

Flow Deal: Peace Treaty or Trojan Horse?

By Caviad Hayes Thronson

Promising up to 825,000 acre-feet a year of new water to protect endangered fish and thousands of acres of habitat improvements, the Newsom administration and others hailed the March announcement of a proposed voluntary agreement on Bay-Delta flows as the beginning of the end of California's water wars, and a boon to the Bay-Delta ecosystem.

"We think this has the promise to give us more benefit for ecosystems because we would be combining both flow and habitat assets," says California Natural Resources Agency spokesperson Lisa Lien-Mager. And by providing an alternative to government mandates already in the works, proponents say the deal will head off litigation that could delay guaranteed environmental flows for years.

Following a decade of stop-and-start negotiations, in March the Resources Agency signed a memorandum of understanding outlining the agreement together with three other state agencies, the U.S. Bureau of Reclamation and 11 water agencies — almost all of them state or federal water contractors, including Metropolitan Water District (Met) of Southern California and Westlands Water District.

The Newsom administration will propose the voluntary agreement (VA) to the State Water Resources Control Board as means of implementing the Board's update to the Water Quality Plan for the Bay and Delta. The new agreement would, in effect, be an alternative to the Board's 2018 framework for Sacramento River Basin flows. That framework, which would require 45% to 65% of unimpaired flows into and through the Delta to San Francisco Bay, was never formally adopted, and has been on hold during the VA negotiations.

The eight-year, \$2.6 billion program established by the agreement would implement the Board's water-quality plan "in a way that doesn't result in a long, protracted water rights process," says Met's Bay-Delta policy manager Steve Arakawa. "The idea is the environment will see [benefits] much quicker."

Bay-Delta environmental advocates are skeptical at best. The proposal is light on details, and includes a lot of red flags, they say, starting with that 825,000 acre-feet of new flows. When you dig into the numbers, says San Francisco Baykeeper senior scientist Jon Rosenfield, it turns out that in both wet years and critically dry years — which account for 47% of years — the agreement only claims to provide around 150,000 acre-feet for fish. "I get going with your top line," he says, "but in almost half of the years, it's not going to be anywhere close to that top line."

Describing the water as “new” or “additional flows” for the environment is also problematic, argue Rosenfield and others. Previously, specific flows have been committed to beleaguered species by various standards, decisions, and opinions. The March voluntary agreement uses water required under the Water Board’s late 1990s Decision 1641 (which set the “X2” estuarine habitat health standard) and the biological opinions issued in 2019 under the Trump administration as a baseline.



Carcass survey crews conduct a salmon carcass survey in the Feather River in Oroville, California, located in Butte County. Photo taken November 4, 2020. Photo: Kelly M. Grow, DWR

Those Biological Opinions, or BiOps, which dramatically increased the amount of water that could be exported relative to the previous BiOps, are widely viewed as deeply flawed. Arguing that they are inadequate to protect endangered salmon and other species from extinction, California sued the federal government to invalidate the 2019 BiOps, and the Biden Administration has declined to defend them in court. Last year the Bureau of Reclamation reinitiated consultation on water project operations, launching a process that will lead to new BiOps by 2024. In the meantime, as drought and exports continue to squeeze flows, populations of endangered salmon and smelt will likely decline precipitously.

“Why [is the state] using the Trump baseline when they disagree with it?” asks Rosenfield. “This is a case where you lower the floor to make your table look higher. The water promised in the VA is basically filling a hole that was created when the Trump administration lowered the floor compared to the 2008-2009 Biological Opinions.”

According to Doug Obegi , a senior attorney with the Natural Resources Defense Council, “Once you account for the changed baseline and the different water-year types, the VA proposes around 300,000 acre-feet of water per year for the environment compared to the 2008/2009 BiOps, whereas the State Board’s 2018 Framework and

Amendments to the Bay-Delta Plan would have provided 1.6 million acre-feet of new flows for the environment.”

“In critically dry years,” says Rosenfield, “the new VA proposal would provide less flow for the environment than it received under previous regulations that everyone agrees were inadequate.”

Lien-Mager notes that the voluntary agreement includes the 2019 BiOps because they “refer to the current regulatory framework for the Central Valley and state water projects and solely for the purposes of measuring whether the flows and habitat are additive to the system.” The agreement acknowledges that the BiOps may be modified, she says, adding that any discrepancies between water commitments in the VA and future requirements under a new BiOp would be reconciled prior to completion of the State Board’s regulatory process.

Although the March agreement is billed as an eight-year program that will be monitored and adaptively managed to ensure that environmental goals are met, “the state plans to use this agreement as their proposal for flows the planned Delta tunnel must meet,” says Obegi.

Emails obtained through a Public Records Act request indicate that “when the Department of Water Resources submits their water rights petition for the Delta tunnel to the State Board, they’re not going to analyze a wide range of outflows, they’ll just propose what’s in the VA,” says Obegi. If the petition is approved, the flow requirements in the agreement would effectively become permanent, unless the rules were changed in the future.

Whatever the exact amount of environmental water that’s provided by the VA really is, it’s clearly inadequate, say Bay-Delta environmental advocates. They cite the State Board’s 2018 framework and its 2010 flow criteria report to the California legislature, as well as numerous studies by state and federal fish and wildlife agencies, NGOs and academics, that found that a much greater amount of flow, released on a more natural pattern, is needed to restore the estuarine ecosystem.

Defining Unimpaired Flows

The proposal for a voluntary agreement between agencies and water contractors on flows into and through the Delta requires understanding some terminology, specifically the concept of “unimpaired flows.” [READ MORE](#)

It’s also unclear where the water for the voluntary agreement will come from. According to the agreement’s term sheet, about one quarter of the water will come from the San Joaquin River Basin (most of the rest will come from the Sacramento River and its tributaries, and water purchases). However, none of the San Joaquin River water districts have signed onto the voluntary agreements.

"Why are they counting new contributions to tributary flow from water districts that have not signed on to the VAs?" wonders Rosenfield.

Lien-Mager hopes "the water agencies on the San Joaquin tributaries can and will become part of the VA at some point." She adds that if the State Water Board approves the agreement, "the intent is to have a dual path — the VA implementation path for those who sign on, and the regulatory path for non-VA parties."

The San Joaquin Basin is covered under Phase One of the water quality plan update, which the State Board formally adopted in 2018, and which requires that 40% of unimpaired flow stays in the rivers from February to June. The proposed VA provides less than 30% of unimpaired flow from the San Joaquin's tributaries, says Obegi, noting that the State Water Board, the California Department of Fish and Wildlife, and the U.S. EPA all rejected 35% as inadequate in 2013 when that figure was proposed as part of a prior VA.

Several San Joaquin Basin water agencies, the Modesto and Turlock irrigation districts, and the San Francisco Public Utilities Commission have proposed their own Tuolumne River Voluntary Agreement.

"Although we were not asked to participate in the development nor the signing of the state's memorandum of understanding, Modesto and Turlock irrigation districts are committed to a collaborative solution," says Modesto Irrigation District spokesperson Melissa Williams. "We still believe that a voluntary agreement is the best resolution that will provide water and habitat improvement for fish, while ensuring water supply certainty for our region."



With water use conflicts and drought deepening year-by-year now (Lake Oroville in July 2021), reservoir releases to maintain environmental flows will be harder and harder to secure. Photo: Kelly M. Grow, DWR Kelly M. Grow/ California Department of Water Resources

A key selling point for the VA is that it would provide for about 45,000 acres of habitat restoration to benefit Delta species. This would be on top of the 25,000 to 30,000 acres of restoration already required as mitigation for the state and federal water projects, says California Department of Fish and Wildlife director Chuck Bonham, who calls the water commitments in the VA “not insignificant.” He believes that focusing too closely on flows is a mistake.

“The debate often devolves into ‘Is it more freshwater flows [that are most important to species protection] or is it habitat?’ I actually think it’s both,” says Bonham. “There’s an equation between cold, clean water in sufficient volumes and the abundance of aquatic species. But abundance alone isn’t a long-term fix. When you restore habitat, you’re creating resiliency. They have more space and places to live and thrive. If we don’t do more good restoration projects, faster, we’re missing an equally important part of the problem, and the solution for it.”

Most of the funding for the VA would come from a combination of state and federal funds, with less than 25% coming from a self-assessment paid by the water agencies. Exporters from the state and federal projects would impose a \$10 per acre foot charge for deliveries, says the Metropolitan Water District’s Arakawa. Besides habitat restoration, the bulk of the money would go to water purchases, which provide a significant portion of flows under the proposal.

“It raises the question of why is the public paying for water that it owns?” says Rosenfield. “The citizens of California already own the water.”

“The idea here is a comprehensive way of managing the system, because the system has been affected by more than just the water projects,” says Arakawa, pointing to the effects of climate change. “So it’s a combination of things that we need to manage for both supply reliability and environmental protection. It’s bringing those resources together to implement a comprehensive approach that goes beyond just setting flow requirements.”

Hovering over all the questions about what is in the VA are concerns about who negotiated it. When talks began back in 2012, participants included a range of stakeholders, including environmental groups, fishermen, tribes, and Delta communities. But for the last several years, those stakeholders have been excluded from talks, and none participated in the development of the new VA.

“This was a deliberate attempt by the administration to exclude all of the other relevant interests in their discussions,” says Gary Bobker, director of the Bay Institute.

The California Natural Resource Agency’s Lien-Mager says the public’s opportunity to weigh in is still to come. “Once this is translated into a legally binding document the State Water Board will need to analyze and do their whole public process. There are still many steps and a lot of process that will happen.”



On April 29, the Department of Water Resources invited several past participants in voluntary agreement negotiations to two governance and implementation workshops for the VA, the first of which was scheduled for early May. The invitation was not received warmly.

"Asking our organization to participate with three-day notice for the first meeting in a process that is near completion is not an offer rooted in equity," wrote Restore the Delta director Barbara Barrigan-Parrilla, who declined the invitation. "Such a late request, after the bulk of the planning has been completed, diminishes the broader environmental justice and tribal community to a checkbox in order to say such outreach has been completed."

Some say the entire premise of the voluntary agreement — that it will avoid litigation and deliver environmental benefits more quickly than if the State Water Board just adopted and implemented the existing water quality plan update — is flawed.

"Of course it will be litigated," says Bobker. "We're talking about water and endangered species in California."

Top Photo: Low freshwater flows necessitate construction of a rock barrier on False River this April, to prevent salt water intrusion into the Delta. Photo: Florence Low, DWR

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Feds propose protections for California's longfin smelt

By Michael Doyle | 10/06/2022 01:44 PM EDT

Young longfin smelt, which can be found from the San Francisco Bay to the Cook Inlet in Alaska.

The Fish and Wildlife Service proposed Endangered Species Act protections Thursday for a crucial population of the longfin smelt, an unassuming California fish that has pit farmers against environmentalists and could end up redirecting the future course of the state's water.

Reversing earlier calls made during both the Obama and Trump administrations, FWS said the San Francisco Bay-Delta distinct population segment of longfin smelt should be added to the list of endangered species.

"All the best available field surveys for documenting long-term abundance trends indicate Bay-Delta longfin smelt numbers have substantially declined over time, with current relative abundance reflecting small fractions of the species' historical relative abundance," FWS stated.

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The agency added that the decline was "three to four orders of magnitude over the course of available historical abundance records."

The longfin smelt grows to between 3.5 and 4.3 inches in length and lives for approximately two to three years. As a species, the smelt occurs in bays and estuaries from Northern California north along the coast through Alaska.

The bay-delta longfin smelt population occupies the San Francisco Bay Estuary and areas of the Pacific Ocean out to the Farallon Islands. In its proposal, FWS noted that San Francisco Bay-Delta is unique because it is the largest estuary on the Pacific Coast of the United States.

"Because of its large size and diverse aquatic habitats, the San Francisco Bay-Delta has the potential to support a large longfin smelt population and is thus potentially important in the conservation of the species," the agency said.

While the species needs freshwater flows to survive, FWS noted that the development of dams and water delivery infrastructure built for flood protection and water supply for farms and cities has "greatly impacted freshwater flows" into the San Francisco Bay estuary.

Water diversion is also reducing freshwater inflow and complicating life for the smelt.

“Freshwater diversion ... through pumping for agricultural, waterfowl, or municipal purposes and in some cases may lead to entrainment of Bay-Delta longfin smelt,” FWS reported.

Entrainment occurs when the suction caused by pumping creates an opportunity for fish to be captured by the flow of water and become trapped.

Citing the absence of “data sufficient to perform required analyses,” FWS said that designation of critical habitat for the bay-delta longfin smelt is “not determinable” at this time. The agency has an additional year to publish a habitat proposal.

In 2012, FWS concluded that the longfin smelt in the San Francisco Bay-Delta was a valid distinct population segment and was warranted for ESA, but that listing was precluded by higher priority actions. As a result, the bay-delta longfin smelt was added to the candidate species list.

In 2020, FWS again concluded that listing the fish was warranted but precluded it due to higher priorities.

The Center for Biological Diversity and San Francisco Baykeeper sued, alleging that the federal agency’s failure to move forward with protections was arbitrary and capricious.

“This is a hugely important species whose decline highlights the potential loss of the bay’s native fish and fisheries,” Jeff Miller, a senior conservation advocate at the center, said in a statement Thursday. “Wildlife officials have dawdled and refused to protect longfin smelt for a quarter century. Meanwhile, more and more water diversions suck the life out of Central Valley rivers and the delta to benefit corporate agribusiness and development.”

Lawyers representing the Rhode Island-sized Westlands Water District in California’s San Joaquin Valley sought unsuccessfully to intervene in the

environmentalists' lawsuit, citing the potential consequences for the district's water supplies (*Greenwire*, Aug. 17, 2021).

