



U.S. DEPARTMENT OF THE INTERIOR
U.S. DEPARTMENT OF COMMERCE



PURSUANT TO the October 19, 2018, *Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West* (Presidential Memorandum):

Background

This response memo outlines the deliverables required 30-days following the issuance of the October 19, 2018 Presidential Memorandum, *Promoting the Reliable Supply and Delivery of Water in the West*. Outlined herein are the projects within the Central Valley Project that the Departments of the Interior and Commerce have either joint responsibility under the Endangered Species Act of 1973 (ESA) (Public Law 93-205) or individual responsibilities under the National Environmental Policy Act of 1969 (NEPA) (Public Law 91-190). Additionally, this response memo outlines plans for consideration by the Secretaries of the Interior and Commerce for the suspension, modification or rescission of regulations and procedures that unduly burden the projects beyond the degree necessary to protect the public interest or otherwise comply with law.

Identification of Projects and Federal Lead

Pursuant to Section 2(a)(i) of the Presidential Memorandum, the Departments of the Interior and Commerce have identified ten projects being evaluated by the Bureau of Reclamation's Mid-Pacific Region that require evaluation pursuant to NEPA and ESA consultation. Of the ten NEPA documents in development, nine EIS documents require consultation with both NMFS and FWS and one EIS document has sole FWS consultation. The project evaluations in progress are described in Table 1 below. Reclamation has identified a first and second priority ranking for the coordination of the completion of the ESA consultation and NEPA process for the outstanding projects. First priority projects require ESA consultation to be completed by the end of calendar year 2019, while second priority projects will have ESA consultation occur at a time following calendar year 2019.

Pursuant to Section 2(a)(ii) of the Presidential Memorandum, the Departments of the Interior and Commerce signed two Memorandums of Agreement on November 7th, 2018, which identify one Lead Official for the Klamath Irrigation Project and one Lead Official for the Central Valley Project. The Lead Official for each project is identified below.

Klamath Irrigation Project Lead Official: Paul Souza, Pacific Southwest Regional Director, United States Fish and Wildlife Service

Reclamation, FWS, and NMFS continue to undertake unprecedented levels of coordination to complete re-consultation under Section 7 of the ESA for continued operation of the Klamath Irrigation Project (Project). Reclamation and the Services have participated in over 23 Agency Coordination Meetings and the Regional Directors for each organization coordinate on a bi-weekly basis. The coordination meetings have resulted in the development of an approach to manage the Project that allows for certainty on timing and water supply for Project water users while meeting the needs of ESA listed species. The Regional Director coordination has also led to a commitment by Reclamation, FWS, and NMFS to accelerate the completion of the Biological Opinion, with a target completion date currently of April 2019. The single lead official for the agencies under the Departments of Commerce and the Interior will produce even further improvements in coordination and decision-making.

Central Valley Project Lead Official: Paul Souza, Pacific Southwest Regional Director, United States Fish and Wildlife Service

Reclamation, FWS, and NMFS have a long history of coordination on the evaluations of new projects and the operations of the Central Valley Project (CVP). The assignment of a single Federal Lead for projects within the CVP will allow for improved coordination between the three agencies that will allow for improved decision-making.

Table 1: Project Evaluations in Progress

Priority	Project Name Section 2(a)(i)	Timeline¹ Section 2(b)	NEPA Action & ESA Consultation Agencies
1	Shasta Dam Raise Record of Decision	ROD: Fall 2019 BA Issuance: 3/2019 BO Issuance: 8/2019 Const. Commence: 12/2019 Const. Complete: 5/2024	FWS², Reclamation
1	Re-initiation of Consultation on Long-Term Operation of the Central Valley Project and State Water Project EIS and biological opinions	BA Issuance: 1/31/2019 BO Issuance: 6/15/2019 ROD: 11/2019	FWS, NMFS, Reclamation
1	Re-consultation on Klamath Project Operations ⁴	BA Issuance: 4/2019 BO Issuance: 8/2019	FWS, NMFS

		EA Completion: 4/2019 – currently anticipate a FONSI	
1	B.F. Sisk Safety of Dams Raise Final EIS	BA Issuance: 1/2019 BO Issuance: 6/2019 ROD: 10/2019 Const. Commence: 2020 Const. Complete: 2027	FWS, Reclamation
2	Yolo Bypass Salmon Habitat Restoration and Fish Passage Final EIS	BA Issuance: 11/2018 BO Issuance: 4/2019 ROD: 4/2019 Const. Commence: 4/2020 Const. Complete: 11/2020	FWS, NMFS, Reclamation
2	Temperance Flat (Upper San Joaquin Storage Study) Final EIS	BA Issuance: 10/2019 BO Issuance: 3/2020 ROD: 4/2020 Const. Commence: 2025 Const. Complete: 2035	FWS, NMFS, Reclamation
2	Los Vaqueros Reservoir Expansion Final EIS	BA Issuance: 1/2020 BO Issuance: 6/2020 ROD: 9/2020 Const. Commence: 2021 Const. Complete: 2026	FWS, NMFS, Reclamation
2	San Luis Low Point Final EIS	BA Issuance: 4/2019 BO Issuance: 8/2019 ROD: 9/2019 Const. Commence: 2023 Const. Complete: 2029	FWS, NMFS, Reclamation

