



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
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In reply refer to:  
81420-2008-F-1481-9

MAR 14 2014

## MEMORANDUM

To: Bay-Delta Office Area Manager, Bureau of Reclamation Mid-Pacific Region,  
Central Valley Office

From: Field Supervisor, U.S. Fish and Wildlife Service, Bay Delta Fish and Wildlife  
Office, Sacramento, California *Mark Anderson*

Subject: Reinitiation of Endangered Species Act Consultation on the Coordinated  
Operations of the Central Valley Project and the State Water Project

This memo is in response to your memo dated March 14, 2014, describing proposed drought response measures for the remainder of March 2014 and request for reinitiation of the December 15, 2008, Biological Opinion (2008 BiOp) on the Coordinated Operation of the Central Valley Project (CVP) and State Water Project (SWP) (Projects). The 2008 BiOp included a provision for the Bureau of Reclamation (Reclamation) to reinitiate consultation if the water year is classified as dry or critically dry for a second consecutive (or more) year(s). This response is in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act).

The following sources of information were used to develop this response: (1) the January 29, 2014, Petition for Temporary Urgency Change (TUC Petition); (2) the January 31, 2014, State Water Resources Control Board (SWRCB) TUC Petition Order; (3) the February 7, 2014, revised SWRCB TUC Petition Order; (4) the January 17, 2014, Governor's Proclamation of a State of Emergency; (5) your February 27, 2014, memo to the U.S. Fish and Wildlife Service (Service) with attached supporting documents; (6) the February 28, 2014, modified SWRCB TUC Petition Order; (7) your March 14, 2014, memo to the Service with attached supporting documents; and (8) other information available to the Service.

On January 29, 2014, Reclamation and the California Department of Water Resources (DWR) submitted a Temporary Urgency Change Petition Regarding Delta Water Quality (TUC Petition), requesting the SWRCB to temporarily modify requirements of water rights decision D-1641 for 180 days, with specific requests for February related to the Delta outflow and Delta Cross-Channel (DCC) standards described in D-1641, Table 3. In response to the TUC Petition, the SWRCB issued an Order on January 31, 2014. Approval of the TUC Petition by the SWRCB has enabled changes in operations that will provide minimum human health and safety supplies

and conserve water for later protections of instream uses and water quality. On January 31, 2014, Reclamation requested reinitiation and concurrence from the Service that there would be no additional adverse effects on delta smelt or its critical habitat from the drought response actions proposed by Reclamation and DWR for the month of February than those previously analyzed in the 2008 BiOp. The Service issued a concurrence that the proposed modifications will have no additional adverse effects on delta smelt or its critical habitat on January 31, 2014. On February 7, 2014, the SWRCB issued a revised TUC Petition Order that provided for increased exports (limited to natural or abandoned flow) during such times when D-1641 requirements were met. On February 27, 2014 Reclamation requested the extension of the February actions related to Delta outflow and DCC gate operations through March 31, 2014, be considered as part of the amended project description for drought response actions and requested concurrence that extension will result in no additional adverse effects on delta smelt or its critical habitat the for the month of March beyond those previously analyzed in the BiOp. The Service issued a concurrence that the proposed modifications will have no additional adverse effects on delta smelt or its critical habitat on February 28, 2014.

As issued, the revised TUC Petition Order temporarily modified February D-1641 Delta outflow requirements, as well as DCC gate operations. The revised TUC Petition Order specified that the February outflow requirements, commonly known as X2 criteria, would be set at a minimum of 3,000 cubic feet per second (cfs), with the potential for higher pulse flow. The TUC Petition Order provides for minimum health and safety level of export of 1,500 cfs. In addition, reservoir releases would be reduced from those otherwise required to meet D-1641 requirements in February to conserve storage for later fishery protection, minimum human health and safety needs, and if necessary, salinity control. In addition, the TUC Petition Order modified DCC gate operations to allow for opening of the gates as water quality and fishery conditions warrant and as restricted to specific monitoring of fish. Finally, the revised TUC Petition Order issued February 7 provided that if precipitation events occurred that allowed Reclamation and DWR to meet the Delta outflow and DCC requirements in D-1641, exports could increase if there is natural or abandoned flow in the Delta. On February 28, 2014, the SWRCB modified the TUC Petition to extend all of the above-described provisions through March.