"Additional ESA regulatory restrictions will have significant negative impacts on Westlands and those it serves," Jose Gutierrez, Westlands' chief operating officer, said in a court filing.

Gutierrez said those impacts could range from "increased land fallowing" and "increased costs and higher risks for acquiring supplemental supplies" to "increased groundwater pumping" and "lower crop yields."

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(Original Signature of Member)

117TH CONGRESS
2D SESSION

H. R. _____

To prohibit the Corps of Engineers from issuing a permit for the Delta
Conveyance Project, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. HARDER of California introduced the following bill; which was referred
to the Committee on _____

A BILL

To prohibit the Corps of Engineers from issuing a permit
for the Delta Conveyance Project, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Stop Delta Tunnels
5 Act".

6 **SEC. 2. PROHIBITION ON DELTA CONVEYANCE PROJECT**
7 **PERMIT.**

8 The Secretary of the Army, acting through the Chief
9 of Engineers, may not issue a permit under section 404

23

1 of the Federal Water Pollution Control Act (33 U.S.C.
2 1344) relating to the Delta Conveyance Project referred
3 to in the document published by the California Depart-
4 ment of Water Resources on January 15, 2020, entitled
5 “Notice of Preparation of Environmental Impact Report
6 for the Delta Conveyance Project”.

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(Original Signature of Member)

117TH CONGRESS
2D SESSION

H. R. _____

To provide long-term water supply and regulatory reliability to drought-stricken California, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. VALADAO introduced the following bill; which was referred to the Committee on _____

A BILL

To provide long-term water supply and regulatory reliability to drought-stricken California, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Working to Advance
5 Tangible and Effective Reforms for California Act” or the
6 “WATER for California Act”.

7 **SEC. 2. TABLE OF CONTENTS.**

8 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

25

Sec. 3. Definitions.

TITLE I—CVP AND SWP OPERATIONS

Sec. 101. Operation of the CVP and SWP.

Sec. 102. Operations and reviews.

Sec. 103. Application of State laws.

Sec. 104. Reconsultation of NOAA Biological Opinion and FWS Biological Opinion.

Sec. 105. Sunset.

Sec. 106. Consultation on coordinated operations.

TITLE II—ALLOCATIONS FOR SACRAMENTO VALLEY CONTRACTORS

Sec. 201. Definitions.

Sec. 202. Allocations of water.

Sec. 203. Protection of refuge, municipal and industrial and other contractors.

Sec. 204. Other contractors.

TITLE III—INFRASTRUCTURE

Sec. 301. Shasta Reservoir enlargement project.

Sec. 302. Water supply plan projects.

Sec. 303. Conservation fish hatcheries.

Sec. 304. Storage; Duration.

Sec. 305. Shasta Dam enlargement.

TITLE IV—CVPIA ACTIONS

Sec. 401. CVPIA restoration actions.

1 **SEC. 3. DEFINITIONS.**

2 In this Act, the following definitions apply:

3 (1) CVP.—The term “CVP” means the Central
4 Valley Project.

5 (2) CVP CONTRACTOR.—The term “CVP con-
6 tractor” means any public water agency, water user
7 organization, or person that has entered into a con-
8 tract with the United States for water service from
9 the CVP, whether in the form of a water service
10 contract, repayment contract, water rights settle-
11 ment contract, exchange contract, or refuge con-
12 tract.

1 (3) FWS BIOLOGICAL OPINION.—The term
2 “FWS Biological Opinion” means the United States
3 Fish and Wildlife Service “Biological Opinion for the
4 Reinitiation of Consultation on the Coordinated Op-
5 erations of the Central Valley Project and State
6 Water Project” (Service File No. 08FBTD00–2019–
7 F–0164) signed on October 21, 2019.

8 (4) NOAA BIOLOGICAL OPINION.—The term
9 “NOAA Biological Opinion” means the National
10 Oceanic and Atmospheric Administration Fisheries
11 “Biological Opinion on the Long-term Operation of
12 the Central Valley Project and the State Water
13 Project” (Consultation Tracking Number: WCRO–
14 2016–00069) signed on October 21, 2019.

15 (5) PREFERRED ALTERNATIVE.—The term
16 “Preferred Alternative” means the Alternative 1
17 (Preferred Alternative), as described in the Final
18 Environmental Impact Statement on the Reinitiation
19 of Consultation on the Coordinated Long-Term Op-
20 eration of the Central Valley Project and the State
21 Water Project, issued by the Bureau of Reclamation,
22 and dated December 2019.

23 (6) SWP.—The term “SWP” means the Cali-
24 fornia State Water Project.

1 (7) SWP CONTRACTOR.—The term “SWP con-
2 tractor” means a public agency that has entered into
3 a long-term water supply contract with the Cali-
4 fornia Department of Water Resources for water
5 service from the SWP.

