



200 W. Willmott Avenue  
Los Banos, CA 93635-5501



(209) 826-5188  
Fax (209) 826-4984  
Email: veronica@gwdwater.org

---

**BOARD OF DIRECTORS**

**Pepper Snyder**  
President

**Doug Federighi**  
Vice President

**Byron Hisey**

**Tom Mackey**

**Bob Nardi**

**Ricardo Ortega**  
General Manager

**Veronica A. Woodruff**  
Treasurer/Controller

**Ellen L. Wehr**  
General Counsel

November 9, 2017

VIA ELECTRONIC MAIL: Bay-Delta@WaterBoards.Ca.Gov

State Water Resources Control Board  
1001 "T" Street, 24th Floor  
P.O. Box 100  
Sacramento, CA 95814

**Re: Phase II Bay-Delta Plan Input**

Dear Staff and Members of the State Water Board:

Grassland Water District provides the following input to inform the development of the Program of Implementation for the Phase II Update to the Bay-Delta Plan. A little over one year ago, on December 16, 2016, Grassland Water District and Ducks Unlimited submitted joint comments on the Draft Science Report. Our comments urged the State Water Board to give due consideration to agricultural and environmental uses of water that benefit wetlands and wildlife. We discussed the overarching importance of non-flow measures to improve floodplain benefits, and the critical contributions that flooded agricultural lands (rice and corn) and managed wetlands (federal wildlife refuges, state wildlife areas and private wetlands) provide to maintain the health of hundreds of species of wildlife. Our comments concluded by urging the State Water Board to consider other environmental water users when developing a Bay-Delta Plan update:

“As the Board seeks to mimic natural conditions in the Delta and revisit interior Delta flow requirements, it should not do so at the expense of other habitats where natural conditions are mimicked through careful water management for the protection of other species.”

The following are suggestions for developing a Bay-Delta Plan update and Program of Implementation that avoid such an outcome, using the framework of questions set forth in the State Water Board's request for input. These comments are specific to Central Valley Project Improvement Act (CVPIA) refuges and are in addition to our previous comments.

Question 1. *What specific provisions should be included in the program of implementation to ensure the expeditious implementation of the inflow and cold water habitat objectives?*

Grassland Water District emphasizes that there are *eleven* (11) Central Valley wildlife refuges located south of the Delta that beneficially use water from the Delta for wildlife purposes. These refuges and other historically flooded lands were cut off from their original water supplies through reclamation activities in the San Joaquin Valley and the construction of Friant Dam on the San Joaquin River. Since that dam was built in the 1940's, the refuges have relied on substitute water from the Delta, supplied by the U.S. Bureau of Reclamation. Almost all CVPIA refuges are located in the Grasslands Ecological Area, which is the largest wetland complex west of the Rocky Mountains and is recognized as among the most important five wetland systems on the North American continent.<sup>1</sup>

The discovery of constituents of concern in agricultural drainage water in the 1980's further reduced the availability of local, historical refuge water supplies. At that time, the State Water Board ruled that the refuges were among the highest priority for wildlife habitat, and that refuge water supplies "are needed to protect this resource and the public welfare."<sup>2</sup> The reduction in agricultural drainage, coupled with several years of drought in the early 1990's, led to enactment of the federal Central Valley Project Improvement Act (CVPIA). In section 3406(d) of the CVPIA, Congress mandated the delivery of "firm supplies" of high quality water to the refuges, on a specific schedule.

The SWRCB should consider the CVPIA refuges as beneficial environmental users of water who hold legal and contractual rights to receive water from the Sacramento River Valley and its tributaries, in order to sustain millions of migratory waterfowl and shorebirds who visit the Central Valley each year, as well as dozens of other water-dependent species including threatened and endangered species. Unfortunately, the State of California has not engaged Grassland Water District as a party to its negotiations for voluntary plans of compliance with the updated Bay-Delta Plan objectives. We are therefore dependent on the SWRCB to take appropriate measures to reasonably protect these beneficial wildlife uses.

