

**Current status of  
Reinitiation of Consultation on Long-Term Operations  
of the Central Valley Project and State Water Project  
Updated June 7, 2018**

On August 2, 2016, the U.S. Bureau of Reclamation (Reclamation) requested reinitiation of Endangered Species Act section 7 consultation with NOAA's National Marine Fisheries Service (NMFS) on the long-term operation of the Central Valley Project (CVP) and State Water Project (SWP, ROC on LTO), based on new information related to multiple years of drought, recent data demonstrating extremely low listed-salmonid population levels for the endangered winter-run Chinook salmon, and new information available and expected to become available as a result of ongoing work through collaborative science processes.

A core team, with representatives from Reclamation, NMFS, U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (CDFW), and California Department of Water Resources (DWR), was established and meets every 2 weeks to discuss ROC on LTO, including progress, issues, duration, Memorandum of Agreement, etc. In 2017, the Department of the Interior divided the reinitiation of consultation into three discrete, but concurrent, efforts: (1) near-term actions (formerly known as Track 1); (2) programmatic (formerly known as Track 2; and (3) long-term re-operation (formerly known as Track 3). These efforts were made public in December 2017, and the concurrent efforts initiated. The following includes the objectives, some proposed projects to include, and a brief timeline for each of the reinitiation efforts, followed by a list of issues/concerns associated with the 3 efforts and timelines. Attached are summary timelines and Gantt charts for the 3 reinitiation of consultation efforts.

**Near-Term Actions (Track 1):**

- Initiated 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 the USFWS 2008 biological opinion (BiOp) and NMFS' 2009 BiOp.
- Reclamation's assumptions include: no additional adverse effects to listed species, no significant impacts, limited scope (regulatory changes, no upstream ops, no evaluation of "other stressors"), limited stakeholder engagement, no cooperating agency drafts, no peer review of tools or documents, and primarily qualitative analysis using existing information.
- Potential list of actions for consideration (as of May 31, 2018):
  - Old and Middle River (OMR) reverse flows
    - Presence-based onset of action
      - Density-based triggers
    - OMR Index
    - Storm-related flexibility (some definition of storm is needed, and if OMR is controlling exports)
  - San Joaquin River inflow to export (I:E) ratio: current Reclamation path is 1:1 I:E ratio in all water year types with no head of Old River barrier

- NMFS indicated that the current I:E ratios based on water year type, with a 1:1 I:E ratio on top for transfers (similar to what is provided in the WIIN Act) would be a good balance between water supply gain and protection to fish.
  - CDFW indicated difficulty including Reclamation's proposal in the incidental take permit for longfin smelt, and reiterated the NMFS proposal.
- Low salinity zone management (for delta smelt)
- Non-physical barriers: Timing may not be right to include this
- Increasing salvage efficiency
- Expanded transfer window (not reflected in the May 31, 2018 documentation, but discussed during the June 6 core team meeting): Current Reclamation discussion is to expand the transfer window to April through November. There has not been any discussion regarding expanding the transfer volume from the 600,000 acre feet that was proposed in the 2008 BA.
- Reclamation's current timeline (as of June 4, 2018) has Reclamation submitting a biological assessment to the USFWS and NMFS for ESA section 7 consultation on October 22, 2018, and for ESA compliance to be completed by December 24, 2018.

#### **Programmatic (Track 2):**

- Initiated December 1, 2017, with Reclamation's publication of a NEPA notice of intent to prepare an environmental impact statement
- Reclamation's assumptions include: limited stakeholder engagement, no cooperating agency drafts, no peer review of tools or documents, primarily qualitative analysis using existing info, and benefits and impacts mostly qualitative
- Objectives:
  - Water supply
  - Power generation
  - Consistent with applicable Federal and state laws
- Potential projects include:
  - Adaptive management framework
  - North of Delta storage
  - South of Delta storage
  - Conveyance (OMR modifications, remove I:E)
  - Power costs
  - Power value
  - Habitat restoration
- Reclamation's current timeline (as of June 4, 2018) has Reclamation submitting a final initiation package to the USFWS and NMFS for ESA section 7 consultation on January 4, 2019, and for formal consultation to be completed by June 25, 2019. Reclamation expects to review and comment on a draft biological opinion.

#### **Long-Term Reoperation (Track 3):**

- This was the actual request to reinitiate consultation on the long-term operation of the CVP and SWP, initiated on August 2, 2016, with an official letter.
- The CVP has been divided geographically into divisions: Trinity River, Clear Creek, Sacramento River, American River, Stanislaus/East Side, and Delta.

- With a “fresh look” concept, Reclamation continues to convene brainstorming workshops for each division, beginning with the Federal and State agencies, then expanding to include stakeholders.
- Objectives for this consultation include a proposed action that results in a joint USFWS/NMFS “no jeopardy” BiOp.
- Reclamation’s current timeline (as of June 4, 2018) includes the following:
  - 13 calendar days for the agencies to review and comment on a draft biological assessment (BA)
  - Final BA to the USFWS and NMFS for ESA section 7 consultation on December 20, 2019
  - ESA consultation to be completed by August 24, 2020<sup>1</sup>

### **Issues/concerns associated with the 3 ROC on LTO efforts and timelines.**

- Staffing issues:
  - As mentioned above, the 3 ROC on LTO efforts are concurrent, with overlapping timelines and efforts, resulting in considerable meeting scheduling and staffing challenges so far, and into the future.
    - As a result of the compressed timeline for tracks 1 and 2, there will not be an opportunity for cooperating agency review of the draft NEPA document.
  - Uncertainty with regard to the fate of California WaterFix (CWF): if reinitiation of consultation on CWF is requested, there would likely be considerable overlap in staffing that effort along with ROC on LTO among most of the Federal and State agencies.
  - WIIN Act implementation and real-time ops has taken considerable effort, not including the additional resources necessary to fully engage in the 3 ROC on LTO efforts.
- CWF:
  - Staffing resource issue already mentioned above.
  - The future of CWF is uncertain, leading to uncertainty regarding how CWF should be addressed in the ROC on LTO.
- State of California: Currently, DWR may not be on board with all aspects of the 3 tracks of ROC on LTO. Even if they are on board, CDFW has determined that it will issue incidental take permits for California State Endangered Species Act compliance, rather than consistency determinations, and CDFW is not in agreement with some of Reclamation’s current thinking on proposed actions, for example, the San Joaquin I:E ratio.
- The key objective for the long-term operation consultation (track 3) has always been a joint USFWS/NMFS no jeopardy BiOp, but with the aggressive timeline to complete the BiOp by August 2020, the core team is not sure whether the objective can be achieved.
- One of the key intentions of the programmatic (track 2) is to help develop the project description for the long-term operation (track 3). However, with the compressed schedules, the timelines for the programmatic (track 2) and long-term reoperation (track

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<sup>1</sup> Per request from the Commissioner of Reclamation (Brenda Burman). Reclamation was scheduled to brief the Deputy Secretary of the Interior (David Bernhardt) in the morning of June 6, 2018, but we’re not sure if this timeline has been provided to the Department of Commerce.

3) now overlap considerably so that the programmatic consultation will not be very helpful in the long-term reoperation consultation.

- The consultation timelines and objectives for each track of the ROC on LTO keep changing, so that the core team has not had adequate time to think through the 3 consultations. During the June 6, 2018, meeting, the core team did not see any need or utility in pursuing the programmatic consultation.