United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Southwest Region
2800 Cottage Way, Room W-2606
Sacramento, California 95825-1846

In reply refer to:
FWS/R8/80270

SEP 29 2011

Memorandum

To: Regional Director, Mid-Pacific Region, U.S. Bureau of Reclamation

From: Regional Director, Pacific Southwest Region
Sacramento, California

Subject: Endangered Species Act Consultation on the Coordinated Operations of the Central Valley Project and State Water Project and Implementation of Reasonable and Prudent Alternative Component 3 for October and November 2011

Thank you for your memorandum transmitting additional information regarding the coordinated operation of the CVP and SWP for the months of October and November 2011, including the California Department of Water Resources' intention to help mitigate deviations from expectations with the understanding that the mitigation measures will not result in unacceptable water delivery costs. Based on the information you present, DWR's stated intentions, and modeling of the expected hydrology of the system from October 16 through November, our understanding of the situation as it relates to the average X2 location for these months has changed significantly since the time when we were making the decision to appeal and seek a stay of Judge Wanger's August 31, 2011, injunction.

First, Judge Wanger's September 16, 2011 bench ruling and subsequent order suspended the implementation of his original injunction until October 16. That decision provided us with several more weeks of assurances that the monthly average X2 location will be maintained at a distance no further east than 74 km in September, consistent with the Reasonable and Prudent Alternative (RPA) Component 3 (which will also continue to be in force during the first half of October). This development is a significant improvement from when we submitted our declarations in support of the motion to stay the injunction. At that time, the operational projections provided to us led us to conclude that the average X2 could range to 80 km and further east in all of October and November. This change has provided greater certainty regarding location of the average fall X2 location for 45 of the 60 days called for in the RPA.

Second, the most recent modeling provided with your memorandum indicates that the average fall X2 location is not expected to move as far east as was thought possible back in July, and also

that the difference in X2 location with or without the injunction in place is very limited. The graph from DWR, forwarded with your memorandum, projects that even with the injunction in place, the average location of fall X2 is expected to be 74.4 km for October, as compared to 74.0 without the injunction. Thus, for the month of October, the modeling indicates that the only effect of the injunction would be to increase the average location of X2 by 0.4 km, from 74.0 to 74.4. This is a further significant improvement of the situation. For the month of November, the difference between average X2 location with or without the injunction in place is estimated to be only between 1.3 and 1.4 km.

The graph represented Reclamation's and DWR's best estimate for X2 locations under planned CVP and SWP operations, barring unforeseen combinations of natural conditions. You noted that Mr. Cowin, Director of the California Department of Water Resources, in an email dated September 29, 2011, concurred with these estimates and committed that should variations to the monthly average X2 location occur relative to the values illustrated in this graph during actual operations, DWR will coordinate with Reclamation to minimize those variations, and work with the Service to reduce significant swings in X2 location provided no additional cumulative export reductions occur relative to planned Project operations.

Finally, as I already mentioned, forecasted hydrologic, tidal, moon, and weather conditions appear generally favorable and we expect the average fall X2 location will be very close to the desired 74 km location for October. In sum, I believe the extended forecasts on which the predictions about the location of average fall X2 are based, along with DWR's commitment to help minimize fluctuations, provide me reasonable certainty regarding the average X2 location and outflow levels for October and November, and further provide me with a reasonable estimate of the differences between the X2 location with or without the Court's injunction in effect.

I have concluded that if we have an average or dry November, and if the modeled projections are accurate, the average fall X2 location should be very close to RPA Component 3 of the 2008 Biological Opinion as presented to me by your office last July and accepted by me on July 22, 2011. If November is wetter than average, I believe the resulting hydrological conditions will also be protective of delta smelt fall habitat. With the caveats already noted, I believe that even with the injunction (as modified) in place, the federally protected delta smelt will be afforded a level of protection consistent with RPA Component 3 in the 2008 Biological Opinion.

Please let me know if you would like to discuss this further and thank you for your hard work, and the hard work of your staff on these issues.