

**Statement for the Record  
Department of the Interior  
Prepared for the House Committee on Natural Resources  
Subcommittee on Water, Wildlife and Fisheries Legislative Field Hearing On  
H.R. 872, the “Federally Integrated Species Health (FISH) Act”**

**April 11, 2023**

The Administration appreciates the opportunity to submit this statement for the record on H.R. 872, the “Federally Integrated Species Health (FISH) Act.” Executive branch agencies prioritize science and being thorough and transparent as we fulfill our statutory responsibilities. Multiple agencies work collaboratively with each other, state and local governments, Tribes, and stakeholders to carry out these responsibilities effectively. A key component of this work is administering and enforcing an array of environmental laws enacted by the Congress, including the Endangered Species Act of 1973 (ESA). This year marks the 50<sup>th</sup> anniversary of the ESA, a bedrock conservation law that plays a pivotal role in preventing the extinction of imperiled species, facilitating recovery of fish, wildlife, and plants, and helping to conserve the habitats on which they depend. The Administration is committed to effective and efficient implementation of the ESA and our responsibilities under it.

Under the ESA, the Departments of the Interior and Commerce are tasked with joint implementation of the ESA, per President Nixon’s Reorganization Plan Number 4 of 1970. President Nixon’s plan created the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce, by transferring existing authorities of other agencies to the newly formed NOAA. The reorganization, which Congress endorsed, included transfer of the then-existing authorities of the Department of the Interior’s Bureau of Commercial Fisheries and marine sport fish program of the Bureau of Sport Fisheries and Wildlife with subsequent elimination of those bureaus and programs. Following implementation of the reorganization plan, the ESA provides authority to the Department of Commerce to manage all federally listed fish species that live or spend the majority of their lives in marine waters, including most anadromous fish. The U.S. Fish and Wildlife Service manages any remaining federally listed fish species.

H.R. 872, the FISH Act, would transfer all functions related to management of federally listed anadromous and catadromous species from the Department of Commerce to the Department of the Interior. Anadromous fish are those that spend most of their lives in marine waters but spawn upstream in fresh or estuarine waters. These include species of salmon, smelt, and sturgeon. Currently, an estimated 43 anadromous fish species or populations are federally listed under National Marine Fisheries Service jurisdiction. Catadromous fish are those that spend most of their lives in fresh or estuarine water but spawn in the ocean. These primarily include eels. Catadromous fish are currently under the jurisdiction of the Department of the Interior, so H.R. 872 would not affect management responsibility for those species. Currently, there are no federally listed catadromous fish species.

The Administration is not seeking a reorganization of responsibilities under the ESA. The U.S. Fish and Wildlife Service and National Marine Fisheries Service collaborate closely on

implementing the ESA, and each agency brings valuable experience and expertise to bear in management of different types of fish species. The Department of the Interior looks forward to working within the Administration and with the Committee to ensure that federally listed fish species are managed as effectively, responsibly, and efficiently as possible under the ESA.

**Statement for the Record  
Bureau of Reclamation  
U.S. Department of the Interior**

**House Committee on Natural Resources  
Subcommittee on Water, Wildlife, and Fisheries**

**H.R. 215, the Working to Advance Tangible and Effective Reforms for California Act  
or the WATER for California Act**

**April 11, 2023**

The Department of the Interior (Department), through the Bureau of Reclamation (Reclamation), appreciates the opportunity to provide this statement for the record on H.R. 215, the Working to Advance Tangible and Effective Reforms for California Act or the WATER for California Act.

**Background**

The federal Central Valley Project (CVP) and the State Water Project (SWP) together provide water for over 25 million Californians, millions of acres of some of the most productive farmland in the world, and 19 federal, State of California (State), and local wildlife refuges along the Pacific Flyway. The projects reduce the risks of catastrophic flooding, protect and restore habitat for many rare and unique species, supplement local water supplies for communities, produce significant low carbon hydroelectric power, backstop water quality in the Sacramento and San Joaquin Delta (Delta), and support important commercial and recreational fisheries.

Over the last decade, the State and much of the West have endured recurring periods of drought, as well as environmental stressors that have negatively impacted fish and other sensitive species in the Delta. While this year has seen repeated atmospheric rivers and significant precipitation, drought conditions over the last three years have been exceptional, with record-high temperatures and record-low levels of snowpack and precipitation such that a single wet year does not compensate for the compounded impacts of several years of severe drought. These alternating cycles of drought and flood have affected the Delta and the State's water supply as a whole and are expected to become the new normal over the coming decades.

The Department and Reclamation are committed to working with our partners to address drought resiliency, water supply reliability, climate change adaptation, and ecosystem health. We will continue to seek creative solutions to stretch water supplies to meet the broadest possible range of needs.

