



January 11, 2017

Ms. Maria Rea  
Assistant Regional Administrator  
California Central Valley Office  
NOAA Fisheries West Coast Region  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

Subject: Proposed RPA Amendments

Ms. Rea:

Thank you for the invitation to meet with you and your team to receive a presentation on the National Marine Fisheries Service's (NMFS) proposed amendments to the Reasonable and Prudent Alternatives (RPA) for Shasta Reservoir Operations. From our perspective, the proposed changes are significant and far-reaching, and we are still trying to determine how these changes will impact the entire California water system.

The presentation that you provided leaves us with many questions and substantial concerns, as well as wanting to understand the urgency of your actions. As an initial response, we are providing the following specific concerns as well as the corresponding actions we believe are needed. These recommended actions will lead to a better RPA amendment process and will allow for all interested parties and agencies to work toward a better final product. Our collective goal is to realize improvements for winter-run salmon and other salmonids in the Sacramento River.

1. There is no need to rush this process at this time. Simply put, a 10-day response period to an RPA amendment of this magnitude is unreasonable and fails to allow for an open and transparent process that you and Barry Thom committed to undertake with us when we met on October 27, 2016. The Sacramento River Settlement Contractors (SRSC) need to be involved in developing the information supporting a potential RPA amendment and evaluating the actual language of any proposed RPA amendment.

Action: Develop a schedule of regular meetings and decision points for the RPA amendment process. We are experiencing very wet conditions in the State, and the 2017 water year is setting up to provide considerably better conditions for winter-run salmon than a normal year, today Shasta Reservoir has 3.7 million acre-feet (82% full). As your presentation indicates, in years like this one, temperature-related mortality is minimal. Under these conditions, there is time to formulate and implement a process that can lead to a better end result.

2. We have only seen a short PowerPoint summarizing the proposed RPA amendment and have not been provided the actual language for the proposed RPA. Even in this summary form, we have substantial questions on the meaning and interpretation of terms like "objectives," "targets" and "requirements" that are included within the PowerPoint presentation. In the consultation process for Shasta operations, we need to understand how the agencies will interpret and adjust these metrics.

Action: Provide the full language of the proposed RPA amendment. This language must be vetted to ensure that all interested parties and agencies understand the RPA and how it will impact Shasta operations and overall Central Valley Project (CVP) operations.

3. The SRSC provided the attached October 25, 2016, letter to NMFS and Reclamation. This letter summarized our initial assessment of potential issues presented by an RPA amendment for Shasta operations. The letter also requested that NMFS provide a timeline for the RPA amendment process and include the SRSC in the process. We never received a response.

Action: Review the SRSC letter and provide a response on how the process, actions, and legal requirements can be addressed and implemented. Specifically, NEPA compliance is required before any RPA amendment may be finalized and implemented by Reclamation. Additionally, NMFS must comply with the adaptive management provision in section 11.2.1.2 of the 2009 biological opinion and the ESA requirements for RPAs.

4. The NMFS proposed approach to modify the Shasta RPA does not comply with the recently enacted Water Infrastructure Improvements for the Nation Act of 2016, Pub. L. No. 114-322 (WIIN Act). Among other applicable provisions, Sections 4004(a)(6)(A) and (B), attached here for your reference, require NMFS to share with the CVP and State Water Project contractors as to how the proposed RPAs will "contribute to avoiding jeopardy" and "why other proposed alternative actions that would have fewer adverse water supply and economic impacts are inadequate to avoid jeopardy or adverse modifications of critical habitat."

Action: Review the legislation and provide a response on how the RPA amendment process complies with Sections 4004(a)(6)(A) and (B) of the WIIN Act.

5. The PowerPoint presentation of the proposed RPA amendment does not show how the proposed objectives, targets, or requirements are connected to actual biological justifications or need. For example, NMFS is proposing to require a 51.5°F Keswick release temperature from May 15 to October 31, but no information, biological or otherwise, is provided to support the requirement.