6 **TITLE I—CVP AND SWP**
7 **OPERATIONS**

8 **SEC. 101. OPERATION OF THE CVP AND SWP.**

9 (a) CONGRESSIONAL DIRECTION REGARDING CVP
10 AND SWP OPERATIONS.—The CVP and the SWP shall
11 be operated in accordance with the Preferred Alternative
12 and FWS Biological Opinion and NOAA Biological Opin-
13 ion.

14 (b) APPLICATION OF LAWS AND REGULATIONS TO
15 OTHERS.—Operation of the CVP and SWP shall proceed
16 pursuant to subsection (a) except to the extent changes
17 to operations are undertaken pursuant to one or more
18 agreements, which are voluntarily entered into, approved,
19 and implemented by CVP contractors, for operations of
20 the CVP, and SWP contractors, for operations of the
21 SWP, with all applicable Federal departments and the
22 State of California, including any agency or board of the
23 State of California.

24 (c) COSTS.—No cost, including water supply, finan-
25 cial, mitigation-related, or otherwise, associated with the

1 implementation of any agreement under subsection (b)
2 shall be imposed by any Federal department or agency or
3 the State of California, including any agency or board of
4 the State of California, directly or indirectly on any CVP
5 contractor, SWP contractor, or any other person or entity,
6 unless such costs are incurred on a voluntary basis.

7 (d) ENDANGERED SPECIES ACT.—Notwithstanding
8 subsection (b), implementation of subsection (a) shall not
9 conflict with the FWS Biological Opinion and the NOAA
10 Biological Opinion.

11 (e) NATIVE SPECIES PROTECTION.—The State of
12 California shall not impose any bag, catch, or size restric-
13 tion or limit on the take or harvest of striped bass or any
14 species of black bass, including largemouth bass,
15 smallmouth bass, and spotted bass, that occupy the Sac-
16 ramento-San Joaquin Rivers Delta or its tributaries.

17 **SEC. 102. OPERATIONS AND REVIEWS.**

18 In carrying out section 101(a), the Secretary of the
19 Interior and the Secretary of Commerce shall implement
20 their statutory authorities in a manner that improves
21 water supply reliability and enables the CVP and SWP
22 to provide the maximum quantity of water supplies prac-
23 ticable to CVP agricultural, municipal, and industrial con-
24 tractors, water service or repayment contractors, water
25 rights settlement contractors, exchange contractors, ref-

1 uge contractors, and SWP contractors, in accordance with
2 the Preferred Alternative, NOAA Biological Opinion, and
3 FWS Biological Opinion.

4 **SEC. 103. APPLICATION OF STATE LAWS.**

5 (a) **REDUCED WATER SUPPLY.**—If, as a result of the
6 application of applicable State law or regulation, the State
7 of California (including any agency or board of the State
8 of California) alters operation of the SWP in a manner
9 that directly or indirectly results in reduced water supply
10 to the SWP as compared with the water supply available
11 under the Preferred Alternative, and as a result, CVP
12 yield is greater than it otherwise would have been under
13 the Preferred Alternative, then that additional yield shall
14 be made available to the SWP for delivery to SWP Con-
15 tractors to offset that reduced water supply. If it is nec-
16 essary to reduce water supplies for any authorized uses
17 of the CVP or CVP Contractors to make available to the
18 SWP that additional yield, such reductions shall be ap-
19 plied proportionately to those authorized uses or CVP con-
20 tractors that benefit from that increased yield.

21 (b) **NO RESTRICTION OF CERTAIN WATER**
22 **RIGHTS.**—The State of California (including any agency
23 or board of the State of California) shall not restrict the
24 exercise of any water right obtained pursuant to State law,
25 including but not limited to a pre-1914 appropriative right

1 or riparian right in order to offset any impact resulting
2 from the implementation of this title on any species af-
3 fected by operations of the CVP or the SWP.

4 **SEC. 104. RECONSULTATION OF NOAA BIOLOGICAL OPIN-**
5 **ION AND FWS BIOLOGICAL OPINION.**

6 (a) REQUIREMENT FOR RECONSULTATION.—

7 (1) REQUIREMENT.—Neither the Secretary of
8 the Interior, acting through the Commissioner of
9 Reclamation, nor the Secretary of Commerce or
10 their designees shall commence, complete, or request
11 reinitiation of consultation on the coordinated long-
12 term operation of the Central Valley Project and the
13 State Water Project that will result in changes to or
14 the replacement of the documents listed in para-
15 graph (2) unless—

16 (A) more than 75 percent of California has
17 experienced 4 consecutive years of D3 or D4
18 level drought, as defined by the U.S. Drought
19 Monitor;

