions to the VA habitat restoration commitments. These already funded projects are not “new” restoration efforts that could count as VA contributions. Beyond this concern, a CVPIA completion decision and a reduction in the CVPIA Restoration Fund could lead to an absurd and cynical result. If a completion decision is issued and the CVPIA Restoration Fund is reduced, it would mean

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<sup>22</sup> CVPIA § 3406(c).

<sup>23</sup> Listen to the River: And Independent Review of the CVPIA Fisheries Program, December 2008. <https://www.usbr.gov/mp/cvpia/docs-reports/docs/report-independent-review-listen-to-the-river-12-2008.pdf>

that Reclamation may suggest that projects supported by a dramatically reduced CVPIA Restoration Fund could be treated as “new” VA restoration projects. It would be cynical indeed for Reclamation to issue a decision that could lead to a claim that a slashed 34 year old salmon restoration program should be considered a “new” Reclamation contribution to the VAs.

Reclamation controls critical operations in the Bay-Delta and committed to be a major funder of the VAs. A CVPIA completion decision is evidence that the federal government will not meet its obligations as a signatory of the VAs MOU, that it is not a good faith partner in efforts to protect the Bay-Delta and its resources, and that the voluntary approach envisioned by the VAs cannot succeed.

### **A CVPIA Completion Finding Would Harm Wetlands and National Wildlife Refuges<sup>24</sup>**

The CVPIA makes clear that Congress’s purpose in dedicating a permanent water supply for refuges was to provide an “ecologically equivalent habitat” to replace what was destroyed when the CVP was constructed and continued to be operated primarily for the purpose of providing water to agricultural users, including settlement and exchange contractors.<sup>25</sup> The CVPIA’s mandate includes providing both “Level 2” and “Level 4” water, which together represent the water necessary to fulfil the CVPIA’s requirements for wildlife refuges. Furthermore, allocations for wildlife refuges are explicitly required under the CVPIA.<sup>26</sup> Reclamation must operate the CVP consistent with the requirements of the CVPIA, including minimum allocations of water for refuges.<sup>27</sup> And all CVP contracts must be administered consistent with the intent and purposes of CVPIA, including its refuge provisions.<sup>28</sup>

The Central Valley’s wildlife refuges provide the last few pockets of crucial habitat for migratory birds and other sensitive species that have been declining since the construction of the CVP, particularly in light of recent droughts in California. The Central Valley has already lost over 95% of its historic wetlands. Without adequate water supply for wildlife refuges, these sensitive species will suffer tremendously. Specifically, the CVPIA-protected refuge areas are critical to ensuring survival of a range of species that depend on these wetland habitats. They provide essential habitat for the survival of millions of migratory waterfowl, shorebirds, and other birds each year, as well as other species, including the threatened giant garter snake, which is endemic to the Central Valley. Adequate water supply for these refuges is necessary to prevent wildlife die-offs in the Central Valley

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<sup>24</sup> See also April 24, 2023 Letter sent by Defenders of Wildlife to the Bureau of Reclamation re “Proposal to Reduce Refuge Water Deliveries as Proposed Action in CVP LTO Consultation Would Hurt Numerous Species and Violate Federal Law,” hereby attached.

<sup>25</sup> CVPIA § 3406(a)(3).

<sup>26</sup> See CVPIA § 3406(d); see also *Tehama-Colusa Canal Auth. v. U.S. Dep’t of the Interior*, 721 F.3d 1086, 1091 (9th Cir. 2013) (the CVPIA “reallocated priorities for use of CVP water”).

<sup>27</sup> CVPIA § 3406(b).

<sup>28</sup> *Id.* § 3404(c)(2).

similar to recent events in the Klamath Basin and similarly devastating events in the Central Valley in the 1970s. Large-scale die-offs of waterfowl species do not just harm the Central Valley ecosystem—such harms to species also jeopardize the United States’s ability to comply with international migratory bird treaties and Pacific Flyway partnerships.

The CVPIA Restoration Fund provides additional federal funds for Reclamation to purchase “Level 4” wetlands water supplies. Reclamation’s legal mandate to continue delivering water to CVPIA-refuges would continue despite a completion determination, but the economic impacts to Reclamation, water contractors and subsequent ripple effects to state resources, would be immense.

### **Conclusion**

For the aforementioned reasons, we request Reclamation not recommend a completion determination of the CVPIA.

A completion determination would result in dramatic reductions for critical mitigation funds in the Restoration Fund that benefit many diverse communities on the West Coast. The CVPIA Restoration Fund and associated programs needs to be increased, not decreased, for communities and wildlife, including fishing communities in the Central Valley, Bay-Delta and across the California and Oregon coasts, and hunting and recreation interests that rely on the Pacific Flyway. The CVPIA Restoration Fund provides ongoing and urgently needed support for Central Valley fish and wildlife and their habitats and is incorporated into numerous regulatory processes. The completion determination would not only harm a broad array of citizens but result in economic harm to both Reclamation as well as other federal and state agencies, and have ripple impacts across the state.

