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“The National Marine Fisheries Service Review Process for the California Central Valley and State Water Projects’ Biological Opinion Deviated from the Region’s Normal Practice”

BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES
July 31, 2007

Mr. Chairman and Members of the Committee, I appreciate the opportunity to discuss the Office of Inspector General’s work on the environmental review process for the long-term Operations, Criteria, and Plan (OCAP) for the California Central Valley Project and the State Water Project.

On October 8, 2004, 19 members of the U.S. House of Representatives requested that the Commerce and Interior IGs review allegations that the Bureau of Reclamation, “. . . in its haste to finalize water contracts in California, has improperly undermined the required NOAA Fisheries environmental review process. . . .” On October 22, 2004, the southwest regional office issued a biological opinion stating that the long-term OCAP—essentially the roadmap for how the Central Valley Project and the State Water Project will manage the water supply—would not jeopardize endangered and threatened species.

We conducted an audit of the review process used to issue the October 2004 opinion. We sought to determine whether NMFS followed its policies, procedures, and normal practices for consultations in issuing the OCAP opinion. Our purpose was not to evaluate the science involved, but rather the integrity of the process.

Our assessment of the process leading to the biological opinion revealed that the southwest regional office did not follow its normal procedures. First, it initiated the consultation with insufficient information, rather than waiting until it received all required details from the Bureau of Reclamation. For comparison, we examined 10 other consultations conducted by the southwest region, and none were initiated without sufficient information.

Second, the southwest regional office did not follow the policies and procedures in place that are intended to ensure that biological opinions are sound. For example, the designated regional Section 7 coordinator did not review or clear the OCAP opinion—a key management control. The coordinator told us she did not complete her review of the draft because the assistant regional administrator for protected resources “stepped in” to work on the draft with the lead biologist and then sent the draft to the Bureau of Reclamation for review. She did not clear the final because the assistant regional administrator sent it out when she was away from the office conducting training. She added that she would not have signed off on the opinion anyway because she believed its conclusion did not match the scientific analysis. According to the coordinator, the only other time she could recall the assistant regional administrator performing her duties was during the 2002 consultation on the Klamath operations.

Third, the southwest region has Section 7 coordinators in field offices, who are supposed to review opinions for clarity, conciseness, and logical analysis and conclusions. But the local coordinator in this case said she was instructed by her managers to send the opinion to the regional office without completing a review.

Finally, the Office of General Counsel never cleared the opinion, though legal review and clearance is part of the NMFS consultative process to ensure that opinions comply with pertinent laws and are defensible. The regional general counsel told us that his office reviews highly controversial or politically sensitive opinions and highlighted the OCAP opinion as a specific example of the type of opinion that should be

reviewed. He did not know until our auditors told him that no one on his staff had cleared that opinion.

We also looked into an allegation that a draft “jeopardy” opinion had been initially provided to the Bureau of Reclamation and was later changed to “no jeopardy” without sufficient justification. We found no corroborating evidence that this occurred. The administrative record only documented delivery of a no jeopardy draft to the Bureau of Reclamation in September 2004.

In summary, by initiating the consultation without sufficient information, and by failing to obtain review and clearance from the appropriate Section 7 coordinators and the Office of General Counsel, the assistant regional administrator circumvented key internal controls designed to ensure the integrity of the biological opinion.

In responding to our report, NOAA agreed with our recommendations to revise its policies and procedures and to conduct an objective peer review of the OCAP opinion.

In early 2006, three independent reviewers examined the OCAP opinion. Two of those reviewers found that the agency had not used the best available science and all made recommendations to improve NOAA’s consultations from a scientific perspective. NOAA’s science center staff generally agreed with the reviewers recommendations. On April 26, 2006, the Bureau of Reclamation (BOR) re-initiated consultation on the 2004 OCAP biological opinion to include newly designated critical habitat. We understand that this consultation with the BOR is ongoing.

A complete text of our audit report on this issue can be found on our website at <http://www.oig.doc.gov>.

Again, I appreciate the opportunity to discuss our work on this subject and welcome any questions you may have.