

**DEPARTMENT OF WATER RESOURCES**

1416 NINTH STREET, P.O. BOX 942836

SACRAMENTO, CA 94236-0001

(916) 653-5791



April 9, 2007

Mr. Kirk C. Rodgers, Regional Director  
United States Bureau of Reclamation  
Mid-Pacific Region  
Federal Office Building  
2800 Cottage Way  
Sacramento, California 95825-1898

Dear Mr. Rodgers:

In May and July 2006 the U.S. Bureau of Reclamation (Reclamation) requested re-initiation of formal consultation under Section 7 of the Endangered Species Act (ESA) with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) for the continued operations of the Central Valley Project (CVP) and State Water Project (SWP) in the Sacramento and San Joaquin River watersheds. Reclamation requested re-initiation of consultation on the NMFS 2004 salmonid biological opinion to address critical habitat listings for steelhead and salmon and the listing of green sturgeon. Reclamation requested re-initiation of consultation on the USFWS 2005 delta smelt biological opinion due to emerging data on the delta smelt and new information resulting from studies on the decline of pelagic organisms in the Delta.

During the consultation to update these biological opinions, the Department of Water Resources (DWR) requests that it participate with Reclamation as an applicant under the ESA and its regulations. (See Title 50, Code of Federal Regulations, Section 402.02 (defining applicant as an entity that obtains approval or authorization from the federal government as a prerequisite to conduct the proposed action).) DWR is requesting to be an "applicant" during consultation based on the mutual obligations and approvals among our CVP and SWP operators to coordinate activities to comply with the terms and conditions of agreements and regulations related to these operations. Reclamation and DWR coordinate the CVP and SWP operations pursuant to the "Agreement Between the United States and State of California for the Coordinated Operation of the CVP and SWP" (COA 1986) and agreements implementing the federal San Luis Act, as well as under their responsibilities pursuant to the State Water Resources Control Board's Decision 1641.

The mutual obligations of the agencies under these agreements and regulations affect activities and programs described as the proposed action in the biological assessment that will be submitted to the fish agencies for the consultation.

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Since the SWP became operational, DWR and Reclamation have operated their respective projects under mutual agreement to coordinate their operations. The coordinated operations are necessary to satisfy water quality requirements under their water right permits and to assure that each project obtains its appropriate share of available water and supports its appropriate share of obligations to protect the environment. In 1960, Reclamation and DWR entered into an agreement that provided for coordinated operations to resolve protests of each agency to the applications of the other for water rights and to clear the way for construction of the San Luis Reservoir, used by both agencies pursuant to the San Luis Act. In 1986, Reclamation and DWR entered into the COA to define a coordinated operation according to mutually authorized accounting of water that would meet inbasin requirements, including water quality standards required under D-1641. Reclamation and DWR must comply with D-1641 as a condition of their respective CVP and SWP water right permits. For these reasons, DWR believes it is important that it be accorded applicant status during the ESA Section 7 consultation for the CVP and SWP operations.

If you have any questions regarding the above, please contact me at (916) 653-7007 or have your staff contact Cathy Crothers, Staff Counsel, at (916) 653-5613 or [crothers@water.ca.gov](mailto:crothers@water.ca.gov).

Sincerely,



Lester A. Snow  
Director

cc: H. Dale Hall, Director  
United States Fish and Wildlife Service  
1849 C Street, NW  
Washington, DC 20240

Dr. William Hogarth, Director  
National Marine fisheries Service  
1315 East West Highway  
Silver Springs, Maryland 20910

L. Ryan Broddrick, Director  
California Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814