

## **Status of Reinitiation of Consultation on the Long-term Operations of the Central Valley Project and State Water Project**

**TO:** Chris Oliver, Assistant Administrator for Fisheries  
**MEETING DATE:** June 28, 2018  
**TIME:** 10:00 AM - 10:30 AM Eastern  
**LOCATION:** 331 Hart SOB  
**FROM:** Barry Thom, Regional Administrator, West Coast Region, NMFS,  
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### **PURPOSE**

To assist in preparation for your June 28th meeting with Senator Dianne Feinstein (D-CA), this memo provides background on the process and timeline for reinitiation of consultation on the Long-term Operation of the Central Valley Project (CVP) and State Water Project (SWP) under Section 7 of the Endangered Species Act (ESA).

### **THREE THINGS YOU MUST KNOW**

- The U.S. Bureau of Reclamation (Reclamation), NMFS, and the U.S. Fish and Wildlife Service (USFWS) are engaged in a process to reinitiate ESA consultation on the long-term operations of the CVP and SWP. This reinitiation was triggered, in part, by the declining status of endangered Sacramento River winter-run Chinook salmon and the drought-related effects of Shasta reservoir operations on this species.
- Reclamation's process has three discrete, but concurrent, ESA consultation efforts: near-term actions, programmatic actions, and long-term operations of the CVP and SWP. NMFS and USFWS will be writing three Biological Opinions (BiOps) to provide coverage for these three sets of actions.
- Reclamation recently proposed a consultation schedule in which all three BiOps are completed by August 2020. This is an ambitious expedited schedule and one that requires critical success factors (described below) be met.

### **BACKGROUND**

On August 2, 2016, Reclamation requested reinitiation of ESA section 7 consultation with NMFS on the long-term operation of the CVP and SWP<sup>1</sup>, based on new information related to multiple years of drought, recent data demonstrating extremely low listed-salmonid population levels for the endangered Sacramento River winter-run Chinook salmon, and new information available (and expected to become available) as a result of ongoing work through collaborative science processes. Following Reclamation's request, a core team with representatives from Reclamation, NMFS, USFWS, California Department of Fish and Wildlife (CDFW), and California Department of Water Resources (DWR) was established and meets every two weeks to discuss issues concerning the consultation reinitiation, and long-term operations.

In 2017, the Department of the Interior divided the reinitiation of consultation into three discrete, but concurrent, consultation efforts: (1) near-term actions (formerly known as Track 1); (2) programmatic actions (formerly known as Track 2); and (3) long-term operations of the CVP and

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<sup>1</sup> The existing NMFS BiOp on the long-term operations of the CVP and SWP was completed in 2009. The existing USFWS BiOp was completed in 2008.

SWP (formerly known as Track 3; additional details provided below). More recently, Reclamation has shared plans for an expedited schedule for the long-term operations consultation effort. This expedited schedule calls for NMFS to complete the ESA consultation and issue a final BiOp by August of 2020<sup>2</sup> and for Reclamation to complete the National Environmental Policy Act (NEPA) review process and issue a Record of Decision in October 2020. [ House Report 115-704, associated with the Commerce, Justice, Science, and Related Agencies Appropriations Bill of 2019 (HR 5952), contains language that stipulates the NMFS and USFWS BiOps be completed by May 31, 2020. To date, there have been no internal discussions in the region regarding the ability to meet this deadline.]

This is an ambitious, expedited schedule. In order to meet this schedule for the long-term operations consultation effort, NMFS has identified certain ‘critical success factors’ including: 1) timely completion of the first two consultation efforts (targeted to be completed in December 2018 and June 2019, respectively), without delay or controversy; 2) close coordination on developing the project description for the long-term operations consultation reinitiation effort; and 3) receiving from Reclamation a complete biological assessment (BA) for the long-term operations consultation reinitiation effort consistent with a non-jeopardy determination by December 2019. Failure to meet these factors puts NMFS’ ability to meet this proposed schedule at risk.

### **Detail on Concurrent Consultation-Reinitiation Efforts**

#### **1. Consultation on Near-Term Actions:**

- Initiated in December 2017.
- Reclamation’s objectives are to maximize water deliveries and optimize marketable power generation consistent with applicable laws, contractual obligations, and agreements without creating additional adverse effects to listed species beyond those analyzed in USFWS’ 2008 BiOp and NMFS’ 2009 BiOp.
- Reclamation’s assumptions include: no additional adverse effects to ESA-listed species, limited scope (e.g., actions, including regulatory changes, that don’t lead to changes to upstream operations or require evaluation of "other stressors"), limited stakeholder engagement, no cooperating agency draft review, no peer review of tools or documents, and primarily qualitative analysis using existing information.
- Potential actions proposed by Reclamation<sup>3</sup> for consideration (as of May 31, 2018) include (but are not limited to): modifications to actions in the USFWS and NMFS BiOps related to Old and Middle River (OMR) reverse flow, modifications to San Joaquin River inflow to export (I:E) ratio action in the NMFS BiOp, low salinity zone management (for delta smelt), and an expanded window for water transfers.
- Reclamation’s current timeline (as of June 4, 2018) has Reclamation submitting a final consultation package to the USFWS and NMFS on October 22, 2018 and NMFS and USFWS completing ESA consultation by December 24, 2018.

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<sup>2</sup> Reclamation was scheduled to brief the Deputy Secretary of the Interior on June 6, 2018, but NMFS is unsure if the briefing included discussion of this timeline.

<sup>3</sup> *For internal awareness:* In NMFS’s perspective, some of the preliminary near-term actions recently proposed by Reclamation may lead to additional adverse effects to listed species and may not fit within the guidelines for the consultation effort on near-term actions (which is intended to include relatively noncontroversial actions for an expedited consultation timeline). NMFS is currently preparing comments to that effect to share with Reclamation.

2. Consultation on Programmatic Actions:

- Initiated December 2017, with Reclamation's publication of a NEPA notice of intent to prepare an environmental impact statement.
- Reclamation's objectives are to maximize water deliveries and optimize marketable power generation consistent with applicable state and federal laws.
- Reclamation's assumptions include: limited stakeholder engagement, no cooperating agency draft review, no peer review of tools or documents, and primarily qualitative analysis using existing information.
- Potential projects include (but are not limited to): development of an Adaptive Management Framework for CVP and SWP operations, examination of north and south of Delta storage options, modifications to BiOp requirements if not achieved as a near-term action (e.g. OMR, I:E ratio), power pricing, and habitat restoration.
- Reclamation's current timeline (as of June 4, 2018) has Reclamation submitting a final consultation package to the USFWS and NMFS on January 4, 2019, and NMFS and USFWS completing formal consultation by June 25, 2019.

3. Consultation on Long-Term Operations:

- Initiated August 2016 via formal letter from Reclamation.
- Reclamation, NMFS, USFWS, CDFW, and DWR share an objective that this consultation includes a proposed action that results in a joint USFWS/NMFS "no jeopardy" BiOp.
- Reclamation has begun to convene brainstorming workshops for each watershed (Trinity River, Clear Creek, Sacramento River, American River, Stanislaus/East Side, and Delta), beginning with the Federal and State agencies, and then expanding to include stakeholders.
- Reclamation's current timeline (as of June 4, 2018) has Reclamation submitting a final consultation package to the USFWS and NMFS on December 20, 2019 and NMFS and USFWS completing formal consultation by August 24, 2020.

**RED FLAGS**

As discussed above, especially in the context of the workload associated with all three consultation efforts, the August 2020 target completion date for the long-term operations consultation reinitiation effort is ambitious, and can be met by NMFS only if other critical success assumptions are met.