U.S. FISH AND WILDLIFE SERVICE AND U.S. BUREAU OF RECLAMATION

WATER YEAR 2008 FINAL ACCOUNTING
FISHERY AND WATER QUALITY CONTROL PLAN ACTIONS

February 5, 2009

In the 2008 water year, both the Sacramento and San Joaquin River Basins were classified as "critically dry," which resulted in reduced deliveries of Central Valley Project (CVP) water to certain users within the CVP. For that reason, and consistent with Section 3406(b)(2) of the Central Valley Project Improvement Act (CVPIA) and the Department of the interior's (Interior) May 2003 (b)(2) Policy, total (b)(2) assets were ultimately limited to 600,000 acre feet during the 2008 water year. Further complicating CVP operations during the 2008 water year was the issuance of an Interim Remedial Order on December 14, 2007 in Natural Resource Defense Council v. Kempthorne, 1:05-CV-1207 OWW GSA (E.D. Cal.), for the protection of the federally-listed delta smelt.

Throughout the 2008 water year, Interior managed (b)(2) assets consistent with the Ninth Circuit's decision in Bay Inst. of San Francisco v. United States, 87 Fed. Appx 637 (2004), confirming Interior's discretion to give effect to the "hierarchy of purposes" in Section 3406(b)(2), Interior's May 9, 2003 (b)(2) Policy, and Interior's December 17, 2003 (b)(2) Guidance. At the end of the 2008 water year, however, Judge Wanger issued a memorandum opinion in San Luis & Delta Mendota Water Authority v. Department of the Interior, 1:97-cv-6140, 1:98-cv-5261 OWW DLB (E.D. Cal. Sept. 19, 2008) (hereinafter "SLDMWA"), concerning Interior's (b)(2) accounting for the 2004 water year.[1] Thus, Interior accounted for fishery actions, including Endangered Species Act (ESA) and water quality control plan (WQCP) actions during the 2008 water year consistent with that opinion, as well as, the Ninth Circuit's decision in Bay Inst. of San Francisco, Interior's 2003 (b)(2) Policy, and 2003 (b)(2) Guidance.

The purpose of this document is to explain Interior's final accounting of fishery and WQCP actions covered by CVPIA Section 3406(b)(2) in water year 2008. The first attached table,

[1] In that opinion, Judge Wanger stated that the "primary purpose" of CVPIA Section 3406(b)(2) "includes all those fish and wildlife restoration activities specifically described in section 3406(b)," including "water dedicated to accomplish the anadromous fish doubling goal set forth in section 3406(b)(1)" and "water needed to accomplish any of the other specifically enumerated programs listed in section 3406(b)(2). SLDMWA, at 43 (underline in original). Thus, "if an action taken under the WQCP and/or ESA predominantly contributes to one of the primary purpose programs (e.g., fish doubling), it must be counted toward the 800,000 AF limit." Id. at 48. In so doing, Judge Wanger recognized that there may be some "primacy" to section 3406(b)(1) in relation to other stated purposes of section 3406(b), but he did not rule on that question. Id. at 45.

"Water Year 2008 Final CVP Accounting of (b)(2) Actions in TAF," summarizes the fishery actions, including WQCP and ESA actions covered by CVPIA Section 3406(b)(2) in water year 2008. The second attached table, "Water Year 2008 Final CVP Accounting of WQCP Actions in TAF That Do Not Predominantly Contribute to CVPIA § 3406(b)(2)," summarizes WQCP actions taken during water year 2008 that did not predominantly contribute to the primary purpose of CVPIA Section3406(b)(2) and were not accounted for as (b)(2) actions. Both of those tables are based on the final daily accounting for water year 2008. This narrative, together with the two attached tables, constitutes Interior's final accounting of fishery actions, including WQCP and ESA actions, covered by CVPIA Section 3406(b)(2) during water year 2008 and explains how Interior exercised its authority and discretion under CVPIA Section 3406(b)(2) during that same period.