2	North-of-Delta Offstream Storage (Sites Reservoir) Final EIS	BA Issuance: 9/2019 BO Issuance: 2/2020 ROD: 11/2021 ³ Const. Commence: 2025 Const. Complete: 2030	FWS, NMFS, Reclamation
<ol style="list-style-type: none"> 1. A detailed Gantt schedule will be developed for each project. 2. ESA Consultation with USFWS for construction only, Programmatic ESA consultation for operations may be provided through Re-initiation of Consultation on LTO of CVP and SWP—both NMFS and FWS 3. ROD Issuance date dependent on water right petition. 4. Though the Presidential Memorandum requires BiOp completion by August 2019, the goal of the project team is to have completion of BiOps by April 2019 to allow for the new BiOps to be in place for the 2019 irrigation season. 			

Regulations and Procedures for Consideration by the Secretaries

Pursuant to Section 2(a)(ii) of the Presidential Memorandum, the Departments of the Interior and Commerce have identified a list of regulations and procedures that pose potential burdens on the projects identified in Table 1. Listed below is a proposed plan for suspending, revising and rescinding certain regulations and procedure to prevent burdens on projects beyond the degree necessary to protect the public interest.

1. NEPA: Reclamation proposes to streamline cooperating agency review for the Re-initiation of Consultation on Coordinated Long-Term Operation of the CVP and SWP by involving cooperating agency subject matter experts in the drafting process related to their specialized expertise and reducing the number of administrative reviews.
2. NEPA: Reclamation will incorporate NEPA streamlining guidance from Department of the Interior Secretarial Order 3355 and subsequent departmental direction on NEPA to ensure that projects and NEPA compliance move forward in a streamlined fashion.
3. ESA: FWS and NMFS (together “the Services”) should consider revising agency ESA policy directives to require full coordination and cooperation between NMFS and FWS, where appropriate, with the goal of issuing Programmatic and Joint Biological Opinions (BiOps) under the ESA. Although not addressed in current law or regulations implementing the ESA, where a proposed Federal action involves both Services, each agency often issues separate biological opinions. Issuance of joint BiOps will ensure that the Services are coordinated in

timing of releasing BiOps and that RPAs or RPMs are fully coordinated in a way that supports operation of the CVP and the Klamath Irrigation Project.

4. ESA: In July 2018, the Secretaries proposed revisions to the ESA's implementing regulations that would benefit Reclamation projects. Revisions implementing Section 4 of the ESA (50 C.F.R. Part 424; Docket ID: FWS-HQ-ES-2018-0006) will address the procedures and criteria used for listing or removing endangered and threatened species. Revisions implementing Section 4(d) of the ESA (50 C.F.R. Part 17; Docket ID: FWS-HQ-ES-2018-0007) will require the U.S. Fish and Wildlife Service to determine what, if any, protective regulations are appropriate for species that the Service in the future determines to be threatened. Revisions implementing Section 7 of the ESA (50 C.F.R. Part 402; Docket ID: FWS-HQ-ES-2018-0009) will improve and clarify the consultation with the Service and make them more efficient and consistent.
5. NHPA: The Department of the Interior should consider working with the Advisory Council for Historic Preservation (ACHP) to streamline National Historic Preservation Act (NHPA) compliance procedures and tools. Existing tools such as programmatic agreements, Program Comments and Exemptions are useful but still require much time and effort. Appropriately streamlining the existing programmatic tools would meet the goals of the NHPA while allowing projects to move forward in a timely manner and build on current efforts between Reclamation and ACHP to develop a programmatic approach to NHPA compliance for certain water distribution facilities.

The Department should consider procedures to coordinate with the ACHP, the National Conference of State Historic Preservation Officers (NCSHPO), individual State Historic Preservation Officers (SHPOs), and the Tribal Historic Preservation Offices (TPOs) to appropriately streamline consultation and ensure mitigation for qualifying actions is proportional to effects. Specific coordination topics could include: defining timelines for consultation; specifically defining mitigation requirements; clarifying procedures and authorities to terminate NHPA consultations when there is not agreement on mitigation efforts; and clarifying the role of SHPOs.