

## NMFS ROC ON LTO

### DIRECTORS ELEVATION BRIEFING PAPER

3/9/19

TOPIC: INCLUSION/EXCLUSION OF COA AND SHORTAGE POLICY AS PART OF CONSULTATION

#### COA

**NMFS REQUEST:** The COA is integral to operations, and should be consulted on as part of this consultation. Because this consultation provides ESA coverage for Oroville operations that are caused by reoperations to meet Delta conditions, understanding the COA will be important for take authorization for both CVP and SWP.

**BACKGROUND:** NMFS has periodically been told by Reclamation that operations are constrained by the COA, and that Reclamation has no discretion to re-negotiate the COA. Notwithstanding these conversations, the COA was renegotiated and signed without NMFS consultation in December 2018.

#### **QUESTIONS:**

1. Does the COA limit your discretion to operate reservoirs in any way? If so, how, when, under what conditions?
2. Does the COA limit your discretion to operate delta pumps in any way - if so, how, when, under what conditions?
3. Do you think the changes in COA will help fish or hurt fish? Why?
4. What is the basis of your no effect determination on the newly signed COA?
5. If the projects can be operated to protect tier 1 Shasta temperatures by meeting Delta needs (D-1641, or other outflow needs) through releases from Oroville, and Folsom releases are already limited to meet steelhead needs, and additional Oroville releases will result in Reclamation accruing a negative COA balance (or COA debt), how will Reclamation and DWR decide whether or not to make these releases from Oroville? What assurance, if any, is there that tier 1 protections at Shasta (or any other ESA metric) will take priority over COA considerations?

#### **PATH FORWARD/RESOLUTION:**

#### SHORTAGE POLICY

**NMFS REQUEST:** The shortage policy is integral to operations, and should be consulted on as part of this consultation.

**BACKGROUND:** Reclamation updated their shortage policy after 2009. NMFS requested cooperating agency status, and commented that it would be important to have an alternative that allowed for shortages for all contracts in locations and amounts needed to meet ESA metrics and needs. We were told that the shortage policy was flexible to ESA, and that these needs would be re-visited during the next CVP-DWR consultation. Also, contracts generally contain shortage provisions, but these provision are not specific as to ESA needs. Contracts generally are not separately consulted on, but defer to systemwide operations consultation.

**QUESTIONS:**

1. Does the shortage policy limit your discretion to operate reservoirs in any way? If so, how, when, under what conditions?
2. Does the shortage policy limit your discretion to operate delta pumps in any way - if so, how, when, under what conditions?
4. Did reclamation make a no effect determination on the shortage policy? If so, what was the basis?
5. If the projects can be operated to meet an ESA metric in a specific time, location and magnitude (eg, a tier one Shasta temperature, a pulse flow, an American river temperature, Trinity ROD flow, or other ESA metric), but this metric cannot be met without shorting a large range of contractors because of the shortage policy, what would Reclamation do? Would the ESA metric take priority over the shortage policy, or not?

**PATH FORWARD/RESOLUTION:**