

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

**WATER YEAR 2012 FINAL ACCOUNTING  
FISHERY AND WATER QUALITY CONTROL PLAN ACTIONS**

**March 27, 2013**

**BACKGROUND**

Pursuant to section 3406(b)(2) of the Central Valley Project Improvement Act (CVPIA), the Secretary of the Interior must:

dedicate and manage annually eight hundred thousand acre-feet of Central Valley Project yield for [1] the primary purpose of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by this title; [2] to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and [3] to help meet such obligations as may be legally imposed upon the Central Valley Project under State or Federal law following the date of enactment of this title, including but not limited to additional obligations under the Federal Endangered Species Act.

The Department of the Interior (Interior) manages (b)(2) water consistent with its May 9, 2003 (b)(2) Policy and December 17, 2003 (b)(2) Guidance and relevant case law, including the Ninth Circuit Court'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), and the Ninth Circuit's recent decision in San Luis & Delta Mendota Water Authority v. United States, 672F.3d 636 (2012), affirming the District's Court's 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).

In SLDMWA, 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). Judge Wanger also recognized that some WQCP and/or ESA actions "may serve the primary purpose of the CVPIA." Id. at 47. 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.

As explained in Interior's May 2003 policy, "actions" in the context of (b)(2) accounting are computed increases in Central Valley Project (CVP) releases and decreases in CVP exports relative to hypothetical baseline operations. The hypothetical baseline operations reflect how the CVP would have been

operated experiencing WY 2012's hydrology under the regulatory environment that existed at the time CVPIA was passed.

The CVP began Water Year 2012 on October 1, 2011 with moderately high storage levels in Trinity, Shasta, Folsom, and New Melones reservoirs, ranging from 125% to 132% of the 15-year average. Subsequent precipitation in the winter and spring was below average, and annual inflows to the CVP reservoirs ranged from 55% to 70% of the 15-year average. In the 2012 water year, the Sacramento River basin and the San Joaquin River basin were classified as below normal and dry respectively, using D-1641 year type classifications. Consistent with Section 3406(b)(2) of the CVPIA and Interior's May 2003 (b)(2) Policy, the total (b)(2) water allocation was 800 thousand acre feet (TAF) during the 2012 water year.

CVP operations during the 2012 water year were subject to implementation of two biological opinions: (1) the United States Fish and Wildlife Service (FWS) Biological Opinion (BO) on the Coordinated Operations of the CVP and the State Water Project (SWP) for the protection of federally-listed delta smelt, issued in December 2008 (FWS BO), and (2) the National Marine Fisheries Service (NMFS) BO on the Long-term Operations of the CVP and SWP for the protection of listed salmonids and Green Sturgeon, issued in June 2009 (NMFS BO). Both biological opinions included a reasonable and prudent alternative (RPA) to avoid jeopardy to the subject species. The CVP also operated in accordance with a Joint Stipulation that included CVP and SWP Delta operations during April and May 2012 (The Consolidated Salmon Cases – Joint Stipulation Regarding CVP and SWP Operations in 2012, 1:09-CV-1053, LJO DLB) (hereinafter Joint Stipulation). In this stipulation, the Plaintiffs (San Luis and Delta Mendota Water Authority, Westlands Water District, State Water Contractors, Metropolitan Water District of Southern California, Coalition for a Sustainable Delta, Kern County Water Agency, Oakdale Irrigation District, South San Joaquin Irrigation District, and Stockton East Water District), the Plaintiff-Intervenor (California Department of Water Resources), and the Federal Defendants (Gary F. Locke, et al., the National Oceanic and Atmospheric Administration, et al., the U.S. Department of Commerce, et al., and the National Marine Fisheries Service, et al.) agreed to specific actions and modifications to the NMFS BO RPA IV.2.1 for the April 1 through May 31, 2012 period.

In water year 2012, the full 800 TAF (b)(2) allocation was utilized for primary purpose fish actions, Endangered Species Act (ESA) requirements, and/or Water Quality Control Plan (WQCP) requirements. An additional 476 TAF of "actions" were taken to comply with WQCP and ESA requirements, and Interior exercised its discretion to refrain from accounting these "actions" as (b)(2) debits.

The purpose of this document is to explain Interior's final accounting of fish actions covered by CVPIA Section 3406(b)(2) in water year 2012. The first attached table, "Water Year 2012 Final CVP Accounting of (b)(2) Actions in TAF," summarizes the fishery actions, including WQCP and ESA actions (relative to the hypothetical baseline operations) covered by CVPIA Section 3406(b)(2) in water year 2012. The second attached table, "Water Year 2012 Final CVP Accounting of Actions in TAF Not Covered with (b)(2) Water", summarizes WQCP and ESA actions taken during water year 2012 that were not accounted for

as (b)(2) debits. Both of those tables are based on the final daily accounting for water year 2012. This narrative, together with the two attached tables, constitutes Interior's final accounting of fishery actions, including ESA and WQCP actions, covered by CVPIA Section 3406(b)(2) during water year 2012 and explains how Interior exercised its authority and discretion under CVPIA Section 3406(b)(2) during that same period.

### **Water Year 2012 Fish Actions Covered By (b)(2) Water**

#### **October 2011:**

On Clear Creek, flows were augmented above the hypothetical baseline using approximately 10.8 TAF of (b)(2) water. Approximately 225 cubic feet per second (cfs) was maintained to meet temperature requirements for spring-run Chinook salmon (ESA Threatened) egg incubation and rearing, pursuant to the NMFS Biological Opinion. This release also helped meet FWS Anadromous Fish Restoration Program (AFRP) flow objectives and improved instream conditions for spawning fall-run Chinook salmon. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

#### **November 2011:**

On Clear Creek, flows were augmented above the hypothetical baseline using approximately 6.6 TAF of (b)(2) water. Approximately 200-225 cfs was maintained to help meet AFRP flow objectives for spring-run Chinook egg incubation and rearing, and improved instream conditions for spawning fall-run Chinook salmon. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

On the American River, flows were augmented above the hypothetical baseline using approximately 37.4 TAF of (b)(2) water. Approximately 2150-2500 cfs was maintained to help meet AFRP flow objectives and maintain suitable conditions for spawning fall-run Chinook salmon. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

#### **December 2011:**

On Clear Creek, flows were augmented above the hypothetical baseline using approximately 6.3 TAF of (b)(2) water. Approximately 200-215 cfs was maintained to help meet AFRP flow objectives to benefit spring-run Chinook fry, steelhead juveniles and pre-spawning adults, and instream conditions for fall-run Chinook salmon spawning and egg incubation. This release predominantly contributed to the primary purpose of Section 3406 (b)(2).

On the Sacramento River, flows were augmented above the hypothetical baseline using approximately 22.5 TAF of (b)(2) water. Approximately 5000-5800 cfs was maintained to help meet AFRP flow objectives for fall-run and late-fall run Chinook salmon spawning and egg incubation and to benefit steelhead juveniles and pre-spawning adults. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

On the American River, flows were augmented above the hypothetical baseline using approximately 48.9 TAF of (b)(2) water. Approximately 2000-2200 cfs was maintained to help meet AFRP flow objectives for fall-run Chinook salmon spawning and emergence and to benefit Central Valley steelhead (ESA threatened) juveniles and pre-spawning adults consistent with the NMFS BO and the American River Flow Management Standard (FMS). This release predominantly contributed to the primary purpose of Section 3406(b)(2).

**January 2012:**

On Clear Creek, flows were augmented above the hypothetical baseline using approximately 9.2 TAF of (b)(2) water. Approximately 200 cfs was maintained to help meet AFRP flow objectives to benefit spring-run Chinook fry, fall-run Chinook spawning and emergence, and spawning steelhead. This release predominantly contributed to the primary purpose of Section 3406 (b)(2).

On the Sacramento River, flows were augmented above the hypothetical baseline using approximately 51.0 TAF of (b)(2) water. Approximately 4000-5000 cfs was maintained to help meet AFRP flow objectives for fall-run and late-fall run Chinook salmon spawning and emergence and to benefit steelhead juveniles, spawning adults, and egg incubation. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

On the American River, flows were augmented above the hypothetical baseline using approximately 45.3 TAF of (b)(2) water. Approximately 1700-1800 cfs was maintained to help meet AFRP flow objectives for fall-run Chinook salmon egg incubation and emergence and to benefit steelhead juveniles, spawning adults, and egg incubation consistent with the NMFS BO and the American River FMS. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

**February 2012:**

On Clear Creek, flows were augmented above the hypothetical baseline using approximately 8.7 TAF of (b)(2) water. Approximately 200 cfs was maintained to help meet AFRP flow objectives to benefit spring-run Chinook rearing, fall-run Chinook emergence and rearing, and spawning steelhead. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

On the Sacramento River, flows were augmented above the hypothetical baseline using approximately 3.1 TAF of (b)(2) water. Approximately 3300-4000 cfs was maintained from February 1-7 to help meet AFRP flow objectives for fall-run and late-fall run Chinook salmon emergence and rearing and to benefit steelhead spawning adults, egg incubation, and juvenile rearing. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

On the American River, flows were augmented above the hypothetical baseline using approximately 32.7 TAF of (b)(2) water. Approximately 1450-1700 cfs was maintained to help meet AFRP flow objectives for fall-run Chinook salmon emergence and rearing and to benefit steelhead spawning adults,

egg incubation, and juvenile rearing consistent with the NMFS BO and the American River FMS. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

In the Delta, from February 27-29, CVP exports were curtailed to an average of approximately 1,634 cfs to assist in meeting the Old and Middle River (OMR) flow requirement included in NMFS RPA IV.2.3. During that period, CVP exports were reduced below hypothetical baseline pumping levels by approximately 15.3 TAF to reduce the vulnerability of emigrating juvenile winter-run Chinook salmon (ESA Endangered), yearling spring-run Chinook salmon, and steelhead within the lower Sacramento and San Joaquin rivers to entrainment into the channels of the South Delta and at the pumps. This export reduction predominantly contributed to the primary purpose of CVPIA 3406(b)(2).

**March 2012:**

On Clear Creek, flows were augmented above the hypothetical baseline using approximately 9.3 TAF of (b)(2) water. Approximately 200 cfs was maintained to help meet AFRP flow objectives for fall-run Chinook salmon rearing and steelhead spawning and emergence. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

On the American River, flows were augmented above the hypothetical baseline using approximately 4.8 TAF of (b)(2) water. Approximately 1100-1300 cfs was maintained to help meet AFRP flow objectives for fall-run Chinook salmon emergence and rearing and to benefit steelhead spawning adults, egg incubation, and juvenile rearing consistent with the NMFS BO and the American River FMS. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

In the Delta, from March 1-30, CVP exports were curtailed to an average of approximately 1,879 cfs to assist in meeting the OMR flow requirement included in NMFS RPA IV.2.3. During that period, CVP exports were reduced below hypothetical baseline pumping levels by approximately 84.4 TAF to reduce the vulnerability of emigrating juvenile winter-run Chinook salmon, yearling spring-run Chinook salmon, and steelhead within the lower Sacramento and San Joaquin rivers to entrainment into the channels of the South Delta and at the pumps. This export reduction predominantly contributed to the primary purpose of CVPIA 3406(b)(2).

