



# Sacramento-San Joaquin Valley Emergency Water Delivery Act

## Legislative Summary

Since the construction of the federal Central Valley Project (CVP), California's water needs have grown dramatically while supplies have hardly risen. Meanwhile, in recent years, the capricious curtailment of water deliveries through regulatory restrictions has inflicted extensive economic damage on Central Valley communities, costing thousands of farmworkers their jobs. Farmers now face far worse conditions due to California's failure to capture excess water in wet years and store it in reservoirs for use in drought years. Despite this dire situation, draconian regulations remain in place that divert water from farms to a three-inch fish – the Delta smelt.

The Sacramento-San Joaquin Valley Emergency Water Delivery Act promotes water policies that facilitate the delivery of California's abundant supply of water. This document provides a summary of the key provisions.

### ***Bay-Delta Improvements***

The Sacramento-San Joaquin Valley Emergency Water Delivery Act (The Act) restores water deliveries to those communities starved of water by reviving the landmark Bay-Delta Accord which was universally praised and signed by California Governor Pete Wilson, Interior Secretary Bruce Babbitt, Commerce Secretary Ron Brown, EPA Director Carol Browner, various local water agencies, and key environmental interest groups. The Act confirms that if the State Water Project and the Central Valley Project are operated in a manner consistent with the Bay-Delta Accord; they have complied with all requirements of the Endangered Species Act.

The Act prioritizes native species over non-native species in the Delta and the Sacramento and San Joaquin Rivers (and tributaries). Scientists have identified that predatory nonnative species are one of the primary stressors on salmon smolts and Delta smelt. With the goal of protecting native species, the Act removes "take" limits on non-native species that are preying on native species.

### ***Water Reliability Improvements***

The Act includes a number of provisions that will ensure water reliability by updating the Central Valley Project Improvement Act (CVPIA) to ensure that it fulfills original promises while focusing on native species.

The Act focuses the entire weight of the CVPIA on native species to ensure that they receive the full benefit of environmental restoration work. Specifically, it removes both American shad and striped bass, which are both non-native species, from the definition of 'anadromous fish'. This will ensure that the focus of the CVPIA remains on the native species of salmon (including steelhead) and sturgeon.



The Act provides incentives for water districts to expand conjunctive use of surface and groundwater to ensure they have an ability to survive during dry years. To do this, the Act repeals the CVPIA tiered pricing scheme - originally intended to encourage water conservation. In reality, tiered pricing has become a punitive tax on water districts who try to expand conjunctive use. Repealing tiered pricing will expand groundwater banking which will have both water supply and environmental benefits.

The Act corrects provisions in CVPIA that, even the drafters admit, unduly limit water transfers between contractors within the CVP. In limiting transfers, it removed the flexibility in the CVP to adapt to various water needs during drought and wet years. First, to speed-up transfers, the Act gives the contracting district or the Secretary 45 days to make a determination if a written transfer proposal is complete. Second, the Act prevents the Secretary from mandating mitigation on the proposed transfer. And third, it exempts historic transfers which occurred before enactment of CVPIA from conditions imposed in CVPIA.

The Act reaffirms the original CVPIA commitment that a maximum of 800,000 acre-feet of water will be dedicated to fish, wildlife, and habitat restoration purposes. It is generally accepted that, on average, the provisions in CVPIA dedicate 1.2 million acre-feet annually to environmental purposes. The Act ensures that 800,000 acre-feet is a cap and that the water can be reused for contractual obligations. The Act further provides a safety net for Delta Division contractors in low water years by requiring a 25% reduction in the 800,000 acre-feet if Delta Division water allocations are below 75% by March 15<sup>th</sup>. Despite a clear direction in CVPIA to mitigate or replace the 800,000 acre-feet, the water has never been replaced or the yield of the CVP increased. The Act reaffirms it was Congress' intent that the CVP yield be increased by requiring the Secretary to implement a plan to increase CVP yield to replace the lost water. If the Secretary fails to do so the 800,000 acre-feet shall be delivered to water users.

The Act restores accountability to the CVPIA Restoration Fund. Since its creation in 1992, the fund has collected and distributed nearly \$825 million for programs and projects intended for habitat restoration and mitigation. To date, over \$1.4 billion in taxpayer funds have been expended through CVPIA authority. However, many question the process that is used to make funding decisions and have further questioned the quantitative and qualitative results of the programs and projects undertaken with money from the fund. The Act ensures that funding decisions are transparent by creating a Restoration Fund Advisory Board consisting of 12 members selected by the Secretary representing various stakeholders. The Advisory Board will be tasked with providing the Secretary advice on expenditures from the Restoration Fund and will report to Congress on the progress being made to achieve the goals identified in CVPIA. The Act further encourages conjunctive use and environmental mitigation through groundwater recharge by waiving the Restoration Fund fee on any water that is delivered with the sole intent of groundwater recharge.

