

WIIN Subtitle J – California Water comments

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December 11, 2016

Section 4001

- (a) The secretaries of Interior and of Commerce shall provide the maximum quantity of water supplies practicable to, by approving in accordance with applicable Federal and State lawsoperations or temporary projects to provide additional water supplies as quickly as possible, based on available information.

Comments:

While the language may incorporate laws specific to species listed under the State and Federal Endangered Species Act, it does not incorporate non-listed species (e.g. fall-run Chinook Salmon). It also says that decisions are to be based on available information. If no data exists for an operations question, then the water is required to be delivered, even if professional judgment identifies likely impacts.

- (b) (1)(A)implement a pilot project to test and evaluate the ability to operate the Delta cross-channel gates daily...to protect out-migrating salmonids, ... and maximize Central Valley Project and State Water Project pumping ... per SWRCB requirements

Comments:

A test program is a good idea. I like the use of salmonids here. Green and White Sturgeon and Delta Smelt should have also been identified.

- (b) (3) ... install a deflection barrier at Georgiana Slough and the Delta Cross Channel to protect migrating salmonids ...

Comments:

Sounds like a good idea. It needs to be evaluated. Salmonids good, should include other species (sturgeon).

- (b) (7) adot a 1:1 inflow to export ration for the increment of increased flow, from Arip 1 through May 31,unless the Secretary of the Interior and Secretary of Commerce determine in writing that a 1:1 inflow to export ratio ...will cause additional adverse effects

on listed salmonid species ...beyond the range of effects ...in the salmonid biological opinion

(7) (A)

The 1:1 inflow may only proceed if the

Secretary of Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with ... the ESA.

Comments:

If the amount of water being exported is equal to the amount of sold, transferred, or exchanged, that seems okay if the amount being sold, transferred or exchanged is subject to review under the ESA. It unclear if this language makes reliance on the 2009 CVP/SWP biological opinion, as amended in 2011; or if it includes biological opinions for water contracts as required under the 2009 CVP/SWP biological opinion.

This should be under both the approval of the Secretaries of Interior and Commerce. It appears to give the Secretary of Interior responsibility for species under the Department of Commerce (under the ESA).

(d)(2) Not later than 7 days after receiving a request for the Governor of California, the Secretaries ...the Secretary of Interior shall convene a final project decision meetingto decide whether to approve a project to provide emergency water supplies or otherwise address emergency drought conditions.

Comments:

7 days is a very short period to evaluate the impacts of proposal. The ESA identifies 135 days.

Section 4002.

(a) Interior and Commerce shall manage reverse flow in Old and Middle Rivers at the most negative reverse flow rate allowed ...under the biological opinions ...to maximize water suppliesunless it would cause additional adverse effects on listed species ...beyond that identified in the biological opinions...or would be inconsistent with State law ... or SWRCB requirements.

Comments

I do not know the specifics at these locations. The reverse flow is a problem. Only ESA listed species are identified. Fall-run Chinook Salmon are not included in the safe guard language.

Section 4003 Temporary Operational Flexibility for Storm Events

- (b) ...Reclamation shall undertake expanded monitoring programs and other data gathering to improve efficiency of operations for listed species protections and Central Valley Project and State Water Project water supply to ensure incidental take levels are not exceeded, and to identify potential negative impacts, if any.

Comments

I like this language, though it appears to be limited to operations under this section. It is unclear how monitoring will be expanded during storm events. That is often when it is unsafe for people to monitor, and conditions in the river make monitoring very difficult. Further down, under (e) it states that the agencies:

... shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short timeframe permitted for timely real-time decisionmaking in response to changing conditions in the Delta.

This would seem to say that no additional monitoring will take place. Also, non-listed fish are not considered.

Section 4004 Consultation on Coordinated Operations

Requires that any public water agency have access to discuss the development of biological assessments, be provided ESA consultation schedules, and receive copies of draft biological opinions and have opportunity to review and comment, and comments will be given due consideration during the consultation.

I like this from an open government point of view, but it will likely take more time for consultation to be completed (but no more time is provided). I think this will likely result in less discussion of consultations, and may result in more litigation.

Section 4005 Protections

(c)(1)(A)

Interior and Commerce shall take to action that:

Diminishes, impairs, or otherwise affects in any manner any are of origin, watershed of origin, county of origin, or any other water rights protection, including rights to water appropriated before December 19, 1914 provided under State law;

Or limit various section of the California Water Code

(e) (2) (A) Allocations

To agriculture water service contractors in the Sacramento River Watershed

100 percent in wet, and above normal years; and below normal years preceded by an above normal year or wet year.

Not less than 50 percent in a dry year that is preceded by a below normal, above normal or wet year.

“(v) In any other year not identified in any of clauses (i) through (iv), not less than twice the allocation percentage to south-of Delta Central Valley Project agricultural water service contractors, up to 100 percent.

Comments:

My understanding is that water contracts are set up in a manner that 100 percent is not achieved very frequently. This is because the laws make it easier to allocate less than 100 percent, than to add water above the identified allocation. So in most years the allocation is less than 100 percent, base on the system currently used. This appears to add additional layers on an already complicated system.

(e) (3) (A) Protection of Environment, Municipal and Industrial Supplies, and other Contractors

(A) Environment – Nothing in paragraph (2) shall adversely affect any protections for the environment, including –

Comments:

This is good language. It should be applied to all sections.

Section 4010 Action to benefit Threatened and Endangered Species and other Wildlife
Requires increased monitoring for smelt and real-time operations.

Funding is provided for actions to benefit endangered species, including for Commerce to do gravel and rearing additions and habitat restoration in the Sacramento River to benefit Chinook salmon and steelhead trout; increase monitoring; and methods to improve Delta salvage systems.

Comments:

This is good, as far as it goes. \$15,000,000 will not cover much of this type of work. And the work must be started within 1 year of the law passing.

(5) Conservation Fish Hatcheries

Requires Interior and Commerce to expanded the use of conservation hatcheries within 2 years, for Delta Smelt and ESA listed anadromous fish species. This appears to be focused on the Central Valley.

Comments

I did not see any funding included. Only authorizes Interior to participate with the State (at (6)(B)). It limits the Federal costs to 50 percent.

Section 4012 Savings Language

This subtitle shall not be interpreted in a manner thataffects the CVPIA; overrides modifies, or amends the ESA or the application of the smelt or salmonid biological opinions for the operations of the CVP/SWP; or would cause additional adverse effects on listed fish species; or overrides the PFMC to manage fisheries.

Comments

This section looks good, but needs legal review.

General Comment:

It would have been nice to see some language and funding supporting reintroduction efforts for salmonids. Specifically, on the San Joaquin, Yuba, and Sacramento rivers.