**April 2012:**

On Clear Creek, flows were augmented above the hypothetical baseline using approximately 9.1 TAF of (b)(2) water. Approximately 200 cfs was maintained to help meet AFRP flow objectives for fall-run Chinook rearing and steelhead juveniles. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

On the Stanislaus River, flows were augmented above the hypothetical baseline using approximately 47.4 TAF of (b)(2) water. Approximately 400-2000 cfs was maintained as specified in the flow schedule contained in the NMFS BO RPA III.1.3 for steelhead juvenile outmigration and to help meet AFRP flow

objectives for fall-run Chinook rearing and outmigration. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

In the Delta, from April 1-30, CVP exports were curtailed to an average of approximately 922 cfs to assist in meeting the OMR flow requirements included in the aforementioned Joint Stipulation. During that period, CVP exports were reduced below hypothetical baseline pumping levels by approximately 144.7 TAF to reduce the vulnerability of emigrating juvenile winter-run Chinook salmon, yearling spring-run Chinook salmon, and steelhead within the lower Sacramento and San Joaquin rivers to entrainment into the channels of the South Delta and at the pumps. This export reduction predominantly contributed to the primary purpose of CVPIA 3406(b)(2).

**May 2012:**

On Clear Creek, flows were augmented above the hypothetical baseline using approximately 1.5 TAF of (b)(2) water (not accomplished through modification of CVP operations). Approximately 200-400 cfs was maintained to help meet AFRP flow objectives for fall-run Chinook, late fall-run Chinook, and steelhead juvenile rearing and outmigration, as well as for spring-run Chinook attraction flows in accordance with NMFS RPA I.1.1.1. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

On the Stanislaus River, flows were augmented above the hypothetical baseline using approximately 38.8 TAF of (b)(2) water. Approximately 900-1500 cfs was maintained as specified in the flow schedule contained in the NMFS BO RPA III.1.3 for steelhead juvenile outmigration and to help meet AFRP flow objectives for fall-run Chinook rearing and outmigration. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

In the Delta, from May 1-14 and May 19-31, CVP exports were curtailed to an average of approximately 1052 cfs to assist in meeting the OMR flow requirement included in the Joint Stipulation. During that period, CVP exports were reduced below hypothetical baseline pumping levels by approximately 104.3 TAF to reduce the vulnerability of emigrating juvenile winter-run Chinook salmon, yearling spring-run Chinook salmon, and steelhead within the lower Sacramento and San Joaquin rivers to entrainment into the channels of the South Delta and at the pumps. This export reduction predominantly contributed to the primary purpose of CVPIA 3406(b)(2).

**June 2012:**

On the Stanislaus River, flows were augmented above the hypothetical baseline using approximately 1.5 TAF of (b)(2) water. Approximately 600-900 cfs was maintained from June 1-9 as specified in the flow schedule contained in the NMFS BO RPA III.1.3 for steelhead juvenile outmigration and to help meet AFRP flow objectives for fall-run Chinook rearing and outmigration. This release predominantly contributed to the primary purpose of Section 3406(b)(2).

In the Delta, from June 1-14, CVP exports were curtailed to an average of approximately 1992 cfs to assist in meeting the OMR flow requirement included in the Joint Stipulation. During that period, CVP

exports were reduced below hypothetical baseline pumping levels by approximately 27.9 TAF to reduce the vulnerability of emigrating juvenile winter-run Chinook salmon, yearling spring-run Chinook salmon, and steelhead within the lower Sacramento and San Joaquin rivers to entrainment into the channels of the South Delta and at the pumps. This export reduction predominantly contributed to the primary purpose of CVPIA 3406(b)(2). From June 15-21, CVP exports were curtailed to an average of approximately 1497 cfs to comply with WQCP net Delta outflow requirements. During that period, CVP exports were reduced below hypothetical baseline pumping levels by approximately 20.9 TAF. From June 22-30, CVP exports were curtailed to an average of 2575 cfs to comply with FWS BO delta smelt requirements (-5000 cfs OMR target). During that period, CVP exports were reduced below hypothetical baseline pumping levels by approximately 7.6 TAF. Because there continued to be salmon salvaged at the pumping facilities during the June 15-30 timeframe, these export reductions likely helped to reduce salmonid entrainment, so Interior exercised its discretion and accounted for them as (b)(2) debits this year.

