



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Director's Office
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



January 30, 2015

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

Dear Mr. Cowin:

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

I am writing in response to your memorandum received on January 30, 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 light of DWR's and the U.S. Bureau of Reclamation's (Reclamation) January 23, 2015, Temporary Urgency Change Petition to the State Water Resources Control Board (SWRCB) for a temporary urgency change order affecting Water Rights Decision 1641 (TUCP) and subsequent correspondence with the U.S. Fish and Wildlife Service (FWS) regarding effects of operations under the FWS 2008 Biological Opinion for Delta smelt (FWS BiOp) 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.

The California Department of Fish and Wildlife (CDFW) has been participating in ongoing discussions through the Real Time Drought Operations Management Team (RTDOT), established under the SWRCB's January 31, 2014 temporary urgency change order to coordinate responses to the ongoing severe drought conditions and to identify potential impacts to aquatic species and available measures to minimize impacts to those species. This includes assistance in the development of the Draft Interagency 2015 Drought Strategy for the Central Valley Project (CVP) and State Water Project (SWP), and the January 15, 2015 CVP and SWP Drought Contingency Plan.

As described in your letter, the TUCP seeks modifications to certain water rights permits for 180 days, with the following specific requests during February and March 2015:

- Modification of the minimum monthly Net Delta Outflow Index described in Table 3 of D-1641 during February and March to be no less than 4,000 cfs;

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- Modification of the February and March San Joaquin River Airport Way Bridge, Vernalis flow to a base flow period average no less than 500 cfs (consistent with D-1641, Table 3, Footnote 12);
- Modification of Delta Cross Channel (DCC) gate operations such that the DCC gates may be opened during February and March with closures determined through the RTDOT process in accordance with the DCC triggers matrix (as described in Appendix G of the April 2014 *Drought Operations Plan and Operational Forecast*);
- Modification of export limits during February and March, such that combined exports would be limited to 1,500 cfs if the DCC gates are open or if outflow is between 4,000 and 5,500 cfs, and could increase to 3,500 cfs combined export rate if outflow is greater than 5,500 cfs but less than 7,100 cfs and the DCC gates are closed, as shown in Draft Table 1, attached to your memorandum. Outflow between 5,500 cfs and 7,100 cfs shall be based on a 3-day average consistent with D-1641, Table 3, Footnote 10.

Reclamation transmitted the TUCP, Project Description for February – March 2015 Drought Response Actions (Project Description) and biological reviews to NMFS and FWS on January 27, 2015. The NMFS BiOp and its reasonable and prudent alternative (RPA) provide for flexible drought provisions. Specifically, RPA Action I.2.3.C requires Reclamation to develop and submit to NMFS a contingency plan, as well as to notify and work with the SWRCB. In a January 29, 2015 letter responding to Reclamation's request, NMFS determined that Reclamation's Project Description, including the TUCP, is consistent with Action I.2.3.C and meets the specified criteria for an interim contingency plan. This determination was based on its understanding of and expectations for the proposed interim contingency plan and the biological review attached to Reclamation's letter and its conclusion that the potential effects of the February and March operations proposed under the interim contingency plan were considered in the underlying analysis of the BiOp, which had assumed that droughts would occur and be addressed through RPA Action I.2.3.C. Further, NMFS determined based on best available scientific and commercial data that implementation of the interim contingency plan will not exceed levels of take anticipated for implementation of the RPA specified in the BiOp.

In its January 30, 2015 memorandum responding to Reclamation's request, FWS concurred that the modified operations will have no additional adverse effects on Delta smelt beyond those previously analyzed in the 2008 BiOp. FWS also recommended that Reclamation initiate an expert scientific review building on potentially important new information regarding the effect of late winter and spring outflow on Delta Smelt recruitment suggested by recently published new information in the Interagency Ecological Program (IEP) Management, Analysis, and Synthesis Team's (MAST) *An Updated Conceptual Model of Delta Smelt Biology* technical report.

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FWS and NMFS have determined that these modifications to project operations are within the scope of the operative BiOps and their RPAs. 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 in accordance with those BiOps. The commitment by DWR and Reclamation to ongoing coordination with and concurrence from fish and wildlife agencies through the RTDOT and continued implementation of the *Central Valley Project and State Water Project Drought Contingency Biological Monitoring Plan for Water Year 2015 and Beyond*² will be critical to ensuring CESA and federal Endangered Species Act requirements are met as additional modifications are considered and implemented.

You also requested confirmation that the operations under the TUCP 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). After review of the proposed modifications and the associated biological review, CDFW confirms that these operations are not expected to alter conditions in the Longfin ITP. However, DFW requests that DWR in collaboration with Reclamation, DFW, and FWS conduct the scientific review related to the recent MAST report, described in the January 30, 2015 FWS memorandum. This review also needs to examine the role of winter-spring outflow and Longfin Smelt abundance.

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
Director

¹ The SWP is currently authorized under an October 14, 2011 consistency determination for the FWS BiOp (No. 2080-2011-022-00) and an April 26, 2012 consistency determination for the NMFS BiOp (No. 2080-2012-005-00).

² Available at http://ca.gov/drought/pdf/DCP-2015-Monitoring-Plan_12-12-14.pdf.

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cc: Ren Lohofener, Director
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