

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

The Delta Smelt Consolidated
Cases

1:09-CV-407 OWW DLB
DRAFT/PROPOSED QUESTIONS FOR 706
EXPERTS

- What evidence is there in the record that the OMR flow restrictions imposed since 2007 have helped avoid jeopardy to the species and/or improved habitat conditions?
 - If there is any such evidence, how does that evidence support/refute a finding that the projects' impacts on OMR flows have a significant effect on the species?

- What evidence is there in the record demonstrating that project operations have a significant effect on smelt survival and critical habitat vis-a-vis other "stressors" (e.g., toxics)?
 - What evidence is there in the record demonstrating that project operations exacerbate the effect/impact of other "stressors" (e.g., toxics)?
 - What evidence is there in the record demonstrating that the combined effects of other stressors, independent of project operations, are jeopardizing the species?
 - Does the record contain evidence establishing a minimum level of negative OMR flow that can be sustained without jeopardy to the species and its habitat?

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- What evidence is there in the record to support/refute FWS's contention(s) regarding the existence of "breaking points" (i.e., that at certain flows less negative than -5000 cfs, entrainment increases noticeably)?
 - Is the Johnson study cited in the BiOp sufficient support for this?
 - How does that study relate to the revised analyses performed by Dr. Deriso (comparing OMR flows to cumulative salvage index and concluding that there is no statistically significant effect on the species of OMR flows less negative than -6100)?
 - Does the record contain evidence supporting FWS's conclusion that the winter and spring flow restrictions are necessary?

 - What evidence is there to support FWS's conclusion that entrainment has "sporadically significant" effect on subsequent abundance?
 - What evidence is there in the record to support FWS's general conclusion that entrainment by the pumps has a meaningful effect on subsequent abundance?
 - If there is any, is this enough on its own to justify imposing the flow restrictions contained in the RPAs?

 - What evidence is there to support the use of turbidity as a measure/proxy for smelt presence in an area and/or as an indicator/proxy for smelt entrainment danger?

 - How critical is it to consider the size of the population when evaluating the impact of negative OMR flows on entrainment?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

○ Can the information represented in figure B-13 (which compares OWMR flows against raw salvage numbers) be relied upon at all because it does not consider population size?

- Was FWS's decision to compare historical baseline data to CALSIM runs scientifically justified/acceptable?
- Were FWS's decisions regarding the years it chose to construct the incidental take statement scientifically justified/acceptable?
- What evidence is there in the record to support/refute FWS's conclusion that project operations impact the species' food supply?

Dated: January 29, 2010