



State of California – Natural Resources Agency
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
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EDMUND G. BROWN, Jr., Governor
CHARLTON H. BONHAM, Director



March 27, 2015

Mark Cowin, Director
Department of Water Resources
1416 Ninth Street, 11th Floor
Sacramento, CA 95814

Subject: Confirmation of Coverage under the California Endangered Species Act (CESA) Consistency Determinations Nos. 2080-2011-022-00 and 2080-2012-005-00

Dear Mr. Cowin:

I am writing in response to your memorandum dated March 27, 2015, requesting confirmation of ongoing authorizations for the California Department of Water Resources' (DWR) operation of the State Water Project (SWP) for incidental take of species listed as threatened or endangered under the California Endangered Species Act (CESA). Your request was made in relation to DWR and the U.S. Bureau of Reclamation (Reclamation) petition for amendment to the State Water Resources Control Board's (SWRCB) March 5, 2015 temporary urgency change order, affecting Water Rights Decision 1641 (D-1641), and associated correspondence with federal fish and wildlife agencies regarding SWP operations under the U.S. Fish and Wildlife Service (FWS) 2008 Biological Opinion (BiOp) for Delta smelt and the National Marine Fisheries Service (NMFS) 2009 *Biological Opinion and Conference Opinion on the Long-term Operations of the Central Valley Project and the State Water Project* for marine species including winter-run and spring-run Chinook salmon.

On February 3, 2015, and through a modification on March 5, 2015, the SWRCB approved several modifications to water quality parameters in D-1641 for the months of February and March. On March 25, 2015, DWR and Reclamation submitted to the SWRCB a request for modifications to the March 5, 2015 order for certain modifications from April 1 through September 30, 2015 (Modification Request). Specifically:

- Modification of the Net Delta Outflow Index in April, May and June;
- Modification of San Joaquin River flows, from April, May and June;
- Modification of export limits in April, May and June;
- Modification of Delta Cross Channel gate closure requirements in April and May, with operations as prescribed in Appendix G of the April 2014 Drought Operations Plan and Operational Forecast;
- Modification of the Sacramento River flow requirement at Rio Vista in September;
- Relocation of the Western Delta salinity compliance point from Emmaton to Three Mile Slough beginning April 1 through August 15;
- Modification of the San Joaquin River at Vernalis salinity standard for April through August.

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On March 25, 2015, Reclamation transmitted the Modification Request as well as the joint *Project Description for April - September 2015 Drought Response Actions to Support Endangered Species Act Consultations* (Project Description) to FWS and NMFS. The Project Description sets out proposed upstream tributary operations, Delta operations consistent with the Modification Request, and proposed implementation of NMFS Reasonable and Prudent Alternative Action IV.2.1. Going forward, Reclamation and DWR will continue to coordinate operations through the RTDOT and technical teams with CDFW, the SWRCB and the federal fish agencies, and the agencies will continue to implement enhanced Delta Smelt and salmonid monitoring efforts, as described in the *Central Valley Project and State Water Project Drought Contingency Plan: January 15, 2015 – September 30, 2015*.

The Project Description lists several additional actions and modifications DWR and Reclamation may seek in the future, if necessary, including Old and Middle River flow management and modifications related to emergency drought barriers. DWR and Reclamation are not proposing these changes at this time and would raise them under separate consultations and biological reviews. This letter addresses only the currently proposed operations and modifications.

Reclamation requested that NMFS and FWS confirm that operations as described in the Project Description are within the limits of the federal BiOps and serve as a contingency plan under NMFS BiOp Action I.2.3.C. In a memorandum responding on March 27, 2015, FWS concluded that the effects of operations described in the Project Description appear to be within the range of effects previously analyzed in the FWS BiOp and concurred that such operations for April through May 31, 2015 will result in no additional adverse effects to Delta Smelt and its critical habitat beyond those previously analyzed in the FWS BiOp. FWS requested further assessment prior to reaching a determination on operations through September. In its March 27, 2015 letter responding to Reclamation's request, NMFS concluded that the Project Description meets the specified criteria for a contingency plan. This determination was based on the biological review attached to Reclamation's letter and NMFS' conclusion that the potential effects of the operations proposed under the Project Description were considered in the underlying analysis of the BiOp, which had assumed that droughts would occur and would be addressed through RPA Action I.2.3.C. Further, NMFS determined based on best available scientific and commercial data that implementation of the Project Description, through September 30, 2015, will not exceed levels of take anticipated for implementation of the RPA specified in the BiOp.