Action: For each objective, target, and requirement, the proposed RPA amendment must specify the scientific and biological basis for and benefit derived from the new requirement, with citations to studies or other information. This information must be the best available science. Providing this information will also help identify the body of science and studies that need to be agreed upon in developing a future work plan between the agencies and participating water agencies and non-governmental organizations (NGOs).

6. The effects of the proposed RPA amendment on CVP operations are not known and, as we understand, have not been modeled by Reclamation. From our brief review, the amendment will significantly impact water supply for CVP contractors and affect operations that benefit other aquatic and terrestrial species, some of which are also endangered and protected species. Indeed, implementation of the proposed RPA amendment would deprive the SRSC of water to which they are otherwise entitled and would require compensation under the Fifth Amendment.

Action: Allow Reclamation to perform modeling of the proposed RPA amendment for different year types, and allow all resource and water agencies to identify Project impacts and other limitations that could affect other species, CVP related-agreements (such as the Coordinated Operations Agreement and settlement agreements), and legal obligations (such as the requirement to maintain 5,000 cfs at Wilkins Slough).

7. The proposed RPA amendment is focused solely on temperature-related effects on winter-run salmon and fails to address other habitat factors causing mortality. The average mortality observed at the Red Bluff monitoring location is 75%, yet in most years, there is less than 10% mortality related to temperature impacts on egg-to-fry survival. This proposal is once again entirely temperature-centric, and does not seriously consider other options to achieve the goal of improved survival.

Action: Coordinate with Reclamation and water contractors on improving the modeling tools for Shasta Reservoir to better understand the use of

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cold water assets, and develop biological work plans that will identify other stressors to salmonids besides temperature.

We understand the importance of the Section 7 consultation process and appreciate the opportunity to engage with you in the effort. Yet, we believe that the best way to work towards and achieve the recovery of salmon is to more aggressively implement your Section 4 recovery plan through joint efforts with local agencies and landowners, as we have been doing with our collective efforts on the Sacramento Valley Salmon Recovery Plan and our action plan for 2017. These collaborative efforts will be essential to improving conditions for all life cycles of salmon that are vital to their recovery while also protecting other species and avoiding the extreme impacts to California's water supply that this current proposal will undoubtedly inflict.

By engaging in a comprehensive process that addresses the above concerns and implements these recommended actions, a more durable RPA amendment can be produced that could improve the consultation process between the agencies, insure more positive engagement by CVP contractors and NGOs, and lastly and most importantly, improve the recovery of salmonid species.

Please let us know if you would like to meet to discuss our comments and actions in more detail.

Sincerely,



Fritz Durst  
Chairman  
Reclamation District 108



Tom Ramos  
Chairman  
Natomas Mutual Water Company



Roger Cornwell  
Chairman  
Sacramento River Settlement Contractors



Donald Bransford  
President  
Glenn-Colusa Irrigation District

Enclosures (2)

cc: David Murillo, Regional Director, Bureau of Reclamation  
Pablo Arroyave, Deputy Regional Director, Bureau of Reclamation  
Michelle Banonis, Bay Delta Office Area Manager, Bureau of Reclamation  
Barry Thom, West Coast Regional Administrator, National Marine Fisheries Services



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October 25, 2016

***Via Electronic Mail and U.S. Mail***

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Subject: Re: Participation in RPA Section 11.2.1.2 Adaptive Management Process

Dear Mr. Murillo and Ms. Rea:

This letter is written on behalf of the undersigned Sacramento River Settlement Contractors (Settlement Contractors) in response to recent correspondence between the National Marine Fisheries Service (NMFS) and the U.S. Bureau of Reclamation (Reclamation). In that correspondence, Reclamation requested the use of the adaptive management provision in Section 11.2.1.2 of the Biological Opinion and Conference Opinion on the Long-Term Operations of the Central Valley Project and the State Water Project issued by NMFS in 2009 (2009 BIOP). The Settlement Contractors understand that the requested adaptive management evaluation may result in a modification to the reasonable and prudent alternative (RPA) for Shasta Operations (Shasta RPA), and therefore request that NMFS and Reclamation directly include and engage the Settlement Contractors in this process.

