



July 11, 2017

H.R. 23, Gaining Responsibility on Water Act of 2017 – OPPOSE

Dear Representative:

Our organizations represent thousands of conservationists and waterfowlers throughout California, including the Central Valley. Our members and landowners strongly oppose any bill that would lessen the reliability of water deliveries to refuges and wildlife areas. We oppose H.R. 23 (Valadao, R-CA) because it would significantly deplete essential habitat for migratory birds and many other species that depend on the Central Valley's last remaining wetlands.

Six years ago, Representative Nunes (R-CA) introduced H.R. 1837 (2011). That bill contained most of the same provisions now replicated in H.R. 23, provisions that are extensively opposed in California but nevertheless continue to be introduced in the House of Representatives year after year, as was the case in 2014 with H.R. 3964 (Valadao, R-CA) and in 2015 with H.R. 2898 (Valadao, R-CA). These provisions were rejected in the final enacted version of the Water Infrastructure Improvements for the Nation Act of 2016. Clearly, it is time for a fresh approach to solving California's water challenges.

The 1992 Central Valley Project Improvement Act (CVPIA) mandates that the Bureau of Reclamation (Reclamation) provide sufficient water supplies to 19 wetland habitat areas in the Central Valley. The refuges routinely receive less than 30% of their mandated spring/summer contractual supplies. In the drought years of 2014 and 2015, spring and summer supplies were cut off entirely for refuges in the San Joaquin Valley. Refuge contractors rely almost exclusively on their CVP contract supplies and have little ability to supplement those supplies, unlike many other CVP water contractors who have access to supplemental groundwater and can acquire water on the private market.

Although H.R. 23 is characterized as a bill that would provide greater water supply reliability to Central Valley Project (CVP) contractors, this is not entirely accurate. The desire of agricultural and municipal CVP contractors to achieve greater water supply reliability is equally shared by CVP refuge water supply contractors. Yet H.R. 23 does nothing to address

Reclamation's longstanding failure to satisfy its obligations to refuge contractors. Instead, H.R. 23 would make things worse.

Our specific concerns with H.R. 23 are the same concerns raised in opposition letters dating back to 2011. New provisions are also included in H.R. 23 that further threaten to undermine the substantial accomplishments of Reclamation's CVPIA Refuge Water Supply Program, depleting the remaining 5% of wetland habitat remaining in the Central Valley.

1. **Refuge water de-prioritization:** H.R. 23 Section 303 attempts to eliminate the equal priority that CVPIA refuge water deliveries share with senior water contractors, by creating a new "obligation to satisfy" senior contracts "prior to the allocation of any other CVP water." This could result in a new approach to CVP water allocations that would leave wildlife refuges completely dry in some years. There are dire implications of this new language for the hundreds of species that rely on Central Valley wetland habitats.
2. **Restoration Fund reduction—water contractors:** H.R. 23 Section 106 targets the CVPIA Restoration Fund in multiple ways. First, it amends CVPIA Section 3607(d)(2) by setting a drop-dead 2020 date when payments into the Restoration Fund would be cut in half. The CVPIA currently requires Reclamation to satisfy its fish and wildlife obligations under Section 3406 before it reduces collections to the Restoration Fund. Replacing this with an arbitrary date will do nothing more than impede Reclamation's progress toward compliance. Those who pay into the Restoration Fund should encourage Reclamation to use the Fund to satisfy its CVPIA obligations, rather than trying to change those obligations to the detriment of CVPIA refuges.

Section 106 would reduce the mitigation fee collections cap from \$50 million to \$25 million per year (current value). Agricultural water contractors who are required to pay into the Restoration Fund now incur a \$10 per acre-foot mitigation charge for CVP water that is delivered. This is a reasonable fee for water that is routinely valued (for transfers) at hundreds of dollars per acre-foot. Cutting the Restoration Fund in half will not increase water reliability in California.