The TUC Petition Order currently allows Reclamation and DWR to conserve additional water in the CVP/SWP reservoirs for protection of aquatic species, water quality, and water deliveries by modifying Table 3 of D-1641 such that Delta Outflow may be no less than 3,000 cubic feet per second. In addition to the above modification to Table 3, Reclamation and DWR are requesting that the SWRCB further modify their TUC Petition Order to also allow for the following:

*For the remainder of March 2014, Table 3 of D-1641 will be further modified to allow for compliance with the Delta Outflow objective through a 7,100 cfs outflow on a 3-day average and/or X2 position at Collinsville. Project diversions from Old River for periods when Delta Outflow is at or above 7,100 will continue to conform to existing Biological Opinions and the D-1641 Export to Inflow Ratio. The Delta Cross Channel (DCC) Gates will remain closed when outflow is at or above 7,100. For lower outflows, the current DCC opening protocol recommended by the fishery agencies will be followed.*

In addition to the above changes in outflow, and in an attempt to capture additional natural flow in the Delta available because of recent storm events, Reclamation and DWR are proposing to adjust implementation of Reasonable and Prudent Action (RPA) Action 3 in the 2008 BiOp for up to 7 days in the middle of March. Reclamation and DWR propose to operate in a manner to capture additional natural flow available in the Delta that is anticipated to result in up to 7 days of OMR index flows between -5000 cfs, and -6000 cfs based on a 14 day average. Reclamation and DWR would be operating to OMR flow more positive than -5000 cfs for 10 days at the end of the month.

To date this WY, the Service has determined that no changes in operations are necessary to protect adult or juvenile delta smelt under Components 1 or 2 of the RPA due to low risks of entrainment resulting from low reverse OMR flows, consistently low turbidity in the south and central Delta, favorable distribution of adult delta smelt outside of the south and central Delta, and the lack of salvage of delta smelt at the Projects' fish salvage facilities. These conditions can be attributed to extreme hydrologic drought conditions resulting in low Delta inflow and severely limited Project exports.

Based on the effects analysis provided by Reclamation, we expect that the additional adverse effects of the action to delta smelt, if any, will be minimal because: (1) of the short and temporary duration (7 days) of OMR values more negative than -5000 cfs; (2) the OMR index values (based on a 14-day average) will not exceed -6000 cfs over the 7-day period; (3) recent delta smelt distribution data (Spring Kodiak Trawl, Smelt Larval Survey) that indicate the delta smelt distribution is far outside of the south and central Delta; (4) no delta smelt adults or juveniles have been salvaged at either Projects facility this Water Year (WY), and (5) no additional take of delta smelt is expected beyond the 2008 BiOp calculated take for WY 2014.

The Service's jeopardy determination and incidental take statement in the 2008 BiOp remain unchanged. As described on page 280 of the BiOp, we will continue to utilize the adaptive process on a weekly basis to proactively meet the biological needs of the delta smelt within the constraints of the critically dry water year conditions. In the Order dated April 9, 2013, the District Court indicated that "any 'modifications' to the RPAs must be made consistent with procedures required by law." (See *Consolidated Delta Smelt Cases* 1:09-cv-00407 LJO BAM). These adjustments and the process we have followed to document and analyze the adjustments are consistent with the court's directive.

We look forward to continued close coordination with you and your staff throughout this extremely challenging water year.

Please address any questions or concerns regarding this response to Mike Chotkowski, Field Supervisor or Kim S. Turner, Assistant Field Supervisor at (916) 930-5603. Please refer to Service file number 81420-2008-F-1481-9 in any future correspondence regarding this project.