



July 2, 2015

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 Nos. 2080-2011-022-00) and 2080-2012-005-00

Dear Mr. Cowin:

I am writing in response to your memorandum transmitted on June 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 relates to the DWR and U.S. Bureau of Reclamation (Reclamation) May 21, 2015 request for modification and renewal of the State Water Resources Control Board's (SWRCB) April 6, 2015 temporary urgency change order, affecting Water Rights Decision 1641 (D-1641), and associated correspondence with federal fish and wildlife agencies regarding SWP and Central Valley Project (CVP) operations 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.

On February 3, 2015, March 5, 2015, and April 6, 2015, the SWRCB has approved several modifications to water quality parameters in D-1641 through June 30. The SWRCB's April 2, 2015 order also directed Reclamation to work with the fisheries agencies to update the 2015 Sacramento River Temperature Management Plan for CVP operations. On May 21, 2015, DWR and Reclamation requested modifications to D-1641 for the period of July 1 through November 30, 2015 (Modification Request). Specifically, the Modification Request seeks:

- Modification of the Net Delta Outflow Index (NDOI) in July to a minimum monthly average of 3,000 cubic feet per second (cfs), with a seven-day running average of no less than 1,000 cfs below the monthly average;
- Modification of minimum Sacramento River flow as measured at Rio Vista to a monthly average of 2,500 cfs, with a seven-day running average no less than 2,000 cfs, for September, October and November; and

- Relocation of the western Delta electrical conductivity (EC) compliance location on the Sacramento River to Threemile Slough through August 15.

On May 29, 2014, the SWRCB suspended Reclamation's 2015 Sacramento River Temperature Management Plan, which Reclamation had submitted to the SWRCB in April. In coordination with the fishery agencies, SWRCB and DWR, Reclamation has since developed a Revised Sacramento River Water Temperature Management Plan, dated June 2015 (Revised Temperature Plan). This plan changes the temperature target for the Clear Creek Compliance point from 56 degrees Fahrenheit (F) to 57 F degrees not to exceed 58 F degrees and relies on real time adjustments and temperature operation guided by a team made up of representatives from Reclamation, NMFS, CDFW, FWS and DWR.

Reclamation and DWR have prepared an *Updated Project Description for July-November 2015 Drought Response Actions to Support Endangered Species Act Consultations (Project Description)* and *Biological Review for Endangered Species Act Compliance with the WY 2015 Drought Contingency Plan July through November 15 Project Description (Biological Review)*. Reclamation prepared updated biological information to reflect the Revised Sacramento River Water Temperature Management Plan. In addition to the D-1641 modifications discussed above, Reclamation and DWR propose to extend the July through September water transfer window through November 15, 2015. The Project Description also stated that Reclamation has sought changes to the Ripon dissolved oxygen compliance point requirement contained in the Water Rights Decision 1422 for New Melones Reservoir.

On May 18, 2015, Reclamation transmitted the Project Description and Biological Review to NMFS. On June 25, 2015, Reclamation requested NMFS' concurrence that operations as described in the Project Description, Revised Temperature Plan and updated biological information are within the limits of the Incidental Take Statement for the NMFS BiOp and serve as a contingency plan under NMFS BiOp Action I.2.3.C. In its July 2, 2015 letter responding to Reclamation's request, NMFS concluded that the Project Description, as modified by the Revised Temperature Plan, is consistent with and meets the specified criteria for a contingency plan. Further, NMFS stated that the potential effects of the types of operations proposed in the contingency plan were considered in the underlying analysis of the NMFS BiOp, which included the drought contingency provisions and considered that droughts would occur.

Reclamation transmitted a memorandum to FWS on May 22, 2015, transmitting the Project Description and Biological Review. On June 25, 2015, Reclamation transmitted supplemental information to FWS showing no additional changes to the NDOI resulting from implementation of the Revised Temperature Plan, and requested FWS' concurrence that the effects of the proposed operations are consistent with the range of effects analyzed in the FWS BiOp. In a memorandum responding on June 26, 2015,

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FWS accepted Reclamation's determination that the effects of operations described in the Project Description are consistent with the effects previously analyzed in the FWS BiOp.

With the above confirmations, and based on CDFW's review of the Project Description, Biological Review, Revised Temperature Plan and updated biological information related to the Revised Temperature Plan, 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 in accordance with the FWS BiOp, and winter-run and spring-run Chinook salmon in accordance with the NMFS BiOp, pursuant to the currently proposed Project Description, through November 30, 2015.

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

Reclamation and DWR will continue to coordinate operations through the Real Time Drought Operations Management Team and technical teams with CDFW, the SWRCB and federal fish agencies. The agencies will continue to implement enhanced Delta Smelt and salmonid monitoring efforts, described in the *Central Valley Project and State Water Project Drought Contingency Plan: January 15, 2015 – September 30, 2015*.

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

cc: Ren Lohofener, Regional Director
Pacific Southwest Region, FWS
David Murillo, Regional Director
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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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