The past several years illuminated the complexity of managing an ecological and water delivery system that has competing environmental water demands. First, in 2014 due to extremely dry conditions, the State Water Board issued a Temporary Urgency Change Permit (TUCP) to the Bureau of Reclamation that relaxed the inflow requirements set forth in the Bay-Delta Plan, in order to sustain "minimum exports" required for human health and safety, senior water rights, and refuge water deliveries. Even with the temporary changes, wildlife refuges

---

<sup>1</sup> The Grasslands Ecological Area is designated as an Audubon Important Bird Area (<http://netapp.audubon.org/iba/Site/173>), a Wetland of International Importance under the Ramsar Convention on Wetlands ([http://archive.ramsar.org/cda/en/ramsar-activities-wwds-two-new-us-ramsar-sites/main/ramsar/1-63-78%5E22428\\_4000\\_0](http://archive.ramsar.org/cda/en/ramsar-activities-wwds-two-new-us-ramsar-sites/main/ramsar/1-63-78%5E22428_4000_0)), and a Site of International Importance by the Western Hemisphere Shorebird Reserve Network (<https://www.whsrn.org/grasslands>).

<sup>2</sup> State Water Resources Control Board Order No. WR 86-5 (March 20, 1986), "In the Matter of Temporary Permit 19806 (Application 28800) Grassland Water District, Permittee," p. 2, *available at*: [http://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/orders/1986/wro86-05.pdf](http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/1986/wro86-05.pdf)

south of the Delta received less than 50% of their total water supply and were denied water in the spring and summer months, contributing to a rapid decline in food supply and available wetland habitat for wildlife.

Second, in 2015 due to a deficit of cold water stored in Shasta Lake, releases from that reservoir were significantly withheld until October, which again reduced water deliveries to wildlife refuges and truncated the water delivery season to only the late fall and winter months. Interior Delta flow requirements imposed by the governing Biological Opinions, which are now proposed for inclusion in the Bay-Delta Plan, exacerbated these reductions in the volume and timing of refuge water deliveries.

The refuge water supply program has proven to be an ecological success, though one that hangs delicately in the balance. Grassland Water District and its partners are continually striving to improve and diversify water supplies for managed wetlands. It is therefore of great concern that the updated Bay-Delta Plan should not be used as a tool to further limit refuge water deliveries, and should instead recognize and protect refuge water requirements. The SWRCB should not rely on future TUCP proceedings, interpretations of “minimum export requirements,” or discretionary adaptive management actions to secure the reliability of environmental water supplies for public trust wetland resources.

In 2004, the State Water Board ruled that deliveries of water to CVPIA refuges “*are similar to water bypassed or released to meet water quality standards.*”<sup>3</sup> We request that the following provision be included in the updated Bay-Delta Plan and the Program of Implementation, and that any approved voluntary plans to meet objectives be made consistent:

**Request No. 1:** Acknowledge that CVPIA refuge water supply is a wildlife beneficial use of water, and set water quality objectives accordingly. For example: “Section 3406(d) of the Central Valley Project Improvement Act (CVPIA, Pub. Law 102-575, Title 34) requires the delivery of ‘firm water supplies of suitable quality’ to maintain and improve 19 Central Valley wetland habitat areas. The water quantity and delivery schedules for these wetlands are in accordance with the U.S. Bureau of Reclamation’s 1989 *Report on Refuge Water Supply Investigations for the Central Valley Hydrologic Basin in California*, and are incorporated in long-term refuge water delivery contracts with the Bureau of Reclamation, which contain shortage provisions based on hydrologic conditions. The required delivery of water to wetlands identified in the CVPIA constitutes a critical and beneficial wildlife use of water that supports native species. There shall be included herein a numeric water quality objective requiring refuge water deliveries in accordance with CVPIA requirements.”

---

<sup>3</sup> State Water Resources Control Board Order WRO 2004-0007-EXEC (March 31, 2004), “In the Matter of the Petitions for Reconsideration of the California Department of Fish and Game and of Grasslands Water District Regarding Water Right Fee Determinations,” p. 3, *available at*: [https://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/orders/2004/wro2004\\_0007.pdf](https://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2004/wro2004_0007.pdf)

Question 6. *How should the State Water Board account for flows provided for floodplain inundation to benefit native species?*

On September 28, 2017, the U.S. Fish and Wildlife Service signed the *Final Recovery Plan for the Giant Garter Snake*, pursuant to the federal Endangered Species Act (ESA).<sup>4</sup> The giant garter snake was listed as a threatened species under the ESA in 1993, around the same time as California fish species were listed. The giant garter snake is native and endemic to the Central Valley and only 5% of its habitat remains, reflecting the overall loss of 95% of the Central Valley’s historic wetlands. The fate of the giant garter snake population is intricately tied to the health of migratory birds on the Pacific Flyway, along with other species of concern that rely on Central Valley wetlands and surrogate flooded agricultural habitat.

