

DECISION SUPPORT PAPER

DATE: November 27, 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.

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" in which there is discretionary Federal involvement or control (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 long-term contract executions and implementation of those contracts.
- Would require additional commitments of resources before California WaterFix could begin operations.
- Results of the climate change analyses would likely not realize the true effects of climate change because of the shorter duration.

Option 2: Indefinite (with or without a specific 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. There could also be another reinitiation trigger: if California WaterFix is constructed, reinitiation of the ROC on LTO would be required prior to operations of the California WaterFix. This reinitiation on the ROC on LTO would then be the subsequent consultation for 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. Actions proposed in the BA (i.e. actions to protect the species), or required in the BO (i.e. conservation measures), would be phased such that they are not all implemented at first, avoiding “front-loading” of actions.

Advantages:

- Reclamation could rely on the ROC on LTO to support signing long-term water service contracts (the duration of the ROC on LTO analysis would be at least the duration of the long-term water service contracts).
- The ROC on LTO would continue to be in effect if California WaterFix is not constructed, avoiding another consultation in the future.

Disadvantages:

- If California WaterFix is operational sooner than several decades, climate change scenarios could be extraneous work.

Option 3: 40 Year ROC on LTO

In Option 3, 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 proposed in the BA, or required in the BO, would be phased such that they are not all implemented at first.

Advantages:

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

Disadvantages:

- Climate change scenarios could be challenging.

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: Some water users want a ROC on LTO that supports renewal of their long-term water service contract.

Environmental NGOs:

Power Customers: