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May 11, 2022

Via Electronic Mail

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Re: *PCFFA v. Raimondo*, No. 1:20-cv-00431-JLT-EPG: Final 2022 Sacramento
River Temperature Management Plan and Likely Violations of 2022 IOP

Dear Counsel:

We see that Reclamation has submitted, and the State Water Resources Control Board has now approved, a final Sacramento River Temperature Management Plan for 2022. After reviewing the TMP and the SWRCB's order, we are concerned that the Federal Defendants are violating the interim operations plan (IOP) for water year 2022 approved by the Court in *PCFFA v. Raimondo*, No. 1:20-cv-00431-JLT-EPG (Dkt. 395).

The IOP provides that Reclamation "will not schedule nor make deliveries of stored water from Shasta" until "Reclamation receives approval of a temperature management plan from NMFS that shows Reclamation will meet winter run Chinook salmon habitat criteria and end of September carryover storage." Dkt. 395 ¶12(i)(b). Based on the enclosed presentation (see slide 4), "water deliveries began April 15" to at least some of the Sacramento River Settlement Contractors. Please confirm whether water deliveries to the SRS contractors were made prior to the finalization of the TMP on May 2. To the extent that Federal Defendants assert that the water deliveries did not involve "stored water," please explain the basis for that assertion. Further, the Sacramento River TMP does not state that NMFS has approved the

temperature management plan, as required by the IOP. Please confirm whether NMFS has approved the 2022 TMP and provide documentation of that approval.

Additionally, it is our understanding that the TMP must *meet* both habitat criteria and end of September carryover storage, and that only if Reclamation is “unable to meet habitat criteria for the entire period” the agencies will develop “an operation to provide sufficient habitat for the longest period possible.” Dkt. 395 ¶12(i)(b). We do not see any analysis or finding in the TMP that reflects that Federal Defendants have determined that Reclamation will be unable to meet the IOP’s habitat criteria for a critically dry year—daily average temperatures of 55 degrees Fahrenheit at the Clear Creek gauge from May 15 to October 31—and the IOP’s carryover storage targets. Please confirm whether that determination has been made and, if so, where that determination is memorialized. Please also provide any studies, modeling, or other information on which that determination is based.

The Court’s order also requires that the state and federal agencies develop a plan “to provide sufficient habitat for the longest period possible.” Again, we do not see any finding or analysis in the TMP that the approved operations will meet this standard. Please explain whether the agencies have made a determination that the plan provides “sufficient habitat for the longest period possible,” identify where that determination is memorialized, and provide the factual basis for such a determination. Indeed, modeling by NMFS’ Southwest Fisheries Science Center in March 2022 demonstrated that limiting Keswick releases to 4,000 cfs (rather than 4,500 cfs in the TMP) would increase carryover storage, meet the IOP’s carryover storage targets, and meet the IOP’s habitat criteria for a longer period of time than the TMP. Additionally, it appears that the agencies have reduced water supply allocations only to the SRSC and north-of-Delta refuges¹ without reducing water supply allocations to the San Joaquin River Exchange Contractors, DWR’s Feather River Settlement Contractors, or DWR’s State Water Project contractors. Please explain the basis for this decision and how it is consistent with the requirement to provide sufficient habitat for the longest period possible.

Finally, we request copies of any and all written correspondence, including any and all agreements, with the Sacramento River Settlement Contractors regarding their contracts and/or water operations this year.

We are extremely concerned that Federal Defendants are already flouting the minimal requirements imposed by the Court’s order.

Sincerely,



Barbara J. Chisholm

enclosure

¹ Such a reduction in allocations to these wildlife refuges violates the 1992 Central Valley Project Improvement Act. *See* P.L. 102-575, § 3406(d)(4).