



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Director's Office
P.O. Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 24, 2019

Ernest A. Conant
Mid-Pacific Regional Director
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Subject: IMPLEMENTATION OF FALL X2 ACTION IN FALL OF 2019

Dear Mr. Conant:

I request that you immediately cease implementation of the U.S. Bureau of Reclamation's (Reclamation) proposed change of Reasonable and Prudent Alternative Component 3 – Action 4 (Fall X2) in the fall of 2019. Reclamation should not make this change. Instead, it should implement the Fall X2 as originally written in the 2008 U.S. Fish and Wildlife Service (USFWS) Biological Opinion for the Coordinated Long-term Operation of the Central Valley Project (CVP) and State Water Project (SWP) (2008 BiOp). While Reclamation and the USFWS may wish to make a permanent, long-term change to this measure through your reinitiated consultation, right now, the 2008 BiOp and this measure control, no adaptive management has been completed consistent with those rules, and the USFWS specifies that there will be impacts from this change to an imperiled species.

Reclamation's August 2019 Environmental Assessment (EA) for this change analyzed a Proposed Action that would include maintaining a monthly average X2 at 80 km with simultaneous operation of the Suisun Marsh Salinity Control Gates (SMSCG) in September and October to maintain salinity of 6 ppt or less at Belden's Landing over a 14-day average. However, the Proposed Action described in Reclamation's September 4, 2019 reinitiation request to the USFWS no longer includes operation of the SMSCG, a state facility. Notably, the California Department of Water Resources has informed Reclamation it will not support the change you seek.

The actual proposal and its environmental impacts have not been set out sufficiently in an environmental assessment. Reclamation has not adequately considered whether the Proposed Action will have a significant impact beyond what was considered in the 2016 Record of Decision from the Long-Term Operations Environmental Impact Statement (ROD). Therefore, Reclamation should maintain a monthly average X2 of 74 km in September and October, in accordance with the 2008 BiOp and 2016 ROD.

The brief analysis of the Proposed Action that USFWS has conducted concludes that the Proposed Action would result in a reduction of habitat suitability ranging from 15% to 18%. As the USFWS further notes, this impact is lessened – but is still up to a 13% impact – when the federal government appears to claim the disproportional and

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inequitable benefit it gets by the State Water Project's commitment to follow the rules and not join in implementing the Proposed Action. The USFWS also notes the current populations of Delta smelt are so low that it is unlikely monitoring programs will be able to detect the effects to Delta smelt abundance or survival. The USFWS re-affirms that the further eastward the low-salinity zone moves, the less likely that the habitat attributes necessary for Delta smelt health will co-occur. Reclamation's pursuit of the Proposed Action, with its adverse impacts that have not been appropriately identified, evaluated, and minimized, sets the stage for violations of the National Environmental Policy Act and other laws.

CDFW is California's trustee agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. Through its trustee and regulatory authority, CDFW has a long history of coordination with its federal partners in the management and protection of the State's trust resources, including those affected by the CVP. Indeed, in a September 10, 2018 memorandum from the Secretary, the U.S. Department of the Interior recently highlighted longstanding policy that State authority regarding fish and wildlife remains the comprehensive backdrop applicable in the absence of specific, overriding Federal law, and directed its bureau heads to recognize the fundamental role of States in fish and wildlife management. It is from that platform I write to you today.

At the same time this unilateral change is being pursued, our agencies are working together with countless water and irrigation districts, conservation organizations, and others to collaborate on voluntary agreements as a paradigm shift to resolving long-running disputes. Great care should be given to not disrupting that potential.

Implementation of the CVP operations as described in Reclamation's reinitiation request to USFWS is based on incomplete and inaccurate information and would undermine necessary species protections even as Delta smelt decline to record-low abundance. I urge you to shift course for CVP operations in 2019 and adhere to the monthly average X2 of 74 km during September and October as required.

Sincerely,



Charlton H. Bonham
Director

cc: Karla Nemeth, Director
California Department of Water Resources
1416 Ninth Street, 11th Floor
Sacramento, CA 95814

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cc: Michelle Banonis, Assistant Chief Deputy Director
California Department of Water Resources
1416 Ninth Street, 11th Floor
Sacramento, CA 95814

Paul Souza, Regional Director
Pacific Southwest Region
U.S. Fish and Wildlife Service
2800 Cottage Way, W2928
Sacramento, CA 95825

Kaylee Allen, Field Supervisor
SF Bay-Delta Fish and Wildlife Office
U.S. Fish and Wildlife Service
650 Capitol Mall, Suite 8-300
Sacramento, CA 95814

Carl Wilcox, Policy Advisor to the Director
California Department of Fish and Wildlife
1416 Ninth Street, Room 1205
Sacramento, CA 95814

Wendy Bogdan, General Counsel
California Department of Fish and Wildlife
1416 Ninth Street, Suite 1341
Sacramento, CA 95814

