

Memorandum

Date: May 2, 2014

To: Mark Cowin
Director
Department of Water Resources

From: Charlton H. Bonham
Director



Subject: Confirmation of Coverage under the California Endangered Species Act (CESA)
Consistency Determinations

I am writing in response to your memorandum dated May 2, 2014, 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 light of DWR's implementation of the "Central Valley Project and State Water Project Drought Operations Plan and Operational Forecast: April 1, 2014, through November 15, 2014," (Drought Operations Plan), and correspondence with the U.S. Fish and Wildlife Service (FWS) regarding effects of the Drought Operations Plan under the FWS 2008 Biological Opinion for Delta smelt (FWS BiOp), and DWR's April 29, 2014 request to the State Water Resources Control Board (SWRCB) for modifications to the January 31, 2014, temporary urgency change order, as subsequently modified, affecting Water Rights Decision 1641.

As you know, the California Department of Fish and Wildlife (CDFW) has been participating in ongoing discussions through the Real Time Drought Operations Management Team, established under the SWRCB's temporary urgency change order, and has provided extensive input on the Drought Operations Plan.

On April 8, 2014, DWR and the U.S. Bureau of Reclamation (Reclamation) finalized the Drought Operations Plan. That same day, in a letter responding to Reclamation's request, National Marine Fisheries Service (NMFS) determined that the incidental take associated with the Drought Operations Plan through November 15, 2014, falls within the incidental take statement for the NMFS 2009 *Biological Opinion and Conference Opinion on the Long-term Operations of the Central Valley Project and the State Water Project* (NMFS BiOp) for marine species including winter-run and spring-run Chinook salmon, and that the plan serves as a contingency plan under NMFS BiOp Action I.2.3.C. In a memorandum also responding on the same day, FWS concurred that the Drought Operations Plan's provisions for April and May operations will have no additional adverse effects on Delta smelt, but reserved its concurrence regarding effects of June 1 through November 15, and requested additional information.

The Drought Operations Plan anticipated the potential construction of three temporary emergency drought barriers on West False River, Steamboat Slough and Sutter

Slough, depending on hydrological conditions. As described in your April 29, 2014 request to the SWRCB, DWR has announced that it does not anticipate needing to install the emergency barriers, and it is requesting modification of the temporary urgency change order consistent with the elements identified in the Drought Operations Plan for a "without barriers" scenario. DWR's request to the SWRCB also included updated hydrologic modeling and an analysis of potential impacts to Delta and longfin smelt.

In a May 1, 2014 memorandum to FWS, the U.S. Bureau of Reclamation (Reclamation) requested confirmation that operations through November 15, 2014 consistent with the "without barriers" scenario of the Drought Operations Plan would not result in additional adverse effects to Delta smelt or its critical habitat beyond those analyzed in the FWS BiOp. In a memorandum responding on May 1, 2014, FWS concurred that the proposed operations for June through November will have no additional adverse effects on delta smelt or its critical habitat.

Through their correspondence, FWS and NMFS have provided confirmation that implementation of the Drought Operations Plan through November 15, 2014 is within the range of effects previously analyzed and is otherwise within the scope of their BiOps and Reasonable and Prudent Alternatives. CDFW has reviewed the Drought Operations Plan and attached Biological Reviews for Salmonids and Sturgeon and Delta Smelt and Longfin Smelt and the updated Analysis of Potential Impacts to Smelt, attached to DWR's April 29, 2014 request to the SWRCB. Based on all of the above, CDFW hereby confirms that the existing consistency determinations¹ remain in effect and no further authorization is necessary for DWR to take CESA-listed Delta smelt and winter-run and spring-run Chinook salmon through November 15, 2014, in accordance with those BiOps and as implemented through the Drought Operations Plan and its "without barriers" scenario.

You also requested confirmation that the operations under the Drought Operations Plan do not impact CESA coverage under the Incidental Take Permit (ITP No. 2081-2009-001-03) CDFW issued to DWR for longfin smelt on February 23, 2009 (Longfin ITP). CDFW also confirms that the conditions in the Longfin ITP are not affected by the implementation of the Drought Operations Plan through November 15, 2014.

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.

cc: Carl Wilcox, Policy Advisor to the Director for the Delta, CDFW
Thomas Gibson, General Counsel, CDFW
Laura King Moon, Chief Deputy Director, DWR
Cathy Crothers, Chief Counsel, DWR

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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.

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cc: Felicia Marcus, Chair, SWRCB
Tom Howard, Executive Director, SWRCB
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