

# NOAA Fisheries

July 17, 2017

## BRIEFING MEMORANDUM

**FROM:** NOAA Fisheries  
**SUBJECT:** California Water and Salmon Management

### EXECUTIVE SUMMARY

Water management in California is always a challenge, and was especially so during the recent five years of drought conditions (2012-2016). During this time, federal and state agencies were forced to make decisions to try to meet multiple, and often competing, objectives when there was not enough water to do so. These objectives include demands for human health, agricultural production, and endangered fish species. Very wet hydrology in 2017 has relieved some drought-related constraints. NOAA Fisheries and the U.S. Fish and Wildlife Service (USFWS) have recently completed consultations under the Endangered Species Act (ESA) with the U.S. Bureau of Reclamation (BOR) on a new \$17 billion water infrastructure project – California WaterFix (CWF) – that would supplement the existing infrastructure and change how some of that water is conveyed to over 25 million Californians. Water management in general, and within the CWF consultation in particular, has required unprecedented coordination and collaboration at the regional level.

### BACKGROUND

#### California WaterFix (CWF)

The CWF is a proposed massive water infrastructure project in the Sacramento-San Joaquin River Delta (Delta), currently undergoing environmental impact review. The CWF is intended to help meet California's long term co-equal goals for Delta management: water supply reliability and ecosystem restoration. The CWF proposes the construction and operation of three new major screened water diversions on the Sacramento River to deliver freshwater directly to the state and federal aqueducts originating in the south Delta through two tunnels running 40 miles long about 150 feet underground.

Implementation of the CWF is a very visible and high priority for Governor Brown and the state of California. It is arguably the largest civilian public works project in the United States (current cost estimates are about \$17 billion for the full proposed program). The Department of Commerce, through NOAA Fisheries, has repeatedly stated that it is in full agreement with the state of California that CWF is a key part of a multi-pronged strategy to address the range of problems threatening both the Delta ecosystem and the reliability of the state's water delivery system.

Consultation on CWF under the ESA is complete, with non-jeopardy Biological Opinions (BiOp) issued by NOAA Fisheries on June 16, 2017 and by USFWS on June 23, 2017. After the initial draft BiOp was issued by NOAA Fisheries in January 2017, significant changes were made to the project to reduce some of the adverse effects identified in the initial draft. On June 29, 2017, the Golden Gate Salmon Association (representing commercial and sport salmon fishing interests), Natural Resources Defense Council, Defenders of Wildlife, and The Bay Institute filed a complaint against Commerce/NOAA Fisheries under the Administrative Procedures Act. A similar complaint was filed against Interior/USFWS. BOR has yet to sign the Record of Decision to conclude the overall project environmental review under the federal National Environmental Policy Act (NEPA) process. BOR's Mid-Pacific Regional Director,

David Murillo, has expressed some concerns to NOAA Fisheries' West Coast Regional Administrator, Barry Thom regarding certain elements of the NOAA Fisheries BiOp. NOAA Fisheries is confident that these concerns can be resolved and is advocating a sit-down meeting in the region to discuss the BiOp in advance of any formal correspondence between the agencies. Other key project-related environmental reviews still in progress at the state level include consultation with the California Department of Fish and Wildlife under the California ESA and the State Water Resources Control Board's review of a petition to change the points of diversion associated with the CVP and SWP water rights.

### **Water Operations and Protections for ESA-listed Salmonids**

NOAA Fisheries has statutory responsibility to ensure that water operations of the federal and state pumping facilities (the Central Valley Project, or CVP, and the State Water Project, or SWP) in California do not jeopardize the survival of various fish species listed under the ESA. In 2009, NOAA Fisheries issued a jeopardy Biological Opinion (2009 BiOp) to the BOR under the ESA, with a reasonable and prudent alternative (RPA) requiring a number of actions throughout the year to protect ESA-listed endangered Sacramento River winter-run Chinook salmon, threatened Central Valley spring-run Chinook salmon, and threatened California Central Valley steelhead. These protective actions were designed primarily to decrease in-river water temperatures, ensure adequate flows for various life history stages, and improve fish passage and spawning success. NOAA Fisheries finely tailors these protections to both meet the needs of these endangered and threatened fish, and to minimize impacts to other water supply users. In August 2016, based on new information related to multiple years of drought, recent data demonstrating extremely low listed-salmonid population levels, and new information available as a result of collaborative science processes, BOR requested reinitiation of consultation with NOAA Fisheries. The CVP and SWP will continue to operate pursuant to the requirements of the 2009 BiOp until the reinitiated consultation is complete and a new BiOp is issued. This consultation is expected to continue over the next five years.

