



# United States Department of the Interior

BUREAU OF RECLAMATION  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825-1898

IN REPLY  
REFER TO:  
CVO-100  
LAW-5.00

NOV 04 2008

VIA ELECTRONIC MAIL AND U.S. MAIL

Mr. Paul S. Weiland  
Nossaman LLP  
18101 Von Karman Avenue  
Suite 1800  
Irvine, CA 92612

Subject: Request for Information Correction

Dear Mr. Weiland:

This is in response to your Request for Information Correction dated September 5, 2008, submitted on behalf of the Coalition for a Sustainable Delta. We have reviewed your request, filed pursuant to the Information Quality Act, P.L. 106-554, section 515, 44 U.S.C. § 3516, note, the Office of Management and Budget's guidelines, 67 Fed. Reg. 8452 (Feb 22, 2002), and the Bureau of Reclamation's Information Quality Guidelines. We hereby deny your Request for Information Correction.

The Bureau of Reclamation prepared the *Central Valley Project and State Water Project Operations Criteria and Plan Biological Assessment* for transmittal to the U.S. Fish and Wildlife Service (Service) and National Marine Fisheries Service (NMFS) pursuant the requirements of the Endangered Species Act (ESA) Section 7(c), 16 U.S.C. 1536(c), and implementing regulations, in May 2008. Reclamation provided a revised *Biological Assessment on the Continued Long-Term Operations of the Central Valley Project and State Water Project (CVP/SWP Operations BA)* to the Service and NMFS in August 2008. This document was prepared pursuant to the ESA and implementing regulations.

The regulations pertaining to Section 7 consultations under Section 7(a)(2) of the ESA require the Federal action agency to "provide the Service with the best scientific and commercial data available or which can be obtained during the consultation for an adequate review of the effect that an action may have upon listed species or critical habitat." 50 C.F.R. § 402.14(d). "Best scientific and commercial data available" is further discussed in the *Endangered Species Consultation Handbook*, March 1998.

Reclamation used the best scientific and commercial data available to develop its CVP/SWP Operations BA. However, the document makes clear that there are limitations in the current state

of the science regarding delta smelt (“It is also important to recognize that the present understanding of the factors affecting the smelt has many limitations.” p.13-3).

We believe that the information included in the BA meets the standards of the ESA, implementing regulations, and the Information Quality Act and applicable guidelines. The CVP/SWP Operations BA presents the best scientific and commercial data available in an accurate, clear, complete and unbiased manner, consistent with the information available to Reclamation at the current time. In fact, the CVP/SWP Operations BA has several caveats regarding the information presented because of the limitations in present understanding. On page 13-3, the CVP/SWP Operations BA states:

It is also important to recognize that the present understanding of the factors affecting smelt has many limitations. As described in Baxter et al. (2008), many studies used for the recent POD synthesis are works-in-progress that have not reported final results. Preliminary results from these studies have been provided whenever possible, but peer-reviewed products from these studies may not be available for some time to come. As a consequence, while this review uses such results because they represent the best available science, Baxter et al. (2008) encouraged users of their POD synthesis report to be cautious when evaluating the relative importance of the different factors. Specifically, statements not based on well-developed and peer-reviewed literature should be viewed with more skepticism.

More specifically, in regards to the particular unpublished data your request concerns, the CVP/SWP Operations BA states: “Bennett has not published some of his results, and it remains unclear whether his central hypothesis is true. We have therefore not attempted to directly evaluate whether water project operations modeled under the various scenarios differentially affect early spawning delta smelt.” (p 13-6).

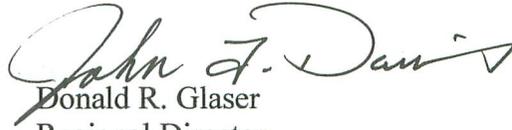
Reclamation has used the best scientific and commercial data available in preparation of the CVP/SWP Operations BA. In doing so, Reclamation has presented this data in an accurate, clear, complete and unbiased manner to the best of its ability given availability of the information by including statements in the BA to qualify the use of this information. The Office of Management and Budget has recognized that agencies will comply with its guidelines in different ways given an agency’s particular needs and requirements. 67 Fed. Reg. at 8453. Reclamation has worked within these guidelines to meet the requirements of the ESA, implementing regulations, and the Information Quality Act and applicable guidelines.

You may appeal this decision to the Commissioner, Bureau of Reclamation at the following address:

Attention: Mr. Casey Snyder  
U.S. Bureau of Reclamation  
Quality of Information, 84-21300  
P.O. Box 25007  
Denver, Colorado 80225-000  
Tel: 303-445-2048  
Fax: 303-445-6575  
E-mail: [IBR8DRODINFOQUALITY@usbr.gov](mailto:IBR8DRODINFOQUALITY@usbr.gov)

Please provide the information specified in the appeal procedures of Reclamation's Information Quality Guidelines (<http://www.usbr.gov/main/qoi/guidelines.html>). If you have any questions, please contact Mr. Snyder at 303-445-2048.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Davis", is written over the typed name "Donald R. Glaser".

Donald R. Glaser  
Regional Director

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