



April 9, 2014

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

Dear Mr. Cowin:

I am writing in response to your memorandum dated April 8, 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 relation to 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 associated correspondence with federal fish and wildlife agencies regarding implementation of the Drought Operations Plan 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 and DWR's request to the State Water Resources Control Board (SWRCB) for an amendment to the January 31, 2014, temporary urgency change order, as subsequently modified, affecting Water Rights Decision 1641.

As you know, prior to and following the Governor's Proclamation of a Drought State of Emergency on January 17, 2014, our departments have been working closely with the SWRCB and the federal agencies to coordinate responses to this year's extreme drought conditions and to identify potential impacts to aquatic species and available measures to minimize those impacts. 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, which describes proposed actions and a likely range of coordinated operations of the SWP and Central Valley Project (CVP) from April 1 through November 15, 2014. The Drought Operations Plan identifies water operations that would be implemented pursuant to contingency planning provisions. With respect to the NMFS BiOp's Reasonable and Prudent Alternatives, the Drought Operations Plan

modifies Action IV.2.1, an action to protect emigrating steelhead¹ during April and May by establishing an inflow to export ratio relating to San Joaquin River inflow. Prior to initiation of an approximately 31-day Stanislaus River pulse flow between April 7 and April 15, increased export pumping would capture abandoned or natural flows in the Delta, up to Old and Middle River (OMR) limits. All other BiOp requirements would remain in effect, including salvage density triggers for winter- and spring-run Chinook salmon, and Smelt Working Group advice concerning OMR flow criteria. During the pulse, the inflow-to-export ratio would be 1:1, as prescribed in Action IV.2.1. Following the pulse flow and through May 31, exports may again capture abandoned or natural flows in the Delta in the event such flows are available, as described above. Operations under the Drought Operations Plan would continue to adhere to provisions of the SWRCB's temporary urgency change order, as modified.

The Drought Operations Plan describes additional measures that may be taken to offset effects of operations to steelhead. The plan also includes a Winter-run Drought Contingency Plan, describing enhanced monitoring and actions to be taken in the event temperature conditions warrant rescuing fish, a Preliminary Delta Smelt and Longfin Smelt Drought Monitoring Plan and a Preliminary Science Plan for Anadromous Fish Monitoring and Technology Improvements.

No additional modifications to the FWS BiOp, or to the Incidental Take Permit (ITP No. 2081-2009-001-03) CDFW issued to DWR for longfin smelt on February 23, 2009 (Longfin ITP), are proposed in the Drought Operations Plan.

The Drought Operations Plan anticipates the potential construction of three temporary emergency drought barriers on West False River, Steamboat Slough and Sutter Slough, depending on hydrological conditions. Whether the barriers are installed or not, DWR and Reclamation will make additional requests to the SWRCB for changes to certain Delta salinity standards under the temporary urgency change order.

On April 8, 2014, Reclamation requested that NMFS and FWS confirm that operations under the Drought Operations Plan are within the limits of the federal BiOps and that the Drought Operations Plan serves as a contingency plan under NMFS BiOp Action I.2.3.C. In a memorandum 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 operations to Delta smelt and requested additional information. In its letter responding to Reclamation's request, NMFS determined that the incidental take associated with the Drought Operations Plan falls within its BiOp's incidental take statement.

Through its correspondence, FWS provided confirmation that implementation of the Drought Operations Plan through May 31, 2014 is within the range of effects previously analyzed and is otherwise within the scope of its BiOp. Similarly, NMFS provided

¹ Central Valley Steelhead (*Oncorhynchus mykiss*) is listed as threatened pursuant to the federal Endangered Species Act, but is not listed under CESA.

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 its 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, for the time periods specified in their correspondence, and based on CDFW's review of the Drought Operations Plan and attached Biological Reviews for Salmonids and Sturgeon and Delta Smelt and Longfin Smelt, CDFW hereby confirms that the existing consistency determinations² remain in effect and no further authorization is necessary for DWR to take CESA-listed Delta smelt during April and May, 2014, 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.

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

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,



Charlton H. Bonham

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
Felicia Marcus, Chair, SWRCB
Tom Howard, Executive Director, SWRCB
Craig Wilson, Delta Watermaster, SWRCB
Les Grober, Water Rights Division, SWRCB
David Murillo, Regional Director, Mid-Pacific Region, USBR
Ron Milligan, Operations Manager, Central Valley Office, USBR

² 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.

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
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