Through their correspondence, FWS provided confirmation that currently proposed operations pursuant to the Project Description through May 31, 2015, and NMFS provided confirmation that currently proposed operations pursuant to the Project Description through September 30, 2015, are within the range of effects previously analyzed or are otherwise within the scope of the BiOp.

Because FWS and NMFS have determined that these modifications to project operations are within the scope of the operative BiOps and their Reasonable and Prudent Alternatives and based on CDFW's review of the Project Description and attached *Biological Review for Endangered Species Act Compliance*, CDFW hereby confirms that the existing consistency determinations¹ remain in effect and no further authorization is necessary for DWR to take, pursuant to the currently proposed Project Description, CESA-listed Delta smelt from April 1 through May 2015 in accordance with the FWS BiOp, and winter-run and spring-run Chinook salmon from April 1, 2015 through September 30, 2015, the NMFS BiOps and pursuant to the currently proposed Project Description.

You also requested confirmation that the operations under the Project Description do not impact CESA coverage under the Longfin ITP. This will confirm that the conditions in the Longfin ITP are not affected by the Project Description.

As March forecasts are analyzed along with other information, and in the event that future precipitation events occur, CDFW recommends that the RTDOT should discuss any storage gains and the appropriate use of those gains towards ensuring environmental protections and protection against a potential fifth year of dry conditions. Similarly, CDFW recommends the RTDOT also continue examination of ideas and options to best manage for winter-run chinook conditions in the upper Sacramento River and salmon and steelhead in the San Joaquin River system.

We appreciate the close coordination of our departments under these extreme drought circumstances. If you have questions regarding this letter, please contact Carl Wilcox, Policy Advisor to the Director for the Delta, at (707) 944-5517 or by email at carl.wilcox@wildlife.ca.gov.

Sincerely,


for Charlton H. Bonham

CC: Carl Wilcox, Policy Advisor to the Director for the Delta, CDFW
Wendy Bogdan, Acting General Counsel, CDFW
Laura King Moon, Chief Deputy Director, DWR
Cathy Crothers, Chief Counsel, DWR
Felicia Marcus, Chair, SWRCB
Tom Howard, Executive Director, SWRCB
Craig Wilson, Delta Watermaster, SWRCB

¹ The SWP is currently authorized under an October 14, 2011 consistency determination for the FWS BiOp and an April 26, 2012 consistency determination for the NMFS BiOp.

Les Grober, Water Rights Division, SWRCB
David Murillo, Regional Director, Mid-Pacific Region, USBR
Ron Milligan, Operations Manager, Central Valley Office, USBR
Will Stelle, Regional Administrator, West Coast Region, NMFS
Maria Rea, Assistant Regional Administrator, California Central Valley Office,
NMFS
Ren Lohofener, Regional Director, Pacific Southwest Region, FWS
Dan Castleberry, Fisheries Assistant Regional Director, Pacific Southwest
Region, FWS

You are requested to determine if the operations under the Project Description do
not require a permit under the Clean Water Act (CWA). This will confirm that the conditions
of the permit are not affected by the Project Description.

As a result of the analysis, the following information is provided in the event that
any permit is required. CDRW recommends that the RTDOT should discuss
any permit requirements and the appropriate use of those permits towards ensuring
environmental protection and protection against a potential fifth year of dry conditions.
Similarly, CDRW recommends the RTDOT also continue examination of these and
other options to best manage the water-run check conditions in the upper Sacramento River
and submit and respond to the San Joaquin River system.

We appreciate the close cooperation of our departments and their efforts during
this process. If you have questions regarding this letter, please contact Cal Wilcox,
Policy Advisor to the Director for the Delta at (707) 944-5517 or by email at
cal.wilcox@water.ca.gov.



Dan Castleberry
Assistant Regional Director

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