

- **Board of Directors**  
**Communications and Legislation Committee**

November 8, 2005 Board Meeting

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**8-6**

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**Subject**

Express support, if amended, for H.R. 3691, the Central Valley Project Reform Act of 2005

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**Description**

**Summary.** Recently, Rep. Devin Nunes (R-Visalia) introduced H.R. 3691—the “Central Valley Project Reform Act of 2005”—which would make significant revisions to the federal Central Valley Project Improvement Act (CVPIA). Rep. Nunes has asked for Metropolitan’s support. The bill, if amended to continue the existing federal responsibility to protect and enhance the environment, could be a vehicle for positive CVPIA reform. A number of proposed economic and contract administration reforms would appear appropriate, but these amendments should not be accompanied by others that reduce the Central Valley Project’s (CVP) environmental responsibilities and CVP Restoration Fund resources available for environmental purposes because these latter actions could shift to the SWP and other water users.

**Background.** The CVPIA, enacted in 1992, resulted in significant and controversial changes to the operation of the CVP. It explicitly added environmental mitigation and restoration to the CVP’s responsibilities; required closer review of contract renewals and modified pricing and water measurement rules applicable to CVP contractors; and attempted to open up the CVP water transfer market by, among other provisions, authorizing individual user-initiated water transfers. Because of the environmental and water transfer benefits the statute promised, as well as federal cost-sharing for local alternative water supply development contained in another title of the legislation, Metropolitan supported the omnibus water bill that included the CVPIA.

Congress considered revisions to the CVPIA in the mid-90s but took no action at that time. Despite continued controversy, the CVPIA has met many of its purposes; however, a number of the anticipated benefits have not materialized, have proved illusory, or have resulted in significant controversy or unnecessarily harsh impacts on CVP contractors. Revision of the CVPIA to remedy legitimate issues that have been identified over the years, while still fully retaining its environmental and water management benefits, could be useful.

**H.R. 3691 Amendments.** The amendments proposed in H.R. 3691 are summarized in [Attachment 1](#). The bill would revise a number of current provisions that are generally recognized to need refinement. Examples of these reforms include:

- Eliminating a tiered pricing mandate on CVP water that was established in a manner that has discouraged effective water management, and has imposed additional costs on CVP contractors.
- Requiring renewal of current CVP contracts for additional 25-year periods, providing agricultural and urban contractors the water supply reliability needed to support the economies in their service areas.
- Clarifying the crediting of CVP water used to meet California State Water Resources Control Board Bay-Delta and other regulatory requirements against the 800,000 acre-feet of CVP water dedicated to the environment under the CVPIA.
- Explicitly providing that the CVPIA shall not affect transfers of CVP water that could have occurred prior to enactment of the statute.
- Allowing the re-use of CVP water for human uses after it has met its environmental purposes.

However, the bill also contains a number of other amendments that would significantly reduce resources available from the CVP for environmental restoration. To the extent H.R. 3691 reduces the environmental restoration resources available from the CVP, it likely would shift the regulatory risks toward other water users, particularly the State Water Project contractors. Most significantly:

- H.R. 3691 would reduce or perhaps eliminate the dedication of 800,000 acre-feet of CVP water to the environment and limits the scope of the anadromous fish doubling plan.
- It would prohibit California's courts or Legislature from seeking the release of water for environmental purposes from Friant Dam.
- H.R. 3691 would allow a reduction in the use of CVP resources for environmental protection and restoration without reference to any actual improvement in affected species or habitat.
- It authorizes the use of the CVPIA Restoration Fund for non-environmental purposes and potentially reduces existing payments into the Fund.

**Staff Review.** H.R. 3691 has set the stage for significant discussion of the efficacy of the CVPIA, which currently is in its thirteenth year of implementation, and could be the vehicle for legitimate adjustments to the CVPIA. As proposed, the amendments to the CVPIA would appear to ameliorate certain overly burdensome impacts on CVP contractors, but may inhibit attempts to maintain and restore the Bay-Delta and Central Valley watershed. Any reduction in CVP's responsibility to maintain and restore the environment likely would be shifted to other water users, such as the State Water Project contractors. Staff believes the bill can be amended to achieve the CVPIA's restoration purposes while reducing impacts on CVP contractors. Various amendments could retain current CVP resources available for environmental restoration; assure protection of the Friant service area economy, while allowing for appropriate fishery restoration in the San Joaquin River; require that the restoration fund be used for its original purposes; and still preserve the economic and other reforms in H.R. 3691. The addition of other amendments - such as eliminating the high taxes and surcharges on transfer of CVP water that effectively precludes transfers to other service areas—would further improve CVPIA's ability to meet its original purposes—Metropolitan's participation in the development of the bill may provide opportunities to promote the Board's policy objectives relative to the range of issues raised by the introduction of H.R. 3691.