3. **Restoration Fund reduction—power contractors:** Section 106 would also cap the mitigation fees paid by CVP power contractors at \$4 per megawatt hour delivered. The resulting estimated reduction in collections to the \$50 million annual Restoration Fund would be \$9 million per year on average, with drastic reductions in dry years. Power contractors pay more into the Restoration Fund in dry years, but then make significantly reduced payments in wet years such as 2016-2017. Reducing the Restoration Fund by nearly 20% to benefit power contractors would

take away needed funding for wildlife refuges and other CVPIA mitigation programs.

4. **Restoration Fund Advisory Board membership:** Section 106 would create a “Restoration Fund Advisory Board.” At least ten of the twelve board members would be agricultural, urban or power customers of the CVP. The board would make recommendations directly to the Secretary of the Interior on how to administer the Restoration Fund, but the Board would not represent refuge or wildlife interests and would not be expressly subject to public transparency requirements. In conjunction with the other blows dealt to the Restoration Fund by H.R. 23, this one could be fatal.

5. **Fish and wildlife mitigation goals:** H.R. 23 Section 105 would add a new subsection at the end of CVPIA Section 3406, stating that the CVPIA’s fish and wildlife mitigation, protection, restoration and enhancement purposes would be “met” so long as Reclamation “pursues” the activities described in Section 3406. This general language creates a potential conflict (or at least confusion) when compared to the very specific mandates in Sections 3406(d)(1) and (d)(2) that require Reclamation to acquire and deliver certain water supplies, on an ongoing basis, to CVPIA refuges. These specific obligations can only be “met” when Reclamation successfully secures and delivers reliable water supplies of suitable quality to refuges. Interrupting Reclamation’s ongoing efforts to do so would jeopardize the gains that have been made since the enactment of the CVPIA.

6. **Fish and wildlife water redirection:** Section 101 would add an entirely new purpose to the CVPIA in Section 3402: to ensure that water dedicated to fish and wildlife purposes by the CVPIA is replaced and provided to CVP water contractors by 2018 at the lowest cost reasonably achievable. To achieve this new purpose, Section 107 of the bill would amend CVPIA Section 3408(j) to require that Reclamation quickly develop a plan to replace all CVPIA water dedicated to fish and wildlife purposes, and to use that new water to meet other CVP obligations (i.e. “contractual obligations”). If Reclamation fails to physically secure 800,000 acre-feet annually (afa) of this “new” CVP water by 2018, that amount would be taken away from fish and wildlife under the CVPIA, and implementation of CVPIA Section 3406(b)(2) would be suspended. It is entirely impractical to expect Reclamation to develop 800,000 afa of new California water supplies to serve CVP agricultural and urban contractors in such a short timeframe. Reclamation is now unable to meet its minimal statutory obligation to provide full “Level 4” water supplies to CVPIA refuges. Adding a new imperative for Reclamation to “find” more water for non-refuge purposes would place a significant burden on

Reclamation's refuge water supply program and would make achieving full Level 4 supplies even less likely.

