UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

September 24, 2004

In Reply Refer To:
151422SWR00SA5851:JSM

Kirk Rodgers
Regional Director
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, California 95814

Dear Mr Rodgers:

This letter acknowledges National Marine Fisheries Service's (NOAA Fisheries) receipt of your July 27, 2004 letter requesting reinitiation of formal section 7 consultation under the Endangered Species Act (ESA) of 1973, as amended [16 U.S.C. 1531 *et seq.*], concerning the efficacy of the Environmental Water Account (EWA) and progress toward achieving the milestones for the CALFED Bay-Delta Program (CALFED) in conserving and promoting recovery of listed species. This reinitiation concerns Federally listed endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), and threatened Central Valley steelhead (*O. mykiss*), pursuant to the ESA. This letter is a follow-up to the reinitiation response letter sent to your office from NOAA Fisheries on August 24, 2004. We have also received supplemental information for the milestones assessment document from the California Department of Fish and Game on September 17, 2004. This information resulted from the 30-day public review of the milestones assessment document.

CONSULTATION HISTORY

After extensive public workshops (beginning in July 1995) to involve stakeholders in developing a Bay-Delta solution, a list of alternatives were developed and refined into three conceptual comprehensive approaches in June 1996. In September of 1996, CALFED started a two-year environmental review of the conceptual alternative solutions. CALFED agencies participated in the development of several planning documents related to the overall program including the draft Multi-Species Conservation Strategy (MSCS) and the draft Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/EIR). After additional public review and comment, as well as agency review and alternative refinement, the final MSCS and PEIS/EIR was released in July 2000, serving as the biological assessment for the CALFED Program.

The Programmatic Record of Decision (ROD) for the CALFED Program was signed by 13 Federal and State agencies on August 28, 2000. Based on the analysis in the MSCS and the final PEIS/EIR, the CALFED agencies fulfilled regulatory requirements for programmatic implementation of the CALFED Program under Section 7 of the ESA.

The U.S. Bureau of Reclamation (Reclamation) initiated formal consultation on August 18, 2000 for the CALFED Program, and NOAA Fisheries issued a programmatic biological opinion on the effects of the CALFED Program on Federally listed endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), and threatened Central Valley steelhead (*O. mykiss*), on August 28, 2000.

Several components of the CALFED Program are designed to further consideration of listed species and compliance with the ESA. These components are an inseparable part of the CALFED Program and include the Ecosystem Restoration Program (ERP), MSCS, Water Quality Program, a short-term (four year) Environmental Water Account (EWA) and its operating principles, and implementation strategies including monitoring and adaptive management. Commitments from the CALFED agencies to uphold the Federal and State Endangered Species Acts and to implement the programs and commitments addressed in the ROD contributed to the Federal consultation process, reaching a conclusion of no jeopardy or adverse modification of designated critical habitat for listed species. These commitments are foundations for the State's decision to approve the MSCS as a programmatic Natural Community Conservation Plan. NOAA Fisheries signed the Conservation Agreement Regarding Multi-Species Conservation Strategy of August 28, 2000. The Conservation Agreement Regarding MSCS requires annual review of the achievement of meeting the MSCS milestones and EWA efficacy through September 30, 2004. The Conservation Agreement Regarding MSCS expires on September 30, 2004, but may be amended to extend the program-level regulatory commitments consistent with reinitiation findings.

The ROD contained a set of 119 "milestones" for the CALFED Program. The milestones are a discrete set of actions intended to be implemented during Stage 1 of the CALFED Program. These actions are derived from the PEIS/EIR technical appendices including the MSCS and program plans for the ERP and Water Quality Program. NOAA Fisheries, U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG) cooperated to ensure that the MSCS, ERP, and Water Quality Program were implemented to sustain the programmatic ROD, Natural Community Conservation Plan Act, California Endangered Species Act, and Federal ESA compliance for all CALFED Program elements. NOAA Fisheries and USFWS committed to reinitiating ESA section 7 consultation no later than 180 days prior to September 30, 2004, in the Conservation Agreement Regarding MSCS, to evaluate progress toward achieving milestones and the efficacy of the EWA.

