

ASSURANCES

PROBLEM: Diverters may be reluctant to install fish screens at their diversions because more stringent fish screen criteria for newly listed, threatened or endangered species could cause them to invest additional funds to upgrade their screens to meet the new criteria. Conversely, regulatory agencies are unable to provide all encompassing assurances since they are required by their respective Endangered Species statutes to provide adequate protection for all listed species.

PROPOSAL: Develop an assurances policy similar to the "No Surprises" assurances policy being used by the Department of Interior for the Habitat Conservation Planning Process under provisions of Section 10 of the federal Endangered Species Act. (Note: a similar approach is being applied by the State of California in their Natural Community Conservation Planning Process) The policy would provide that no additional screen requirements would be imposed should additional species be listed (providing the diverter addressed the conservation of that species when the project was designed and built). Such an assurances policy would provide a level of comfort and certainty to the diverter while providing adequate protection for listed and candidate species and ensuring appropriate application of both State and Federal Endangered Species Acts.

Some additional concerns to be addressed include:

Events and conditions that would nullify indemnification period

Consistent criteria (see Fish Screen Criteria paper)

Cost

Operations and maintenance required

Action required if a catastrophic event occurs.

Operations and maintenance performed, as appropriate

Speedy recourse if diverter does not adequately operate or maintain the screen

METHOD OF DEVELOPING SOLUTION: Both the Fish and Wildlife Service and the Bureau of Reclamation believe that the Anadromous Fish Screen Program, which includes representatives of the state and federal regulatory agencies on its policy advisory group, can develop a set of assurances for review and comment by stakeholders and the interested public within the next several months. In order to develop broad assurances this program will address both anadromous fish and non-anadromous resident fish.

ANTICIPATED RESULT: The development of a set of assurances that includes recognizing that maximum longevity will be provided to diverters whose screens are built to specifications that protect the suite of species that could become endangered in the area of the diversion. If a screen is built to this level of specification the diverter will not be required to upgrade his or her screen even if additional species become of concern, or listed.

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