United States Department of the Interior

FISH AND WILDLIFE SERVICE
San Francisco Bay-Delta Fish and Wildlife Office
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Sacramento, California 95814

In reply refer to:
81420-2008-F-1481-7

JAN 31 2014

MEMORANDUM

To: Operations Manager, Bureau of Reclamation Mid-Pacific Region, Bay-Delta Office, Sacramento, California

From: Field Supervisor, U.S. Fish and Wildlife Service, Bay Delta Fish and Wildlife Office, Sacramento, California Mike Chrisman

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

This memo is in response to your memo dated January 31, 2014, outlining your and California Department of Water Resources' (DWR) requested approval from the State Water Resources Control Board (SWRCB) for temporary modification to the water rights decision D-1641 permit terms related to the Delta outflow and Delta cross-channel standards described in D-1641, Table 3, for the month of February 2014. The U.S. Fish and Wildlife Service (Service) has issued a biological opinion (BiOp) on the Coordinated Long term Operation of the Central Valley Project (CVP) and State Water Project (SWP) (Projects) on December 15, 2008. This 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). The determination of dry or critically dry is based on the February 1, 50% runoff DWR exceedance forecast. While the February forecast has yet to be completed, based on the January forecast of critically dry and the lack of significant precipitation in January, the BiOp provision has been triggered and Reclamation has requested reinitiation from the Service. In addition, on January 17, 2014, the Governor announced an Emergency Proclamation finding that "conditions of extreme peril to the safety of persons and property exist in California due to water shortage and drought conditions." 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).

In addition, the Service has reviewed: (1) the January 29, 2014, cover letter from DWR and Reclamation to the SWRCB; (2) the January 29, 2014, Petition for Temporary Urgency Change (TUC Petition); (3) the January 17, 2014, Governor's Proclamation of a State of Emergency; (4) your January 31, 2014, memo to the Service with attached supporting documents; and (5) other information available to the Service. The TUC Petition was jointly submitted by Reclamation and DWR and, per your request, will be considered as part of the amended project description for the purposes of reinitiating consultation.

In the TUC Petition, Reclamation and DWR request that the D-1641 Delta outflow standard be changed from a 3-day average of net delta outflow of 7,100 cfs at Collinsville to allow for the necessary 1,500 cfs minimum health and safety deliveries while also allowing additional preservation of cold water pool. Reclamation and DWR indicate that this operation may result in a Delta outflow in the 3,000 cfs to 4,500 cfs range. Reclamation and DWR also request in the TUC Petition that the D-1641 Delta Cross Channel (DCC) operation restrictions requiring closure of the DCC from February 1 through May 20 be released as a means to control salinity conditions. Reclamation has proposed to open the DCC gates as soon as possible to reduce salinity in the central Delta.

No actions under Component 1 or Component 2 of the BiOp's Reasonable and Prudent Alternative (RPA) have been taken in Water Year (WY) 2014 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 drought conditions resulting in low Delta flows and severely limited Project exports. 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 and 2 of the RPA. In addition, it is our understanding that Reclamation will continue to fully meet the RPA actions outlined in the Service's 2008 BiOp.

Although the proposed departure from D-1641 was not anticipated in the Project Description of the BiOp, or the modeling in the biological assessment, the proposed relaxation, based on the provisions provided in the TUC Petition and existing hydrologic and biological conditions for the month of February appear to be within the range of effects previously analyzed in the 2008 BiOp. Therefore, the Service concurs with Reclamation's determination that the proposed modifications will have no additional adverse effects on delta smelt or its critical habitat. As described on p 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 petition, Reclamation and DWR have proposed to convene a team of managers from Reclamation, DWR, SWRCB, California Department of Fish and Wildlife (DFW), National Marine Fisheries Service (NMFS), and the Service in order to coordinate management of water supplies and protection of natural resources during the course of the declared drought emergency.

During any period in which Reclamation and DWR are operating the Projects under a temporary change order, there will be close coordination on current and projected operations on a weekly basis through existing meetings (Smelt Working Group, Delta Conditions Team, Water Operations Management Team, etc.). The Service will continue to make weekly determinations under our RPA actions (to include consideration of operations pursuant to a temporary change order) regarding whether changes in operations are necessary to protect listed fish species. These determinations will continue to be presented at the weekly WOMT call. The SWG and the Delta

Conditions Team will also continue to provide weekly advice to the Service. As mentioned above, an additional weekly drought coordination meeting will also be needed to ensure effective coordination. This meeting will help guide development of a CVP/SWP operational strategy and corresponding contingency plan to address operations through the operating season if conditions fail to improve. The result of this effort will inform any future determinations pursuant to the 2008 BiOp and the 2009 NMFS Coordinated Long term Operations of the CVP and SWP Biological Opinion (2009 NMFS BiOp), as well as any additional TUC Petitions to the SWRCB that may be submitted.

The Service recommends that weekly drought coordination meetings address the following topics:

- Reclamation's and DWR's consideration of any new TUC Petitions during the current water year, utilizing the drought exception procedures described in the 2009 NMFS BiOp, and provision of similar information to the Service that is related to delta smelt and our 2008 BiOp.
    - To extend the current request beyond February 28, 2014, or for any future changes or modifications to the project description, Reclamation will provide the fish agencies with detailed descriptions of the changes and a complete effects analysis and determinations of effects to listed species, unless following emergency consultation provisions. The Service will provide our findings or concurrence in writing prior to Reclamation taking the action.
- Reclamation's development of a contingency plan, to include the development of a comprehensive, system-wide approach to address future ESA compliance for coordinated water project operations during the drought beyond February 28, 2014.

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-1481-7 in any future correspondence regarding this project.