# APPENDIX E

# NATIONAL MARINE FISHERIES SERVICE CONCURRENCE LETTER

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administratio
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

February 22, 2002

In Response Refer To:
SWR-00-SA-5851:MEA

Mr. Frank Michny
Regional Environmental Officer
U.S. Bureau of Reclamation
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 05825-1898

Dear Mr. Michny:

This is in response to your letter dated November 19, 2001 initiating informal consultation under the Endangered Species Act (ESA) for the interim renewal of 42 Central Valley Project (CVP) water service contracts for the period from March 1, 2002 through February 29, 2004. These new interim contracts are similar to the one year interim contracts executed last year, and contain provisions described in current biological opinions addressing CVP operations, the Bay-Delta Accord, and conditions which allow for the reduction of deliveries for various reasons, including the need for CVP operations to be modified to meet the requirements of any amended or new biological opinions.

Species, under the jurisdiction of the NMFS, which may be affected by the Bureau of Reclamation's (Reclamation) proposed action are: 1) endangered Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*); 2) threatened Central Valley spring-run chinook salmon (*O. tshawytscha*); 3) threatened Central Valley steelhead (*O. mykiss*); and, 4) threatened Southern Oregon/Northern California Coast coho salmon (*O. kisutch*). In addition, designated critical habitat for these species may be affected by the proposed action.

Reclamation has determined that executing these interim contracts, in and of themselves, will likely have no adverse effect on winter-run chinook salmon, spring-run chinook salmon, coho salmon, or steelhead. Reclamation's determination is based on the following:

(1) Contract amounts are limited to established needs or existing contract amounts, whichever is less. There will be no increase in total deliveries.

(2) Contracts will be for a 2 year period, from March 1, 2002 through February 29, 2002.

(3) The interim contracts contain shortage provisions that allow for reduction of deliveries for various reasons, including the need for CVP operations to be modified to meet requirements of listed species. Biological Opinions addressing the effects of the hydrologic operation of the CVP on Sacramento River winter-run chinook salmon, Central Valley spring-run chinook salmon and Central Valley steelhead exist. In addition, Reclamation has reinitiated consultation with NMFS on the effects of the CVP Operations on Central Valley spring-run chinook salmon and Central Valley steelhead to cover the period through April 30, 2004 (expected to be completed by March 30, 2002), and has initiated consultation on long-term operations of the CVP. Reclamation has also consulted on the effects of operations of the Trinity River Division on coho salmon.

(4) The hydrologic operations of the CVP are, and will continue to be, operated in compliance with existing, amended, or new biological opinions that address the effects of the operation of the CVP on any listed species. A letter dated October 29, 1999, was provided to NMFS to confirm this commitment..

(5) Reclamation is committed to engaging NMFS in the (b)(2) interagency team to provide recommendations on how to best dedicate and manage 800,000 acre-feet of CVP yield.

(6) The proposed action is tiered from the CVPIA PEIS and was considered within and is consistent with the programmatic biological opinion (dated November 14, 2000) NMFS prepared on the implementation of the CVPIA.

NMFS' interpretation of the letter of October 29, 1999, mentioned in item (4) above, is that Reclamation will continue to operate the CVP in compliance with existing, amended, or new long-term biological opinions and will not commit additional resources (e.g. water withdrawals) which would effect the environmental baseline, absent this action.

Based on the best available information, NMFS concurs with Reclamation's determination that the 2-year interim contracts, identified in the list enclosed with your letter of November 19, 2001, will not likely adversely effect Sacramento River winter-run chinook salmon, Central Valley spring-run chinook salmon, Southern Oregon/Northern California Coast coho salmon, or Central Valley steelhead, or their designated critical habitat. The contracts shortage provisions should allow Reclamation adequate flexibility to continue to comply with existing biological opinions or any amended or new opinions currently under development that address the effects of CVP operations on listed species. In addition, based on our interpretation of your October 29, 1999 letter, Reclamation, through this action, will not commit resources which will effect the environmental baseline for the long-term. Reclamation should be prepared to exercise its flexibility within these contracts as our agencies proceed with consultations on long-term CVP operations.

This concludes Section 7 consultation for Reclamation's proposed execution of 42 interim water service contract renewals for the period of lMarch 1, 2002 through February 29, 2004. However, if any new information becomes available indicating that listed or proposed species may be adversely affected by this action, further consultation may be necessary.

If you have any questions concerning these comments, please contact Mr. Michael Aceituno in our Sacramento Area Office, 650 Capitol Mall, Suite 8-300, Sacramento, California 95814. Mike may be reached by telephone at (916) 930-3600 or Fax at (916) 930-3629.

Sincerely,

for Rodney R. McInnis
Acting Regional Administrator

cc: Jim Lecky, NMFS, Long Beach, CA
Wayne White, USFWS, Sacramento, CA