ENVIRONMENTAL WATER ACCOUNT

FINAL ENVIRONMENTAL IMPACT STATEMENT/
ENVRIONMENTAL IMPACT REPORT

APPENDIX A

NOAA Fisheries
Letter of Concurrence

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

December 23, 2003

In Reply Refer To:
SWR-02-SA-6418:BSK

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Mr. Frank Michny
Regional Environmental Officer
Bureau of Reclamation
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825-1898

Dear Mr. Michny:

We have received your letter of October 2, 2003 requesting concurrence with your determination that the Environmental Water Account Program (EWA) may affect, but is not likely to adversely affect the Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) and its critical habitat; the Central Valley spring-run Chinook salmon (*O. tshawytscha*); and the Central Valley steelhead (*O. mykiss*). This list correctly reflects the listed species under our jurisdiction that may be affected by the EWA.

Reclamation has identified the EWA as a four-year (2001-2004) cooperative management program to protect at-risk fish of the Bay-Delta estuary. This program was established through the CALFED Programmatic EIS/EIR Record of Decision (ROD) and may be extended through written agreement by the EWA agencies (Bureau of Reclamation, US Fish and Wildlife Service, NOAA Fisheries, California Department of Fish and Game, and California Department of Water Resources). The EWA Draft EIS/EIR and Action Specific Implementation Plan (ASIP) that accompanied your request for concurrence analyzes EWA actions that will start at the time the EWA ROD is signed in 2004 and extend through 2007. In addition to comparing potential impacts, the EWA agencies have established the following management measures to avoid adverse affects on listed salmonids:

1. The EWA agencies will coordinate EWA water acquisitions and transfer actions with Federal (Reclamation, USFWS, and NOAA Fisheries), State (DWR and CDFG), other CALFED agencies, and regional programs (e.g., the San Francisco Bay Ecosystem Goals Project, the Anadromous Fish Restoration Program, the Senate Bill [SB] 1086 Program, the U.S. Army Corp of Engineers' (USACE) Sacramento and San Joaquin Basin Comprehensive Study, the Riparian Habitat Joint Venture, the Central Valley Project Improvement Act (CVPIA), the Central Valley Habitat Joint Venture, and the Grassland

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Bird Conservation Plan) that could affect management of evaluated species. Coordination would avoid conflicts among management objectives and would be facilitated through CALFED's water transfer program. Coordination is prescribed by the EWA Operating Principles Agreement and transfers are addressed in Article III of that Agreement.

2. The EWA agencies will review potential water contracts for biological concerns prior to signing contracts or calling for water deliveries to avoid acquisition or transfer of water that would reduce flows essential to maintaining populations of native aquatic species in the source river.

3. EWA water transfers will not increase exports, over biological opinion criteria, during times of the year when anadromous and estuarine fish are most vulnerable to damage or loss at project facilities or when their habitat may be adversely affected.

4. The EWA agencies will manage acquisition and transfer of stored reservoir water to avoid impairing compliance with flow requirements and maintenance of suitable habitat conditions in the source river in subsequent years.

5. The EWA agencies will fully adhere to the terms and conditions in all applicable CESA and ESA biological opinions and permits for CVP when implementing the EWA.

6. The EWA agencies will minimize flow fluctuations resulting from the release of EWA assets from project reservoirs to preclude stranding of juvenile salmonids.

7. In May of each year the EWA agencies will evaluate Folsom Reservoir coldwater pool availability to benefit over-summering juvenile steelhead and will request release of EWA assets consistent with the evaluation.

8. The EWA agencies will consult with the local river management teams regarding flow ramping rates before and after EWA transfers to avoid displacement or inadvertent downstream movement of juvenile steelhead.

ESA Section 7 Consultation

The National Marine Fisheries Service (NOAA Fisheries) has reviewed the EWA Draft EIS/EIR and the ASIP that you attached to your request. We have examined the structure of the CALFED Bay-Delta Program. We have considered the biological opinion for the implementation phase of the Program (August 28, 2000), the baseline fishery protection requirements established by the biological opinions for operation of the Central Valley Project (CVP) and State Water Project (SWP) (February 12, 1993, as amended, and September 20, 2002) and the biological findings in the EWA ASIP. The ASIP examined flow, water temperature, annual early life-stage survival, Delta habitat conditions, salvage at the SWP and the CVP export facilities, and implementation of conservation measures developed by the EWA agencies

As a result of this review and our participation in the development of the Draft and the operation of the EWA, NOAA Fisheries concurs with your determination that the EWA "may affect, but is not likely to adversely affect" the listed species subject to this consultation.

The determination is supported by the following factors:

1. The impacts of operating the water supply system on listed salmonids are addressed in the biological opinions initiated by Reclamation and the California Department of Water Resources (DWR) pertaining to the CVP and the SWP. The CALFED ROD also identifies the baseline level of fishery protection requirements for CVP/SWP Project Operations. The baseline includes the February 12, 1993 (as amended) Winter-run Chinook salmon Biological Opinion (NOAA Fisheries 1993), the 1995 Delta Water Quality Control Plan (1995 Delta WQCP) and SWRCB's Decision 1641, the Vernalis Adaptive Management Plan (VAMP), the 1995 Delta Smelt Biological Opinion (USFWS), the September 20, 2002, Spring-run Chinook and Steelhead Biological Opinion (NOAA Fisheries 20023), the Full Use of 800 TAF Supply of Water Pursuant to Section 3406(b)(2) of the CVPIA, and Level 2 Refuge Water Supplies. These documents are listed in Section 2.3 of the EWA ASIP.

