
From: Barry Thom - NOAA Federal <barry.thom@noaa.gov>
Sent: Monday, December 10, 2018 4:04 PM
To: Hannah Mellman - NOAA Federal
Cc: Maria Rea - NOAA Federal; Howard Brown - NOAA Federal; Tancy Moore - NOAA Federal; _NMFS WCR Clearance-Taskers; Scott Rumsey
Subject: Re: URGENT TASKER due 3pm tomorrow 12/11: CA Water PM update information

and here is the update for the memo. - Barry

On Mon, Dec 10, 2018 at 3:44 PM Hannah Mellman - NOAA Federal <hannah.mellman@noaa.gov> wrote:
Hi CVO,

Gallaudet is going to the Colorado River Water Users Association Annual Meeting on Thursday and Friday of this week. HQ is requesting high level updates on Section 2 and 6 of the attached document by COB tomorrow. I think this means updates on any actions we have taken to date. I've copied those sections below. Barry, if you have any suggestions would you please chime in?

CVO, can you please provide your updates by **3pm tomorrow**? I think it would be easiest if you edited the attachment directly but your choice.

Also attached is the referenced draft DOI/DOC memo for awareness.

Thank you and sorry this is a rush!

Hannah

Sec. 2. Streamlining Western Water Infrastructure Regulatory Processes and Removing Unnecessary Burdens. To address water infrastructure challenges in the western United States, the Secretary of the Interior and the Secretary of Commerce shall undertake the following actions: (Lead: NOAA Fisheries

Focus will be on these 5 specific projects:

1. **Central Valley Project (MOU signed on 11/7 by DOI & DOC)**
2. **Klamath (MOU signed on 11/7 by DOI & DOC)**
3. **Yolo Bypass (NEPA, ESA and project construction/completion dates in development)**
4. **Shasta Dam Raise (NEPA dates and project completion dates in development. ESA nexus not yet determined)**
5. **San Luis reservoir (NEPA, ESA and project construction/completion dates in development)**

Sec. 6. Streamlining Regulatory Processes and Removing Unnecessary Burdens on the Columbia River Basin Water Infrastructure. In order to address water and hydropower operations challenges in the Columbia River Basin, the Secretary of the Interior, the Secretary of Commerce, the Secretary of Energy, and the Assistant Secretary of the Army for Civil Works under the direction of the Secretary of the Army, shall develop a schedule to complete the Columbia

River System Operations Environmental Impact Statement and the associated Biological Opinion due by 2020. The schedule shall be submitted to the Chair of the Council on Environmental Quality within 60 days of the date of this memorandum.

Update: There is direction to develop a schedule for completion of a new Columbia River Hydro project (Columbia River System Operations) NEPA and BiOp by 2020. The other Federal action agencies have taken the lead and are developing 3 schedules and the associated risk and benefits for presentation to DC level leadership and CEQ. Interior has tentatively scheduled a meeting among the agencies Regional and DC level leadership, CEQ and DOJ at the main Interior building on Nov. 30th from 10-11:30 am. They have indicated that the Deputy Secretary of the Interior is planning on attending.

----- Forwarded message -----

From: Alesia Read - NOAA Federal <alesia.read@noaa.gov>

Date: Mon, Dec 10, 2018 at 3:30 PM

Subject: Re: CA Water PM update information

To: Lindsey Kraatz - NOAA Federal <lindsey.kraatz@noaa.gov>

Cc: Barry Thom <barry.thom@noaa.gov>, Emma Htun - NOAA Federal <emma.htun@noaa.gov>, Ming Warren - NOAA Federal <ming.warren@noaa.gov>, <Scott.Rumsey@noaa.gov>, <nmfs.wcr.clearance.taskers@noaa.gov>

+ Scott and WCR tasker email box - action due by COB EST Tuesday 12/11.

Thanks Lindsey!

