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Mr. Will Stelle, Regional Administrator
West Coast Region National Marine Fisheries Service
7600 Sand Point Way, NE, Bldg 1
Seattle, WA 98115-0070

RE: Habitat Expansion Agreement Annual Report for period beginning July 2013 through June 2014.

Dear Mr. Stelle:

The purpose of this letter is to provide an Annual Status Report (**Annual Report**) to the National Marine Fisheries Service (**NMFS**) on progress achieved in implementing habitat expansion actions contemplated under the *Amended Habitat Expansion Agreement for Central Valley Spring-Run Chinook Salmon and California Central Valley Steelhead (HEA)*, which has an effective date of May 9, 2011. This Annual Report is intended to fulfill the reporting obligation of the Licensees, Pacific Gas and Electric Company (**PG&E**) and the California Department of Water Resources (**DWR**), described in Section 6.2 of the Amended HEA. The reporting period covered by this Annual Report is July 2013, when the last Annual Report was submitted, through June 2014.

Following the submittal of last year's annual report, we continued to look forward to receiving a response from NMFS regarding the Final Habitat Expansion Plan (**HEP**) that was submitted by DWR and PG&E in November 2010. Additionally, we continued to track the ongoing legal dispute over the February 29, 2012 Biological Opinion for the Army Corps of Engineers' (**Corps**) operation and maintenance of Englebright and Daguerre Point dams and Englebright Reservoir (**2012 BiOp**), because of its relationship with the Lower Yuba River habitat expansion actions proposed in the Final HEP. The inclusion of habitat expansion actions as the Corps' responsibility in NMFS' 2012 BiOp that overlapped with those included in the 2010 Final HEP contributed to the uncertainty of eligibility for the proposed HEP actions under the HEA.

In January 2014, NMFS issued its response to the Final HEP, making the determination that the habitat expansion actions proposed in the Final HEP do not meet the following NMFS HEA Approval Criteria: (a) estimated to meet the habitat expansion threshold; (b) assures necessary testing, operation and maintenance; (c) supports establishing a geographically separate, self-sustaining population of spring-run; and (d) supports separating spring-run habitat from Central Valley fall-run Chinook salmon. On the subject of Approval Criterion (e) "meets the requirements for eligible habitat expansion action(s) pursuant to Section 3 of this Agreement," NMFS indicated that it would not make a determination due to ongoing consultations regarding preparation of a new biological opinion for the Corps' activities in the lower Yuba River. Leading up to the issuance of the January 2014 letter, NMFS' primary argument against the actions proposed in the Final HEP had been eligibility. In conclusion, NMFS indicates that "this determination is not a final decision on whether to approve the habitat expansion actions recommended in the HEP," but recommends "that alternative or modified habitat expansion actions should be developed that will fulfill the purpose, goal, and approval criteria of the Amended HEA."

We are disappointed that NMFS has made a negative determination on Approval Criteria (a), (b), (c), and (d), because we are confident that the actions proposed in the Final HEP not only meet the NMFS Approval Criteria, but also provide a cost-effective and timely contribution to the recovery of spring-run Chinook salmon and steelhead. In fact, in the *Final Central Valley Chinook Salmon and Steelhead Recovery Plan*, issued on July 22, 2014, NMFS recommends two elements of the Final HEP: YUR-1.2, spawning habitat improvement in the Englebright Dam Reach of the lower Yuba River, Action Priority 1; and YUR-3.3, consideration and possible implementation of spring-run and fall-run Chinook salmon segregation in the lower Yuba River, Action Priority 3. Further, based on comments in the NMFS letter of January 2014, we are concerned that NMFS either misunderstood or did not fully consider information that we provided in the Final HEP or during our October 11, 2012 meeting at the NMFS office in Santa Rosa to discuss technical issues.

In May 2014, NMFS issued two documents of importance relative to the legal dispute over the 2012 BiOp: 1) Final Biological Opinion on the Corps' operation and maintenance of Daguerre Point Dam and fish ladders; and 2) Concurrence Letter for the Corps' ongoing operation and maintenance of Englebright Dam and Reservoir. These documents superseded the 2012 BiOp and no longer include the Corps' responsibility for habitat expansion actions that overlap with those proposed in the Final HEP. Thus, the eligibility of the proposed HEP actions has been clarified, as they now apparently meet NMFS Approval Criterion (e). We are encouraged that, in light of these recent developments, there may now be a new opportunity for DWR, PG&E, and NMFS to meet and confer over the Final HEP and come to an agreement over the future of the HEA. However, while we do not necessarily agree with the view expressed by NMFS in its January 2014 response letter regarding the Final HEP, we do agree that the Licensees and NMFS should meet to discuss all options for working together to find an agreeable resolution to implementing the HEA.

As a first step in restarting HEA discussions, we recommend that a meeting be held among the HEA Principals from NMFS, DWR, and PG&E at the earliest convenience of the three parties.

Please let us know if you concur with this approach, and we'll work towards determining a meeting time and location. We look forward to continuing to work with NMFS on implementation of the HEA. If you have any questions regarding this Annual Report, please contact either of us.

Sincerely,



Dean F. Messer, PhD
Chief, Division of Environmental Services
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