

January 11, 2017, Sacramento River Settlement Contractors letter to NMFS on the draft proposed RPA amendment

The presentation that you provided leaves us with many questions and substantial concerns, as well as wanting to understand the urgency of your actions. As an initial response, we are providing the following specific concerns as well as the corresponding actions we believe are needed. These recommended actions will lead to a better RPA amendment process and will allow for all interested parties and agencies to work toward a better final product. Our collective goal is to realize improvements for winter-run salmon and other salmonids in the Sacramento River.

1. There is no need to rush this process at this time. Simply put, a 10-day response period to an RPA amendment of this magnitude is unreasonable and fails to allow for an open and transparent process that you and Barry Thom committed to undertake with us when we met on October 27, 2016. The Sacramento River Settlement Contractors (SRSC) need to be involved in developing the information supporting a potential RPA amendment and evaluating the actual language of any proposed RPA amendment.

Action: Develop a schedule of regular meetings and decision points for the RPA amendment process. We are experiencing very wet conditions in the State, and the 2017 water year is setting up to provide considerably better conditions for winter-run salmon than a normal year, today Shasta Reservoir has 3.7 million acre-feet (82% full). As your presentation indicates, in years like this one, temperature-related mortality is minimal. Under these conditions, there is time to formulate and implement a process that can lead to a better end result.

Response: As part of the draft proposed RPA amendment process NMFS and Reclamation initiated four stakeholder engagement workshops throughout the 2017 water year to (1) seek input on the initial science and modeling work plan, (2) seek input on the draft temperature pilot plan components and modeling, (3) review the final 2017 temperature management pilot plan and status report on system-wide modeling, and (4) discuss 2017 pilot results with feedback to prepare for the annual review of the long-term operations biological opinions, and present system-wide modeling results and other analyses.

Amendments to the Shasta RPA actions will be issued in a phased approach. The majority of changes have associated monitoring and analytical requirements. These requirements, combined with ongoing collaborative science, and refinement of temperature forecasting models, will iteratively inform implementation of the amended actions in subsequent water years and overall success of meeting the biological objectives identified for the RPA actions, that may warrant a subsequent amendment. Changes made within the 2017 amendment, including new and refined tools and monitoring, will further be used to inform the larger re-consultation of CVP/SWP operations. Re-consultation will provide a comprehensive analysis of integrated operations.

2. We have only seen a short PowerPoint summarizing the proposed RPA amendment and have not been provided the actual language for the proposed RPA. Even in this summary form, we have substantial questions on the meaning and interpretation of terms like "objectives," "targets" and "requirements" that are included within the PowerPoint presentation. In the consultation process for Shasta operations, we need to understand how the agencies will interpret and adjust these metrics.

Action: Provide the full language of the proposed RPA amendment. This language must be

vetted to ensure that all interested parties and agencies understand the RPA and how it will impact Shasta operations and overall Central Valley Project (CVP) operations.

Response: Full language of the draft proposed RPA amendment was issued in our January 19, 2017 letter to Reclamation.

3. The SRSC provided the attached October 25, 2016, letter to NMFS and Reclamation. This letter summarized our initial assessment of potential issues presented by an RPA amendment for Shasta operations. The letter also requested that NMFS provide a timeline for the RPA amendment process and include the SRSC in the process. We never received a response.

Action: Review the SRSC letter and provide a response on how the process, actions, and legal requirements can be addressed and implemented. Specifically, NEPA compliance is required before any RPA amendment may be finalized and implemented by Reclamation. Additionally, NMFS must comply with the adaptive management provision in section 11.2.1.2 of the 2009 biological opinion and the ESA requirements for RPAs.

Response: NMFS finds that the proposed draft Shasta RPA amendment is consistent with the adaptive management provision in section 11.2.1.2 of the 2009 biological opinion and the ESA requirements for the RPAs.