As you are aware, the Settlement Contractors are senior water right holders that divert from the Sacramento River below Shasta in quantities identified and defined in the Settlement Contracts. Reclamation is obligated, by contract and by law, to make sufficient releases from Shasta and Keswick Reservoirs to satisfy the Settlement Contractors' scheduled diversions. Modifications to the Shasta RPA that may require a different release pattern could impact the Settlement Contractors' operations, and for these reasons, the Settlement Contractors request to participate fully in the RPA Section 11.2.1.2 Adaptive Management Process.

The recent correspondence between Reclamation and NMFS does not specify the timing of the RPA amendment process. Based on the provisions of RPA Section 11.2.1.2, it seems that the RPA amendment process will occur within the

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framework of the annual workshop and report by the Independent Review Panel (IRP). However, NMFS and Reclamation recently agreed that this review process will occur biennially and will not be scheduled for 2016. The Settlement Contractors request clarification as to the timing of the RPA adjustment process, given that the triggering event will not occur this year. As you are aware, the Settlement Contractors and the Northern California Water Association recently began a coordinated effort with Reclamation and NMFS to develop an improved and consolidated temperature model and species monitoring program, in addition to collaboratively completing other research and habitat improvement projects. Any RPA amendment process should account for and accommodate the schedule to develop this improved modeling, other programs, and updated information so that the Shasta RPA is based on the best available science.

Additionally, any modification to the Shasta RPA that changes the timing and extent of Shasta and Keswick releases will affect the overall operations of the Central Valley Project (CVP) in a manner that triggers environmental review under the National Environmental Policy Act (NEPA). The Settlement Contractors request to assist in scoping the necessary NEPA documentation for a potential amendment to the Shasta RPA, and developing the impacts analysis, especially as it pertains to the Settlement Contractors' operations and overall CVP operations.

The Settlement Contractors look forward to engaging with the agencies in this adaptive management process and developing the necessary information to evaluate whether the Shasta RPA should be modified. As stated above, the schedule for this process is currently unclear. Accordingly, the Settlement Contractors request an initial response as to the process and timing by which the agencies expect to consider potential amendments to the Shasta RPA.

Very truly yours,



Roger Cornwell, President  
Sacramento River Settlement Contractors

cc:

Barry Thom, National Marine Fishery Service

Paul Souza, US Fish and Wildlife Service

Pablo Arroyave, CVP Deputy Regional Director

Ron Milligan, CVP Operations Manager

Michelle Banonis, CVP Bay-Delta Office

1 doing so is required to avoid additional adverse effects on  
2 listed fish species beyond those anticipated to occur  
3 through implementation of the smelt biological opinion  
4 and salmonid biological opinion using the best scientific  
5 and commercial data available.

6 (e) LEVEL OF DETAIL REQUIRED FOR ANALYSIS.—  
7 In articulating the determinations required under this sec-  
8 tion, the Secretary of the Interior and the Secretary of  
9 Commerce shall fully satisfy the requirements herein but  
10 shall not be expected to provide a greater level of sup-  
11 porting detail for the analysis than feasible to provide  
12 within the short timeframe permitted for timely real-time  
13 decisionmaking in response to changing conditions in the  
14 Delta.

15 **SEC. 4004. CONSULTATION ON COORDINATED OPERATIONS.**

16 (a) RESOLUTION OF WATER RESOURCE ISSUES.—In  
17 furtherance of the policy established by section 2(e)(2) of  
18 the Endangered Species Act of 1973, that Federal agen-  
19 cies shall cooperate with State and local agencies to re-  
20 solve water resource issues in concert with conservation  
21 of endangered species, in any consultation or reconsulta-  
22 tion on the coordinated operations of the Central Valley  
23 Project and the State Water Project, the Secretaries of  
24 the Interior and Commerce shall ensure that any public  
25 water agency that contracts for the delivery of water from

1 the Central Valley Project or the State Water Project that  
2 so requests shall—

3 (1) have routine and continuing opportunities  
4 to discuss and submit information to the action  
5 agency for consideration during the development of  
6 any biological assessment;

7 (2) be informed by the action agency of the  
8 schedule for preparation of a biological assessment;

9 (3) be informed by the consulting agency, the  
10 U.S. Fish and Wildlife Service or the National Ma-  
11 rine Fisheries Service, of the schedule for prepara-  
12 tion of the biological opinion at such time as the bio-  
13 logical assessment is submitted to the consulting  
14 agency by the action agency;

15 (4) receive a copy of any draft biological opin-  
16 ion and have the opportunity to review that docu-  
17 ment and provide comment to the consulting agency  
18 through the action agency, which comments will be  
19 afforded due consideration during the consultation;

20 (5) have the opportunity to confer with the ac-  
21 tion agency and applicant, if any, about reasonable  
22 and prudent alternatives prior to the action agency  
23 or applicant identifying one or more reasonable and  
24 prudent alternatives for consideration by the con-  
25 sulting agency; and

(6) where the consulting agency suggests a reasonable and prudent alternative be informed—

3 (A) how each component of the alternative  
4 will contribute to avoiding jeopardy or adverse  
5 modification of critical habitat and the scientific  
6 data or information that supports each compo-  
7 nent of the alternative; and

(B) why other proposed alternative actions that would have fewer adverse water supply and economic impacts are inadequate to avoid jeopardy or adverse modification of critical habitat.

12 (b) INPUT.—When consultation is ongoing, the Secretaries of the Interior and Commerce shall regularly solicit  
13 input from and report their progress to the Collaborative  
14 Adaptive Management Team and the Collaborative  
15 Science and Adaptive Management Program policy group.

17 The Collaborative Adaptive Management Team and the  
18 Collaborative Science and Adaptive Management Program  
19 policy group may provide the Secretaries with rec-  
20 ommendations to improve the effects analysis and Federal  
21 agency determinations. The Secretaries shall give due con-  
22 sideration to the recommendations when developing the  
23 Biological Assessment and Biological Opinion.

24 (c) MEETINGS.—The Secretaries shall establish a  
25 quarterly stakeholder meeting during any consultation or

1 reconsultation for the purpose of providing updates on the  
2 development of the Biological Assessment and Biological  
3 Opinion. The quarterly stakeholder meeting shall be open  
4 to stakeholders identified by the Secretaries representing  
5 a broad range of interests including environmental, rec-  
6 reational and commercial fishing, agricultural, municipal,  
7 Delta, and other regional interests, and including stake-  
8 holders that are not state or local agencies.

9 (d) CLARIFICATION.—Neither subsection (b) or (c) of  
10 this section may be used to meet the requirements of sub-  
11 section (a).

12 (e) NON-APPLICABILITY OF FACA.—For the pur-  
13 poses of subsection (b), the Collaborative Adaptive Man-  
14 agement Team, the Collaborative Science and Adaptive  
15 Management Program policy group, and any recomme-  
16 dations made to the Secretaries, are exempt from the Fed-  
17 eral Advisory Committee Act.

18 **SEC. 4005. PROTECTIONS.**

19 (a) APPLICABILITY.—This section shall apply only to  
20 sections 4001 through 4006.

21 (b) OFFSET FOR STATE WATER PROJECT.—

22 (1) IMPLEMENTATION IMPACTS.—The Sec-  
23 retary of the Interior shall confer with the California  
24 Department of Fish and Wildlife in connection with  
25 the implementation of the applicable provisions of