The Act resolves the consternation over the wild fluctuations of CVPIA Restoration Fund charges to CVP hydropower operators. Restoration Fund assessments that averaged less than \$10 million per year from 1993 through 2007 have exploded to \$25 million per year from 2008 to 2011. The Act sets a flat CVPIA Restoration Fund fee at \$4 per megawatt-hour for CVP power sold to power contractors. The Act further sets a date of December 31, 2020 as a trigger to reduce the Restoration Fund assessments paid by all water users.



The Act restores consistency in water contracts by directing the Secretary to provide successive 40 year renewal of existing long-term contracts which promotes the certainty required for long-term investment. The right of successive renewal is a critical component in long-term financing and planning for agricultural and urban water contractors. The Act also continues the mandate established by the CVPIA that requires the Secretary to only charge for water that is delivered.

The Act resolves long standing concerns about the use of the Central Valley Project to store and convey non-project water. The Act specifically authorizes the Secretary to enter into contracts, including long-term contracts, with any agency or private organization to exchange, impound, store, carry, and deliver non-project water through the Central Valley Project and charge appropriate rates to do so, thus promoting efficient water management.

The Act authorizes the storage of non-Central Valley Project water in New Melones reservoir when space is available and allows for a pilot fish predator suppression program on the Stanislaus River.

The Act reaffirms the Bureau of Reclamation's long held policy related to the use of rescheduled water in San Luis Reservoir in order to meet other Central Valley Project (CVP) water delivery obligations. Ensures that rescheduled water is not used for any other purpose other than originally intended as a reserve supply secured by contractors in anticipation of ongoing drought conditions.

### ***San Joaquin River Salmon Restoration – Repeal and Replace***

The Act stops the billion dollar salmon restoration program on the San Joaquin River – better known as the San Joaquin River Settlement. The Act revises the San Joaquin River Restoration Settlement Act and directs the Secretary to stop implementation of the court approved settlement. The Act replaces the salmon restoration program with a more environmentally sustainable and economically feasible habitat restoration program that provides substantial regional benefits. The Act re-wets the San Joaquin River from Friant Dam to Mendota Pool requiring a target flow of 50 cubic feet per second (except in Critical Water Years) thereby restoring a live fishery. The Act declares that if the flow regime is implemented, then it satisfies any obligation under Section 5937 of the California Fish and Game Code which is the basis of the lawsuit that created the salmon restoration program.

The Act mitigates for the lost water in the new habitat restoration plan by authorizing the recovery of the Restoration Flows downstream.

### ***Sacramento Valley Water Rights***

The Act secures senior water rights of the Sacramento Valley water users. The Act directs the Secretary to strictly adhere to State water rights law and California Water Code by honoring water rights senior to those belonging to the Central Valley Project. In implementing the Endangered Species Act, the Act also directs the Secretary to do so in a manner that honors the water priorities as outlined previously. The Act clarifies the Sacramento River Settlement Contracts to ensure that any limitations on the operation of the CVP is done in a manner that strictly adheres to the water rights priorities for “Project Water” and “Base Supply”.



The Act resolves a long standing dispute over area-of-origin rights and Central Valley Project water rights by enumerating, based on water year, specific delivery percentages for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed.

### **Other Authorities**

The Act settles a long debated issue – the counting of hatchery fish toward compliance with the Endangered Species Act. The Act directs the Secretary to not distinguish between natural-spawned and hatchery-spawned species when making any determination under the Endangered Species Act in relation to species present in the Sacramento and San Joaquin Rivers and their tributaries.

The Act incentivizes Central Valley Project water users to pay-off the remaining balance of the federal loan provided to construct the project. The Act authorizes the Secretary, upon request of the water user, to convert existing “water service contracts” to more favorable “repayment contracts”. Upon conversion, the “full cost pricing” and “acreage limitation” stipulated by Reclamation law will no longer apply. To qualify for conversion, a contractor must pay, either through lump sum or accelerated prepayment, their remaining balance of capital construction costs.

The Act streamlines the duplicative environmental review processes for the construction of CVP water projects and thereby eliminating wasteful spending and accelerating water reliability projects. The Act deems that if a project completes the California Environmental Quality Act (CEQA) process then it has satisfied the requirements under the National Environmental Policy Act (NEPA).

The Act clarifies that the circumstances in California are unique and the provisions in the Act will not be considered a precedent to be used in any other State. The Act further declares that the coordinated operations of the Central Valley Project and the State Water Project, consented to by the State of California, requires the assertion of Federal supremacy to protect existing water rights.

The Act ensures that nothing in the Act will restrict the California Governor’s implementation of the January 17, 2014 drought emergency proclamation.

The Act increases water storage in Lake McClure by narrowly adjusting the Wild and Scenic River boundary on the Merced River.