7. **New contracts:** Section 103 and 107 of the bill would repeal and replace Section 3404 and amend Section 3408 of the CVPIA, such that Reclamation would no longer be prohibited from executing new CVP contracts prior to meeting its fish and wildlife restoration obligations. Section 3404 now prohibits Reclamation from executing new CVP water supply contracts until the provisions of Sections 3406 (b) through (d) are satisfied, including the requirement to obtain and deliver Level 4 water supplies to refuges. The CVP's water supplies are already over-allocated. Reclamation should not be allowed to execute new CVP water service contracts until it can meet its existing statutory and contractual obligations to deliver needed supplies to refuge contractors.
8. **Restoration Fund diversion:** Section 106 of the bill deletes the current requirement in CVPIA Section 3407(a) to use most of the Restoration Fund (67%) for habitat and restoration purposes, and the remaining portion (33%) for fish- and wildlife-specific projects. The entire purpose of the Fund is to mitigate for the vast losses to fish and wildlife habitat caused by the CVP. Reclamation should not be given discretion to use the Restoration Fund for purposes that it was not established or intended to serve.
9. **Restoration Fund reduction—conveyance:** Section 106 also appears to limit other sources of funding for the CVPIA Restoration Fund, which hurts refuges that depend on that Fund for their water supply acquisition, and the agricultural districts that incur wheeling costs to deliver refuge water supplies (costs that are paid for from the Fund). Existing demands on the Restoration Fund have already stretched it beyond its ability to keep up with both agricultural and refuge needs. H.R. 23 Section 106 would amend CVPIA Section 3407 to prohibit the collection of Restoration Fund payments from those who convey non-CVP water through CVP facilities, who receive deliveries of temporary CVP flood flows ("section 215 water"), and who receive CVP water for purposes of groundwater recharge. At the same time, Section 107 of the bill would amend CVPIA Section 3408 by directing Reclamation to encourage and facilitate those same types of uses. Creating an exemption from payment into the Restoration Fund for certain classes of water users that benefit from the CVP, at the expense of those who do pay into the Fund, is inequitable to all CVP users.
10. **Restoration Fund reduction—transfers:** H.R. 23 Section 104 would amend CVPIA Section 3405(f) so that only revenues "that exceed the cost of service rates"

applicable to the delivery of water being transferred from agricultural to urban use would go to the Restoration Fund. This will result in less money being dedicated to the Fund, to the detriment to wildlife refuges.

11. **Fish and wildlife water re-use:** Section 105 would amend CVPIA Section 3406 so that to the “fullest extent possible” the 800,000 afa now dedicated to fish and wildlife under subsection (b)(2) must be “reused” to fulfill Reclamation’s contractual obligations to supply water for “agricultural and municipal and industrial purposes.” This ignores Reclamation’s statutory and contractual obligations to refuge contractors. Reclamation should be able to reuse (b)(2) water for purposes of serving any CVP contractor to whom it owes water, including refuge contractors.
12. **Mitigation elimination for water transfers:** H.R. 23 Section 104 would amend CVPIA Section 3405 so that Reclamation could not impose “mitigation or other requirements” on CVP water transfers. Notwithstanding the vagueness of this language and the legal uncertainty of how it would interact with a number of other statutes, this amendment could undermine the ability of the CVP to serve its contractors. There is increasing pressure to allow CVP water transfers to non-CVP contractors, and the proposed language should be of concern to all CVP water users.
13. **Fees for crops that provide habitat:** Section 105 of the bill would repeal CVPIA Section 3405(d), including subsection (d)(4), so that Reclamation would no longer be able to waive or reduce water charges for contractors who grow crops that provide “significant and quantifiable” habitat value for waterfowl. It is hard to understand the rationale for removing this provision of the CVPIA, which requires binding agreements to assure that significant habitat value will in fact be provided and serves both agricultural and wildlife interests.
14. **Fish and wildlife water reallocation:** H.R. 23 Section 105 would amend Section 3406(b)(2) of the CVPIA to remove the designation of fish, wildlife, and habitat restoration as the “primary purpose” for which Reclamation uses the 800,000 afa of CVPIA water dedicated by subsection (b)(2). This amendment would overturn judicial precedent recognizing that Reclamation has discretion to avoid relegating the fish and wildlife restoration mandates of the CVPIA “to a secondary role, or perhaps no role at all.” The amendment would almost certainly lead to just this result since, as a practical matter, most if not all of these (b)(2) flows would be dedicated to the secondary purposes of the CVPIA rather than the primary purpose of fish and wildlife restoration.

Thank you for your consideration of these concerns. Our organizations welcome the opportunity to provide further information about these issues and we will continue to work with other stakeholders to lessen impacts to agriculture while preserving the refuge water supply provisions of the CVPIA. We respectfully ask that you oppose H.R. 23.

Sincerely,



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