

to be less than the Jones and Banks diversions from the Delta, and the difference in Jones and Banks pumping is then added to San Luis Reservoir, reversing its spring and summer decline and eventually filling the San Luis Reservoir - typically before April of the following year.

4.10 Items Not Included in This Consultation

This document includes context on the entirety of operations of the CVP and SWP. However, not all of these actions are being consulted on, either because they were the subject of prior consultations or due to other legal authority. Reclamation and DWR are consulting on the exercise of discretion in operational decision making, including how to comply with the terms of their respective existing water supply and settlement contracts (which includes the impacts of maximum water diversions under the terms of these contracts), and other legal obligations. Reclamation and DWR are not consulting on:

- Flood control
- Folsom Water Control Manual
- Oroville Dam and Feather River operations
- Execution of new CVP water service or repayment contracts, or the prior execution of existing contracts that were the subject of separate but parallel prior consultations
- Execution of new settlement contracts and agreements, or the prior execution of existing contracts that were the subject of separate but parallel prior consultations
- Contract conversion
- Operations and maintenance activities of CVP minor facilities
- Exchange Contractor deliveries from Friant Dam
- SJRRP flows and lower SJR recapture
- TRRP flows
- Coordinated Operation Agreement
- D-1641
- Contra Costa Water District Operations
- Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project
- Suisun Marsh Preservation Agreement
- California WaterFix
- Battle Creek Restoration Program

4.11 Governance

The Core Water Operation serves as the foundation for meeting the requirements of D-1641 and providing for Reclamation and DWR to operate the CVP and SWP, while reducing the stressors on listed species influenced by those ongoing operations. The Core Water Operation consists of operational actions that do not require subsequent concurrence or extensive coordination to define annual operation. For the Core Water Operation, Reclamation would implement activities, monitor performance, and report on

compliance with the commitments in the proposed action. The CVP and SWP Water Operations Charter, Appendix C, *ROC Real Time Water Operations Charter*, describes how Reclamation and DWR will monitor and report on ESA Section 7 commitments under the proposed action and how the five agencies, public water agencies, and other participants will plan, communicate, and coordinate real-time water operations decisions on the Core Water Operation. The Charter describes the deliverables, schedule, and processes.

Portions of the Core Water Operation rely upon real-time monitoring to inform Reclamation and DWR on how to minimize and/or avoid stressors on listed species. Some elements of the Core Water Operation provide for seasonal input by the federal and state fish agencies on the scheduling and routing of certain flow volumes to benefit fisheries. The Core Water Operation also provides for regulatory coordination in the event conditions exceed the ability to anticipate how Reclamation and DWR would operate (i.e., “outliers”). Reclamation and DWR must demonstrate compliance with the commitments in the proposed action and provide sufficient information for an evaluation of reinitiation triggers through regular monitoring and reporting.

Aspects of the proposed action that are adaptively managed will require additional coordination that occurs more than once, for example, implementing spawning and rearing projects annually. Reclamation and DWR will form program teams with fish agency and stakeholder representatives on adaptively managed commitments. The governance of project teams will remain consistent with requirements under the ESA and CESA; however, within the program teams, fish agencies may also participate in a capacity as action agencies for specific projects under their authorities and resources, where appropriate.

Within the Core Water Operation, several different types of coordination occur on different time scales:

- **Real-Time Species Distribution and Life Stage Monitoring:** Fish agencies provide information to Reclamation and DWR on the real-time disposition of species through specific monitoring workgroups. This information informs the risk analysis performed by Reclamation and DWR. This coordination occurs seasonally. Examples: OMR Management, Shasta cold water pool management.
- **Flow Scheduling:** Fish agencies and other stakeholders in watershed-based groups provide scheduling recommendations to Reclamation and DWR on specific blocks of water. Reclamation and DWR will evaluate and consider the recommendations and operate the CVP and SWP to these schedules as feasible. Examples: Clear Creek, Stanislaus River, Suisun Marsh Salinity Control Gates.
- **Outlier Years:** In outlier years, fish agencies would work with Reclamation and DWR to identify options and intervention measures. Examples: Tier 4 of Shasta cold water pool management, extreme drought, emergency conditions.
- **Seasonal and Annual Reviews:** Reclamation and DWR will report on activities to fish agencies and determine whether to reinitiate on one or more components (although either party may also trigger reinitiation in real-time).
- **Project Teams:** Programmatic activities will have program teams that develop the specific project descriptions and obtain the appropriate permits. Examples: Spawning and rearing habitat, Delta Fish Conservation Hatchery.

Under the CVP and SWP Water Operation Charter, decisions shall be made consistent with authorizing legislation and the regulations and policies under the ESA and CESA, as appropriate.

Reclamation and DWR shall retain sole discretion for:

- Water operations of the CVP and SWP, including allocations, under Reclamation Law and the SWP authorization.
- Agency appropriations (budget requests, fund alignment, contracting, etc.).
- Section 7 action agency and applicant (consultation).
- Coordination and cooperation with PWAs as required by contracts and agreements.

CDFW, USFWS, and NMFS shall retain sole discretion for:

- Consultation under Section 7 of the federal ESA and California Fish and Game Code, as appropriate, Incidental Take Statements/Permits, and enforcement.
- Agency appropriations.

SWRCB

- Enforcement as allowable under federal and state law.

Operating Entities other than CVP and SWP shall retain sole discretion for:

- Operation of non-CVP and non-SWP diversion facilities.
- Meeting the the terms of contracts and/or agreements.
- Participating in the cooperation and coordination provisions under the WIIN Act.

Reclamation and DWR will annually report on water operations and fish performance seasonally and in an annual summary. The monitoring programs and schedule for reporting are described in the Charter. Changes to the proposed action would occur based on the reinitiation triggers provided by 50 CFR 402.16. These triggers include:

- (a) If the amount or extent of taking specified in the incidental take statement is exceeded;
- (b) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;
- (c) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or
- (d) If a new species is listed or critical habitat designated that may be affected by the identified action.

Reclamation will monitor take for the purpose of evaluating trigger (a) above; Reclamation will monitor the effects of the proposed action for the purpose of evaluating trigger (b) above. If, through adaptive management, Reclamation decides to modify the proposed action, Reclamation will evaluate the changes to the proposed action based on trigger (c) above. Consistent with 50 CFR 402.16, the USFWS and/or NMFS may also reinitiate formal consultation as appropriate. Reclamation will coordinate with DWR as an “applicant” and support DWR’s coordination with CDFW.