## **Policy**

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By Minute Item 41504, dated July 13, 1995, the Board adopted the Central Valley Improvement Act Policy.

## **California Environmental Quality Act (CEQA)**

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CEQA determination for Options #1 and #3:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

**Board Options/Fiscal Impacts**

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**Option #1**

Adopt the CEQA determination and authorize the CEO/General Manager to express Metropolitan’s support for H.R. 3691 if it is amended consistent with the Board’s policies.

**Fiscal Impact:** None

**Option #2**

Take no position on H.R. 3691

**Fiscal Impact:** None

**Option #3**

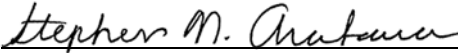
Oppose H.R. 3691

**Fiscal Impact:** None


**Staff Recommendation**

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Option #1

  
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Stephen N. Arakawa  
Manager, Water Resource Management

10/26/2005  
Date

  
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Dennis B. Underwood  
CEO/General Manager

10/26/2005  
Date

**Attachment 1 – Summary Central Valley Project Reform Act of 2005**

BLA #4014

### Summary Central Valley Project Reform Act of 2005

CVPIA Language	CVPRA 3691 Proposals	Staff Proposed Amendments/Positions
Anadromous Fish Doubling	Eliminates doubling requirement for American shad, striped bass, sturgeon and requires only “reasonable” flows.	Support, but restore sturgeon (proposed for listing) to the doubling requirement.
800 TAF of water for fish	Limits amount of discretionary CVP water dedicated to fish and wildlife to only amounts available through re-operation and purchase.  Requires that all post CVPIA regulations for fish and wildlife be charged against the 800 TAF.	Amend. Restore dedication of water.  Support
San Joaquin River	Forbids releasing water from Friant for river restoration. Ends restoration studies.  Allows use of Friant payments to the CVP Restoration Fund (RF) to be used for non-environmental purposes, including supply and infrastructure.  Limits Friant surcharge payments on Class 2 supplies.	Amend. Require development of program to protect Friant service area while completing restoration studies and accommodating flows for restoration as necessary and as determined by sound science.  Amend. Assure RF is used for restoration purposes, consistent with the original act.  Open issue.
Restoration Fund	Allows use of RF to develop supplies for CVP contractors impacted by 800 TAF dedication to fish.  Contributions to RF to be credited against CVP contractor repayment obligations, retroactive to original CVPIA date.  Deletes specific allocation of RF among specific purposes.  Requires annual plan for expenditure of RF and rationale why expenditures provide optimum benefit.	Amend. Assure adequate funding for restoration purposes.  Open issue.  Support  Support
Contract Renewals	Secretary must (not “may”) renew interim and long-term contracts.  Secretary to charge only for water delivered.	Support, but restore language requiring contracts to comply with existing federal and state law.  Support
Tiered Pricing	Eliminates requirement to raise rates on last 20% of contract supplies.	Support

<b>CVPIA Language</b>	<b>CVPRA 3691 Proposals</b>	<b>Staff Proposed Amendments/Positions</b>
Measuring	Removes requirement for meters, provided that supplies are accurately measured through other means.	Support
Reduction of resources for environment	Allows Secretary to declare achievement of environmental objectives without reference to actual status of fish populations or habitat, which could trigger a reduction in RF payments by CVP contractors.	Amend. Require declaration to be based on assessment of actual population and habitat conditions.
CALFED	Directs Secretary to coordinate with California to resolve problems in the Central Valley.	Support
User Initiated Transfers	Provides that districts have same approval authority over transfers as in state law, substantially weakening “user-initiated” transfer provisions.  Provides that CVPIA/CVPRA don’t affect historic transfers.	Support, if bill eliminates transfer taxes.  Support
Transfer Tax	Does not eliminate tax on transfer of CVP agricultural water to urban users.	Amend. Eliminate tax provisions to facilitate transfers.
Make up Water	Requires recovery of supplies lost due to 800 TAF dedication.	Open issue
Project Yield Increase	Plan must be prepared on a “priority basis” and include recommendations for storage.	Support

Unrelated to the CVPIA, authorizes construction of new regulatory storage near the All American Canal to remove sediment behind Laguna Dam, with a 100% Federal cost share; support.