Water Year 2008 Actions Covered By (b)(2)

October 2007:

Interior released approximately 4.9 thousand acre feet (TAF) of water above base case operations on the Stanislaus River in conjunction with approximately 12 TAF of acquired water[2] to provide a fall attraction flow for fall-run Chinook adult migration and spawning. These flows represented the Stanislaus River's contribution towards the October San Joaquin River pulse flows at Vernalis. (State Water Resources Control Board (SWRCB), D-1641, Table 3, Footnote 15). In its May, 1995 Environmental Report (ER) for the 1995 WQCP (Appendix 1), the SWRCB described the purpose of the Vernalis pulse flow requirement in October as follows: "The purpose of the pulse flow standard is to attract adult fall-run Chinook salmon into the San Joaquin River. . . . A pulse of water down the mainstem San Joaquin River will provide additional velocity and olfactory cues which should direct salmon to the main river and facilitate passage through the lower Delta." The release of approximately 4.9 TAF of non-acquired water predominantly contributed to the primary purpose of Section 3406(b)(2) of the CVPIA and was accounted for as a (b)(2) action.

November 2007:

Interior released approximately 4.8 TAF of water above base case operations on the Stanislaus River to help meet Anadromous Fish Restoration Program (AFRP) flow objectives for fall-run Chinook salmon spawning. These releases predominantly contributed to the primary purpose of Section 3406(b)(2) of the CVPIA and were accounted for as (b)(2) actions.

[2] This 12 TAF of water was acquired pursuant to CVPIA Section 3406(b)(3) and was not a (b)(2) asset.

Interior reduced CVP exports by approximately 25.9 TAF to meet WQCP objectives, specifically net Delta outflow (SWRCB, D-1641, Table 3). "The stated purpose of the outflow standard is to protect 'estuarine habitat for anadromous fishes and other estuarine-dependent species.'"[3] SLDMWA, at 50 (quoting 1995 WQCP). Although this standard provides some benefit to anadromous fish species, it does "not specifically identify an intent to support the fish doubling goal (or any other specifically-enumerated 3406 program). . . . Actions taken to comply with the Delta outflow objective . . . do not 'predominantly' contribute to primary purpose programs." Id. at 51-52. Because these reductions did not predominantly contribute to the primary purpose of CVPIA Section 3406(b)(2), Interior had the discretion to refrain from accounting for these export reductions as (b)(2) actions. Nonetheless, Interior exercised its discretion and accounted for these export reductions as (b)(2) actions this year.

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[3] In SLDMWA, the actions taken to comply with net Delta outflow requirements occurred in June of 2004. In its May, 1995 ER for the 1995 WQCP (Appendix 1), the SWRCB described the purpose of the Delta outflow objectives during the spring (defined in the WQCP as February through June) as follows:

> The purpose of the Delta outflow standards are to increase outflow and restore some of the natural hydrologic patterns that historically occurred in the system and in which native fish and invertebrate species likely evolved and proliferated. The provision of late winter and spring river flow and Delta outflow promotes conditions conducive for spawning and dispersal of delta smelt, longfin smelt, Sacramento splittail, and other estuarine and anadromous species.

The SWRCB also described the purpose of net Delta outflow objectives during the summer (July and August):

> The purpose of these standards is to provide outflow during summer months for maintenance of biological communities in preparation for the fall transition period, described below. The intended benefits are to sustain suitable habitat in the Delta for continued rearing of juvenile and maintenance of adult fish (delta smelt, striped bass, and others) and to reduce seawater intrusions into the estuary to prevent the colonization of undesirable organisms in the Delta (e.g., *Potamacorbula*, *Mya* sp., and others).

The SWRCB described the purpose of the net Delta outflow standard during the fall (September and October) as follows:

> The purpose of this standard is to provide outflow for maintaining conditions conducive to growth and maintenance of resident and anadromous adult and juvenile fish populations utilizing the Bay-Delta Estuary during this period and to provide attraction flows for fall-run Chinook salmon.

The SWRCB also described the purpose of net Delta outflow objectives during the winter (November through January):

> The purpose of the standards are to provide net Delta outflow for continued rearing of juvenile and maintenance of adult fish, and to provide conditions conducive for maturation of adult fish in preparation for spring spawning.

These statements suggest that the net Delta outflow objectives are intended to improve habitat conditions in the Delta for a host of species and fortify Judge Wanger's conclusion that they "do not predominantly contribute to primary purpose programs." SLDMWA, at 51-51. This includes net Delta outflow standards in-effect during the winter, spring, and summer.