On December 23, 2003, NOAA Fisheries concurred with Reclamation, pursuant to section 7 of the ESA, that the EWA Program may affect but is not likely to adversely affect Sacramento River winter-run Chinook salmon and its critical habitat, Central Valley spring-run Chinook salmon, and Central Valley steelhead. That concurrence evaluated the EWA Program through

the end of Stage 1 as referenced in the PEIS/EIR. This letter also relates to the efficacy of the EWA Program and progress toward fulfilling milestones.

The reinitiation requested by Reclamation, on behalf of the Federal CALFED Program agencies, consisted of the reinitiation package received by NOAA Fisheries staff on July 27, 2004 and supplemental information received on September 17, 2004. The proposed action stated in the reinitiation request has not changed from that described in the CALFED Program ROD of August 2000, and thus will not be reiterated in this letter. This NOAA Fisheries response seeks to ensure continued milestone implementation and EWA efficacy consistent with the project description.

STATUS OF SPECIES AND CRITICAL HABITAT

NOAA Fisheries listed Sacramento River winter-run Chinook salmon as threatened under emergency provisions of the ESA on August 4, 1989 (54 FR 32085), and formally listed the species on November 5, 1990 (55 FR 46515). The State of California listed Sacramento River winter-run Chinook as endangered in 1989 under the California Endangered Species Act and on January 4, 1994, NOAA Fisheries reclassified the species as endangered and a draft recovery plan was issued August 1997. Critical habitat was designated on June 16, 1993, and consists of the Sacramento River from Keswick Dam to Chipps Island at the westward margin of the Sacramento-San Joaquin Delta, and all of the north San Francisco, San Pablo, and Suisun Bays.

The Central Valley spring-run Chinook salmon Ecologically Significant Unit (ESU) is listed as a threatened species under both the Federal and California Endangered Species Acts. The Federal and State listing decisions were finalized in September 1999 (64 FR 50394) and February 1999, respectively. The ESU includes all naturally spawning populations of Central Valley spring-run Chinook salmon in the Sacramento River and its tributaries.

NOAA Fisheries listed the Central Valley steelhead ESU as threatened on March 19, 1998 (63 FR 13347). The ESU includes all naturally-produced Central Valley steelhead in the Sacramento-San Joaquin River Basin. Steelhead from San Pablo and San Francisco Bays are not included in the Central Valley ESU. NOAA Fisheries published a final 4(d) rule for Central Valley steelhead on July 10, 2000 (65 FR 42422).

Detailed life history and species status information for Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead can be found in the June 14, 2004 proposed listing determinations for West coast salmonids (69 FR 33101).

MILESTONE AND EWA REVIEW

To ensure continued milestone implementation and EWA efficacy consistent with the project description, and to help guide future priorities regarding milestone revision and project proposal solicitation, NOAA Fisheries is providing programmatic-level comments on the first four years of EWA and milestone implementation.

Milestones

CALFED has initiated an admirable effort toward restoring the Central Valley ecosystem and has made progress toward meeting many of the milestones intended to be beneficial to listed species; however, NOAA Fisheries recommends the following additional efforts during the next three years of Stage 1 in order to maintain consistency with the project description in the ROD and the August 2000 NOAA Fisheries biological opinion.

1. Benefits of the milestone actions, as they relate to recovery of listed species, need to be adequately documented and demonstrated. Although significant progress has occurred and many of the milestones intended to be beneficial to listed species are on or ahead of schedule, this information is needed by the end of Stage 1 to evaluate actions related to listed species, particularly those designated as "R" species in the MSCS. Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead are all designated "R" species with specific goals towards achieving recovery as identified in the MSCS.

2. The CALFED Program should develop an enhanced baseline monitoring package in coordination with existing monitoring programs, with committed funding to evaluate and document the benefits of actions relative to fulfilling the milestones and contributing toward recovery of listed species, as described in the ROD. Considerably more environmental baseline information is needed to effectively assess the progress toward achieving recovery as a result of milestone implementation. Current long-term monitoring programs necessary to track ecosystem changes and effects resulting from CALFED actions are not adequate to assess ecosystem or species metrics. Of particular concern to NOAA Fisheries is the lack of life history and status and trend information regarding Central Valley steelhead. The recent CALFED Science Program proposal solicitation and discussion of future Interagency Ecological Program monitoring program expansion are opportunities for the CALFED Science Program to begin meeting these obligations.

