United States Department of the Interior

FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

IN REPLY REFER TO:
81420-2008-TA-1481

MAY 29 2008

Memorandum

To: Operations Manager, Bureau of Reclamation, Central Valley Operations Office, Sacramento, California

From: Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California

Subject: Receipt of biological assessment for the Continued Long-term Operation of the Central Valley Project and the State Water Project (OCAP)

This is in response to your memorandum dated May 16, 2008, requesting initiation of formal consultation and transmitting the biological assessment (BA) on the coordinated operations of the Central Valley Project and State Water Project and the OCAP to the U.S. Fish and Wildlife Service's (Service). This response is provided in accordance with the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

The Service subsequently received a number of revisions to the BA and additional information that addressed effects upon delta smelt. The last of this information was received on May 28, 2008. As of that date we are prepared to initiate formal consultation. The Service has started its initial 30-day review of the BA for adequacy, provided at 50 CFR §402.12(j).

Under Federal regulation 50 CFR §402.14, the Service has 135 days to complete a biological opinion, after a complete BA has been submitted. The court order set September 15, 2008 as the deadline for the Service to deliver its biological opinion. Normally, based on §402.14, the determination that the BA was complete on May 28, 2008, would have set a completion date for the Service's revised biological opinion of October 10, 2008. We note that this is past the court's deadline.

The May 16, 2008, initiation memo states that "integration of new information and data analyses into the body of work…will continue throughout the consultation process." A consultation under the Act cannot be conducted without all of the required information. It is important to note that if DWR or Reclamation amend the project description or provide significant new information regarding the effects of the proposed action upon the listed species, Reclamation would need to revise the BA. Additionally, we would consider this to be the start of a new consultation process, based on the implementing regulations. This would begin with both a new 30-day window for review of adequacy of the BA and a new 135-day due date based on receipt and review of this information. The Service understands this date may be constrained by the court order.

If you have any questions or concerns, please contact Ryan Olah or Cay C. Goude at (916) 414-6600.

cc:

National Marine Fisheries Service, Sacramento
California Department of Fish and Game, Sacramento
California Department of Water Resources, Sacramento