20 (B) the Commissioner of Reclamation iden-
21 tifies one specific factor or combination of fac-
22 tors under section 402.16 of title 50, Code of
23 Federal Regulations; and

24 (C) not fewer than 120 days before offi-
25 cially commencing or requesting reinitiation, the

1 Secretary of the Interior notifies the Committee
2 on Natural Resources of the House of Rep-
3 resentatives and Committee on Energy and
4 Natural Resources of the Senate, in writing,
5 of—

6 (i) the intent to commence or request
7 reinitiation under this section; and

8 (ii) the detailed justification for the
9 identification of the specific factor or com-
10 bination of factors under section 402.16 of
11 title 50, Code of Federal Regulations, that
12 was identified to satisfy the requirement in
13 subparagraph (B).

14 (2) DOCUMENTS.—The documents referred to
15 in paragraph (1) are the following:

16 (A) The FWS Biological Opinion.

17 (B) The NOAA Biological Opinion.

18 (C) The Record of Decision for the Reiniti-
19 ation of Consultation on the Coordinated Long-
20 Term Modified Operations of the Central Valley
21 Project and State Water Project, signed on
22 February 18, 2020.

23 (b) APPLICABLE PROCEDURES AND REVIEW.—For
24 the purposes of this Act, before reinitiating consultation
25 on the Long-Term Operation of the CVP and SWP, a re-

1 quest by the Secretary of the Interior, the Secretary of
2 the Commerce, or any other Federal employee, to reini-
3 tiate consultation shall be made in writing and considered
4 a rule under section 551 of title 5, United States Code,
5 and subject to the requirements of sections 801 through
6 808 of that title.

7 (c) COOPERATION.—In implementing this section, the
8 Secretary of the Interior and the Secretary of Commerce
9 shall comply with requirements included in section 4004
10 of Public Law 114-322.

11 (d) EXCLUSION.—Notwithstanding subsection (b), in
12 implementing this section, section 801(b)(2) of title 5,
13 United States Code, shall not apply.

14 **SEC. 105. SUNSET.**

15 Sections 101 through 104 shall have no force or ef-
16 fect on and after the date that is 7 years after the date
17 of the enactment of this Act.

18 **SEC. 106. CONSULTATION ON COORDINATED OPERATIONS.**

19 The Water Infrastructure Improvements for The Na-
20 tion Act (Public Law 114-322) is amended—

21 (1) in section 4004(a)—

22 (A) in paragraph (1), by inserting “or pro-
23 posed action” after “biological assessment,”;

24 (B) in paragraph (2), by inserting “or pro-
25 posed action” after “biological assessment,”;

1 (C) by redesignating paragraphs (3)
2 through (6) as paragraphs (4) through (7), re-
3 spectively;

4 (D) after paragraph (2), by inserting the
5 following new paragraph:

6 “(3) receive a copy of the proposed action and
7 have the opportunity to review that document and
8 provide comment to the action agency, which com-
9 ments shall be afforded due consideration during de-
10 velopment;” and

11 (E) in paragraph (7), as redesignated by
12 subparagraph (C) of this paragraph—

13 (i) in the matter preceding subpara-
14 graph (A), by inserting “action agency pro-
15 poses a proposed action or” before “the
16 consulting agency”;

17 (ii) in subparagraph (A), by inserting
18 “proposed action or” before “alternative
19 will”; and

20 (iii) in subparagraph (B), by striking
21 “alternative actions” and insert “actions
22 or alternatives”; and

23 (2) in section 4013, by deleting “section 4004,
24 which shall expire 10 years after the date of its en-

1 actment;" and inserting "section 4004, which shall
2 expire on December 16, 2033;".

3 **TITLE II—ALLOCATIONS FOR**
4 **SACRAMENTO VALLEY CON-**
5 **TRACTORS**

6 **SEC. 201. DEFINITIONS.**

7 In this title, the following definitions apply:

8 (1) The term "existing CVP agricultural water
9 service or repayment contractor within the Sac-
10 ramento River Watershed" means any water service
11 or repayment contractor within the Shasta, Trinity,
12 or Sacramento River division of the CVP that has
13 in effect a water service or repayment contract on
14 the date of enactment of this title that provides
15 water for irrigation.

16 (2) The terms "Above Normal", "Below Nor-
17 mal", "Dry", and "Wet", with respect to a year,
18 have the meanings given those terms in the Sac-
19 ramento Valley Water Year Type (40-30-30) Index.

20 **SEC. 202. ALLOCATIONS OF WATER.**

21 Subject to section 203, and notwithstanding any
22 changes to operations of the CVP or SWP voluntarily
23 agreed to, approved, and implemented by CVP contrac-
24 tors, the Secretary of the Interior shall make every reason-
25 able effort in the operation of the CVP to allocate water

1 provided for irrigation purposes to each existing CVP agri-
2 cultural water service contractor within the Sacramento
3 River Watershed in accordance with the following:

4 (1) Not less than 100 percent of the contract
5 quantity of the existing CVP agricultural water serv-
6 ice contractor within the Sacramento River Water-
7 shed in a Wet year.

8 (2) Not less than 100 percent of the contract
9 quantity of the existing CVP agricultural water serv-
10 ice Contractor within the Sacramento River Water-
11 shed in an Above Normal year.

12 (3) Not less than 100 percent of the contract
13 quantity of the existing CVP agricultural water serv-
14 ice contractor within the Sacramento River Water-
15 shed in a Below Normal year that is preceded by an
16 Above Normal or Wet year.

17 (4) Not less than 50 percent of the contract
18 quantity of the existing CVP agricultural water serv-
19 ice contractor within the Sacramento River Water-
20 shed in a Dry year that is preceded by a Below Nor-
21 mal, Above Normal, or Wet year.

22 (5) In any other year not identified in any sub-
23 sections (a) through (d), not less than twice the allo-
24 cation percentage to south-of-Delta CVP agricultural
25 water service contractors, up to 100 percent.

36

1 **SEC. 203. PROTECTION OF REFUGE, MUNICIPAL AND IN-**
2 **DUSTRIAL AND OTHER CONTRACTORS.**

3 Nothing in section 202 shall—

4 (1) adversely affect any protections for the envi-
5 ronment, including the obligation of the Secretary of
6 the Interior to make water available to managed
7 wetlands pursuant to section 3406(d) of the Central
8 Valley Project Improvement Act (Title XXXIV of
9 Public Law 102-575; 106 Stat. 4722);

10 (2) adversely affect any obligation of the Sec-
11 retary of the Interior or the Secretary of Commerce
12 under the FWS Biological Opinion or the NOAA Bi-
13 ological Opinion;

14 (3) modify any provision of a water service con-
15 tract that addresses municipal or industrial water
16 shortage policies of the Secretary of the Interior;

17 (4) affect or limit the authority of the Secretary
18 of the Interior to adopt or modify municipal and in-
19 dustrial water shortage policies;

20 (5) constrain, govern, or affect, directly or indi-
21 rectly, the operations of the American River division
22 of the CVP or any deliveries from that division or
23 a unit or facility of that division; or

24 (6) affect any allocation to a CVP municipal or
25 industrial water service contractor by increasing or
26 decreasing allocations to the contractor, as compared

1 to the allocation the contractor would have received
2 absent section 202.

3 **SEC. 204. OTHER CONTRACTORS.**

4 Nothing in section 202 shall—

5 (1) affect the priority of any individual or entity
6 with a Sacramento River settlement contract over
7 water service or repayment contractors;

8 (2) affect the United States' ability to deliver
9 water to the San Joaquin River exchange contrac-
10 tors from the Sacramento River and the Delta via
11 the Delta-Mendota Canal or modify or amend the
12 rights and obligations under the Purchase Contract
13 between Miller and Lux and the United States and
14 the Second Amended Exchange Contract between
15 the United States, Department of the Interior, Bu-
16 reau of Reclamation and Central California Irriga-
17 tion District, San Luis Canal Company, Firebaugh
18 Canal Water District and Columbia Canal Company;

19 (3) affect the allocation of water to Friant divi-
20 sion contractors of the CVP;

21 (4) result in the involuntary reduction in con-
22 tract water allocations to individuals or entities with
23 contracts to receive water from the Friant division;

24 (5) result in the involuntary reduction in water
25 allocations to refuge contractors; or

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1 (6) authorize any actions inconsistent with
2 State water rights law.

3 **TITLE III—INFRASTRUCTURE**

4 **SEC. 301. SHASTA RESERVOIR ENLARGEMENT PROJECT.**

5 Section 40902(a)(2) of the Infrastructure Investment
6 and Jobs Act (Public Law 117–58) is amended—

7 (1) in subparagraph (B)—

8 (A) in the matter preceding clause (i), by
9 striking “this Act, except for any project for
10 which—” and inserting “this Act; or”; and

11 (B) by striking clauses (i) and (ii); and

12 (2) in subparagraph (C), by striking “(except
13 that projects described in clauses (i) and (ii) of sub-
14 paragraph (B) shall not be eligible)”.

15 **SEC. 302. WATER SUPPLY PLAN; PROJECTS.**

16 (a) PLAN.—Not later than 180 days after the date
17 of the enactment of this Act, the Commissioner of Rec-
18 lamation shall develop a water deficit report, which shall
19 identify—

20 (1) projected water supply shortages in the
21 State of California for irrigation water service, mu-
22 nicipal and industrial water service, water supply for
23 wildlife refuges supplied by the CVP or the SWP;
24 and

1 (2) infrastructure projects or actions which, if
2 taken, would—

3 (A) significantly reduce or eliminate the
4 projected water supply shortage; or

5 (B) fulfill water allocations consistent with
6 agricultural, municipal and industrial contrac-
7 tors, water service or repayment contractors,
8 water rights settlement contractors, exchange
9 contractors, and SWP contractors with water
10 delivery contractors on the CVP and SWP.

11 (b) REPORT TO CONGRESS.—The Commissioner of
12 Reclamation shall provide a report described in subsection
13 (a) to the House Committee on Natural Resources and
14 the Senate Committee on Energy and Natural Resources
15 upon its completion.

16 **SEC. 303. CONSERVATION FISH HATCHERIES.**

17 Section 4010(b)(5) of the Water Infrastructure Im-
18 provements for The Nation Act (Public Law 114–322) is
19 amended by adding at the end the following:

20 “(D) SEMI-ANNUAL REPORT.—The Sec-
21 retary of the Interior and the Secretary of
22 Commerce shall submit to the Committee on
23 Natural Resources of the House of Representa-
24 tives and Committee on Energy and Natural
25 Resources of the Senate semi-annual reports

1 that detail activities carried out under this
2 paragraph.”.

3 **SEC. 304. STORAGE; DURATION.**

4 (a) **STORAGE.**—Section 4007 of the Water Infra-
5 structure Improvements for The Nation Act (Public Law
6 114–322) is amended—

7 (1) in subsection (b)(1), by striking “or any
8 public agency organized pursuant to State law” and
9 inserting “any public agency organized pursuant to
10 State law, or any stakeholder”; and

11 (2) in subsection (i), by striking “January 1,
12 2021” and inserting “January 1, 2028”.

13 (b) **DURATION.**—Section 4013 of the Water Infra-
14 structure Improvements for The Nation Act (Public Law
15 114–322) is amended—

16 (1) in paragraph (1), by striking “and”;

17 (2) by redesignating paragraph (2) as para-
18 graph (3); and

19 (3) by inserting after paragraph (1) the fol-
20 lowing:

21 “(2) section 4007, which (except as provided in
22 paragraph (3), shall expire on December 31, 2028;
23 and”.

1 SEC. 305. SHASTA DAM ENLARGEMENT.

2 (a) FUNDING.—In accordance with section 4007 of
3 the Water Infrastructure Improvements for the Nation
4 Act (Public Law 114–322), and as recommended by the
5 Secretary in letters dated February 13, 2019; June 22,
6 2020; and December 3, 2020; funds made available in the
7 Water and Related Resources account for the Bureau Rec-
8 lamation in Acts of appropriation for fiscal years 2017,
9 2018, 2019, 2020, and 2021 shall be made available to
10 the Shasta Dam and Reservoir Enlargement Project.

11 (b) CLARIFICATION.—No provision of State law shall
12 preclude or otherwise prevent any public water agency, in-
13 cluding a public agency of the State, that contracts for
14 the delivery of CVP water from assisting or cooperating
15 with, whether by loan, grant, license, or otherwise, the
16 planning and construction of any project undertaken by
17 the Bureau of Reclamation to enlarge Shasta Dam.

18 TITLE IV—CVPIA ACTIONS**19 SEC. 401. CVPIA RESTORATION ACTIONS.**

20 (a) REFUGE WATER SUPPLY PROGRAM.—Not later
21 than two years after the date of enactment of this Act,
22 the Secretary of the Interior shall complete the refuge
23 water supply program under section 3406(d) of the Cen-
24 tral Valley Project Improvement Act (Title XXXIV of
25 Public Law 102–575; 106 Stat. 4722) and shall, within
26 that two-year period, give priority to completing the refuge

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1 water supply program when making funding decisions
2 from the Central Valley Project Restoration Fund estab-
3 lished under section 3407 of the Central Valley Project
4 Improvement Act (106 Stat. 4726), the Infrastructure In-
5 vestment and Jobs Act (Public Law 117-25), the Land
6 and Water Conservation Fund Act (Public Law 88-578),
7 and other sources of funding.

8 (b) RESTORATION ACTIONS DEEMED COMPLETE.—
9 Upon completion of the refuge water supply program pur-
10 suant to subsection (a), or September 30, 2025, whichever
11 occurs first, the Secretary of the Interior shall deem com-
12 plete the fish, wildlife, and habitat mitigation and restora-
13 tion actions mandated under section 3406 of the Central
14 Valley Project Improvement Act (Title XXXIV of Public
15 Law 102-575; 106 Stat. 4714).

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