**H.R. 215, WATER for California Act**

The Department and Reclamation recognize that H.R. 215 seeks to improve the drought resiliency, operational stability, and infrastructure needs of the CVP. While we share these goals, for the reasons discussed below, we believe H.R. 215 presents several significant challenges that could jeopardize the operational and financial stability of the CVP.

## *Title I*

Title I of H.R. 215 provides congressional direction that the CVP and the SWP be operated in accordance with the 2019 Preferred Alternative as described in the Final Environmental Impact Statement on the Reinitiation of Consultation on the Coordinated Long-Term Operation of the CVP and the SWP (LTO), issued by Reclamation and dated December 2019, related to the 2019 U.S. Fish & Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) Biological Opinions.

On February 20, 2020, the California Attorney General's Office filed a complaint against the federal government on behalf of the California Natural Resources Agency, California Environmental Protection Agency, and the People of the State of California. The complaint challenges the 2019 Biological Opinions issued by the FWS and NMFS regarding proposed operations of the CVP and SWP under the Endangered Species Act (ESA). Following that action, in March 2020, the California Natural Resources Agency issued an Incidental Take Permit (ITP) pursuant to State law with operational requirements on the SWP that differed with those found in the 2019 Biological Opinions.

State and federal agencies are currently engaged in reconsultation on long-term project operations. Title I of H.R. 215 would legislatively restrict this ongoing reconsultation and prescribe conditions under which the federal and State resource agencies may engage in reconsultation under the ESA. We believe these restrictions on consultations would set a negative precedent and hamper the Department's completion of this new biological opinion. This creates uncertainty that will further complicate the operations of the CVP and SWP, adding additional barriers and reducing operational stability.

In order to operate complex water infrastructure pursuant to the State's water rights permitting system and operational considerations, close coordination with the State is essential to managing water supplies for all of our communities, farms, refuges, and species in the Central Valley, the Delta, and the greater San Francisco Bay Area. Inconsistency between the regulatory documents used by the two entities responsible for operating co-located and co-permitted projects significantly complicates delivery of water and power.

In order to support a stay in the aforementioned litigation of the 2019 Biological Opinions and the Record of Decision (ROD) implementing the 2019 Biological Opinions, Reclamation committed to the State to reinitiate consultation, and did so on September 30, 2021.

For the reinitiated consultation on the Long-Term Operation of the CVP and SWP, Reclamation is following a transparent, participatory, and science-driven process for the development of alternatives and an analysis of environmental impacts. This process has included public scoping under NEPA; soliciting knowledge-based papers for relevant datasets, literature, and models; performing initial alternatives formulation to inform a proposed action; and coordinating pursuant to Section 4004 of the Water Infrastructure Improvements for the Nation (WIIN) Act (Public Law 114-322) through quarterly stakeholder meetings, monthly interested party meetings, monthly modeling discussions, and targeted issue-specific discussions.

These collaborative approaches are necessary for advancing CVP-SWP operations, serving project stakeholders, assuring environmental compliance, providing required updates to the Bay-Delta Water Quality Control Plan, and effectively planning for new water infrastructure coming online, among other considerations.

### ***Title II***

Title II of H.R. 215 directs the Department to “make every reasonable effort” in the operation of the CVP to allocate water provided for irrigation purposes to each existing CVP agricultural water service and repayment contractor within the Sacramento River Watershed. The language is subject to hydrologic conditions, the Central Valley Project Improvement Act (Title XXXIV of Public Law 102–575) (CVPIA) commitments to wetlands, and obligations under the 2019 Biological Opinions.

Title II seeks to legislatively mandate specific water allocations to groups of CVP contractors. The CVP and SWP are authorized to meet multiple purposes including flood control and navigation; water supply; fish and wildlife mitigation, protection, and restoration and enhancement; and power generation. Operation of the CVP and SWP also provides recreation and water quality benefits. Reclamation operates the project and makes water allocation decisions consistent with federal law and the State’s water rights priority system to best balance these competing demands for water, including water quality and flow requirements, agricultural, municipal, and industrial uses of water, fish and wildlife needs, and power contractor considerations.

The legislative mandates included within Title II would restrict Reclamation’s flexibility to most appropriately allocate water supplies based on the existing conditions of particular divisions of the CVP, which often differ.

### ***Title III***

Title III of H.R. 215 would deem the Shasta Reservoir Enlargement Project to be eligible for funding under the Water Storage and Conveyance funding provided under the Bipartisan Infrastructure Law (Public Law 117–58) (BIL). It would further require Reclamation to develop and submit to Congress a water deficit report to identify projected water supply shortages within the State and evaluate infrastructure projects that would assist in the reduction of water supply shortages.