One of three primary goals of the *Recovery Plan* is to “restore and conserve healthy Central Valley wetland ecosystems that function to support the giant garter snake and associated species and communities of conservation concern such as Central Valley waterfowl and shorebird populations.” Proposed actions to achieve *Recovery Plan* goals include protection and creation of new habitat, and actions to “ensure summer water is available for wetland habitats used by the snake.” The implementation schedule for the *Recovery Plan* identifies the State Water Board as a responsible party to help “evaluate the current, existing water supply and determine whether additional water is necessary to meet habitat needs and management goals.”<sup>5</sup>

The *Recovery Plan* is the latest in a series of plans, reports, and resolutions that call for greater protection and restoration of wetlands for the benefit of terrestrial and avian species of concern.<sup>6</sup> During the recent drought, the last remaining viable population of reproductive giant garter snakes located within Grassland Water District, in the Volta area near Los Banos, was nearly extirpated due to the lack of water supply. The beneficial use of flows to maintain and restore Central Valley wetlands and seasonally flooded lands that support native species should be given full and equal “credit” by the State Water Board as other environmental flows.

**Request No. 2:** Give full and equal credit to flows used for floodplain inundation to benefit native species. For example: “Measured flows used for floodplain inundation to benefit native species shall be given credit, on an acre-foot basis, as meeting the environmental water requirements of the Bay-Delta Plan. Inundated floodplains must support multiple native species of concern, including fish, waterbirds, and terrestrial species such as the giant garter snake.”

---

<sup>4</sup> Available at: [https://www.fws.gov/sacramento/documents/20170928\\_Signed%20Final\\_GGS\\_Recovery\\_Plan.pdf](https://www.fws.gov/sacramento/documents/20170928_Signed%20Final_GGS_Recovery_Plan.pdf)

<sup>5</sup> *Id.*, p. III-10 (.pdf p. 50).

<sup>6</sup> E.g. the *Central Valley Joint Venture Implementation Plan*, available at:

<http://www.centralvalleyjointventure.org/science>; the most recent *National Report on the Implementation of the Ramsar Convention on Wetlands (2015)*, available at:

[http://www.ramsar.org/sites/default/files/documents/2014/national-](http://www.ramsar.org/sites/default/files/documents/2014/national-reports/COP12/cop12_nr_united_states_america.pdf)

[reports/COP12/cop12\\_nr\\_united\\_states\\_america.pdf](http://www.ramsar.org/sites/default/files/documents/2014/national-reports/COP12/cop12_nr_united_states_america.pdf) (Central Valley refuges are designated under the Convention);

and proposals by the State and Central Valley Regional Water Boards to protect wetlands, available at:

[https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/official\\_Doc\\_timeline/procedures\\_clean.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/official_Doc_timeline/procedures_clean.pdf)

and [https://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/resolutions/r5-2016-0064\\_res.pdf](https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/resolutions/r5-2016-0064_res.pdf).

Question 7. *How should the State Water Board structure adaptive management for the new objectives?*

In 2016, a new proposal to assist Delta smelt populations by increasing Delta outflow was undertaken by the Bureau of Reclamation, at the behest of the U.S. Fish & Wildlife Service and the California Department of Fish & Wildlife. Under the proposal, the Bureau of Reclamation would seek dedications of increased outflow from Central Valley Project contractors, including through the purchase of water, using federal funding. However, in its initial form, the proposal would have redirected funding away from refuge water supply in order to acquire water for Delta outflow. The funding proposal drew strong negative reactions from the conservation community, and was modified as a result.

This example illustrates the importance of early coordination with stakeholders in the development and execution of adaptive management measures. Environmental tradeoffs must be considered and avoided to the extent feasible.

**Request No. 3:** Require consultation with refuge stakeholders as needed when making adaptive management decisions, to better protect and balance all environmental water uses. For example, “Proposed adaptive management actions that could adversely affect the delivery of water for any environmental beneficial use, or reduce available funding for environmental water, shall only be approved after close consultation with the affected environmental water users, and resulting decisions shall reflect a balanced approach to environmental water management.”

