
From: Wilcox, Carl@Wildlife
Sent: Friday, February 27, 2015 12:03 PM
To: Grober, Les@Waterboards
Cc: Bonham, Chuck@Wildlife; Little, Shannon@Wildlife; Dibble, Chad@Wildlife; Garwin.Yip@noaa.gov; Rabin, Larry@fws.gov; Stein, Russell@DWR; Fry, Susan@USBR; RMILLIGAN@usbr.gov; Rea, Maria@NOAA; Leahigh, John@DWR
Subject: RE: Additional Info

Les,

In response to your request for additional information below, following the Board Workshop on February 18, 2015. The California Department of Fish and Wildlife (CDFW) has previously provided extensive technical input to the Board as part of the 2006 Water Quality Control Plan for the Bay-Delta (Bay-Delta Plan) update process and as part of the process for developing flow criteria for the Delta ecosystem to protect public trust resources in response to legislative mandates found in the 2009 Delta Reform Act. Attached below are links to relevant documents that CDFW has submitted to the Board since 2010.

As was discussed at the Board workshop, in a January 30, 2015 letter to DWR, CDFW provided confirmation of ongoing California Endangered Species Act (CESA) coverage for the State Water Project (SWP) for operations as proposed in the TUCP. This confirmed that no take authorizations were necessary beyond the existing consistency determinations for the U.S. Fish and Wildlife Service 2008 Biological Opinion for Delta Smelt and the National Marine Fisheries Service 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, and the 2009 Longfin Smelt Incidental Take Permit for the SWP. CDFW's analysis was focused specifically on the operations proposed in the TUCP and their effects in relation to the CESA authorizations for the SWP and was not intended to address the potential for unreasonable effects on fish, wildlife and other instream beneficial uses under the TUCP. We understand that the evaluation of "unreasonableness" or not is the Board's to make.

As you know, pursuant to its broader trustee role, CDFW has been participating in ongoing Real Time Drought Operations Team discussions and in your Board's public hearings and workshops throughout the drought. Moreover, in its comments and presentations to the Board on flow criteria and the Bay-Delta Plan update, CDFW has emphasized that Delta outflow is a critical element for maintaining the ecological health of the Bay and Delta and the fishery resources that depend upon it. These documents are ones that the Board and Board staff should have already, but we list them below as additional context for the broader biological and ecological issues involved. We hope this information is helpful to the Board in making the difficult decisions before it related to all beneficial uses, during these extremely challenging drought conditions, and, in particular, how the Board may consider effects to beneficial uses when evaluating the various components of the TUCP.

California Department of Fish and Game. 2010a. Closing Comments. Entered by CDFG for the State Water Resources Control Board 2010 informational proceeding to develop flow criteria for the Delta ecosystem to protect public trust resources. March 2010.
http://www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/closing_comments/dfg_closing.pdf

California Department of Fish and Game. 2010b. Quantifiable Biological Objectives and Flow Criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta. November 2010.
<http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=25987>.

California Department of Fish and Game. 2012b. Written Information Responsive to the Workshop Questions for the Bay Delta Workshop 1 - Ecosystem Changes and Low Salinity Zone. August 2012.

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/cmnt081712/scott_cantrell.pdf

California Department of Fish and Game. 2012c. State Water Resources Control Board Workshop 1 September 5, 2012: Ecosystem Changes and the Low Salinity Zone. September 2012.

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/wrkshp1/fishagencies.pdf

California Department of Fish and Game. 2012d. Written Information Responsive to the Workshop Questions for the BayDelta Workshop 2 – Bay-Delta Fishery Resources. September 2012.

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/cmnt091412/scott_cantrell.pdf

California Department of Fish and Wildlife. 2014. State Water Resources Control Board Delta Outflows Workshop February 10-11, 2014: Longfin Smelt Abundance – What’s flow got to do with it?. February 2014.

<http://deltacouncil.ca.gov/sites/default/files/documents/files/03-Baxter-SWRCB-Longfin-Update-2014.pdf>

From: Grober, Les@Waterboards

Sent: Saturday, February 21, 2015 5:45 PM

To: Rabin, Larry@fws.gov; Wilcox, Carl@Wildlife; Garwin.Yip@noaa.gov

Subject: RE: Additional Info

Larry, Carl, Garwin,

Per my earlier email, here are two questions that we would like answered.

What if any additional information that has not already been submitted should the Board be considering when determining whether the proposed changes included in the TUCP would have unreasonable impacts on fish, wildlife and other instream beneficial uses? As you have expressed to us, your review of the TUCP changes were for compliance with the BO requirements and not necessarily to determine the potential unreasonable effects of the modifications to D-1641 on fish and wildlife. Specifically, what additional issues beyond those you have already evaluated for your ESA findings should be evaluated to determine the potential unreasonable effects of the modifications to D-1641 on fish and wildlife? We need a brief written answer to these questions by no later than close of business Wednesday because as you may have seen, we are continuing the workshop on March 4. And, as I indicated in my previous email, we will likely issue another Executive Director Order by Feb 27.

Please call me if you'd like to discuss before our meeting Wednesday.

Thanks, Les