
From: Maria Rea - NOAA Federal <maria.rea@noaa.gov>
Sent: Monday, October 23, 2017 3:04 PM
To: Garwin Yip - NOAA Federal
Cc: Anita Deguzman - NOAA Affiliate
Subject: Re: Remaining issues with ROC on LTO MOU

Garwin,

It looks like there has been good back and forth and the current version of negotiated language looks good on all four issues. I don't see a policy need to elevate to Barry, but I do want to make sure that NOAA GC has reviewed and does not see any legal issues. It would be good to finish this one, but please let me know status of Chris K. Review. Thanks.

Maria

Sent from my iPad

On Oct 23, 2017, at 10:57 AM, Garwin Yip - NOAA Federal <garwin.yip@noaa.gov> wrote:

Maria,

Attached is a clean version of the ROC on LTO MOU with the 4 remaining issues highlighted (some are repeated multiple times in the MOU but only highlighted once). Below is a summary of each of the issues, and current disposition. Please advise on NMFS decision, or need for elevation. Thanks.

-- Consideration of California WaterFix operations in the ROC on LTO **Unresolved.**

++ PWAs really don't want them included because of uncertainty in its implementation. Along with this issue, they want a shorter duration of the ROC so even if CWF will be implemented, it would not need to be considered in this go around. Tom Birmingham thinks that a non-CWF BiOp could take 3 years rather than a full-blown ROC that may take 5 years.

++ Potential resolution (seems OK to me):

== Section 5.1, "Goals and Objectives," says "...future operations of potential new components of the CVP and SWP, as necessary and appropriate."

== Language leaves the future possibility without being committal either way, which may be appropriate in the MOU.

- NMFS to check on One BO to the extent feasible **Resolved, pending confirmation**. Section 5.1, 8th bullet: The expectation, "Preparing a joint BiOp issued by the USFWS and NMFS, or two closely coordinated BiOps issued separately by USFWS and NMFS." was edited to read,

"To the extent feasible, preparing a joint BiOp issued by the USFWS and NMFS." All were OK with the edit, including me, but I also indicated that I would check with my management to confirm.

- economic and technological feasibility of RPA Unresolved.

++ Section 5.4.7, Public Water Agencies, second to last bullet: "how the alternative is economically and technologically feasible (see 50 CFR 402.02)" was inserted.

++ Not part of WIIN Act, but part of the ESA section 7 regulations (which would apply to the action agency and applicant, and not necessarily non-Federal representatives).

++ USFWS is OK with this insertion. Are we?

- PWA input on USFWS or NMFS's RPA Unresolved.

++ Section 5.4.7, Public Water Agencies, last bullet is new: "That, in the event that USFWS or NMFS reaches a jeopardy or adverse modification determination, will have the opportunity to provide input regarding possible reasonable and prudent alternatives to the proposed action."

++ Not part of WIIN Act, but part of the ESA section 7 regulations (which would apply to the action agency and applicant, and not necessarily non-Federal representatives).

++ USFWS is OK with this insertion. Are we?

-Garwin-

Garwin Yip

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