Title III would require an additional semi-annual report to Congress on the activities carried out under conservation hatchery programs established under paragraph (1) of Section 4010(b)(5) of the WIIN Act. The Department is concerned about the requirement for semi-annual reports and would appreciate the opportunity to work with Congress on a more efficient reporting cycle.

Title III would also re-authorize Section 4007 of the WIIN Act, which expired on January 1, 2021, until January 1, 2028 with the aim of allowing additional projects to be considered further for WIIN-related funding. It would further allow for funding provided under several previous appropriations bills to be made available to the Shasta Dam and Reservoir Enlargement Project, subject to the availability of funding, and limit the consideration of applicable State law that was enacted with specific applicability to the Shasta project.

Shasta Dam and Reservoir is the largest reservoir in California, and sits at the top of the water system, serving as the cornerstone of the CVP and the coordinated operation with the SWP. It is an indispensable asset to the State's water security. Over the years, proposals to raise Shasta Dam have been studied extensively, with the most recent proposal evaluating an 18.5-foot expansion. This proposed expansion would inundate an additional 2,500 acres, requiring the acquisition of approximately 100 parcels of non-federal land, mostly in the community of Lakehead. Congress passed legislation in each of fiscal years 2021-2023 that had the effect of prohibiting the use of current year funding to support the raise of Shasta Dam. Reclamation has acted in accordance with that Congressional directive.

The Department supports a comprehensive approach to furthering the climate resiliency of our water infrastructure. It seeks to do so in partnership with states and local communities. We are resolved to invest in projects to increase surface and groundwater storage, new water sources such as desalination and water recycling programs, along with water conservation measures to increase the efficiency of water deliveries. Reclamation's consistent and timely allocation of funding enacted pursuant to the WIIN Act, the BIL, and other sources illustrates this commitment to surface and groundwater storage. However, the Department does not support amending Section 40902(a)(2) of the BIL to include additional purposes.

#### *Title IV*

Congress enacted the CVPIA in 1992 in an effort to address long-standing concerns about the CVP's impact on fish and wildlife. Section 3407(a) of the CVPIA established the CVP Restoration Fund for collections from water and power customers based on specific provisions within the CVPIA, and for donations from any sources. Reclamation uses appropriations from funds other than the CVP Restoration Fund to carry out the purposes of the CVPIA. Historically, approximately 40% of the CVPIA funding provides refuge water supplies; 50% funds activities for supporting Central Valley anadromous fish (including FWS staff); and the remaining 10% funds terrestrial habitat restoration, the San Joaquin River Restoration Program, and certain Trinity River Restoration Program activities.

Under CVPIA section 3407(d)(2), the Secretary of the Interior must determine whether the fish, wildlife, and habitat mitigation and restoration activities in section 3406 funded, in part by these payments, are complete. The determination is significant because if the restoration activities are deemed complete, the Secretary must reduce the sums collected from water and power contractors that fund CVPIA restoration activities.

Title IV of H.R. 215 would require Reclamation to complete the refuge water supply program within two years, which may not be technically feasible, and deem complete the fish, wildlife, and habitat mitigation and restoration actions mandated under Section 3406 of the CVPIA. Title IV, if it were to become law, would impair the restoration program's ability to meet the intended purposes to support the ongoing fish and wildlife protection and restoration purposes as expressed in CVPIA Sections 3402(a) and (b), and/or require additional otherwise unfunded appropriations from Congress to meet the same restoration program needs. Such a time limitation would also preclude the necessary Departmental collaboration and decision-making necessary for fish and wildlife restoration decisions. The CVPIA gives Reclamation and the FWS the tools

necessary to restore the fish and wildlife resources of the Trinity River and the Central Valley. The mandates in Title IV are not consistent with the Department's commitment to the protection of the fish, wildlife, and habitat affected by CVP operations, and by impairing implementation of these programs, could compromise our ability to maximize water reliability and water deliveries from the CVP.

### **Conclusion**

The Department and Reclamation agree that additional operational flexibility for the CVP is necessary. Reclamation is committed to incorporating the best available science into our decisions on the operation of the CVP for all of its authorized purposes – for river regulation, improvement of navigation, and flood control; irrigation and domestic uses; fish and wildlife mitigation, protection, and restoration; power generation; and fish and wildlife enhancement.

However, Reclamation must operate the CVP within a complex environment that serves multiple parties and interests. H.R. 215 would reduce the ability of State and federal agencies to balance these interests. H.R. 215 would mandate Reclamation to act without full consideration of possible negative outcomes, complicate CVP-SWP operations, and prioritize a few authorized purposes above other authorized purposes and statutory obligations of the CVP, such as fish and wildlife mitigation. As such, the Department cannot support H.R. 215.