

# Meeting Notes

Reinitiation of Consultation (ROC) on the Coordinated Long-term Operation (LTO) of the Central Valley Project (CVP) and State Water Project (SWP): Agency Core Team Meeting

Tuesday, November 7, 2017, 2:00pm – 4:00pm

USFWS, 650 Capitol Mall, Leopold Room

## Attendees

Katrina Harrison, Janice Piñero, Garwin Yip, Luke Davis, Katherine Sun, Jana Affonso, Kim Squires, Ben Nelson, Justin Ly, Mike Ford, You Chen Chao, Chris Wilkinson

## Meeting Purpose

To discuss the ROC on LTO MOU status, California WaterFix inclusion in the ROC on LTO, duration of the ROC on LTO, model fair and workflow to determine analytical tool use, and any rolling agenda items related to the ROC on LTO.

## Non-Agenda Items

- Question: Is the tribal meeting on the week on December 11? Answer: Yes, we will attempt to have it setup for some time between Monday and Thursday that week.

## ROC on LTO MOU Status

- USFWS is fine with the current edits from the water users
- NMFS is waiting on one staff member to approve the edits.
- State Water Contractors may still have comments on the MOU. A deadline of 11/3 was originally set.
  - o The additional comments will be considered pending current timelines.

## California WaterFix Inclusion

- Water users expressed interest in option 4 of the briefing paper (exclusion of CWF) during the October 30 Water users meeting.
  - o PWAs are questioning if CWF will be considered a Federal project.
    - Services still have consultations with Reclamation as the lead Federal agency.
    - Services believe the only way to legally avoid including CWF in the ROC environmental baseline would be for Reclamation to withdraw the consultation.
    - If CWF is excluded from ROC on LTO, USFWS will still need to do a subsequent consultation for CWF to issue incidental take for the project-specific operations consultation prior to the USACE issuing the 408 permit. Potentially this could be done with the USACE as the lead Federal agency instead of Reclamation.
- Option 5 from the briefing paper is to wait until CWF's future becomes more certain. This may be the best option from the agencies' perspective.

- Question: Is there a way to withdraw CWF operations from the environmental baseline but keep construction in? Answer: No, that would be piecemealing.
- What's the difference between option 2 and option 5? Answer: What's to be written in the ESA consultation.
  - For NEPA, both options include multiple no actions – one with CWF and one without CWF- and multiple alternatives, some with and some without CWF.
  - Option 5 involves doing analysis with and without CWF as part of NEPA and waiting on a final decision to include it in the environmental baseline.
  - Option 2 includes multiple BA baselines, of which there is no precedent.
    - NMFS has a precedent of not consulting on multiple NEPA alternatives as proposed actions.
      - This will be added as a disadvantage to option 2 in the briefing paper.
- An additional disadvantage to option 3 would be it creates more legal vulnerability for CWF.
  - This is also the case for option 4.
- Question: Who else will view this briefing paper? Answer: Environmental NGOs, Power Customers, etc.
- Recommendation: Provide clear references throughout the options in the briefing paper on whether NEPA or ESA is being discussed.
  - Katrina will send an updated version soon.
- Reclamation will finalize water users' edits to the CWF briefing paper via conference call on November 13.
  - Contra Costa has some concerns regarding option 4 – they may not want construction included in the environmental baseline.
- Recommendation: Would be good to gain legal input regarding the CWF briefing paper.
  - Agencies will aim to have Solicitors review the CWF briefing paper in the next 3 weeks.
- The agencies will get legal input on the CWF briefing paper. After incorporating legal input and finalizing the paper along with input from environmental NGOs, etc., Reclamation, DWR, USFWS, and NMFS would raise the question to management. If all management agrees with Option 5 (wait), no Director level meeting is needed.

## Duration of the ROC on LTO

- PWAs discussed the duration of the ROC during the October 30 water users' meeting.
  - Many PWAs want the ROC to last longer than 5 years and be legally defensible.
- Reclamation must have NEPA/ESA compliance for long-term (40 years) water contracts, which are likely to be included in the ROC.
  - PWAs asked if less than 40 years could work.
    - Contractors could request shorter contracts.
  - Reclamation explained to the PWAs that yes, ESA and NEPA analyses are needed for the full length of the contract.
    - Reclamation will provide court cases and legal documents to the PWAs to further support this legal position.

- Question: Did OCAP (LTO Remand) include long-term water contracts? Answer: Yes, they were included up to 2030.
- Question: Do upcoming water service contract renewals need an updated LTO consultation? Answer: Yes, it is likely. Reclamation will discuss this with their solicitor.
- Reclamation is considering a duration of an indefinite timeline with various triggers.
  - PWAs are concerned about the inclusion of CWF with regards to this timeline.
  - CWF could potentially be one of the triggers.
  - Katrina will send out duration options and a template of the briefing paper to the agencies to gain input.
  - Services are fine with the indefinite duration with triggers option.
  - Reclamation could consider various duration options:
    - One with CWF as a trigger and one without CWF as a trigger.
    - Reclamation could also consider an option of a 40-year ROC to meet the long-term water contracts.
    - Reclamation would also consider a 15-year option to end before CWF comes online.

## Model Fair and Workflow to determine analytical tool use

- Reclamation is considering having a workshop on different models in relation to the ROC.
  - This would be open to the agencies and different parties.
  - Question: What's the duration for this? Answer: Multiple days.
  - Question: What would be the setup? Answer: Likely presentations and booths.
- Reclamation would provide a list of tools (NEPA and ESA lists) prior to conducting the workshop.
  - Could gain insight from the agencies and PWAs on which models may be needed.
  - Question: Would this be only fish related models? Answer: No, it will be broader (e.g. groundwater).
  - Question: Could models under development be included? Answer: Yes, if they have the potential to be used for the ROC.
- Recommendation: It's important to note multiple models/information does not always mean better quality information.
- Model fair could mirror the NMFS life cycle workshops but in a much shorter form.
  - Many PWAs would like to know how tools and models are used in the decision making and regulatory processes.
    - Reclamation will make a flow chart describing this process.
    - Recommendation: Be sure not to limit our options when describing how models and tools are chosen.
- The model fair would at the very least showcase transparency from the agencies.

## Rolling Agenda Items

- Katrina will discuss Friant with USFWS in the future, prior to the next core agency meeting.
  - NMFS is fine with the latest position on Friant.

## Action Items

- Katrina will send a briefing paper to the agencies on the duration options for the ROC.
- Katrina will send an updated version of the briefing paper on the CWF options to the agencies for solicitors' review.
- Agencies will get their Solicitor's / counsel to review the CWF briefing paper by Thanksgiving.