2. The biological opinion for winter-run Chinook salmon (NOAA Fisheries 1993) established: 1) a reasonable and prudent alternative to CVP/SWP operation to avoid jeopardy; 2) a series of actions that are intended to minimize the adverse effects of flow fluctuations associated with upstream reservoir operations on salmonid life history stages; and 3) incidental take at the pumping facilities.

3. For Sacramento River winter-run Chinook salmon, flows on the Sacramento River would not be reduced below the NOAA Fisheries Winter-run Chinook Salmon BO flow criteria. Water temperatures, would not exceed the NOAA Fisheries Winter-run Chinook Salmon BO temperature criteria more frequently, and no change in long-term average annual early life-stage survival in the Sacramento River would occur with the implementation of the Proposed Action. Long-term average Delta outflow would increase, relative to the basis of comparison, and monthly flows would be essentially equivalent to or greater than flows under the basis of comparison. The monthly mean position of X2 would move downstream or would not shift. The monthly E/I ratio would be identical to or less than the E/I ratio in all months simulated for the February through June period. The Proposed Action would provide a benefit by decreasing the frequency of reverse flows and reducing the magnitude when reverse flows would still occur. Overall, such changes would be considered a benefit to juvenile salmonid emigration.

4. The September 20, 2002 Spring-run Chinook and Steelhead BO also established non-discretionary terms and conditions to implement reasonable and prudent measures, as well as discretionary conservation recommendations to benefit these listed species.

5. For Central Valley spring-run Chinook salmon, EWA flow reductions in the main stem migration corridor of the Sacramento, lower Feather, and lower Yuba Rivers would not

be of sufficient frequency or magnitude affect attraction and holding of immigrating adults. Spawning, egg incubation, and initial rearing, juvenile rearing or emigration would not likely occur in these sections of the rivers at the time that flow reductions would occur. Water temperatures in the main stem migration corridors of the Sacramento, lower Feather and lower Yuba Rivers would not be of sufficient frequency or magnitude to result in water temperatures above the upper end of the suitable range of temperatures required for adult immigration and holding. Spawning, egg incubation, and initial rearing is likely to take place in areas that are unaffected by flow curtailments for EWA or by releases to compensate for flow reductions. Juvenile rearing and emigration may benefit from EWA curtailments of water transfers from the Delta that result in increases in flows transporting juveniles toward the ocean.

6. For Central Valley steelhead, EWA flow reductions in the Sacramento, lower Feather, Yuba, lower American, and San Joaquin Rivers would not be of sufficient frequency or magnitude to affect attraction of immigrating adults. Spawning, egg incubation, initial rearing, and juvenile over-summer and fall/winter rearing may benefit from EWA flows that are released from storage in the summer to replace curtailments in the spring or early summer. Changes in water temperature in the Sacramento, lower Feather, Yuba, lower American, and San Joaquin Rivers would not be of sufficient frequency or magnitude to result in water temperatures above the suitable range of temperatures required for spawning, incubation, and initial rearing, or juvenile rearing and emigration.

Essential Fish Habitat

The Proposed Action area has been identified as Essential Fish Habitat (EFH) for Pacific salmon in Amendment 14 of the Pacific Salmon Fishery Management Plan, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Federal action agencies are mandated by the MSA (section 305[b][2]) to consult with NOAA Fisheries on all actions that may adversely affect EFH, and NOAA Fisheries must provide EFH Conservation Recommendations (section 305[b][4][A]). NOAA Fisheries has determined that the ESA consultation will also serve as the EFH Consultation for this project. NOAA Fisheries believes that the Proposed Action is not likely to adversely affect EFH for Pacific salmon.

The ESA and EFH determinations above are contingent on Reclamation and the EWA agencies implementing all measures intended to avoid and minimize impacts to fish and fish habitat identified in this letter and all other supporting documents including the consultation for the OCAP BO. Incorporation of the OCAP BO into the EWA ASIP, as noted in Chapter 2.3, includes the EFH by reference and thus applies here. EFH for Pacific groundfish and coastal pelagic species are not included since the majority of the habitats occupied by these species lie outside the Action Area for EWA effects.

Should additional information reveal that the project may affect Federally-listed endangered or threatened species, their critical habitat, or EFH for Pacific salmon in a way not previously considered or should action be modified in such a way that may cause additional affects to listed species, critical habitat, or EFH, this determination may be reconsidered. This response is in

accordance with Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), and section 305[b][4][A] of the Magnuson-Stevens Fishery Conservation and Management Act.

If you have any questions regarding this correspondence or if NOAA Fisheries can provide further assistance, please contact Mr. Brian Kinnear in our Sacramento Area Office, 650 Capitol Mall, Suite 8-300, Sacramento, CA 95814. Mr. Kinnear may be reached by telephone at (9160 930-3609, or by Fax at (916) 930-3629.

Sincerely,

for Rodney R McInnis
Acting Regional Administrator

cc: NMFS-PRD, Long Beach, CA