

DECISION SUPPORT PAPER

DATE: November 15, 2017
SUBJECT: Duration of the Reinitiation of Consultation (ROC) on the Coordinated Long-term Operation (LTO) of the Central Valley Project (CVP) and State Water Project (SWP)

This paper describes the possible options for the duration of the ROC on LTO.

BACKGROUND

Per 50 CFR 402.16, formal consultation must be reinitiated when a) the amount or extent of taking specified in the incidental take statement is exceeded; b) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; c) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or d) if a new species is listed or critical habitat designated that may be affected by the identified action.

As described in the Memorandum of Understanding signed by the five agencies on December 30, 2016, the overall goal of the consultation on the coordinated long-term operation of the CVP and SWP is to achieve a durable and sustainable BiOp(s) issued by the USFWS and NMFS that accounts for the updated status of the species and species' needs as developed through ongoing collaborative science processes, operation of CVP and SWP facilities, existing operations of the CVP and SWP, and operation of potentially new components of the CVP and SWP. Specific objectives for this process include one joint, non-jeopardy Biological Opinion, preparing a fully integrated operational and biological analysis of the CVP and SWP, and utilizing concepts that may consider existing and alternative ways of achieving biological objectives.

Reclamation intends to execute several water service contracts in the near future, and must comply with the National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) prior to executing the long-term water service contracts. Reclamation must consult on Federal "actions" that the agency proposes to undertake (50 CFR 402.03). Actions include the issuance or execution of Federal permits, licenses and contracts (50 CFR 402.02). The Ninth Circuit has clearly held that the execution of Reclamation water service contracts is an "action" that triggers compliance with Section 7 of the ESA (*See Natural Resources Defense Council v. Houston*, 146 F.3d 1118 (9th Cir. 1998)). Reclamation must decide whether to rely on the ROC on LTO to support contract execution, or to undertake stand-alone consultations and environmental analyses.

ESA consultation should address the duration of all of the effects that are caused by and are reasonably certain to occur as a result of the proposed action. Not analyzing the full extent of the proposed action could be considered segmenting the analysis of the action.

DISCUSSION

Option 1: 15-20 year ROC on LTO

In this option, the ROC on LTO Biological Assessment and Biological Opinions would include a 15 or 20 year sunset date. This date would be picked to correspond to when the California

WaterFix could begin operations. Climate change conditions would be selected that correspond to the anticipated effects in 15-20 years.

Advantages:

- Climate change analysis for this shorter time period would be less uncertain than other options.

Disadvantages:

- Reclamation would need to undertake stand-alone consultations and environmental analyses to support contract executions and implementation of those contracts.

Option 2: Indefinite with California WaterFix Trigger

Under this option, the ROC on LTO Biological Assessment and Biological Opinions would not include a sunset date. However, the Biological Opinions would have the four normal reinitiation triggers, which could include more specificity or additional specific triggers, as well as an additional one: if California WaterFix is constructed, reinitiation would be required prior to operations of the California WaterFix. A variety of climate change conditions would be selected that represent different possible futures, and would include analysis of operations necessary to support signing long-term contracts. Any actions suggested in the BA, or required in the BO, would be phased such that they are not all implemented at first. As changes in the climate occur, actions may change and changed actions would be required when changes in the climate become more certain.

Advantages:

- Reclamation could rely on the ROC on LTO to support signing long-term water service contracts if the duration of the ROC on LTO is at least the duration of the long-term water service contracts.
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Disadvantages:

- Future conditions with climate change are uncertain.

Option 3: Indefinite

Under Option 3, the ROC on LTO Biological Assessment and Biological Opinions would not include a sunset date. Instead, the normal four reinitiation triggers would apply. These reinitiation triggers could be made more specific or also include additional specific triggers. A variety of climate change conditions would be selected that represent different possible futures, and would include analysis of operations necessary to support signing long-term contracts. Any actions suggested in the BA, or required in the BO, would be phased such that they are not all implemented at first. As changes in the climate occur, actions may change and changed actions would be required when changes in the climate become more certain.

Advantages:

- Reclamation could rely on ROC on LTO to support signing long-term water service contracts.

Disadvantages:

- Future conditions with climate change are uncertain.

Option 4: 40 Year ROC on LTO

In Option 4, Reclamation's proposed action and the ROC on LTO Biological Opinions would include a sunset date of 40 years from the anticipated completion of the ROC on LTO – likely 2065. Climate change conditions would be selected that represent anticipated effects in 40 years. Any actions suggested in the BA, or required in the BO, would be phased such that they are not all implemented at first. As changes in the climate occur, actions may change and changed actions would be required when changes in the climate become more certain.

Advantages:

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- Reclamation could rely on the ROC on LTO to support signing long-term water contracts.

Disadvantages:

- Future conditions with climate change are uncertain.

POSITION OF INTERESTED PARTIES

Staff from Reclamation, DWR, USFWS, DFW and NMFS would like a durable and sustainable BO in order to minimize the need for new LTO consultations every few years, draining resources and unable to provide a holistic and forward thinking approach.

Water users:

Environmental NGOs:

Power Customers: