

Julie MacDonald

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To: Steve Thompson/SAC/R1/FWS/DOI, Paul Henson/SAC/R1/FWS/DOI,
Michael Frie/SAC/R1/FWS/DOI,
cc: Craig Manson/ASFW/OS/DOI, tom bauer
Subject: Delta Smelt letter/report/press release.

I have copies of the letter and the press release which were provided to by Congressional Affairs in Washington DC. Each of these documents makes the statement that delta smelt populations have not recovered and are significantly below historic levels. We have spent the last two days agreeing that we cannot estimate delta smelt populations as we do not have the proper data to do so, and yet your letter and the press release categorically state we have this information. In addition we spent hours discussing the fact that the data are inconclusive, we don't know what they show us, and all we know is that the situation is far more complicated than we originally thought in 1993.

We also had explicit conversations about the fact that the review panel was not completely independent and that most of the comments included were biased and did not consider the most recent information we have on the smelt; which is that we have a lot of contradictory information. As a result of those discussions, my understanding was that it would not be necessary to reference the review panel's work. Particularly given the fact that, unlike most peer review processes the authors of the paper were never given a chance to respond to the criticisms leveled at their work. Generally, when a document is peer reviewed, the comments are forwarded to the authors, and they are provided an opportunity to clarify, provide additional information, or defend their approach. This is done to ensure that the final review is based on an accurate understanding of the assumptions and underlying research supporting the work. Despite the fact that the review document was completed November 6, 2003 and never transmitted to the authors so that dialogue never took place.

Nowhere, in any of the documents I received are those discussions and what I understood our fundamental agreement on the facts reflected. We also had explicit discussions about the shortcomings in all the data sets used to measure population, the fact that 1970 may not be the appropriate benchmark to use in describing the "historic" population (we have NEVER had any population numbers). We agreed that our lack of understanding of smelt population dynamics was what prevented us from managing in a manner that would remove significant threats to the smelt since we don't and haven't been able to understand what and how the various factors interact to affect smelt populations. None of that is reflected in the documents that I have received. We agreed that the Service would acknowledge that both the recovery plan and the listing document were based on flawed data and assumptions but that we did not have sufficient understanding to replace them with any other data or assumptions.

I did not insist on seeing any of the documents you and your staff were preparing because I understood the need for a speedy completion of the documents and I believed that we were in agreement. I see now that was a grave error in judgment on my part. I believe it is critical to present a fair characterization of our understanding of the smelt to date to the public and to our partners. The documents I have before me do no such thing. They leave the impression there is no uncertainty, that we know populations have declined from historic levels due to climate change and project operations, without the qualification that we don't have any accurate population information nor do we have any understanding of the interactions between the various factors influencing delta hydrology. They leave the impression that an independent panel dismissed the San Luis and Delta Mendota Water Authority's white paper is insubstantial. The truth is that the panel was not independent and there were serious concerns with the process.

My understanding of our agreements is as follows:

That the smelt would be listed again today if the Service were to be presented with a petition.
That the original listing and recovery plan was based on flawed assumptions and data.
That we do not have and have not ever had any good population estimates.
That we do not understand how the various factors within the delta affect populations.
That all of the data we use to estimate populations is flawed.

The Service wrote:

Delta smelt populations remain at historically low levels.
That climate change and water projects operations are the cause of the decline.
That smelt populations are substantially below historic levels.
That threats identified in the original listing remain.

I believe that the facts represented by the Service provide an oversimplified and misleading characterization of what is happening and are certainly inconsistent with our discussions. I have asked that the press release be stopped until we have an opportunity to more accurately characterize the finding and its basis.