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DEPARTMENT OF JUSTICE



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Via Email only
(*Nicole.M.Smith@usdoj.gov*)

Nicole M. Smith
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Wildlife & Marine Resources Section
150 M St NE
Washington, DC 20002

RE: Reclamation Action Contrary to Representations Made in Federal Court Declaration

Dear Ms. Smith:

The Attorney General of the State of California, Xavier Becerra, requests that Reclamation immediately reduce export of water at the Jones Pumping Plant to at most 900 cfs. This reduction is necessary to conform Reclamation's actions to the Declaration of Reclamation's Central Valley Office's Operations Manager, Kristin White, in *Pacific Coast Federation of Fishermen's Associations v. Ross*, Case No. 1:20-cv-00431-DAD-SAB (E.D. Cal.).

In the White Declaration, Reclamation submitted for the Court's consideration its position that regardless of whether the 2008/2009 BiOps or the new 2019 BiOps were in force and effect, "operation in the Delta are [sic] expected to be similar across April and May." (Para. 49). However, Reclamation is now operating to export at 2,700 cfs and may increase pumping beyond even that rate. Because Vernalis flows are below 1,500 cfs, under the I:E ratio of the 2008/2009 BiOps, the projects are limited to a combined pumping rate of 1,500 cfs. Since DWR is operating at minimum health and safety flows of 600 cfs, Reclamation would be limited to 900 cfs. Reclamation cannot plausibly claim that operating at 2,700 cfs is "similar" to a pumping rate of 900 cfs.

Although the White Declaration states that unsettled weather could provide opportunities for short-term increases in exports, the declaration was executed on March 26, 2020, when the hydrology for the vast majority of March was already known. Therefore, to claim that hydrology changes in March support Reclamation's shift in pumping as compared to the requirements of the 2008/2009 BiOps is misleading. Early April is a critical time for endangered and threatened species that live in or migrate through the Delta. Approximately half of the juvenile populations

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of both Winter-run and Spring-run Chinook Salmon are currently present in the Delta and vulnerable to entrainment caused by Reclamation's increased pumping. Critically endangered Delta smelt are likely spawning or rearing, and both spawning adult and larval Longfin Smelt are likely present in high densities. These smelt populations are also exposed to the dangers of entrainment caused by Reclamation's increased rate of export.

Reclamation's greatly increased pumping over the requirements of the 2008/2009 BiOp also contradicts its submission in the White Declaration that the elimination of the I:E ratio should have no effect on Delta outflows this year. (Para. 55). Operating the Jones Pumping Plant at 2,700 (or more) cfs will alter Delta outflows compared to the 900 cfs that would have been required under the 2008/2009 BiOps. In order to conform its actions to the representations made to the District Court for the Eastern District of California, Reclamation must immediately reduce exports to at most 900 cfs and not increase pumping beyond the greater of minimum health and safety flows or the 1:1 I:E ratio for the remainder of April and May 2020.

We have been provided notice that the *PCFFA et al.* plaintiffs have filed an application for a temporary restraining order. Reclamation can obviate the need for this order by immediately acting in conformity with the White Declaration submitted to the court under penalty of perjury.

Sincerely,



Daniel Fuchs
Deputy Attorney General

For XAVIER BECERRA
Attorney General