3. Increased efforts must be made to evaluate, verify, and update data concerning instream flow needs, carryover storage options, temperature objectives, and methods of restoring the natural ecological processes of Central Valley Rivers and provide habitat for listed species. Flow is a critical factor for restoration and recovery, yet actions that assess instream flow needs and implementation of flow measures are behind schedule. Temperature thresholds should be identified and management plans are needed to provide appropriate spawning, incubation, and rearing conditions in all tributaries. Progress with carryover storage re-operation also is behind schedule in many watersheds. The Environmental Water Program (EWP) is an effort to acquire water and water rights, but, available data concerning the instream flow needs of listed species such as Central Valley steelhead in some tributaries is extremely limited. For example, shifts of carryover storage and resultant changes in flow and temperature could be assessed to augment watershed hydrographs to benefit listed salmonids, thus

contributing toward recovery. Such data would aid in guiding and prioritizing EWP actions and acquisitions.

Environmental Water Account

The Environmental Water Account has made significant strides in reducing conflicts between fishery protection and water project operations, incorporating additional water supply reliability, coordination, and flexibility. The reduction of take at the Federal and State pumping plants by using EWA assets is thought to be beneficial to listed species, as well. NOAA Fisheries appreciates the complexity and challenges associated with the ambitious goals of the EWA Program.

The primary objective of EWA is to provide sufficient water supply, combined with the Ecosystem Restoration Program and the regulatory baseline, to address CALFED's fishery protection and restoration/recovery needs (EWA Operating Principles Agreement). Furthermore, the EWA is anticipated to "reduce Delta exports during key rearing and outmigration periods for juvenile Chinook salmon and steelhead" (NOAA Fisheries biological opinion) at no cost in terms of water allocation to south of Delta water users.

The EWA Program has been successfully implemented consistent with the project description as described in the MSCS project action statement; however, benefits of the program to listed species have not been well demonstrated, specifically, documentation and study of the effects of EWA actions on listed salmonids. The EWA Program should document clearly and demonstrate how EWA actions affect Sacramento River Winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead. The ROD, MSCS, PEIS/EIR, and other CALFED Program documents describe a synergistic relationship with the Science Program, and indicate the impacts of all CALFED actions, including EWA, to listed species would be monitored, studied, and adaptively managed. Scientifically sound performance measures are needed to describe and evaluate the benefits of the EWA Program on listed salmonids, and the appropriate monitoring and assessment methods need to be implemented to assess overall program performance.

NOAA FISHERIES DETERMINATION

NOAA Fisheries has determined that the first four years of the program have been implemented consistent with the project description of the ROD, according to the milestones as described in the MSCS, and that the intent is to continue implementation of Stage 1 actions over the remaining three years consistent with the project description. The Ecosystem Restoration Program (ERP) appears to have met the minimum monetary obligations stated in the ROD. The EWA Program has met obligations stated in the ROD by acquiring assets using functional equivalents which kept costs below the minimum monetary obligation for EWA. Progress toward fulfilling milestones and EWA efficacy is occurring and is adequate at this time.

The annual review of progress toward meeting the milestones and EWA actions by fishery agencies (including NOAA Fisheries) also ensures the regulatory conditions of the program are being met. NOAA Fisheries has determined that a supplemental biological opinion is not necessary at this time because no new actions have been proposed and implementation of the project to date has remained consistent with the original project description. The CALFED program annual reporting requirement as described in the NOAA Fisheries biological opinion, the ROD, and the Conservation Agreement Regarding MSCS should include the focus areas described in this letter. This needs to be achieved during the remaining three years of Stage 1. In addition, the multi-year program plan for the ERP should address these identified focus areas. Annual reporting is necessary to assess the continued progress toward achieving the milestones and maintaining the efficacy of the EWA. The regulatory agencies will evaluate the consistency of the CALFED Program as described in respective biological opinions and binding documents at the end of Stage 1.

We look forward to working with the CALFED Program on the continuing implementation and assessment of the milestones and the EWA Program. If you have any questions regarding this correspondence, please contact Mr. Jeff McLain in our Sacramento Area Office, 650 Capitol Mall, Suite 8-300, Sacramento, CA 95814. Mr. McLain may be reached by telephone at (916) 930-5648, or by Fax at (916) 930-3629.

Sincerely,

for Rodney R. McInnis
Regional Administrator

cc: NOAA Fisheries-PRD, Long Beach CA
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Mr. Mike Pool, U.S. Bureau of Land Management, 2800 Cottage Way, Room W-1622 Sacramento, CA 95825
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