### **Current Temperature Management in the Sacramento River**

ESA-listed endangered Sacramento River winter-run Chinook salmon (a NOAA Fisheries "Species in the Spotlight") were hit particularly hard during the drought due to limited cold water available in Shasta Reservoir (cold water is typically released during summer months to keep the river cool enough for incubating salmon eggs and fry). As a result, in August 2016, BOR requested using the adaptive management provision in the 2009 BiOp to modify the Shasta Reservoir portion of the RPA to make certain that it continued to ensure suitable water temperatures for the protection of endangered winter-run Chinook. In January 2017, NOAA Fisheries proposed a draft amendment to the 2009 BiOp's Shasta RPA. As part of the amendment process, BOR agreed to implement a pilot approach for temperature management in summer 2017 and undertake additional modeling and analyses with NOAA Fisheries to examine performance of portions of the draft amended RPA. NOAA Fisheries and BOR have also committed to a collaborative stakeholder engagement process this summer and will use feedback received to inform development of a forthcoming, final amended RPA.

### **RELEVANT INTERNAL STAKEHOLDERS**

*Barry Thom, NOAA Fisheries West Coast Regional Administrator:* NOAA Fisheries works with other federal and state agencies that supply water, protect fish and wildlife, and regulate water quality. NOAA Fisheries West Coast Regional Administrator is keenly attuned to the issues of California water (contentious even in non-drought years) given its highly political nature and coordinates closely with NOAA Fisheries and NOAA leadership.

## **RELEVANT EXTERNAL STAKEHOLDERS**

*Farmers, irrigators, urban populations in Southern California, and environmental NGOs:*

Changes in water deliveries due to reduced water supplies pit large and widespread economic losses in some areas of central and southern California against possible extinction of several species and large economic losses to northern California coastal communities and others dependent on salmon and recreation industries. This dynamic correspondingly pits against each other farmers in the Central Valley, urban populations in the southern part of the State and conservation-minded constituencies, including those representing recreational and commercial salmon fishermen in the state. CWF attracts attention from stakeholders (residents, farmers, and water districts) within the Delta, primarily due to concerns about changes in Delta water quality with the new Sacramento River diversions.

*CA Congressional delegation members:* Like their constituencies, the California Congressional delegation is frequently split on any actions that affect California water distribution. After many attempts to legislate operational changes to the 2009 BiOp (and the companion 2008 BiOp issued by USFWS), in December 2016, Congress passed the Water Infrastructure Improvements for the Nation (WIIN) Act. The WIIN Act specifies certain operational changes to the way CVP and SWP water management occurs under the 2008 and 2009 BiOps, however, many of the WIIN Act provisions did not govern operations this year due to California's current extremely wet hydrology. In this Congress, Rep. Valadao [R-CA-21] has introduced H.R. 23, the Gaining Responsibility on Water Act of 2017, which (among other things) overrides the 2009 BiOp and otherwise exempts project operations from compliance with the ESA. NOAA Fisheries has stated that H.R. 23 as drafted would cause irreparable harm to ESA-listed and non-listed salmonids on the West Coast and curtail our ability to protect and recover these trust resources to support the fishing industry, coastal communities, and the California Bay-Delta ecosystem. H.R. 23 passed the House on July 12, 2017.

## **UPCOMING DEADLINES/TIMING**

- Throughout 2017 and beyond: Re-initiation on CVP/SWP ESA consultation continues. This consultation is expected to be completed in 2022.
- February 2018: NOAA Fisheries is hoping to have an amendment finalized before February 2018, when planning for summer 2018 temperature management begins.
- February – June 2018: Most critical timing for 2018 water allocations decisions from BOR and the California Department of Water Resources, who operates the SWP, to farmers and irrigators. Also critical timing for real-time CVP and SWP operational management decisions (made by the federal and state project operating and fisheries management agencies)
- Unknown: BOR's Record of Decision under NEPA for California WaterFix