

## INFORMATION / BRIEFING MEMORANDUM

**DATE:** October 11, 2017  
**FROM:** Katrina Harrison, Project Manager, Reclamation's Bay-Delta Office  
**SUBJECT:** Reinitiation of Consultation (ROC) on the Coordinated Long-term Operation of the Central Valley Project and State Water Project (LTO) Schedule

This paper presents options for the ROC on LTO NEPA schedule.

### KEY TAKEAWAYS

- The WIIN Act requires public water agencies participation, which extends schedule.
- The 1 year time-frame to complete the NEPA process, pursuant to Secretarial Order (S.O.) 3355, precludes analysis known to result in a legally sufficient NEPA document and Record of Decision likely to withstand scrutiny.
- A 3- to 5-year timeframe allows Reclamation to complete the fresh-look concept for a more thorough project operation alternatives analysis, reduce controversy through extensive coordination, and prepare a defensible document that is likely to withstand litigation.

### DISCUSSION

#### Option 1: Current Schedule

Notice of Intent (NOI) to Published Final EIS (per S.O. 3355): April 2018 to October 2020 (2 years, 6 months)

NOI to Record of Decision (includes ESA process): 3 years 11 months

Estimated Date of Record of Decision: March 2022

Critical Factors: Requires identifying the initial Proposed Action for starting ESA analysis by July 2018, before any Admin Draft EISs are prepared and before public comment on the Draft EIS.

- Already includes time savings due to short (10 day) review period by Reclamation.
- Includes Reclamation red flag review to avoid wrong or sensitive information being disseminated.
- Already very compressed schedule to develop Record of Decision, tight schedule for biological assessment (BA) effects analysis given the number of species involved, and for Reclamation review of BA.
- Includes two administrative draft EISs to ensure substantial input from cooperating agencies, and ensures the draft they review is complete and correct.
- Reclamation and water users want a participatory approach and a robust process which there is time to do since there are not timeframes set by the court.

#### Option 2: 2020 Schedule

NOI to Published Final EIS (per S.O. 3355): August 2018 to June 2020 (1 year, 10 months)

NOI to Record of Decision (includes shortened ESA process): 2 years 5 months

Estimated Date of Record of Decision: January 2021

Critical Factors: Increases legal liabilities due to shortened agency review times, reduces opportunities for stakeholder input, may not allow for a joint BO (which water users want). Requires modeling and identifying the Proposed Action before NEPA scoping.

- Reduces the NEPA impact analysis timeframe by 2 months – modeling of non-CVP and SWP operations “other stressors” will be less robust.

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- Will require increased budget for consultant contract due to shortened timeframes.
- Eliminates an admin draft - water users would be reviewing documents that the agencies may not agree with. Review timeframes may not be long enough to enable legal review sufficient to protect against legal liabilities.
- Shortens BO review process by 1.5 months, reducing opportunities for stakeholder input required in the WIIN Act.
- Shortens BO revision period by 5 months, increasing legal vulnerabilities if the Services do not have enough time to address all of the comments.
- Should check with the Services if a sufficiency review of 20 days as opposed to 90 days for original schedule is realistic.
- Schedule may not allow for a joint BO (which is important for the water users), given peer review timelines and other factors.

### **Option 3: Shortest Possible NEPA Schedule**

NOI to Published Final EIS (per S.O. 3355): September 2022 to February 2024 (1 year 5 months)

NOI to Record of Decision (ESA done first): 1 year 6 months

Estimated Date of Record of Decision: March 2024

Critical Factors: Requires doing ESA and getting final BOs before the NEPA process begins. Longer total project timeframe, shorter NEPA timeframe. Reduces impact analysis timeframe, modeling of “other stressors” will be less robust. Increases legal liabilities due to shortened agency review times, reduces opportunities for stakeholder input. NOA review extends the schedule by several months.

- No time savings by having ESA first unless there is no RPA. If a non-jeopardy BO is achieved, still ends in 2022.
- Will require increased budget for consultant contract due to shortened NEPA timeframes.
- Eliminates an admin draft - water users would be reviewing documents that the agencies may not agree with. Review timeframes may not be long enough to enable legal review sufficient to protect against legal liabilities.
- Does not allow for analysis of alternatives raised during NEPA scoping.
- Requires determining the proposed action before public input (may be pre-decisional, in violation of NEPA).
- Requires document prep during NOA review process, and NOA review still extends the schedule by 4 months.

### **POSITION OF INTERESTED PARTIES**

Water users want frequent meetings and input. Most water users suggest 3.5 years to complete the ROC on LTO.