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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

NATURAL RESOURCES DEFENSE COUNCIL, CALIFORNIA TROUT, BAYKEEPER & ITS DELTAKEEPER CHAPTER, FRIENDS OF THE RIVER, and THE BAY INSTITUTE, all non-profit organizations, Plaintiffs, v. DIRK KEMPTHORNE, in his official capacity as Secretary of the Interior, and H. DALE HALL, in his official capacity as Director of the U.S. Fish and Wildlife Service, Defendants. SAN LUIS & DELTA MENDOTA WATER AUTHORITY, WESTLANDS WATER DISTRICT, CALIFORNIA FARM BUREAU FEDERATION, GLENN-COLUSA IRRIGATION DISTRICT, et al., CALIFORNIA DEPARTMENT OF WATER RESOURCES, STATE WATER CONTRACTORS; and KERN COUNTY WATER AGENCY. Intervenors/Defendants.	Case No.: 05-CV-01207 OWW LJO **DECLARATION OF SUSAN K. MOORE**

I, SUSAN K. MOORE, declare as follows:

1. I am the Field Supervisor for the Sacramento Fish and Wildlife Office, Region 8, U.S. Fish and Wildlife Service ("USFWS"). One of my primary responsibilities includes supervision of the USFWS personnel conducting the ESA §7 consultation on the effects

of ongoing long-term operation of the Central Valley Project (CVP) and State Water Project (SWP) operations upon the threatened delta smelt.

2. The court, in its Interim Remedial Order Following Summary Judgment and Evidentiary Hearing, dated December 14, 2007, ordered the USFWS to report to the court and the parties to this action the status of the development of the remanded biological opinion for the OCAP, on April 30, 2008.

3. My staff, assisted by staff from USFWS's Region 8, has participated in numerous conferences and workshops, such as the Interagency Ecological Program, which has kept the USFWS current on new scientific research and ongoing studies regarding the status of the delta smelt. My staff has also been meeting on at least a weekly basis with the U.S. Bureau of Reclamation (USBR), National Marine Fisheries Service (NMFS), California Department of Fish and Game (DFG), and the California Department of Water Resources (DWR), to coordinate on current water project operations and associated fishery protection in the Delta; and to assist in the development of the project description for the ongoing long-term operation of the CVP and SWP, and preparation of an updated Biological Assessment for such operation. These meetings have been useful in developing a better understanding of water project operations and the project description, which should facilitate preparation of the biological opinion.

4. A "biological assessment" is a document compiled by an action agency (here, USBR, and DWR in its capacity as an "applicant") and submitted to USFWS at the beginning of an Endangered Species Act consultation. Its purpose, as described at 50 C.F.R. §402.12(a), is to evaluate the potential effects of the proposed Federal action on listed and proposed species and designated and proposed critical habitat, and to determine whether any such species or habitat are "likely to be adversely affected" by the proposed action. The contents of a biological assessment are at the discretion of the consulting Federal agency

and depend on the nature of the action, but the regulations do provide suggestions for information that may be included, such as: the results of inspection of the area affected by the Federal action to determine if listed or proposed species are present or occur seasonally; the views of recognized experts on the species that may be affected by the Federal action; a review of the literature regarding the listed or proposed species, and other information that is available; an analysis of the effects of the proposed Federal action on the species and their habitat, including consideration of cumulative effects, and the results of any related studies; and an analysis of alternate actions considered by the Federal agency for the proposed action. The "project description" is an essential part of any biological assessment. The project description identifies the purpose of the proposed activity, the timing of its implementation, and the form, scope, and scale of the action. The more comprehensive the biological assessment is at the time that it is transmitted to the USFWS, the less likely it will be that the USFWS will request additional information after the end of the initial 30-day review period provided for by 50 C.F.R. §402.12(j).

5. As of this date, our office has not received an updated, complete, and final, biological assessment for the ongoing long-term operation of the CVP and SWP. My staff have reviewed sections of a draft Biological Assessment transmitted previously by USBR, including a section titled Summary of Legal and Statutory Authorities, a draft project description, and species accounts for delta smelt and longfin smelt. Comments on those sections have been provided to the USBR for incorporation into the final biological assessment. My staff has not been provided for review a draft analysis of effects upon listed species associated with CVP and SWP operations, nor a description of the analytical approach and methods associated with such analysis.

6. While I, and my staff, are prepared to continue to assist the USBR and DWR in the preparation of the final biological assessment, we are unable to begin formal §7 consultation on the ongoing long-term operation of the CVP and SWP until the final

biological assessment is forwarded to this office. In discussions on this matter with the management team of Mid-Pacific Region, USBR, I have been informed that the final Biological Assessment will be delivered in mid-May, 2008.

I declare under penalty of perjury under the laws of the State of California and the United States, that the foregoing is true and correct.

Dated this 30th day of April, 2008.

Susan K. Moore

Susan K. Moore
Field Supervisor
Sacramento Fish and Wildlife Office, USFWS