

>EXCERPTS FROM THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT

>Public Law 102-575 Title XXXIV

> APPLICABLE OR REFERRING TO THE TRINITY RIVER.

>

>Sec. 3402(a)

>The purposes of this title shall be--

> (a) to protect, restore, and enhance fish, wildlife, and associated

>habitats in the Central Valley and TRINITY RIVER basins of California;

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>Sec. 3406(b)

> (b) FISH AND WILDLIFE RESTORATION ACTIVITIES.--The Secretary, immediately

>upon the enactment of this title, shall operate the Central Valley Project

>to meet all obligations under State and Federal law, including but not

>limited to the Federal Endangered Species Act, 16 U.S.C. 1531, et seq., and

>all decisions of the California State Water Resources Control Board

>establishing conditions on applicable licenses and permits for the project.

>The Secretary, in consultation with other State and Federal agencies, Indian

>tribes, and affected interests, is further authorized and directed to:

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* * *

> (2) upon enactment of this title dedicate and manage annually eight hundred

>thousand 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 to 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. For the

>purpose of this section, the term "Central Valley Project yield" means the

>delivery capability of the Central Valley Project during the 1928-1934

>drought period after fishery, water quality, and other flow and operational

>requirements imposed by terms and conditions existing in licenses, permits,

>and other agreements pertaining to the Central Valley Project under

>applicable State or Federal law existing at the time of enactment of this

>title have been met.

> (A) Such quantity of water shall be in addition to the quantities needed

>to implement paragraph 3406(d)(1) of this title and in addition to all water

>allocated pursuant to paragraph (23) of this subsection for release to the

>TRINITY RIVER for the purposes of fishery restoration, propagation, and

>maintenance; and shall be supplemented by all water that comes under the

>Secretary's control pursuant to subsections 3406(b)(3), 3408(h)-(i), and

>through other measures consistent with subparagraph 3406(b)(1)(B) of this

>title.

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> (19) reevaluate existing operational criteria in order to maintain minimum

>carryover storage at Sacramento and TRINITY RIVER reservoirs to protect and

>restore the anadromous fish of the Sacramento and TRINITY RIVER in

>accordance with the mandates and requirements of this subsection and subject

>to the Secretary's responsibility to fulfill all project purposes, including
>agricultural water delivery.

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* * *

> (23) in order to meet Federal trust responsibilities to protect the fishery
>resources of the Hoopa Valley Tribe, and to meet the fishery restoration
>goals of the Act of October 24, 1984, Public Law 98-541, provide through the
>TRINITY RIVER Division, for water years 1992 through 1996, an instream
>release of water to the TRINITY RIVER of not less than three hundred and
>forty thousand acre-feet per year for the purposes of fishery restoration,
>propagation, and maintenance and,

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> (A) by September 30, 1996, the Secretary, after consultation with the
>Hoopa Valley Tribe, shall complete the TRINITY RIVER Flow Evaluation Study
>currently being conducted by the United States Fish and Wildlife Service
>under the mandate of the Secretarial Decision of January 14, 1981, in a
>manner which insures the development of recommendations, based on the best
>available scientific data, regarding permanent instream fishery flow
>requirements and TRINITY RIVER Division operating criteria and procedures
>for the restoration and maintenance of the TRINITY RIVER fishery; and

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> (B) not later than December 31, 1996, the Secretary shall forward the
>recommendations of the TRINITY RIVER Flow Evaluation Study, referred to in
>subparagraph (A) of this paragraph, to the Committee on Energy and Natural
>Resources and the Select Committee on Indian Affairs of the Senate and the
>Committee on Interior and Insular Affairs and the Committee on Merchant
>Marine and Fisheries of the House of Representatives. If the Secretary and
>the Hoopa Valley Tribe concur in these recommendations, any increase to the
>minimum TRINITY RIVER instream fishery releases established under this
>paragraph and the operating criteria and procedures referred to in
>subparagraph (A) shall be implemented accordingly. If the Hoopa Valley
>Tribe and the Secretary do not concur, the minimum TRINITY RIVER instream
>fishery releases established under this paragraph shall remain in effect
>unless increased by an Act of Congress, appropriate judicial decree, or
>agreement between the Secretary and the Hoopa Valley Tribe. Costs
>associated with implementation of this paragraph shall be reimbursable as
>operation and maintenance expenditures pursuant to existing law.

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>If the Secretary and the State of California determine that long-term
>natural fishery productivity in all Central Valley Project controlled rivers
>and streams resulting from implementation of this section exceeds that which
>existed in the absence of Central Valley Project facilities, the costs of
>implementing those measures which are determined to provide such enhancement
>shall become credits to offset reimbursable costs associated with
>implementation of this subsection.

