



December 6, 2017

Katrina Harrison
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Sent via email to kharrison@usbr.gov

RE: Comments on the Draft Notice of Intent for the Reinitiation of Consultation on Long Term Operations of the Central Valley Project and State Water Project

Dear Ms. Harrison:

On behalf of Natural Resources Defense Council (NRDC), Defenders of Wildlife (DOW), Pacific Coast Federation of Fishermen's Associations (PCFFA), Institute for Fisheries Resources (IFR), The Bay Institute (TBI), Golden Gate Salmon Association (GGSA), and Water4Fish, we are writing to provide comments on the Bureau of Reclamation's draft Notice of Intent for the Reinitiation of Consultation on Long Term Operations of the Central Valley Project and State Water Project ("draft NOI"), and on the accompanying email from Regional Director David Murillo dated November 28, 2017 (explaining the proposed structure of this reinitiation of consultation and environmental analysis under the National Environmental Policy Act). Unfortunately, as discussed below, the draft NOI and approach to the consultation appear inconsistent with Reclamation's legal obligations under the Endangered Species Act, NEPA, and the Central Valley Project Improvement Act.

First, the draft NOI identifies the purpose of the reinitiation of consultation and the NEPA analysis as modifications to coordinated operations of the CVP and SWP to "maximize water supply delivery", to "restore, at least in part, water supply", and to "maximize water deliveries." Similarly, on page 6, the draft NOI states that, "The proposed EIS will address both operations of the CVP and SWP and construction actions and habitat restoration in the Project area designed to reduce regulatory restrictions, increase operational flexibility and increase water supply for irrigation and municipal and industrial purposes." However, as Reclamation is aware, federal law requires that the Bureau operate the CVP for equal purposes of water supply and "mitigation, protection, and restoration of fish and wildlife" pursuant to section 3406(a) the CVPIA. The purpose and need statement and language of the NOI is inconsistent with Reclamation's obligations under the CVPIA, and this reinitiation and NEPA analysis cannot be limited to projects that increase water diversions from the imperiled Bay-Delta estuary.

Second, the draft NOI is inconsistent with the ESA and NEPA because it fails to acknowledge that reinitiation of consultation is required because existing operations of the CVP and SWP are jeopardizing the continued existence and recovery of ESA-listed species. In 2016, the U.S. Fish and Wildlife Service and National Marine Fisheries Service concurred that reinitiation was warranted because of the effects of CVP/SWP operations during the ongoing drought, new scientific information on effects of operations of the CVP and SWP that were not considered in the existing biological opinions, and recent data showing extremely low abundance of ESA-listed species. In this context, the purpose and need cannot be limited to projects and alternatives that would increase water supply, as the best available science demonstrates that greater protections for endangered species are required, including actions that will reduce exports. As currently drafted, the purpose and need statement is improperly narrow under NEPA, and it would be unlawful to preclude consideration of alternatives that result in reduced water deliveries from the Delta.

Similarly, the Regional Director's email indicates that Reclamation is considering a three-phased approach to the reinitiation of consultation and accompanying NEPA compliance, where the first phase would consist of a modification of restrictions on Delta exports that would be limited to certain issues and would not consider other actions that would reduce Delta exports. Effectively, this approach proposes to only consider rollbacks of existing ESA protections in the Delta, without consideration of additional operational provisions to protect ESA listed species such as increased Delta outflow, increased instream flows, and reduced diversions. Under the ESA, the reinitiation of consultation must consider the best available science on the effects of CVP and SWP operations on listed species, including new scientific information regarding the effects of delta outflow on listed species and the effects of impaired Sacramento River flows on ESA-listed salmon and sturgeon. Reclamation cannot limit the scope of the reinitiation of consultation to a limited set of actions as described in the Regional Director's email, given the best available science. Nor can Reclamation defer the NEPA analysis of the effects of the reinitiation of consultation to a second phase years later.

We strongly urge Reclamation to reconsider this approach, and to take an approach that recognizes that CVP and SWP operations must be more protective of ESA-listed species, even though that is likely to reduce exports from the Delta.

Thank you for consideration of our views.

Sincerely,



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NRDC



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DOW



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Gary Bobker
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Cc: David Murillo, USBR
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