

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:

TIME:

LOCATION:

FROM: Barry Thom, Regional Administrator, West Coast Region, NMFS,
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THREE THINGS YOU MUST KNOW

- Reclamation's reconsultation process on the Central Valley Project process has three discrete, but concurrent, ESA consultation efforts: initial actions, programmatic actions, and long-term re-operations of the CVP and SWP. Although a decision has not been officially made, Reclamation may discontinue the programmatic actions effort, and absorb parts of it into the long-term re-operations effort.
- Reclamation recently provided multiple consultation schedules, driven by Congress and the Department of the Interior, in which the long-term re-operations of the CVP and SWP BiOps are to be completed by August 2019, May 2020, August 2020. All of these are ambitious expedited schedules that require critical success factors (described below) be met.
- There are long-standing disagreements between State and Federal water contractors that affect their participation in the process. Reclamation and DWR are meeting with contractors this week to negotiate agreements between the parties.

BACKGROUND

On August 2, 2016, Reclamation requested reinitiation of ESA section 7 consultation with NMFS on the long-term operation of the CVP and SWP¹, 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 were meeting every two weeks, until early August, 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; (2) programmatic actions; and (3) long-term operations of the CVP and SWP (additional details provided below). More recently, Reclamation shared expedited schedules for the long-term operations consultation effort. These expedited scheduled call for NMFS to complete the ESA consultation and issue a final BiOp by

¹ 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.

August 2019², May 2020³, and August 2020⁴ and for Reclamation to complete the National Environmental Policy Act (NEPA) review process and issue a Record of Decision in October 2020. These dates and the process change frequently.

These are very ambitious, expedited schedules. In order to meet any of these schedules for the long-term operations consultation effort, NMFS has identified ‘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 (for the August 2020 BiOp completion date). Failure to meet these factors puts NMFS’ ability to meet this proposed schedule at risk.

Recently, Reclamation’s Bay-Delta Office decided to temporarily cut back on interagency coordination meetings and stakeholder workshops associated with all three consultation efforts in order to re-write the project description for the interim actions in response to comments received and increase their coordination, collaboration, and partnership with DWR.

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 included: no additional adverse effects to ESA-listed species, limited scope (e.g., actions, including regulatory changes, that do not 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 Reclamation⁵ for consideration (as of May 31, 2018⁶) 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.

² Reclamation drafted this schedule based on hearing the completion date from various members of the Senate

³ 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.

⁴ Supported by Reclamation Commissioner Brenda Berman

⁵ *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 has provided comments to Reclamation to that effect.

⁶ Reclamation indicated that a revised project description and environmental assessment is currently being prepared and will be available and distributed at the end of August 2018.

- Reclamation's timeline, as of June 4, 2018, includes 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.

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 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. However, as mentioned above, Reclamation may discontinue this effort, but rather, absorb parts of it into the long-term re-operations effort.

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, and Delta), beginning with the Federal and State agencies, and then expanding to include stakeholders. A Stanislaus/East Side brainstorming workshop was scheduled, but cancelled given Reclamation's recent internal focus.
- Reclamation indicated that various timelines to complete formal consultation has been provided by Congress and the Department of the Interior (i.e., August 2019, May 2020, and August 2020). However, a final timeline is currently in flux.

RED FLAGS

Reclamation's process, content and schedule change very frequently, making it challenging for NMFS to plan to meet expectations. NMFS recommended "critical success factors" have been shared with Reclamation, but have not been reflected in their process and decision-making to date.

TALKING POINTS (in addition to the "Three Things")