**July 2012:**

No (b)(2) actions

**August 2012:**

No (b)(2) actions

**September 2012:**

No (b)(2) actions

**Water Year 2012 Actions Not Covered with (b)(2) Water**

**November 2011:**

In the Delta, Interior reduced CVP exports below hypothetical baseline pumping levels by approximately 29.3 TAF from November 17-28 to implement RPA Component 3 of the FWS BO (fall X2), as stipulated in the US Bureau of Reclamation's July 21, 2011 "Coordinated Operation and Implementation of RPA Component 3" memorandum and the FWS July 22, 2011 "Acceptance" memorandum. The objective of this component of the RPA is to improve fall habitat for delta smelt through increasing Delta outflow during the fall months. Because these export reductions were intended to help increase Delta outflow (fall x2) and did not predominantly contribute to the primary purpose of CVPIA Section 3406 (b)(2), SLDMWA, at 51-52, Interior exercised its discretion and did not account for these export reductions as (b)(2) debits this year.

**February 2012:**

On the Sacramento River, flows were augmented above the hypothetical baseline using approximately

38.6 TAF of water from Shasta Reservoir from February 8-29 to assist in meeting WQCP net Delta outflow requirements. Actions taken to meet WQCP net Delta outflow requirements<sup>1</sup> do not predominantly serve the primary purpose of CVPIA Section 3406(b)(2), SLDMWA, at 51-52. To give effect to the hierarchy of purposes of Section 3406 (b)(2), Interior exercised its discretion and did not account for them as (b)(2) debits this year.

In the Delta, Interior reduced CVP exports below hypothetical baseline pumping levels by approximately 117.2 TAF from February 1-26 to comply with 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). SLDMWA, at 51-52. Because these export reductions did not predominantly contribute to the primary purposes of Section 3406(b)(2), Interior exercised its discretion and did not account for these export reductions as (b)(2) debits this year.

### **March 2012:**

On the Sacramento River, flows were augmented above the hypothetical baseline using approximately 24.3 TAF of water from Shasta Reservoir from March 1-19 to assist in meeting WQCP net Delta outflow

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<sup>1</sup> 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., *Potamocorbula*, *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.



requirements. As explained above, actions taken to meet WQCP net Delta outflow requirements<sup>1</sup> do not predominantly serve the primary purpose of CVPIA Section 3406(b)(2), SLDMWA, at 51-52. To give effect to the hierarchy of purposes of Section 3406 (b)(2), Interior exercised its discretion and did not account for them as (b)(2) debits this year.

#### **June 2012:**

On the Sacramento River, flows were augmented above the hypothetical baseline using approximately 36.2 TAF of water from Shasta Reservoir from June 16-30 to assist in meeting 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. To give effect to the hierarchy of purposes of Section 3406 (b)(2), Interior exercised its discretion and did not account for them as (b)(2) debits this year.

On the American River, flows were augmented above the hypothetical baseline using approximately 15.1 TAF of water from Folsom Reservoir from June 16-30 to assist in meeting 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. To give effect to the hierarchy of purposes of Section 3406 (b)(2), Interior exercised its discretion and did not account for them as (b)(2) debits this year.

On the Stanislaus River, flows were augmented above the hypothetical baseline using approximately 20.5 TAF of water from New Melones Reservoir from June 10-30 to assist in meeting WQCP requirements for San Joaquin River flows at Vernalis. This June release occurred after 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 this release as a (b)(2) action<sup>2</sup>. As described above, to give effect to the hierarchy of purposes of Section 3406(b)(2), Interior exercised its discretion and did not account for it as a (b)(2) debit this year.

