



# United States Department of the Interior

BUREAU OF RECLAMATION  
Mid-Pacific Regional Office  
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IN REPLY REFER TO:

**DEC 13 2011**

BDO – 100  
ENV – 7.00

## MEMORANDUM

To: Regional Director, Region 8  
U.S. Fish and Wildlife Service

From: Donald R. Glaser  
Regional Director

Subject: Information Pertaining to the Coordinated Long-Term Operation of the Central Valley Project (CVP) and State Water Project (SWP)

In response to the United States District Court for the Eastern District of California (District Court) amended final judgment issued on May 17, 2011, in the Delta Smelt Consolidated Cases (1:09-cv-00407-OWW-DLB), the Bureau of Reclamation (Reclamation) provided updates and additional information to the U.S. Fish and Wildlife Service (Service) on August 26, 2011, to facilitate the development of a draft Biological Opinion (BO) by October 1, 2011. The Federal Court subsequently amended its final judgment, and extended the due date for transmission of the draft BO to Reclamation to December 14, 2011. Reclamation understands that the Service will use the previously provided updates in the development of this first draft BO by December 14, 2011. The updates included general changes due to the passage of time and those items that have been litigated or legislated since Reclamation submitted the 2008 Biological Assessment to the Service. Unless otherwise requested, Reclamation does not intend to provide any additional information to the Service in the immediate future.

The District Court remanded, but did not vacate the 2008 Service BO and Reasonable and Prudent Alternative (RPA) on the Coordinated Long-Term Operation of the CVP and SWP (Service BO). Thus, Reclamation will continue to operate the CVP in accordance with the RPA specified within the Service BO. By doing so, Reclamation continues to satisfy its Endangered Species Act (ESA) Section 7(a)(2) obligation to ensure that its actions do not jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat.

On September 20, 2011, the District Court issued a Memorandum Decision on Cross Motions for Summary Judgment in the litigation associated with the 2009 National Marine Fisheries Service BO and RPA on the Coordinated Long-Term Operation of the CVP and SWP (NMFS BO). The court also remanded the NMFS BO for further consideration. The court requested that the Federal defendants provide a proposed date by which they could complete a new BO and RPA. Through the remand processes for the smelt and salmon opinions, Reclamation intends to coordinate consultation with both the Service and NMFS thereby allowing for coordinated biological opinions.

Additionally, because the District Court found in an earlier ruling that Reclamation violated the National Environmental Policy Act (NEPA) by accepting and implementing both the 2008 Service BO and RPA and the 2009 NMFS BO and RPA without performing a NEPA analysis of the potential impacts to the human environment, Reclamation will complete a NEPA review prior to accepting or implementing the BOs prepared on remand. The opportunity exists to complete a combined NEPA process for both new BOs. To that end, Reclamation intends to immediately initiate the NEPA process to analyze the effects of CVP and SWP operations and associated actions to protect listed species, including publishing a Notice of Intent in the Federal Register and initiating the scoping process. This NEPA process, including public involvement, alternatives development, and impact analyses, will provide additional information and may inform future decisions by Reclamation and the California Department of Water Resources (DWR; the applicant in the consultation process) on long-term operation of the CVP and SWP. The NEPA process could also result in the development of a new proposed action for future ESA consultations.

Reclamation recognizes that the current project description for coordinated operations is a work in progress and is likely to change as we engage with DWR and stakeholders during the consultation process and undertake the NEPA analysis. Moreover, efforts to develop a draft biological assessment will require Reclamation's continued engagement with DWR. Operations decisions by DWR are directly linked to Reclamation's successful implementation of the BOs. Reclamation understands that your staff is utilizing the information we have provided to date to prepare a draft BO to the extent practicable. Because the project description needs to be further updated to reflect emerging changes to proposed operations, Reclamation is cognizant that this draft BO may not contain a determination on whether the proposed action is likely to jeopardize the species or result in destruction or adverse modification of critical habitat. Reclamation understands that this determination and an incidental take statement will likely be developed by the Service at a later date.

cc: Mr. Mark Cowin  
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cc: Continued from previous page

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