



1 motions have been made and entered deciding accounting issues<sup>1</sup> on  
2 which final judgment can be entered under Federal Rule of Civil  
3 Procedure 54(b) in these consolidated cases. There is no just  
4 reason for delay. The March 13, 2000 Memorandum and Order Re:  
5 Inclusion of the Modified D-1400 Flows in the CVPIA Definition of  
6 'CVPIA Yield' and Interior's Discretion as to Interpretation and  
7 Implementation of CVPIA § 3406(b)(2), Motions Re: Preliminary  
8 Injunction; the October 19, 2001 Memorandum Decision and Order  
9 Re: Cross Motions for Summary Judgment; and the February 5, 2002  
0 Supplemental Memorandum Decision and Order Re: Summary Judgment  
1 Motion on Offset/Reset have resolved the following accounting  
2 issues raised in the environmental plaintiffs'<sup>2</sup> second claim; San  
3 Luis and Delta-Mendota Authority's first, second, and third  
4 claims; Pixley Irrigation District's first and second claims; and  
5 Stockton East Water District's first and second claims:

6 a. Interior's interpretation of the definition of CVP yield  
7 is not arbitrary or capricious except for the deduction of the  
8 modified D-1400 flows, to be replaced by D-893 flows, in  
9 calculating CVP yield;

0 b. Interior did not act arbitrarily or capriciously in  
1

---

2 <sup>1</sup>By the decision of February 20, 2002, p. 11, the court  
3 determined the accounting claims presented by the two lawsuits  
4 are legally and factually severable from the remaining claims and  
5 should be tried first and decided.

6 <sup>2</sup>The group "environmental plaintiffs" is comprised of: the  
7 Bay Institute of San Francisco; the Pacific Coast Federation of  
8 Fishermen's Associations; the Institute for Fisheries Resources;  
9 Save San Francisco Bay Association; and the United Anglers of  
0 California.

modeling the proposed 1999 (b) (2) actions on 1999 hydrologic conditions;

c. Interior cannot be required to use a comparative 1928-34 period analysis to annually measure the separate impact of each (b) (2) action for (b) (2) purposes in quantifying CVP yield;

d. No evidence establishes that Interior's recalculation of CVP yield using D-893 flows, submitted on March 17, 2000 violates the CVPIA;

e. Interior's decision to credit a maximum 450,000 AF of water that is used to satisfy Water Quality Control Plan and post-CVPIA-enactment Endangered Species Act requirements against (b) (2)'s 800,000 AF mandate is not provided for by statute, is arbitrary, and violates (b) (2);

f. The Final Decision's treatment of (b) (2) banking is not arbitrary, capricious, or unlawful;

g. The reasonable re-use of former (b) (2) water after a (b) (2) use, for non-(b) (2) purposes is not unlawful, arbitrary, or capricious;

h. The use of reset is unlawful, arbitrary, and capricious; as it fails to account for all annual (b) (2) use of CVP yield and resulted in more than 800,000 AF being used for (b) (2) purposes in the 1999-2000 water year;

i. Offset as implemented in water year 1999-2000 is unlawful, arbitrary, and capricious, as it failed to count all CVP yield actually used for (b) (2) purposes and contributed to the overall use of more than 800,000 AF of CVP yield for (b) (2) purposes; and

j. The Decision on Implementation of Section 3406(b) (2) of