December 2007:

Interior released water above base case operations on the following CVP-controlled streams: approximately 4.2 TAF of water on Clear Creek (not accomplished through reoperation) to help meet AFRP flow objectives for spring-run Chinook fry (ESA Threatened), fall-run Chinook spawning and emergence, and to benefit steelhead juveniles and pre-spawning adults (ESA Threatened), approximately 4.9 TAF on the Stanislaus River to meet AFRP flow objectives for fall-run Chinook spawning and emergence, and to benefit steelhead, approximately 8.9 TAF on the American River to meet AFRP flow objectives for fall-run Chinook spawning and emergence and to benefit steelhead juveniles and pre-spawning adults, and approximately 12.5 TAF on the Sacramento River to meet AFRP flow objectives for spring-run Chinook fry, fall-run Chinook spawning and emergence, late fall-run Chinook spawning, and steelhead juveniles and pre-spawning adults. These releases predominantly contributed to the primary purpose of Section 3406(b)(2) of the CVPIA and were accounted for as (b)(2) actions.

On the Sacramento River, Interior released approximately 29.6 TAF above base case operations to help meet WQCP net Delta outflow requirements.[4] (SWRCB, D-1641, Table 3). As explained above, actions taken to meet net Delta outflow objectives generally provide some benefit to anadromous fish, but they do not predominantly contribute to the primary purpose of CVPIA Section 3406(b)(2). SLDMWA, at 51-52. Consequently, Interior had the discretion to refrain from accounting for this release as a (b)(2) action.[5] Nonetheless, Interior exercised its discretion and accounted for these releases as (b)(2) actions this year.

Interior reduced CVP exports by approximately 12.4 TAF to comply with the Interim Remedial Order issued in NRDC v. Kempthorne to address the entrainment of delta smelt (ESA Threatened) at the CVP pumps. Consistent with the Ninth Circuit's 2004 decision, confirming Interior's discretion to give effect to the hierarchy of purposes in CVPIA Section 3406(b)(2), and Judge Wanger's September, 2008 opinion in SLDMWA, Interior accounted for these export reductions as (b)(2) actions this year.

Interior reduced CVP exports by approximately 13.1 TAF to help meet WQCP objectives, specifically salinity requirements in the Delta at Contra Costa pumping plant #1. (SWRCB, D-1641, Table 1). These export reductions were related to temporary Delta cross channel gates closures (SWRCB, D-1641, Table 3), which contributed to higher salinity levels in the Delta. Although the Contra Costa salinity standard is found in Table 1 of the 1995 WQCP and serves "Municipal and Industrial Beneficial Uses," the temporary Delta cross channel gates closures

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[4] Of this amount, approximately 0.1 TAF of this was released in January, 2008 to gradually ramp down from the December WQCP releases.

[5] See footnote 3.

are intended to benefit winter-run (ESA Endangered) and spring-run Chinook salmon outmigrants and other species. Consequently, these export reductions predominantly contributed to the primary purpose of CVPIA Section 3406(b)(2), and Interior accounted for them as (b)(2) actions this year.

Interior reduced CVP exports by an additional 34.8 TAF to meet WQCP objectives, specifically net Delta outflow (SWRCB, D-1641, Table 3). As explained above, actions taken to meet net Delta outflow objectives do not predominantly contribute to the primary purpose of section 3406(b)(2), SLDMWA, at 51-52, so Interior had the discretion to refrain from accounting for these export reductions as (b)(2) actions.[6] These export reductions were not related to the Delta cross channel gate closures or the Interim Remedial Order to address the entrainment of delta smelt at the federal CVP pumps. Nonetheless, Interior exercised its discretion and accounted for these export reductions as (b)(2) actions this year.

January 2008:[7]

Interior released water above base case operations on the following CVP-controlled streams: approximately 9.2 TAF of water on Clear Creek to help meet AFRP flow objectives for fall-run Chinook emergence and steelhead spawning, approximately 4.6 TAF on the Stanislaus River to meet AFRP flow objectives for fall-run Chinook emergence and steelhead spawning, approximately 13 TAF on the American River to meet AFRP flow objectives for fall-run Chinook emergence and steelhead spawning, and approximately 29.2 TAF on the Sacramento River to meet AFRP flow objectives for fall-run Chinook emergence, and late fall-run Chinook and steelhead spawning. These releases predominantly contributed to the primary purpose of Section 3406(b)(2) of the CVPIA and were accounted for as (b)(2) actions.

Interior reduced CVP exports by approximately 55.8 TAF to comply with the Interim Remedial Order issued in NRDC v. Kempthorne to address the entrainment of delta smelt at the federal CVP pumps. Consistent with the Ninth Circuit's 2004 decision, confirming Interior's discretion to give effect to CVPIA Section 3406(b)(2)'s hierarchy of purposes, and Judge Wanger's September, 2008 opinion in SLDMWA, Interior accounted for these export reductions as (b)(2) actions for this year.

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[6] See footnote 3.

[7] From October 1, 2007 through January 31, 2008, Interior accounted for approximately 271.7 TAF of upstream releases and export reductions as (b)(2) actions. Of those actions, approximately 96.2 TAF were upstream releases for AFRP flow objectives, which fall under the 300,000 TAF of (b)(2) water identified for "high priority fish and wildlife actions" in the December 2003 (b)(2) Guidance and the 200,000 TAF target identified for the October through January period in the May 2003 (b)(2) Policy. The remainder of the actions, approximately 175.6 TAF, were related to ESA and WQCP requirements and fall under the 500,000 acre feet of WQCP/ESA costs described in Interior's December 2003 (b)(2) Guidance.

Interior also reduced CVP exports by approximately 4 TAF to meet WQCP net Delta outflow requirements. As discussed above, actions taken to comply with net Delta outflow objectives do not predominantly contribute to the primary purpose of CVPIA Section 3406(b)(2), SLDMWA, at 51-52, so Interior had the discretion to refrain from accounting for this export reduction as a (b)(2) action.[8] Nonetheless, Interior exercised its discretion and accounted for these export reductions as (b)(2) actions this year.

February 2008:

Interior released water above base case operations on the following CVP-controlled streams: approximately 8.6 TAF of water on Clear Creek to help meet AFRP flow objectives for fall-run Chinook rearing and steelhead spawning, and approximately 11.5 TAF on the American River to meet AFRP flow objectives for fall-run Chinook rearing and steelhead spawning. These releases predominantly contributed to the primary purpose of Section 3406(b)(2) of the CVPIA and were accounted for as (b)(2) actions.

Interior reduced CVP exports by approximately 57.8 TAF to comply with the Interim Remedial Order issued in NRDC v. Kempthorne to address the entrainment of delta smelt at the federal CVP pumps. Consistent with the Ninth Circuit's 2004 decision, confirming Interior's discretion to give effect to Section 3406(b)(2)'s hierarchy of purposes, and Judge Wanger's September, 2008 opinion in SLDMWA, Interior accounted for these export reductions as (b)(2) actions this year.

On the Stanislaus River, Interior released approximately 4.5 TAF of water above base case operations to help meet WQCP Vernalis flow objectives (SWRCB, D-1641, Table 3). "The stated purpose of the Vernalis flow requirements are to 'provide attraction and transport flows and suitable habitat for various life stages of aquatic organisms, including delta smelt and Chinook salmon.'" SLDMWA, at 51 (quoting 1995 WQCP). Although these standards provide some benefit to anadromous fish species, they do "not specifically identify an intent to support the fish doubling goal (or any other specifically-enumerated 3406 program). . . . Actions taken to comply with the . . . Vernalis flow requirement do not 'predominantly' contribute to primary purpose programs." Id. at 51-52.[9] These releases did not predominantly contribute to the primary purpose of CVPIA Section 3406(b)(2), so Interior had the discretion to refrain from

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[8] See footnote 3.

[9] In SLDMWA, the challenged actions taken to comply with Vernalis flow objectives took place in late June of 2004. As discussed more fully below, some actions taken to meet Vernalis flow objectives during April and May also help to meet AFRP flow objectives and benefit anadromous fish, so they predominantly contribute to the primary purpose of CVPIA Section 3406(b)(2). In February and March, 2008 – as in late June of 2004 – the actions taken to meet Vernalis flow objectives did not predominantly contribute to the primary purpose of CVPIA Section 3406(b)(2).

accounting this release as a (b)(2) action. Nonetheless, Interior exercised its discretion and accounted for these releases as (b)(2) actions this year.

March 2008:

Interior released water above base case operations on the following CVP-controlled streams: approximately 8.6 TAF of water on Clear Creek to help meet AFRP flow objectives for fall-run Chinook rearing and steelhead spawning and emergence, and approximately 12.3 TAF on the American River to meet AFRP flow objectives for fall-run Chinook rearing and steelhead spawning and emergence. These releases predominantly contributed to the primary purpose of Section 3406(b)(2) of the CVPIA and were accounted for as (b)(2) actions.

Interior reduced CVP exports by approximately 77.3 TAF to meet WQCP net Delta outflow requirements. As discussed above, actions taken to comply with net Delta outflow objectives do not predominantly contribute to the primary purpose of CVPIA Section 3406(b)(2), SLDMWA, at 51-52, so Interior had the discretion to refrain from accounting for this export reduction as a (b)(2) action.[10] Nonetheless, Interior exercised its discretion and accounted for these export reductions as (b)(2) actions this year.

Interior also reduced CVP exports by an additional 76.1 TAF to comply with the Interim Remedial Order issued in NRDC v. Kempthorne to address the entrainment of delta smelt at the federal CVP pumps. Consistent with the Ninth Circuit's 2004 decision, confirming Interior's discretion to give effect to Section 3406(b)(2)'s hierarchy of purposes, and Judge Wanger's September, 2008 opinion in SLDMWA, Interior accounted for these export reductions as (b)(2) actions this year.

On the Stanislaus River, Interior released approximately 26.6 TAF of water above base case operations to help meet WQCP Vernalis flow objectives (SWRCB, D-1641, Table 3). As explained above, the "purpose of the Vernalis flow requirements are to 'provide attraction and transport flows and suitable habitat for various life stages of aquatic organisms, including delta smelt and Chinook salmon.'" SLDMWA, at 51 (quoting 1995 WQCP). Although these standards provide some benefit to anadromous fish species, they do "not specifically identify an intent to support the fish doubling goal (or any other specifically-enumerated 3406 program). . . . Actions taken to comply with the . . . Vernalis flow requirement do not 'predominantly' contribute to primary purpose programs." Id. at 51-52. Consequently, Interior had the discretion to refrain from accounting for this release as a (b)(2) action.[11] Due to limited (b)(2) assets in the 2008 water year and to give effect to the hierarchy of purposes of Section

[10] See footnote 3.

[11] See footnote 9.

3406(b)(2), Interior exercised its discretion and accounted for approximately 0.8 TAF of these releases as (b)(2) actions, but the remainder of these releases (approximately 25.8 TAF) were not accounted for as (b)(2) actions this year.

April 2008:

Interior released water above base case operations on the following CVP-controlled streams: approximately 5.4 TAF of water on Clear Creek to help meet AFRP flow objectives for fall-run Chinook rearing and steelhead juveniles, and approximately 4.8 TAF on the American River to meet AFRP flow objectives for fall-run Chinook rearing and steelhead juveniles. These releases predominantly contributed to the primary purpose of Section 3406(b)(2) of the CVPIA and were accounted for as a (b)(2) actions.

On the Stanislaus River, Interior released approximately 22.1 TAF of water above base case operations to help meet WQCP monthly Vernalis flow objectives and 2.4 TAF of water above base case operations to help meet the Vernalis Adaptive Management Program (VAMP) pulse flow requirements (SWRCB, D-1641, Table 3). In April and May, fall-run Chinook smolts principally migrate down the San Joaquin River. SWRCB, ER for the 1995 WQCP (Appendix 1). Thus, during April and May, the purpose of the San Joaquin objectives "is to improve survival of salmon smolts emigrating down the San Joaquin River and to improve habitat conditions in the central and southern Delta for numerous aquatic species." Id. Although these actions provide general benefits to Delta habitat conditions and numerous species, they help meet AFRP flow objectives, benefit fall-run Chinook and steelhead juveniles, and predominantly contributed to the primary purpose of CVPIA Section 3406(b)(2). Interior accounted for these releases as (b)(2) actions this year.[12]

May 2008:

On Clear Creek, Interior released approximately 7.2 TAF of water above base case to help meet AFRP flow objectives for fall-run Chinook and steelhead rearing. This release predominantly contributed to the primary purpose of Section 3406(b)(2) of the CVPIA and was accounted for as a (b)(2) action.

On the Stanislaus River, Interior released approximately 2.9 TAF of water above base case operations to help meet the VAMP pulse flow requirements (SWRCB, D-1641, Table 3)[13]. As previously stated, during April and May the purpose of the San Joaquin objectives "is to improve survival of salmon smolts emigrating down the San Joaquin River and to improve

[12] See footnote 9.

