



The Western Water and American Food Security Act of 2015

Section-by-Section Overview

California is a vast state with several regional climates – some of which are naturally arid. A sophisticated network of storage and delivery facilities sustain California’s water supply, and the biggest challenge is to make sure that water is in the right places at the right times so that when communities need it, they have it. Meeting that challenge is dependent upon an even more complex and often contradictory system of laws, court decisions and regulations. The severity of historic drought conditions and federal regulations have been exacerbating Mother Nature’s refusal to cooperate the past four years, which has undoubtedly placed increased pressure on our state’s ability to supply water.

Informed by previous legislative efforts that were initially developed on a bipartisan and bicameral basis, the *Western Water and American Food Security Act of 2015* brings into balance the needs of Californians and the way regulatory laws are enforced.

At the heart of the challenge is [the dedication of vast quantities of water to protected species of fish](#), which is done at a great cost to entire communities and California while the condition of the fish has not measurably improved. The human costs to continue these regulatory practices are shockingly clear: they exacerbate high unemployment and reduced quality of life – especially in disadvantaged communities; threaten our nation’s food security; and place undue burdens on the environment that so many Californians rely on. Yet, the federal water administrators cannot actually quantify factual beneficial effects to listed fish from today’s policies.

These facts support one central premise of the *Western Water and American Food Security Act of 2015* - it is critical to put measures in place that attempt to make more water available to people, while simultaneously ensuring that federal government water managers’ decisions to protect listed species are governed by up-to-date science and are effective.

Simply put, when it comes to delivering water in California, the legislation helps ensure that decisions are based on the best and most recent science, which increase the amount of water to the millions of people who rely on the critical life-giving resources while maintaining protections for listed species. To accomplish this, the Act seeks to make science-based management work better through the following:

- Integrates the considerable new science developed since the current biological opinions on Delta smelt and Chinook salmon relating to the operation of Central Valley Project and the State Water Project were issued in 2008 and 2009.
- Requires agencies to use the most accurate survey methods to help determine how these water projects may be operated to maximize water utilization and deliveries.
- Requires agencies to consider other less water-costly alternatives that would benefit the listed species, such as installing temporary barriers in the delta to prevent saltwater intrusion or removing non-native predator fish that eat protected fish species.
- Requires agencies to consider other management strategies not necessarily included in the existing biological opinions as alternatives before restricting additional pumping.
 - In short, if two alternative measures are equally effective in protecting listed fish species, the agencies should pursue the measures with better overall outcomes – the measure that helps listed fish species while not reducing pumping. Informed by this analysis, the Secretaries of the Interior and Commerce would continue to decide the best course necessary for **both** the 25 million people who depend on these water supplies and listed fish.





Additionally, in light of this historic crisis, the Act provides federal water regulators the operational flexibility during times of crises to effectively make and implement operational decisions in real time without unnecessary regulatory hurdles, while protecting the state water rights. Furthermore, to facilitate additional long-term water solutions, the Act requires that studies related to five California water storage projects, which have been delayed for nearly a decade, be expeditiously completed by the Bureau of Reclamation and presented to Congress. To assist other states in avoiding a water crisis such as that facing the State of California, the Act also contains several measures intended to facilitate a more expeditious and dependable permitting process for constructing water projects throughout the West.

Titles I and II: Integrating New Science into the Management of the Species

Since the biological opinions for the California water projects were adopted in 2008 and 2009, there has been considerable new science on the smelt and the salmon species. The proposal attempts to integrate the updated data into the operation of the California water projects, without mandating specific changes in the biological opinions or prescribing particular outcomes.

Delta Smelt

Incidental Take. The smelt biological opinion calculated the Delta Smelt Incidental Take Level (ITL) using data from just three years: 2006, 2007, and 2008. Using only three years to calculate the ITL severely limits the method's ability to estimate the biological and physical conditions that are likely to occur during the life of the smelt biological opinion. Increased understanding of the factors associated with Delta smelt salvage from the past several years means that the U.S. Fish and Wildlife Service should now be able to use information from before and after 2006 to provide the basis for a more robust ITL.