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>Sec. 3406(e)

> (e) SUPPORTING INVESTIGATIONS.--Not later than five years after the date
>of enactment of this title, the Secretary shall investigate and provide

>recommendations to the Committee on Energy and Natural Resources of the
>Senate and the Committees on Interior and Insular Affairs and Merchant
>Marine and Fisheries of the House on the feasibility, cost, and desirability
>of developing and implementing each of the following, including, but not
>limited to, the impact on the project, its users, and the State of
California:

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* * *

> (4) installation and operation of temperature control devices at TRINITY
>DAM and Reservoir to assist in the Secretary's efforts to conserve cold
>water for fishery protection purposes;

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>Sec. 3406(g)

> (g) ECOSYSTEM AND WATER SYSTEM OPERATIONS MODELS.--The Secretary, in
>cooperation with the State of California and other relevant interests and
>experts, shall develop readily usable and broadly available models and
>supporting data to evaluate the ecologic and hydrologic effects of existing
>and alternative operations of public and private water facilities and
>systems in the Sacramento, San Joaquin, and TRINITY RIVER watersheds. The
>primary purpose of this effort shall be to support the Secretary's efforts
>in fulfilling the requirements of this title through improved scientific
>understanding concerning, but not limited to, the following:

> (1) a comprehensive water budget of surface and groundwater supplies,
>considering all sources of inflow and outflow available over extended
periods;

> (2) related water quality conditions and improvement alternatives,
>including improved temperature prediction capabilities as they relate to
>storage and flows;

> (3) surface-ground and stream-wetland interactions;

> (4) measures needed to restore anadromous fisheries to optimum and
>sustainable levels in accordance with the restored carrying capacities of
>Central Valley rivers, streams, and riparian habitats;

> (5) development and use of base flows and channel maintenance flows to
>protect and restore natural channel and riparian habitat values;

> (6) implementation of operational regimes at State and Federal facilities
>to increase springtime flow releases, retain additional floodwaters, and
>assist in restoring both upriver and downriver riparian habitats;

> (7) measures designed to reach sustainable harvest levels of resident and
>anadromous fish, including development and use of systems of tradeable
>harvest rights;

> (8) opportunities to protect and restore wetland and upland habitats
>throughout the Central Valley; and

> (9) measures to enhance the firm yield of existing Central Valley Project
>facilities, including improved management and operations, conjunctive use
>opportunities, development of offstream storage, levee setbacks, and
>riparian restoration.

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>All studies and investigations shall take into account and be fully
>consistent with the fish, wildlife, and habitat protection and restoration

>measures required by this title or by any other State or Federal law.
>Seventy-five percent of the costs associated with implementation of this
>subsection shall be borne by the United States as a nonreimbursable cost;
>the remaining 25 percent shall be borne by the State of California.

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>Sec. 3407(a)

> (a) RESTORATION FUND ESTABLISHED.--There is hereby established in the
>Treasury of the United States the "Central Valley Project Restoration Fund"
>(hereafter "Restoration Fund") which shall be available for deposit of
>donations from any source and revenues provided under sections 3404(c)(3),
>3405(f), 3406(c)(1), and 3407(d) of this title. Amounts deposited shall be
>credited as offsetting collections. Not less than 67 percent of all funds
>made available to the Restoration Fund under this title are authorized to be
>appropriated to the Secretary to carry out the habitat restoration,
>improvement and acquisition (from willing sellers) provisions of this title.
>Not more than 33 percent of all funds made available to the Restoration Fund
>under this title are authorized to be appropriated to the Secretary to carry
>out the provisions of paragraphs 3406(b)(4)-(6), (10)-(18), and (20)-(22) of
>this title. Monies donated to the Restoration Fund by non-Federal entities
>for specific purposes shall be expended for those purposes only and shall
>not be subject to appropriation.

>Sec. 3407(b)

> (b) AUTHORIZATION OF APPROPRIATIONS.--Such sums as are necessary, up to
>\$50,000,000 per year (October 1992 price levels), are authorized to be
>appropriated to the Secretary to be derived from the Restoration Fund to
>carry out programs, projects, plans, and habitat restoration, improvement,
>and acquisition provisions of this title. Any funds paid into the
>Restoration Fund by Central Valley Project water and power contractors and
>which are also used to pay for the projects and facilities set forth in
>section 3406(b), shall act as an offset against any water and power
>contractor cost share obligations that are otherwise provided for in this
title.

