

Draft CVPIA Fiscal Year 2015 Annual Work Plan, Dedicated Project Yield, CVPIA Section 3406 (b)(2)

Responsible Entities:

Staff Name	Agency	Role
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The U. S. Fish and Wildlife Service (USFWS) and the Bureau of Reclamation (Reclamation) jointly implement the Dedicated Project Yield Program. The Dedicated Project Yield Program implements Section 3406 (b) (2) which directs and authorizes the Secretary of the Interior to:

“dedicate and manage annually 800,000 acre-feet of Central Valley Project yield for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by this title; to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and 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.”

Program Goals and Objectives for FY 15:

The Program goals are:

1. Improve habitat conditions for anadromous fish in CVP controlled rivers and streams and the Bay-Delta to help meet the AFRP doubling goals
2. Increase survival of out migrant juvenile anadromous fish, especially in the Bay-Delta.
3. Contribute to recovery of listed threatened and endangered fish species, including delta smelt.
4. Assist the State in its efforts to protect the Delta.
5. Monitor and evaluate to guide the (b)(2) management decisions and assess the effectiveness of (b)(2) measures.

To achieve these goals, the program:

1. Develops monthly 12-month operational forecasts.
2. Develops daily accounting of (b)(2) and non-(b)(2) fishery actions.
3. Conducts weekly interagency team meetings to confer with fishery biologists and project operators to determine where and when to apply (b)(2) water.

Status of the Program:

On May 9, 2003, Interior released a revised Final Decision on Implementation of Section 3406 (b)(2), in response to a ruling by the federal District Court in March, 2002. The revised Final Decision set out a calculation of CVP yield, the method of accounting for use of the dedicated CVP yield, and procedures for management of the yield.

On June 3, 2003 and again on January 23, 2004, the U.S. Court of Appeals for the Ninth Circuit ruled that the District Court erred in concluding that Interior lacks discretion to specify what portion of the 800,000 acre feet is set aside for water quality and Endangered Species Act purposes. Section 3406 (b)(2) provides that the “primary purpose” to which the 800,000 acre feet should be dedicated is the implementation of “fish, wildlife, and habitat restoration purposes authorized by this title...” (i.e., CVPIA). The language of the statute gives Interior discretion to allocate the 800,000 acre feet among fish and wildlife, water quality, and endangered species obligations, as long as Interior’s allocation gives effect to the hierarchy of purposes established in Section 3406 (b)(2).

In September 2008, the Federal District Court issued a memorandum opinion in *San Luis & Delta Mendota Water Authority v. Department of Interior*, 1:97-cv-6140, 1:98-cv-5261 OWW DLB (E.D.Cal. Sept. 19, 2008), concerning Interior’s (b)(2) accounting for the 2004 water year. In March 2012, the U.S. Court of Appeals for the Ninth Circuit affirmed the District Court’s 2008 opinion and ruled that Interior’s accounting with respect to the latter June 2004 releases was not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” (No. 09-17594, D.C. No. CV 97-06140-OWW Opinion). Thus, Interior accounted for fishery actions, including Endangered Species Act (ESA) and water quality control plan (WQCP) actions during the 2012 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.

For more information, see USBR CVO website:

<http://www.usbr.gov/mp/cvo/>