Increase Monitoring. The proposal allows for more real-time data collection to inform real-time decisions. Numerous analyses of adult smelt salvage patterns have linked salvage to elevated turbidity levels and high negative flows in Old and Middle River. While the high salvage of Delta smelt tends not to occur without high turbidity in Old and Middle River (OMR), the existence of high turbidity does not guarantee high salvage, even when OMR flows are highly negative. The proposed sampling is designed to test for the presence of adult Delta smelt in Old River as the water becomes turbid following winter storms. If smelt are detected, then Project operations can be modified in time to avoid salvage. If no smelt are detected, then Project operations need not be heavily curtailed.

Salmonids

Review Management Alternatives. Delta water exports alter water movements in the Delta and can entrain migrating juvenile salmonids. However, based on particle tracking studies, the 2009 Biological Opinion hypothesized a much larger effect (in geographic range and magnitude of importance) than has been supported by more recent and robust acoustic telemetry studies of the salmonids. In addition, the reasonable and prudent alternatives in the biological opinion did not adequately address other stressors in the Delta that may overwhelm or compromise the effectiveness of water project restrictions. To clarify the relative importance of export effects, and to help identify other management actions that can contribute to species recovery, the proposal calls for the Secretary of Commerce to analyze and quantify survival benefits from a suite of action alternatives other than just reducing pumping. These actions include existing export restrictions, barriers to fish entrainment, habitat enhancements, and predation control programs. By conducting a rigorous analysis of these and other actions, the National Marine Fisheries Service will demonstrate the effectiveness of existing reasonable and prudent alternative actions and potentially identify new actions that can achieve greater or equal benefits to reducing pumping water to Central and Southern California.

Program to Protect Native Fish in the Stanislaus River. Authorizes a fish predator suppression program paid for by water users on the Stanislaus River and requires that the program be scientifically-based and include a rigorous monitoring and reporting program.





Secretarial Discretion Remains to be Utilized

The proposal works within current law to ensure that a particular water operation decision is made with regards to the needs of listed fish species. The Secretaries of the Interior and Commerce are directed to obtain, document, and implement the best available scientific data so that when they exercise the discretion given to them, they have the necessary information to explain their decision. A science-based framework remains. For example:

- Under the smelt proposal, the Secretaries maintain negative 5,000 cubic feet per second (cfs) or higher, in Old and Middle River flows, unless lower pumping levels are necessary to protect the species.
- Under the salmon proposal, the Secretary of Commerce is required to explain the basis for raising or lowering OMR flow levels within the range of the biological opinion, and to consider how alternative measures compare against water supply reductions in avoiding jeopardy to the salmon.
- In addition, the Secretary of Commerce is only directed to substitute alternative management proposals for current regulatory restrictions if they would provide equivalent protections for listed salmonid species.

Other Highlights of Remaining Titles: Facilitating Operational Flexibility and Providing Drought Relief

In addition, the Secretaries are directed to take certain actions while operating the Central Valley Water Project and the State Water Project, including:

- While using U.S. Geological Survey data, operating the Cross Channel Gates to maximize the peak flood tide period and provide water supply and water quality benefits, consistent with emergency orders issued by the California State Water Resources Control Board;
- Under limited circumstances, consistent with effects permissible under existing law and where delta conditions are suitable, allowing the sale, transfer or exchange of water at a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River;
- Expeditiously issuing permits for the use of temporary barriers or operable gates to improve water quality and water quantity under limited circumstances;
- Utilizing a streamlined project elevation and decision process to ensure that final federal decisions relating to projects that provide additional water supply or address emergency drought conditions are made in a timely manner;
- Authorizing the Secretaries to increase pumping to -7,500 cfs to capture high peaks of precipitation since an overwhelming percentage of our state's water supply comes down in pulses during the first few storms of the year.

Protecting the State Water Project and Preserving Senior Water Rights

In California, there is a complex system of federal and state water rights, seniority, and allocation practices set by federal and state law, judicial decisions, and tradition and practice. In addition, the Central Valley Project and the State Water Project operation and environmental compliance are linked, ensuring all of California benefits from these projects. The *Western Water and American Food Security Act of 2015* includes provisions designed to preserve water rights seniority and to protect the joint operation of the Federal and state water projects, thereby ensuring that Northern, Central, and Southern Californians all receive the water they are entitled to.