Thank you for the opportunity to provide informal feedback on this important issue, and your time and consideration of this letter.

Respectfully,



Ashley Overhouse  
Defenders of Wildlife



Vance Staplin  
Golden State Salmon Association



Eric Buescher  
San Francisco Baykeeper



Gary Bobker  
Friends of the River

March 20, 2026



Barbara Barrigan Parilla  
Restore the Delta



Gary Mulcahy  
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Yosemite Rivers Alliance



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# Attachment 1



**California Program Office**

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[www.defenders.org](http://www.defenders.org)

April 24, 2023

Mr. Ernest Conant, Regional Director  
U.S. Bureau of Reclamation  
2800 Cottage Way  
Sacramento, CA 95825

Mr. Paul Souza, Regional Director  
U.S. Fish and Wildlife Service  
2800 Cottage Way  
Sacramento, CA 95825

*Via email:* [econant@usbr.gov](mailto:econant@usbr.gov); [paul\\_souza@fws.gov](mailto:paul_souza@fws.gov)

RE: Proposal to Reduce Refuge Water Deliveries as Proposed Action in CVP LTO  
Consultation Would Hurt Numerous Species and Violate Federal Law

Dear Mr. Conant and Mr. Souza:

Publicly available documents released by the U.S. Bureau of Reclamation regarding the reinitiation of consultation on the coordinated long-term operations of the Central Valley Project (CVP) and State Water Project (SWP) indicate that Reclamation is considering “Reductions to CVPIA Level 2 Refuge Deliveries” as part of its proposed action.<sup>1</sup> Such a change in Reclamation policy would have devastating consequences. Reclamation’s refuge water deliveries are critical for the survival of the Central Valley’s migratory waterfowl and other bird species. Such a reduction would also be unlawful, contrary to Congress’s clearly expressed mandate in the Central Valley Project Improvement Act (CVPIA), Pub. L. No. 102-575,<sup>2</sup> and harmful to other sensitive species that rely on CVPIA-protected wetlands. It is essential that Reclamation and the U.S. Fish and Wildlife Service (FWS) reject any such proposal to reduce CVPIA Level 2 refuge deliveries.

The CVPIA makes clear that Congress’s purpose in dedicating a permanent water supply for refuges was to provide an “ecologically equivalent habitat” to replace what was destroyed when the CVP was constructed and continued to be operated primarily for the purpose of providing water to agricultural users, including settlement and exchange contractors. CVPIA § 3406(a)(3). The CVPIA’s mandate includes providing both “Level 2” and “Level 4” water, which together represent the water necessary to fulfil the CVPIA’s requirements for wildlife refuges. Failing to provide adequate water

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<sup>1</sup> See Bureau of Reclamation, “LTO Modeling Update” (March 2023), slide 32, which lists “Reductions to CVPIA Level 2 Refuge Deliveries” under “Ongoing Discussions.” A copy of the presentation is attached to this letter as Exhibit A.

<sup>2</sup> Allocations for wildlife refuges are explicitly required under the CVPIA. See CVPIA §3406(d); see also *Tehama-Colusa Canal Auth. v. U.S. Dep’t of the Interior*, 721 F.3d 1086, 1091 (9th Cir. 2013) (the CVPIA “reallocated priorities for use of CVP water”). Reclamation must operate the CVP consistent with the requirements of the CVPIA, including minimum allocations of water for refuges. CVPIA §3406(b). And all CVP contracts must be administered consistent with the intent and purposes of CVPIA, including its refuge provisions. *Id.* §3404(c)(2).

supply to national wildlife refuges and other CVPIA-protected wetlands would violate decades of public policy, but such a failure is completely avoidable—the actual amount of water needed for refuges remains a small portion of what is delivered to other CVP users and a tiny portion of the overall amounts managed by the CVP system. In 2023, for example, Reclamation has allocated around 420,000 acre-feet of CVP water to be delivered to refuges, in contrast to the approximately 2,100,000 acre-feet allocated to the Sacramento River Settlement Contractors and the 6,500,000 acre-feet of total CVP water allocated.<sup>3</sup> There is no excuse for Reclamation’s failure to provide adequate allocations to these refuges, and a new policy of reducing already minimal Level 2 allocations would further degrade a system that CVPIA was designed to protect and restore.

The CVPIA unambiguously requires Reclamation to provide a minimum of 75% Level 2 refuge supply, even during critically dry years. CVPIA §3406(d) states: “In support of the objectives of the Central Valley Habitat Joint Venture and in furtherance of the purposes of this title, the Secretary *shall provide*, either directly or through contractual agreements with other appropriate parties, *firm water supplies* of suitable quality to maintain and improve wetland habitat areas . . .” (emphasis added). These requirements are mandatory, not discretionary. *Westlands Water Dist. v. Nat. Res. Def. Council*, 43 F.3d 457, 460 (9th Cir. 1994) (“Section 3406(d)(1) directs the Secretary ‘[u]pon enactment of this title’ to deliver a specified amount of water to wetlands within the Central Valley. . . . The phrase means that implementation is triggered by enactment. . . . Congress did not give the Secretary discretion over when he may carry out his duties under these sections.”). The Level 2 refuge allocation, which is set forth in §3406(d)(1), can be reduced by no more than 25%, even in critically dry years. CVPIA §3406(d)(4). Reductions of Level 2 water allocations beyond 25%, such as the reductions that Reclamation is apparently discussing as part of reinitiation, are unlawful. This is particularly troubling given Reclamation’s arbitrary and unlawful decision to issue an allocation that reduced Level 2 deliveries in the Sacramento Valley last year down to a mere 18%, which caused major harms as well as imposed unnecessary and unjustified additional financial burdens on the limited CVP Restoration Fund as agencies attempted to mitigate these harms. It must be remembered that Level 2 is only part of the congressional mandate for protecting wetlands and refuges, and last year’s reductions were aggravated by Reclamation’s repeated failure to meet its separate legal obligation to carry out the full Level 4 mandate in CVPIA.

The Central Valley’s wildlife refuges provide the last few pockets of crucial habitat for migratory birds and other sensitive species that have been declining since the construction of the CVP, particularly in light of recent droughts in California. The Central Valley has already lost over 95% of its historic wetlands. Without adequate water supply for wildlife refuges, these sensitive species will suffer tremendously. Specifically, the CVPIA-protected refuge areas are critical to ensuring survival of a range of species that depend on these wetland habitats. They provide essential habitat for the survival of millions of migratory waterfowl, shorebirds, and other birds each year, as well as other species, including the threatened giant garter snake, which is endemic to the Central Valley. Adequate water supply for these refuges is necessary to prevent wildlife die-offs in the Central Valley similar to recent events in the Klamath Basin (where tens of thousands of birds died of avian botulism due to inadequate water and overcrowding in summer 2020) and similarly

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<sup>3</sup> See Bureau of Reclamation, Central Valley Project (CVP) Water Quantities for Delivery 2023, available at <https://www.usbr.gov/mp/cvp-water/docs/cvp-water-quantities-for-delivery-2023.pdf> (accessed April 13, 2023).

devastating events in the Central Valley in the 1970s. Large-scale die-offs of waterfowl species do not just harm the Central Valley ecosystem—such harms to species also jeopardize the United States’s ability to comply with international migratory bird treaties and Pacific Flyway partnerships.

We therefore strongly urge Reclamation to reject any proposal to reduce the nondiscretionary Level 2 refuge water allocations. Any Proposed Action that includes such unwarranted reductions would render the entire effort legally flawed and subject to immediate challenge. At a minimum, adoption of such a proposal would be arbitrary, capricious, and unlawful. *See Tebama-Colusa Canal Auth.*, 721 F.3d at 1093 (the Administrative Procedure Act provides a mechanism for plaintiffs to challenge violations of the CVPIA). Additionally, dewatering refuge areas in the Central Valley may violate the Endangered Species Act (ESA), including applicable biological opinions for the ESA-listed giant garter snake.<sup>4</sup> Accordingly, we urge Reclamation and FWS to reject any proposal to include refuge water supply reductions that conflict with the requirements of the CVPIA in any proposal for the reinitiation of consultation or in any other Reclamation policy or operations plan going forward.

Sincerely,



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CC: Camille Touton, Commissioner, U.S. Bureau of Reclamation  
Carter Brown, Associate Solicitor, Office of the Solicitor, U.S. Department of the Interior  
Martha Williams, Director, U.S. Fish and Wildlife Service  
Gary Gold, Deputy Assistant Secretary for Water and Science  
Charlton Bonham, Director, California Department of Fish and Wildlife

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<sup>4</sup> *See, e.g.*, Fish and Wildlife Service Memorandum to Reclamation re: Reinitiation of Programmatic Formal Consultation for Bureau of Reclamation’s Proposed Central Valley Project Long Term Water Transfers (2015-2024) with Potential Effects on the Giant Garter Snake within Sacramento Valley, California, June 4, 2015, at 8, 12-14 (programmatic biological opinion restricting transfers of water that might adversely affect habitat for giant garter snakes, and prohibiting transfers from “[a]reas with known priority snake populations”).