>Sec. 3407(c)

> (c) MITIGATION AND RESTORATION PAYMENTS BY WATER AND POWER
BENEFICIARIES.--

> (1) To the extent required in appropriation Acts, the Secretary shall
>assess and collect additional annual mitigation and restoration payments, in
>addition to the charges provided for or collected under sections 3404(c)(3),
>3405(a)(1)(C), 3405(f), and 3406(c)(1) of this title, consisting of charges
>to direct beneficiaries of the Central Valley Project under subsection (d)
>of this section in order to recover a portion or all of the costs of fish,
>wildlife, and habitat restoration programs and projects under this title.

> (2) The payment described in this subsection shall be established at
>amounts that will result in collection, during each fiscal year, of an
>amount that can be reasonably expected to equal the amount appropriated each
>year, subject to subsection (d) of this section, and in combination with all
>other receipts identified under this title, to carry out the purposes
>identified in subsection (b) of this section; Provided, That, if the total
>amount appropriated under subsection (b) of this section for the fiscal

>years following enactment of this title does not equal \$50,000,000 per year
>(October 1992 price levels) on an average annual basis, the Secretary shall
>impose such charges in fiscal year 1998 and in each fiscal year thereafter,
>subject to the limitations in subsection (d) of this section, as may be
>required to yield in fiscal year 1998 and in each fiscal year thereafter
>total collections equal to \$50,000,000 per year (October 1992 price levels)
>on a three-year rolling average basis for each fiscal year that follows
>enactment of this title.

>Sec. 3407(d)

> (d) ADJUSTMENT AND ASSESSMENT OF MITIGATION AND RESTORATION PAYMENTS.--

> (1) In assessing the annual payments to carry out subsection (c) of this
>section, the Secretary shall, prior to each fiscal year, estimate the amount
>that could be collected in each fiscal year pursuant to subparagraphs 2(A)
>and (B) of this subsection. The Secretary shall decrease all such payments
>on a proportionate basis from amounts contained in the estimate so that an
>aggregate amount is collected pursuant to the requirements of paragraph
>(c)(2) of this section.

> (2) The Secretary shall assess and collect the following mitigation and
>restoration payments, to be covered to the Restoration Fund, subject to the
>requirements of paragraph (1) of this subsection:

> (A) The Secretary shall require Central Valley Project water and power
>contractors to make such additional annual payments as are necessary to
>yield, together with all other receipts, the amount required under paragraph
>(c)(2) of this subsection; Provided, That such additional payments shall
>not exceed \$30,000,000 (October 1992 price levels) on a three-year rolling
>average basis; Provided further, That such additional annual payments shall
>be allocated so as not to exceed \$6 per acre-foot (October 1992 price
>levels) for agricultural water sold and delivered by the Central Valley
>Project, and \$12 per acre-foot (October 1992 price levels) for municipal and
>industrial water sold and delivered by the Central Valley Project; Provided
>further, That the charge imposed on agricultural water shall be reduced, if
>necessary, to an amount within the probable ability of the water users to
>pay as determined and adjusted by the Secretary no less than every five
>years, taking into account the benefits resulting from implementation of
>this title; Provided further, That the Secretary shall impose an additional
>annual charge of \$25 per acre-foot (October 1992 price levels) for Central
>Valley Project water sold or transferred to any State or local agency or
>other entity which has not previously been a Central Valley Project customer
>and which contracts with the Secretary or any other individual or district
>receiving Central Valley Project water to purchase or otherwise transfer any
>such water for its own use for municipal and industrial purposes, to be
>deposited in the Restoration Fund; And Provided further, That upon the
>completion of the fish, wildlife, and habitat mitigation and restoration
>actions mandated under section 3406 of this title, the Secretary shall
>reduce the sums described in paragraph (c)(2) of this section to \$35,000,000
>per year (October 1992 price levels) and shall reduce the annual mitigation
>and restoration payment ceiling established under this subsection to
>\$15,000,000 (October 1992 price levels) on a three-year rolling average
>basis. The amount of the mitigation and restoration payment made by Central

>Valley Project water and power users, taking into account all funds
>collected under this title, shall, to the greatest degree practicable, be
>assessed in the same proportion, measured over a ten-year rolling average,
>as water and power users' respective allocations for repayment of the
>Central Valley Project.

>Sec. 3407(e)

> (e) FUNDING TO NON-FEDERAL ENTITIES.--If the Secretary determines that the
>State of California or an agency or subdivision thereof, an Indian tribe, or
>a nonprofit entity concerned with restoration, protection, or enhancement of
>fish, wildlife, habitat, or environmental values is able to assist in
>implementing any action authorized by this title in an efficient, timely,
>and cost effective manner, the Secretary is authorized to provide funding to
>such entity on such terms and conditions as he deems necessary to assist in
>implementing the identified action.

>Sec. 3407(f)

> (f) RESTORATION FUND FINANCIAL REPORTS.--The Secretary shall, not later
>than the first full fiscal year after enactment of this title, and annually
>thereafter, submit a detailed report to the Committee on Energy and Natural
>Resources and the Committee on Appropriations of the Senate, and the
>Committee on Interior and Insular Affairs, the Committee on Merchant Marine
>and Fisheries, and the Committee on Appropriations of the House of
>Representatives. Such report shall describe all receipts to and uses made
>of monies within the Restoration Fund and the Restoration Account during the
>prior fiscal year and shall include the Secretary's projection with respect
>to receipts to and uses to be made of the funds during the next upcoming
>fiscal year.

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>Sec. 3408

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>SEC. 3408. ADDITIONAL AUTHORITIES.

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>Sec. 3408(a)

> (a) REGULATIONS AND AGREEMENTS AUTHORIZED.--The Secretary is authorized
>and directed to promulgate such regulations and enter into such agreements
>as may be necessary to implement the intent, purposes and provisions of this
>title.

>Sec. 3408(b)

> (b) USE OF ELECTRICAL ENERGY.--Electrical energy used to operate and
>maintain facilities developed for fish and wildlife purposes pursuant to
>this title, including that used for groundwater development, shall be deemed
>as Central Valley Project power and shall, if reimbursable, be repaid in
>accordance with Reclamation law at a price not higher than the lowest price
>paid by or charged to other Central Valley Project contractors.

>Sec. 3408(c)

> (c) CONTRACTS FOR ADDITIONAL STORAGE AND DELIVERY OF WATER.--The Secretary
>is authorized to enter into contracts pursuant to Reclamation law and this
>title with any Federal agency, California water user or water agency, State
>agency, or private nonprofit organization for the exchange, impoundment,
>storage, carriage, and delivery of Central Valley Project and non-project

>water for domestic, municipal, industrial, fish and wildlife, and any other
>beneficial purpose, except that nothing in this subsection shall be deemed
>to supersede the provisions of section 103 of Public Law 99-546 (100 Stat.
>3051).

>Sec. 3408(d)

> (d) USE OF PROJECT FACILITIES FOR WATER BANKING.--The Secretary, in
>consultation with the State of California, is authorized to enter into
>agreements to allow project contracting entities to use project facilities,
>where such facilities are not otherwise committed or required to fulfill
>project purposes or other Federal obligations, for supplying carry-over
>storage of irrigation and other water for drought protection,
>multiple-benefit credit- storage operations, and other purposes. The use of
>such water shall be consistent with and subject to State law. All or a
>portion of the water provided for fish and wildlife under this title may be
>banked for fish and wildlife purposes in accordance with this subsection.

>Sec. 3408(e)

> (e) LIMITATION ON CONSTRUCTION.--This title does not and shall not be
>interpreted to authorize construction of water storage facilities, nor shall
>it limit the Secretary's ability to participate in water banking or
>conjunctive use programs.

>Sec. 3408(f)

> (f) ANNUAL REPORTS TO CONGRESS.--Not later than September 30 of each
>calendar year after the date of enactment of this title, the Secretary shall
>submit a detailed report to the Committee on Energy and Natural Resources of
>the Senate and the Committee on Interior and Insular Affairs and the
>Committee on Merchant Marine and Fisheries of the House of Representatives.
>Such report shall describe all significant actions taken by the Secretary
>pursuant to this title and progress toward achievement of the intent,
>purposes and provisions of this title. Such report shall include
>recommendations for authorizing legislation or other measures, if any,
>needed to implement the intent, purposes and provisions of this title.

>Sec. 3408(g)

> (g) RECLAMATION LAW.--This title shall amend and supplement the Act of
>June 17, 1902, and Acts supplementary thereto and amendatory thereof.

>Sec. 3408(h)

> (h) LAND RETIREMENT.--

> (1) The Secretary is authorized to purchase from willing sellers land and
>associated water rights and other property interests identified in paragraph
>(h)(2) which receives Central Valley Project water under a contract executed
>with the United States, and to target such purchases to areas deemed most
>beneficial to the overall purchase program, including the purposes of this
>title.

