

February 4, 2014

✓ Mr. Michael Buckman
State Water Resources Control Board
P. O. Box 2000
Sacramento, CA 95812-2000

STATE WATER RESOURCES
CONTROL BOARD

2014 FEB -5 PM 1:49

DIV OF WATER RIGHTS
SACRAMENTO

Ms. Maria Rea
National Ocean and Atmospheric Administration
National Marine Fisheries Service
650 Capitol Mall
Sacramento, CA 95814

Re Additional comments on the Notice and Order of Temporary Urgency Change filed by California Department of Water Resources and United States Bureau of Reclamation regarding permits and licenses of the State Water Project and the Central Valley Project

Thank you Michael for your prompt response to my request for direction to what is Appendix B to the DWR/BOR petition. What alerted me to a sensitive situation was the statement in the Board's Order, page 10 "*With the DCC gates open there is potential for decreased survival of Sacramento River-origin species as they move through the central Delta. Potential hazards include increased entrainment, predation and salvage. The petitioners provided a detailed analysis of how these issues will not result in decreased survival, and state that they will continue to consult with the fishery agencies on these issues.*" It seemed counterintuitive. I have read the analysis provided, Appendix B, and I take a slightly different read. I can get real close to but not arrive at a determination of "not result in decreased survival". Is "take" an issue? Is there a Biological Opinion for this operation now in play? What is the allowable take under that opinion? Could the fish numbers now be so low due to drought and years of decimation through risky water project operations that monitoring is not useful? What if an incident of take is documented? Balancing or a reasonableness determination does not work in matters of take unless it stems from a biological opinion.

Appendix B summarizes plenty of good science. It informs us of what we understand as well as what we are unsure of. The analysis is replete with "data may suggest", "there are a diversity of opinions", "additional uncertainty", "lines of evidence suggest", etc.

The Appendix B section that describes the logic is the 5-point **Approach** on page 2. In particular point 5: *Analyze risks to affected species with this petition relative to risk with the unmodified D-1641 action.* While a with- and with-out analysis is valid for some situations, perhaps it is not valid in this petition. My letter of July 18, 2013 to DWR Director Cowin, BOR Regional Director Murrillo, and SWRCB Chair Marcus expressed dismay at painting ourselves into the same corner again and again and seeking relief by a relaxation of protective standards. I argued for better planning to avoid urgency changes in the future. My letter of December 23, 2013 to Chair Marcus, Director Bonham and

Governor Brown asking "If winter 2013/2014 is dry will salmon survive? And here we are again.

Admittedly the current situation is unprecedented. Previous assumptions about the worst-case hydrology that are a basis for operation studies have to be thrown out and a new hydrological paradigm substituted right away. Perhaps something of an interim hydrology will be necessary followed by new assumed hydrology once this drought has broken and defined the new future. Certainly the existing assumptions and hydrology that got us to this debacle are no longer reliable.

The key wording in the Order ".....will not result in decreased survival" is perhaps too high a bar for the Board to claim. I urge you to explore this matter further and, if and when appropriate, restore operations to the required levels.

I write not to thwart the agencies in managing through this drought, but to advocate for public trust resources protection too and arriving at a sound process for dealing with these issues tomorrow and all days thereafter. It is really challenging I will admit. I don't have all the answers, but I aim for attaining a fair and durable process.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Morat", with a long horizontal line extending to the right.

Richard Morat
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