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June 5, 1997

Roger Patterson
US Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Re: Violation of Delta Smelt Biological Opinion and Failure to Fully Meet the Objectives of the Bay-Delta Accord

Dear Mr. Patterson,

The Bureau of Reclamation (Bureau) is in clear violation of the federal Endangered Species Act (ESA), as it relates to Delta smelt incidental take limits specified in the Biological Opinion (BO), and have not met the intent nor the objectives of the Bay-Delta Accord, as it pertains to fishery protection under the ESA. As of this writing, both Bureau and state Department of Water Resources (DWR) officials have chosen not to implement actions recommended by the US Fish and Wildlife Service (Service) to improve habitat conditions in the Delta, and to decrease salvage of the threatened Delta smelt at the federal and state pumping facilities.

According to the March 6, 1995 BO, the total allowable incidental take of Delta smelt for the month of May, in an above normal year, was 9,769 fish. This number was exceeded by the projects three fold. For the month of June, the allowable incidental take is 10,709 fish. The Service has advised the Bureau to make changes in operations at this time to reduce the risk to the remaining Delta smelt and decrease salvage at the facilities. In fact, the Service stated in its May 30, 1997 memorandum to the Bureau that, "...the US Fish and Wildlife Service believes the operation of the projects is out of compliance with the March 6, 1995, biological opinion, and its continued actions pose a serious threat to the conservation of delta smelt." As of this writing, the projects have salvaged 25% of the allowable monthly take. According to the most recent monitoring information there is potential for the June take limit to be exceeded under current and future proposed operating conditions.

We write to bring this urgent matter to your attention for several reasons. It appears that the Bureau and DWR view compliance with ESA take limits as discretionary, that the implementation of protective actions is reliant on the ability to make up all lost water later in the year, and that dry spring conditions make additional protective actions unreasonable. These claims are invalid under the ESA and the Accord.

We find this situation to be alarming especially given the importance of the Delta smelt BO and the success of the CALFED process. We urge the Bureau to comply with the Service's recommendations to avoid exceeding the June incidental take limit for Delta smelt, thereby meeting the requirements of the BO, and the intent of the Accord.

Sincerely,



Elise Holland
Fisheries Program Director

cc: John Garamendi, Deputy Secretary, US Department of Interior
Mike Spear, Regional Director, US Fish and Wildlife Service
Don Barry, Acting Assistant Secretary for Fish, Wildlife, & Parks
Robert Perciasepe, Assistant Administrator for Water, US EPA
Doug Wheeler, Secretary, The Resources Agency