4. NMFS proposed approach to modify the Shasta RPA does not comply with the recently enacted Water Infrastructure Improvements for the Nation Act of 2016, Pub. L. No. 114-322 (WIIN Act). Among other applicable provisions, Sections 4004(a)(6)(A) and (B), attached here for your reference, require NMFS to share with the CVP and State Water Project contractors as to how the proposed RPAs will "contribute to avoiding jeopardy" and "why other proposed alternative actions that would have fewer adverse water supply and economic impacts are inadequate to avoid jeopardy or adverse modifications of critical habitat."

Action: Review the legislation and provide a response on how the RPA amendment process complies with Sections 4004(a)(6)(A) and (B) of the WIIN Act.

Response:

5. The PowerPoint presentation of the proposed RPA amendment does not show how the proposed objectives, targets, or requirements are connected to actual biological justifications or need. For example, NMFS is proposing to require a 51.5°F Keswick release temperature from May 15 to October 31, but no information, biological or otherwise, is provided to support the requirement.

Action: For each objective, target, and requirement, the proposed RPA amendment must specify the scientific and biological basis for and benefit derived from the new requirement, with citations to studies or other information. This information must be the best available science. Providing this information will also help identify the body of science and studies that need to be agreed upon in developing a future work plan between the agencies and participating water agencies and non-governmental organizations (NGOs).

Response: See Enclosure 3, draft Shasta RPA amendment memorandum, of the January 19, 2017, Proposed Amendment to the Reasonable and Prudent Alternative of the 2009 Opinion letter to Reclamation for the scientific and biological basis for and benefit derived from the new requirements.

6. The effects of the proposed RPA amendment on CVP operations are not known and, as we understand, have not been modeled by Reclamation. From our brief review, the amendment will significantly impact water supply for CVP contractors and affect operations that benefit other aquatic and terrestrial species, some of which are also endangered and protected species. Indeed, implementation of the proposed RPA amendment would deprive the SRSC of water to which they are otherwise entitled and would require compensation under the Fifth Amendment.

Action: Allow Reclamation to perform modeling of the proposed RPA amendment for different year types, and allow all resource and water agencies to identify Project impacts and other limitations that could affect other species, CVP related-agreements (such as the Coordinated Operations Agreement and settlement agreements), and legal obligations (such as the requirement to maintain 5,000 cfs at Wilkins Slough).

Response: Reclamation is committed to developing an analysis throughout the 2017 water year to evaluate the system-wide impacts of revised temperature management values, locations, and metrics on CVP operations, the environment, and/or impacts to other ESA listed species.

7. The proposed RPA amendment is focused solely on temperature-related effects on winter-run salmon and fails to address other habitat factors causing mortality. The average mortality observed at the Red Bluff monitoring location is 75%, yet in most years, there is less than 10% mortality related to temperature impacts on egg-to-fry survival. This proposal is once again entirely temperature-centric, and does not seriously consider other options to achieve the goal of improved survival.

Action: Coordinate with Reclamation and water contractors on improving the modeling tools for Shasta Reservoir to better understand the use of cold water assets, and develop biological work plans that will identify other stressors to salmonids besides temperature.

Response: NMFS is working with Reclamation and the water contractors on improving the modeling tools for Shasta Reservoir to better understand the use of cold water, and develop biological work plans that will identify other stressors to salmonids besides temperature.

We understand the importance of the Section 7 consultation process and appreciate the opportunity to engage with you in the effort. Yet, we believe that the best way to work towards and achieve the recovery of salmon is to more aggressively implement your Section 4 recovery plan through joint efforts with local agencies and landowners, as we have been doing with our collective efforts on the Sacramento Valley Salmon Recovery Plan and our action plan for 2017. These collaborative efforts will be essential to improving conditions for all life cycles of salmon that are vital to their recovery while also protecting other species and avoiding the extreme impacts to California's water supply that this current proposal will undoubtedly inflict.

By engaging in a comprehensive process that addresses the above concerns and implements these recommended actions, a more durable RPA amendment can be produced that could improve the consultation process between the agencies, insure more positive engagement by CVP contractors and NGOs, and lastly and most importantly, improve the recovery of salmonid species.

Please let us know if you would like to meet to discuss our comments and actions in more detail.