[13] Of this amount, approximately 0.9 TAF was used to gradually ramp down releases in the post-VAMP period.

habitat conditions in the central and southern Delta for numerous aquatic species." Id. Although these actions provide general benefits to Delta habitat conditions and numerous species, they help meet AFRP flow objectives, benefit fall-run Chinook and steelhead juveniles, and predominantly contributed to the primary purpose of CVPIA Section 3406(b)(2). Interior accounted for these releases as (b)(2) actions this year.[14]

On the American River, Interior released approximately 3.4 TAF to help meet WQCP Delta outflow requirements. As explained above, actions taken to meet net Delta outflow objectives do not predominantly contribute to the primary purpose of CVPIA Section 3406(b)(2), SLDMWA, at 51-52.[15] However, these WQCP actions helped meet AFRP flow objectives in May, benefitted fall run Chinook and steelhead smolts, and predominantly contributed to the primary purpose of CVPIA Section 3406(b)(2). Interior accounted for these releases as (b)(2) actions this year.

During the first part of May, Interior reduced CVP exports by approximately 7.5 TAF to meet the VAMP export target. This action benefitted San Joaquin basin fall-run Chinook outmigration, helped meet AFRP flow objectives, and predominantly contributed to the primary purpose of CVPIA Section 3406(b)(2). Interior accounted for them as (b)(2) actions.

June 2008:

Interior released approximately 2.8 TAF of water above base case operations on Clear Creek to help meet AFRP flow objectives and to comply with the temperature objectives for juvenile steelhead and pre-spawning adult spring-run Chinook included in the 2004 National Oceanic and Atmospheric Administration's Biological Opinion (2004 NOAA BiOp) for the 2004 CVP Operating Criteria and Procedures. This release predominantly contributed to the primary purpose of Section 3406(b)(2) of the CVPIA and was accounted for as a (b)(2) action.

Interior reduced CVP exports by approximately 5.8 TAF to comply with the Interim Remedial Order issued in NRDC v. Kempthorne to address the entrainment of delta smelt at the federal CVP pumps. Consistent with the Ninth Circuit's 2004 decision, confirming Interior's discretion to give effect to Section 3406(b)(2)'s hierarchy of purposes, and Judge Wanger's September, 2008 opinion in SLDMWA, Interior accounted for these export reductions as (b)(2) actions this year.

August 2008:

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[14] See footnote 9.

[15] See footnote 3.

As described above, Interior released approximately 1.6 TAF of water above base case operations on Clear Creek to help meet AFRP flow objectives and to comply with the temperature objectives for juvenile steelhead and spawning adult spring-run Chinook included in the 2004 NOAA BiOp. This release predominantly contributed to the primary purpose of Section 3406(b)(2) of the CVPIA and was accounted for as a (b)(2) action.

September 2008:

As described above, Interior released approximately 5.1 TAF of water above base case operations on Clear Creek to help meet AFRP flow objectives and to comply with the temperature objectives for juvenile steelhead and spawning adult spring-run Chinook included in the 2004 NOAA BiOp. This release predominantly contributed to the primary purpose of Section 3406(b)(2) of the CVPIA and was accounted for as a (b)(2) action.

Water Year 2008 WQCP Actions Not Covered By (b)(2)

In March, as discussed above, Interior released approximately 26.6 TAF of water above base case operations from the Stanislaus River to assist in meeting WQCP requirements for San Joaquin River flows at Vernalis. These actions took place prior to the months of April and May, when actions to meet Vernalis flow objectives might also help to meet AFRP flow objectives and coincide with historical peak juvenile salmon outmigration. As such, the purpose of these Vernalis flow objectives are"to 'provide attraction and transport flows and suitable habitat for various life stages of aquatic organisms, including delta smelt and Chinook salmon.'" SLDMWA, at 51 (quoting 1995 WQCP). Although this standard provides some benefit to anadromous fish species in March, it does "not specifically identify an intent to support the fish doubling goal (or any other specifically-enumerated 3406 program). . . . Actions taken to comply with the . . . Vernalis flow requirement do not 'predominantly' contribute to primary purpose programs.," Id. at 51-52. These March releases occurred prior to peak salmon outmigration and did not predominantly contribute to the primary purpose of CVPIA Section 3406(b)(2), so Interior had the discretion to refrain from accounting for these releases as (b)(2) actions.[16] As described above, due to limited (b)(2) assets in the 2008 water year and to give effect to the hierarchy of purposes of Section 3406(b)(2), Interior exercised its discretion and refrained from accounting approximately 25.8 TAF of these March releases as (b)(2) actions this year.

