

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE DEPARTMENT OF FISH AND GAME AND  
THE DEPARTMENT OF WATER RESOURCES  
DURING  
REINITIATED CONSULTATION OF FEDERAL BIOLOGICAL OPINIONS ON  
THE COORDINATED OPERATIONS OF  
THE STATE WATER PROJECT AND CENTRAL VALLEY PROJECT

We the undersigned, as Director of the California Department of Fish and Game (DFG) and Director of the Department of Water Resources (DWR), hereby enter into this Memorandum of Understanding (MOU) in order to facilitate and expedite completion of the reinitiated consultation of the federal biological opinions on the coordinated operations of the State Water Project (SWP) and Central Valley Project (CVP). Our two departments desire that the federal biological assessment and resulting biological opinions be developed to include requirements for SWP operations (including coordinated operations) that are consistent with the California Endangered Species Act (CESA). The reinitiated consultation discussed in this MOU is the consultation under Section 7 of the federal Endangered Species Act (ESA) that includes the U.S. Bureau of Reclamation (Reclamation), the U.S. Fish and Wildlife Service (USFWS), and the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) analyzing the effects of the SWP and CVP operations on the delta smelt and salmonid species in the Sacramento – San Joaquin Delta Estuary (federal biological opinions).

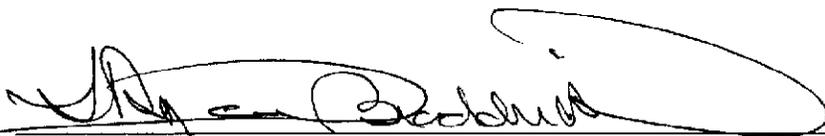
DWR and DFG recognize the importance of having the aspects of the federal biological opinions that relate to SWP operations developed in a manner that is also consistent with CESA. Therefore, DWR and DFG make the following commitments:

1. The parties' goal is to complete their work so that the biological assessment can be completed by October 2007. This would facilitate completion of the biological opinions by the federal fish agencies by April 2008. DWR and DFG will assign necessary staff and resources to fully and actively participate in the federal reinitiated consultation to meet this goal. DWR will provide financial assistance to DFG, if necessary, to meet this goal.
2. The Directors of DWR and DFG will confer at least monthly to ensure that the goals of completing the opinions as quickly as possible and the possible use of the opinions for CESA compliance are achieved.
3. DWR, as an applicant during the reinitiated consultation process with Reclamation, will be assisted by DFG in the reinitiated consultation.

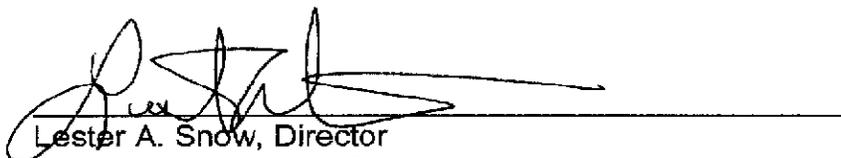
4. DWR, upon completion of the federal reinitiated consultation and the issuance of new biological opinions by USFWS and NOAA Fisheries, will submit to DFG a request for a consistency determination under CESA section 2080.1 based upon the new opinions and incidental take statements.
5. Although DFG commits to participating in the federal reinitiated consultation, it retains all independent authority to review and determine whether the resulting opinions are consistent with CESA.
6. During the reinitiated consultation and pending completion of the federal biological opinions, DWR will take the following actions related to protecting species through the adaptive management provisions of the existing biological opinions:
  - Keep all variable water assets used for the protection of at-risk native fish species consistent with those used in the past several years.
  - If purchased water assets for the protection of at-risk native fish species are insufficient to meet the recent fixed asset targets (210-250 Thousand Acre Feet), DWR will provide water to the fixed asset account to meet these targets.
  - Adjust or reduce the determination of available interruptible water deliveries so that this determination does not interfere with the repayment of "carryover debt" anticipated by the existing biological opinions.
7. DWR and DFG will begin negotiations to amend the 1986 "Agreement Between DWR and DFG To Offset Direct Fish Losses In Relation to the Harvey O. Banks Delta Pumping Plant" (known as the Four Pumps Agreement) to at least address direct and indirect take of delta smelt and indirect take of salmon and methods to develop mitigation credits for this take. The goal is to finish this process in time for the amendment to be included in the project description for the biological assessment due in October 2007.

DWR and DFG agree that by signing this MOU they will make good faith efforts to fulfill the above commitments. DWR and DFG acknowledge that other than the obligation to make good faith efforts the MOU is not binding and each Department retains its full statutory and regulatory authorities.

Effective as of May 7, 2007 by:

A handwritten signature in black ink, appearing to read "L. Ryan Broddrick", written over a horizontal line.

L. Ryan Broddrick, Director  
Department of Fish and Game

A handwritten signature in black ink, appearing to read "Lester A. Snow", written over a horizontal line.

Lester A. Snow, Director  
Department of Water Resources