Sent from my iPhone

On Dec 10, 2018, at 6:01 PM, Lindsey Kraatz - NOAA Federal <lindsey.kraatz@noaa.gov> wrote:

Dear Barry,

Thank you for all your help today. As always your updates are most appreciated.

As you heard on the call, the Admiral is going to the Colorado River Water Users Association Annual Meeting on Thursday and Friday. We will be preparing materials tomorrow and finalizing everything Wednesday. Would it be possible to get your updates for Section 2 and 6 by COB tomorrow?

If it is of any use, I included the brief memo that I drafted for the Nov. 19 meeting we had with Admiral Gallaudet. You are welcome to provide your specifics into that document or provide in an email if that is easier. As you will see, the information I have in the memo attached is high level and not very specific, we would certainly need much more information, that of which you discussed today, for the Admiral to speak cogently about the full EO.

Lastly, below is the definition of environmental baseline per the new ESA reg text. Please let me know if you have any questions or concerns.

Thank you once again,

Best,

Lindsey

Definition of Environmental Baseline

We proposed a stand-alone definition for “environmental baseline” as referenced in the discussion above in the proposed revised definition for “effects of the action.” The proposed definition read:

Environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process.

In the proposed rule, we also sought comment on potential revisions to the definition of “environmental baseline” as it relates to ongoing Federal actions. The Services received numerous comments regarding the proposed definition of “environmental baseline” and the consideration of ongoing Federal actions.

In response to these comments and upon further consideration, through this final rule, we are revising § 402.02 to read:

Environmental baseline refers to the environmental condition of the listed species or its designated critical habitat without the consequences to the listed species or designated critical habitat caused by the proposed action. The environmental baseline includes the consequences to listed species or designated critical habitat from the past and present impacts of all Federal, State, or private actions and other human activities in an action area, the anticipated consequences of all proposed Federal projects in an action area that have already undergone formal or early section 7 consultation, and the consequences of private or State actions which are contemporaneous with the consultation in process. The consequences to listed species or designated critical habitat from ongoing agency activities or existing agency facilities that are not within the agency’s discretion to modify are part of the environmental baseline.

We revised the definition of environmental baseline in order to make it clear that “environmental baseline” is a separate consideration from the effects of the action. In addition, we added a sentence to clarify that the consequences of ongoing agency activities or existing agency facilities that are not within the agency’s discretion to modify are included in the environmental baseline. This third sentence is specifically intended to help clarify environmental baseline issues that have caused confusion in the past, particularly with regard to impacts from ongoing agency activities or existing agency facilities that are not within the agency’s discretion to modify.

We added this third sentence because we thought it was necessary to explicitly answer the question as to whether ongoing consequences of past or ongoing activities or facilities should be attributed to the environmental baseline or to the effects of the action under consultation when the agency has no discretion to modify either those activities or facilities. The Services have concluded that, in general, ongoing consequences attributable to ongoing activities and the existence of agency facilities are part of the environmental baseline when the action agency has no discretion to modify them. Courts have recognized that the consequences from the existence of a dam, for example, are in the baseline for most consultations concerning dam operations, even if operations of the dam are under consultation. Further, courts have recognized, and the regulations assert, that section 7 only applies to actions taken by an agency in which there is discretionary involvement or control. The Supreme Court concluded that it was reasonable for

the Services to narrow the application of section 7 to an action agency’s discretionary actions because it made no sense to consult on actions over which the action agency has no discretionary involvement or control. *National Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 667-71 (U.S. 2007) (“Home Builders”). It follows, then, that consequences from those non-discretionary duties should be in the environmental baseline. Attributing ongoing consequences to the environmental baseline does not mean that those consequences are ignored. As discussed in more detail below, the environmental baseline is an important representation of the health of the species or the critical habitat. To the extent ongoing consequences are adverse to a species, the environmental baseline and status of the species or critical habitat evaluations will reflect the impact of those consequences.

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