Question 9. *What specific drought measures should be included in the Bay-Delta Plan?*

Lessons from the drought in 2014 and 2015 provide insight about drought measures that will allow the State Water Board to address changing circumstances and balance competing environmental water needs as necessary. In 2014, the Bureau of Reclamation submitted its TUCP petition to the State Water Board, arguing not that the Bay-Delta Plan anticipated and provided for pressing drought circumstances, but that the 2008 Biological Opinion for the Delta smelt did. That Biological Opinion contains the following language in its closing statement, which was the subject of State Water Board consideration in reviewing and approving the TUCP:

“If the Sacramento Valley Water Year Type Index (40-30-30) February 1 50 percent exceedence forecast indicates that the water year will be a second consecutive (or more) dry or critically dry year, Reclamation shall reinitiate consultation with the Service. In order to allow the CVP/SWP to provide health and safety needs, critical refuge supplies, and obligation to senior water rights holders, the combined CVP/SWP export rates will not be required to drop below 1,500 cfs in these circumstances. However, in the unlikely event that salvage approaches the incidental take limit at these low export levels, the Service shall

assess the on-going risk to delta smelt and will determine if additional reductions in pumping or other actions are necessary to further minimize effects.”<sup>7</sup>

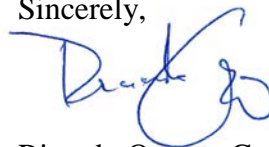
This language reflects foresight that difficult decisions and tradeoffs are sometimes required on a circumstantial basis, especially in dry years. Similar language was incorporated into the recently issued Biological Opinion for the California Water Fix Project.<sup>8</sup>

In 2015, the cold water supply behind Shasta Dam was significantly depleted before cold water releases were needed during the salmon spawning season. The Bureau of Reclamation was required to restrict releases in September that would have otherwise been delivered to Central Valley wildlife refuges. As a result, refuge water deliveries were significantly delayed, and the Bureau of Reclamation made hasty decisions to “borrow” other water supplies stored in San Luis Reservoir. Months of meetings and complaints by water users followed, with unwanted attention focused on refuge water deliveries. The updated Bay-Delta Plan should include drought measures that acknowledge these types of dilemmas.

**Request No. 4:** The Bay-Delta Plan should include a drought measure that provides for minimum export levels including critical refuge water deliveries south of the Delta. For example, “Consistent with Biological Opinions issued under the Endangered Species Act, the combined CVP/SWP export rates will not be required to drop below 1,500 cfs, in order to allow the CVP/SWP to provide health and safety needs, critical refuge supplies, and obligation to senior water rights holders, subject to assessments and actions to minimize risk to endangered fish species in the Delta.” The Plan should also include a measure authorizing a balancing of environmental water needs. For example, “In dry or critically dry years when flows are insufficient to meet the environmental objectives of this Plan and the objectives for all species of concern, including critical refuge water supplies, the State Water Board shall only require strict compliance with the environmental objectives of this Plan if significant adverse effects on other species of concern can be addressed and mitigated.”

Thank you for your time and consideration of Grassland Water District’s input. Please contact me with any questions.

Sincerely,



Ricardo Ortega, General Manager

---

<sup>7</sup> U.S. Fish & Wildlife Service, *Biological Opinion on the Proposed Coordinated Operations of the Central Valley Project (CVP) and State Water Project (SWP)*, p. 62, available at: [https://www.fws.gov/sfbaydelta/documents/SWP-CVP\\_OPs\\_BO\\_12-15\\_final\\_OCR.pdf](https://www.fws.gov/sfbaydelta/documents/SWP-CVP_OPs_BO_12-15_final_OCR.pdf)

<sup>8</sup> U.S. Fish & Wildlife Service, *Biological Opinion for the California WaterFix*, p. 26, fn. 8, available at: [https://www.fws.gov/sfbaydelta/HabitatConservation/CalWaterFix/documents/Final\\_California\\_WaterFix\\_USF\\_WS\\_Biological\\_Opinion\\_06-23-2017.pdf](https://www.fws.gov/sfbaydelta/HabitatConservation/CalWaterFix/documents/Final_California_WaterFix_USF_WS_Biological_Opinion_06-23-2017.pdf)