From April through September Interior released approximately 206 TAF of water above base case operations from CVP reservoirs (Shasta and Folsom) to assist in meeting WQCP net Delta outflow requirements. As explained above, actions taken to meet net Delta outflow objectives do not predominantly contribute to the primary purpose of CVPIA Section 3406(b)(2).[17]

[16] See footnote 3.

[17] See footnote 3.

SLDMWA, at 51-52. Interior recognizes, however, that certain WQCP releases also help meet AFRP flow objectives and benefit Chinook salmon and steelhead, so certain WQCP actions might predominantly contribute to the primary purpose of CVPIA Section 3406(b)(2). None of these releases, however, were necessary to meet AFRP flow objectives, so they did not predominantly contribute to the primary purpose of CVPIA Section 3406(b)(2) and were not accounted for as (b)(2) actions this year.

In August and September, Interior reduced CVP exports by approximately 43 TAF to comply with WQCP net Delta outflow requirements. As explained above, actions taken to meet WQCP net Delta outflow requirements do not predominantly serve the primary purpose of CVPIA Section 3406(b)(2), SLDMWA, at 51-52, so these export reductions did not predominantly contribute to the primary purposes of Section 3406(b)(2).[18] Consequently, Interior did not account for these export reductions as (b)(2) actions this year.

[18] See footnote 3.

Water Year 2008 Final CVP Accounting of (b)(2) Actions in TAF (using DOI's May '03 (b)(2) Decision metrics)

B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
Fish Actions covered with §3406(b)(2) Water																
					Oct-Jan											Oct-Sep
	Oct	Nov	Dec	Jan	Total	Feb	Mar	Apr01-21	Apr22-30	May01-22	May23-31	Jun	Jul	Aug	Sep	Total
Clear Creek Release towards AFRP Objectives			4.2	9.2	13.4	8.6	8.6	4.2	1.2	4.5	2.7	2.8		1.6	5.1	52.6
Stanislaus River Release towards AFRP Objectives	4.9	4.8	4.9	4.6	19.2											19.2
American River Release towards AFRP Objectives			8.9	13.0	21.9	11.5	12.3	4.8								50.5
Sacramento River Release towards AFRP Objectives			12.5	29.2	41.7											41.7
Stanislaus River Release for WQCP/ESA & VAMP (Apr01-May31)								22.1	2.4	2.3	0.6					27.4
American River Release for WQCP/ESA											3.4					3.4
Sacramento River Release for WQCP/ESA			29.6		29.6											29.6
Export Reduction for WQCP/ESA & VAMP (Apr01-May31)										7.5						7.5
Export Reduction Oct01-Mar31, Jun01-Sep30 for entrainment avoidance			12.4	55.8	68.2	57.8	76.1					5.8				207.8
Export Reduction for WQCP WQ stds compliance necessitated by DXC closures			13.1		13.1											13.1
Stanislaus River Release for WQCP/ESA						4.5	0.8									5.3
Export Reduction for WQCP reasons other than DXC closure related quality		25.9	34.8	4.0	64.7		77.3									142.0
Total					271.7											600.0

Water Year 2008 Final CVP Accounting of WQCP Actions in TAF That Do Not Predominently Contribute to CVPIA §3406(b)(2) (using DOI's May '03 Decision metrics)

	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
2	**Additional WQCP Fish Actions not covered with §3406(b)(2) Water**																
3						Oct-Jan											Oct-Sep
4		Oct	Nov	Dec	Jan	Total	Feb	Mar	Apr01-21	Apr22-30	May01-22	May23-31	June	July	Aug	Sept	Total
5	Stanislaus River Release for WQCP Mar01-Mar31							25.8									25.8
6	Export Reduction for WQCP Delta Outflow Reqts														19.7	23.0	42.7
7	Upstream Releases beyond AFRP Objectives for WQCP Delta Outflow Reqts								45.5	3.9	16.0	24.1	61.3	10.7	17.3	27.4	206.3
8	Total																274.8