> (2) The Secretary is authorized to purchase, under the authority of
>paragraph (h)(i), and pursuant to such rules and regulations as may be
>adopted or promulgated to implement the provisions of this subsection,
>agricultural land which, in the opinion of the Secretary--

> (A) would, if permanently retired from irrigation, improve water
>conservation by a district, or improve the quality of an irrigation
>district's agricultural wastewater and assist the district in implementing

>the provisions of a water conservation plan approved under section 210 of
>the Reclamation Reform Act of 1982 and agricultural wastewater management
>activities developed pursuant to recommendations specific to water
>conservation, drainage source reduction, and land retirement contained in
>the final report of the San Joaquin Valley Drainage Program (September,
>1990); or

> (B) are no longer suitable for sustained agricultural production because
>of permanent damage resulting from severe drainage or agricultural
>wastewater management problems, groundwater withdrawals, or other causes.
>Sec. 3408(i)

> (i) WATER CONSERVATION.--

> (1) The Secretary is authorized to undertake, in cooperation with Central
>Valley Project irrigation contractors, water conservation projects or
>measures needed to meet the requirements of this title. The Secretary shall
>execute a cost-sharing agreement for any such project or measure undertaken.
>Under such agreement, the Secretary is authorized to pay up to 100 percent
>of the costs of such projects or measures. Any water saved by such projects
>or measures shall be governed by the conditions of subparagraph
>3405(a)(1)(A) and (J) of this title, and shall be made available to the
>Secretary in proportion to the Secretary's contribution to the total cost of
>such project or measure. Such water shall be used by the Secretary to meet
>the Secretary's obligations under this title, including the requirements of
>paragraph 3406(b)(3). Such projects or measures must be implemented fully
>by September 30, 1999.

> (2) There are authorized to be appropriated through the end of fiscal year
>1998 such sums as may be necessary to carry out the provisions of this
>subsection. Funds appropriated under this subsection shall be a
>nonreimbursable Federal expenditure.

>Sec. 3408(j)

> (j) PROJECT YIELD INCREASE.--In order to minimize adverse effects, if any,
>upon existing Central Valley Project water contractors resulting from the
>water dedicated to fish and wildlife under this title, and to assist the
>State of California in meeting its future water needs, the Secretary shall,
>not later than three years after the date of enactment of this title,
>develop and submit to the Congress, a least-cost plan to increase, within
>fifteen years after the date of enactment of this title, the yield of the
>Central Valley Project by the amount dedicated to fish and wildlife purposes
>under this title. The plan authorized by this subsection shall include, but
>shall not be limited to a description of how the Secretary intends to use
>the following options:

> (1) improvements in, modification of, or additions to the facilities and
>operations of the project;

> (2) conservation;

> (3) transfers;

> (4) conjunctive use;

> (5) purchase of water;

> (6) purchase and idling of agricultural land; and

> (7) direct purchase of water rights.

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>Such plan shall include recommendations on appropriate cost-sharing
>arrangements and shall be developed in a manner consistent with all
>applicable State and Federal law.

>Sec. 3408(k)

> (k) Except as specifically provided in this title, nothing in this title
>is intended to alter the terms of any final judicial decree confirming or
>determining water rights.

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>Sec. 3409

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>SEC. 3409. ENVIRONMENTAL REVIEW.

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> Not later than three years after the date of enactment of this title, the
>Secretary shall prepare and complete a programmatic environmental impact
>statement pursuant to the National Environmental Policy Act analyzing the
>direct and indirect impacts and benefits of implementing this title,
>including all fish, wildlife, and habitat restoration actions and the
>potential renewal of all existing Central Valley Project water contracts.
>Such statement shall consider impacts and benefits within the Sacramento,
>San Joaquin, and TRINITY RIVER basins, and the San Francisco
>Bay/Sacramento-San Joaquin River Delta Estuary. The cost of the
>environmental impact statement described in this section shall be treated as
>a capital expense in accordance with Reclamation law.

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>Sec. 3411

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>SEC. 3411. COMPLIANCE WITH STATE WATER LAW AND COORDINATED OPERATIONS
AGREEMENT.

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>Sec. 3411(a)

> (a) Notwithstanding any other provision of this title, the Secretary
>shall, prior to the reallocation of water from any purpose of use or place
>of use specified within applicable Central Valley Project water rights
>permits and licenses to a purpose of use or place of use not specified
>within said permits or licenses, obtain a modification in those permits and
>licenses, in a manner consistent with the provisions of applicable State
>law, to allow such change in purpose of use or place of use.

>Sec. 3411(b)

> (b) The Secretary, in the implementation of the provisions of this title,
>shall fully comply with the United States' obligations as set forth in the
>"Agreement Between the United States of America and the Department of Water
>Resources of the State of California for Coordinated Operation of the
>Central Valley Project and the State Water Project" dated May 20, 1985, and
>the provisions of Public Law 99-546; and shall take no action which shifts
>an obligation that otherwise should be borne by the Central Valley Project
>to any other lawful water rights permittee or licensee.

>