#### **Replacement Pumping (July – September):**

Under Condition 3 of D-1485<sup>3</sup> and Article 10(b) of the “Agreement Between the United States of America and State of California for the Coordinated Operation of [CVP] and State Water Project” (COA),

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<sup>2</sup> In SLDMWA, the challenged actions taken to comply with Vernalis flow objectives took place in late June of 2004. Actions taken to meet Vernalis flow objectives during April and May 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 June 2012 – 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).

<sup>3</sup> Condition 3 of D-1485 states, “To the extent that operational constraints on the Central Valley Project to minimize diversion of young striped bass from the Delta during May and June reduce project exports, permittee, the United States Bureau of Reclamation, shall be allowed through coordinated operations to make up such deficiencies during later periods of the year by direct diversion or by rediversion of releases of stored water through State Water Project facilities.”

Interior would have been able to replace up to about 195 TAF of exports foregone in May and June due to D-1485 requirements later in the year (generally July through September).<sup>4</sup> This ability to make up for reductions in exports during May and June of any year under D-1485 is commonly referred to as “replacement pumping” and is considered part of the base case operation for CVPIA 3406(b)(2) purposes, consistent with Interior’s 2003 (b)(2) Policy. If actual CVP exports are more than the 3,000 cfs base case operation in May or June, the incremental amount of exports above 3,000 cfs is subtracted from the nominal 195 TAF of replacement pumping allowed under D-1485 and the COA. In water year 2012, in the base case operation under D-1485, the CVP would have been entitled to a replacement pumping volume of 195 TAF.

However, Condition 8 of SWRCB Decision 1641 (D-1641) eliminated Interior’s ability to make up for export reductions later in the year by rescinding Condition 3 of D-1485.<sup>5</sup> The SWRCB’s decision to rescind Condition 3 and eliminate replacement pumping is a WQCP requirement mandated through D-1641 and, therefore, any replacement pumping foregone in the 2012 water year due to Condition 8 of D-1641 was considered a WQCP action. Additionally, as explained above, Interior considers operations under D-1485, including the ability to replace foregone CVP pumping in May and June, to be part of the base case condition, consistent with Interior’s May 2003 (b)(2) Policy.

In water year 2012, Interior distributed the 195 TAF of replacement pumping foregone due to D-1641 uniformly throughout July, August, and September.<sup>6</sup> In July, CVP exports were less than base case exports under D-1485, which included about 65.7 TAF of foregone replacement pumping. In August, CVP exports were less than base case operations under D-1485, which included about 65.7 TAF of foregone replacement pumping under D-1641 and the current WQCP. In September, CVP exports were less than base case operations, which included about 63.5 TAF of foregone replacement pumping under D-1641 and the current WQCP. Interior considered the 195 TAF of foregone replacement pumping to be a WQCP action that did not predominantly contribute to the primary purpose of CVPIA 3406(b)(2), and exercised its discretion to not account for it as (b)(2) debit this year.

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<sup>4</sup> Generally, the 195 TAF of replacement pumping allowed under D-1485 and the COA is calculated as the difference between the designed pumping capacity of the Jones Pumping Plant (4,600 cfs) and allowable exports under D-1485 (3,000 cfs) during the 61 days in May and June. Interior assumes that replacement pumping under D-1485 would have occurred at a uniform rate from July 1 through September 30. Thus, Interior accounts for replacement pumping foregone due to D-1641 based on a uniform rate in July, August, and September.

<sup>5</sup> Condition 8 of SWRCB Water Rights Decision 1641 (D-1641) rescinded Condition 3 of D-1485 stating, “SWRCB Decision 1485 (D-1485) ordered that certain terms and conditions in this license/permit be added or amended. Except as amended or deleted herein, the terms and conditions set forth in D-1485 remain in this license/permit. The terms and conditions in D-1485 numbered 2, 3, 4, 5, and 8 are rescinded.”

<sup>6</sup> See note 5.