

**ROC LTO Directors Meeting  
NMFS Internal Notes  
March 8, 2019**

**Attendees**

- Reclamation: Ernest Conant, Russ Callejo, Dave Mooney, Mike Ryan, Don Bader, Jeff Rieker, Katrina Harrison, Kristen White
- USFWS: Paul Souza, Dan Castleberry, Kaylee Allen, Jana Affonso
- NMFS: Barry Thom, Maria Rea, Howard Brown (ph), Garwin Yip, Justin Ly (ph), Cathy Marcinkevage

**Decision Items and Action Items**

*DC Updates:* Potential review of schedule by DC counsel from both Departments.

*BA Revision Documentation:* Reclamation indicated that a table of issues and resolution status is/will be generated and potentially included in submission of a supplemental BA.

*Trinity ROD Flows:* Agreement reached that Trinity flows are really no change to existing, and that Reclamation desires to consult on those. Final reiteration that Trinity flows are included because Reclamation wants coverage for the Trinity. All in attendance agreed. Table 4-6 of BA regarding Trinity ROD flows will change from “NCO” to “No Change” or something similar.

*COA:* NMFS can assume that Reclamation won't go to Oroville for temperature management, and will operate to avoid accrual of COA debt. “NCO” in Table 4-6 for COA will be replaced with “No Change From Current Operations” or removed completely. Reclamation to provide documentation of no effect determination to NMFS.

*Shortage Policy:* The effect is a small sliver of allocation and therefore warrants a lower level technical discussion.

*Shasta Dam Raise:* Development of a reinitiation trigger identifying that reconsultation would be required if Shasta Dam raise results in effects to the habitat condition and species outside of the bounds (positive or negative) of those covered by this consultation. NMFS and FWS will work with Russ to identify this reinitiation trigger.

*Adaptive Management:* Reclamation could commit to trying to work out revisions to the existing five-agency plan to better suit their desires, and agencies can provide identification of the (non-CWF-associated) uncertainties associated with existing/PA operations that they would like to be addressed by this AMP. Agencies will outline the uncertainties that they have regarding current operations and PA operations (i.e., without CWF). NMFS will provide a “CWF-free” version of the five-agency program to Reclamation, and will also provide suggestions for approaches to marrying the PA with a revised five-agency plan.

*I:E Action:* Analysis will be completed on the PA as provided; concerns about extent of effect will later be discussed and evaluated for being addressed by relating to adaptive management. NMFS noted that we see changes in the PA that we expect to have a more negative effect, and that this decision has potential affect the schedule. NMFS to identify associated uncertainties that can be related/incorporated into adaptive management uncertainties.

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*Meetings:* Wednesday 10 AM meetings will now be directors meetings reflecting this group. Additionally, this group plans to meet again on April 4, 12-2, for updates and address of new issues.

### **Introduction and Opening Remarks**

Paul noted ambitious agenda (developed jointly by Russ, Howard, and Jana) and suggested prioritizing discussion on items for which decisions could be made today, noting that he expected additional meetings may be necessary to address other items. Attendees generally agreed but no immediate revisions were made to the agenda.

Paul and Ernest both praised the effort to date and acknowledged the challenge of the remaining effort.

### **Status of Consultation**

Kaylee noted that FWS has identified many issues that they believe can be resolved. They have set a schedule of major milestones (distributed at meeting), which include stakeholder meetings.

Paul noted that he told DC about this schedule and that he requested/expects counsel from Interior and perhaps NOAA/DOC to go over it in prep for any review of documents.

Maria noted that the NMFS effort is quite active and there have been many productive meetings/discussions in the last two weeks in the follow-up “focus group” meetings. She noted that we are still waiting on a table that populates responses to questions as a form of documentation of conversations and clarification of the BA.

Discussed the April 1, 2019, entry on the schedule indicating no further changes to the proposed action. Barry asked if NMFS had the same date, and Paul suggested reserving the right to change the project later than that if it led to needed improvement. Generally accepted, but Kaylee noted the need to include that to prevent problematic changes to the PA late in the biop drafting process.

Russ acknowledged changes to the PA resulting from focus groups. Indicated that a table of issues and resolution status is/will be generated and potentially included in submission of a supplemental BA.

### **Elevation Topics**

Discussion on agenda, with Reclamation noting that they thought I:E and Shortage topics were not ready for elevation due to lack of staff level discussion. NMFS agreed that the Shortage topic could be short or included with the COA topic. However, NMFS advocated for director-level discussion of I:E given that there were many conversations on this topic in summer 2018 (which produced the alternatives paper that was distributed then and at this meeting). Maria noted that I:E has fallen out of recent discussions, which is most explicitly demonstrated by a lack of inclusion of it or any proposed alternative in the PA. NMFS has been and is still committed to a fresh look at alternatives, but notes that it is very challenging to move forward on the consultation without it or a commitment to a proposed alternative protection for San Joaquin steelhead. It therefore remained as an elevated topic.

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Topic discussion order shifted slightly from the agenda and is reflected in the order captured below.

### **Trinity ROD Flows**

*Decision:* Agreement reached that Trinity flows are really no change to existing, and that Reclamation desires to consult on those. Final reiteration that Trinity flows are included because Reclamation wants coverage for the Trinity. All in attendance agreed. Action item to change the line in Table 4-6 of BA regarding Trinity ROD flows from “NCO” to “No Change” or something similar.

*Discussion:* NMFS reviewed some of the history on this topic, noting that the Trinity has needed reconsultation for quite a while, and it keeps getting passed back-and-forth between Trinity and CVP. The need to reconsult because of a new species listed is a known issue, and Trinity flows have long expected to be covered in a “next” CVP ops consultation. The 2000 Trinity River Restoration Program BiOp did include reinitiation triggers, but did not have incidental take for coho; because the 2009 BiOp was on CV species and NMFS was under a court-ordered timeline, coho was segmented out and not included in that consultation. Therefore there is no take coverage for coho. NMFS advocated for incorporating Trinity ROD flows into the BA. Justin and Barry indicated that they did not expect this to be a notable impact on the schedule, and would require minimal BA revisions.

Paul expressed repeated concern that incorporating Trinity ROD flows could affect schedule or “reopen” the ROD, noting the complicated process considering tribes and other stakeholders who may request other changes to the ROD flows; suggested separate consultation that focuses on coho, perhaps as part of the CESA or VSA. Dave noted the desire to separate this consultation from reopening the ROD, but noted seeing the Trinity as part of the CVO ops so sees best path is to get coverage for all of the CVP with this consultation. Russ clarified that they wanted the Trinity ROD flows to move forward as is, to have the transbasin diversions, and want take coverage for that transfer.

Agreement reached that Trinity flows are really no change to existing, and that Reclamation desires to consult on those. Final reiteration that Trinity flows are included because Reclamation wants coverage for the Trinity. All in attendance agreed. Action item to change the line in Table 4.6 of BA regarding Trinity ROD flows from “NCO” to “No Change” or something similar.

### **COA**

NMFS started with indication that we need to understand where it affects protective actions, and whether avoidance of accruing COA debt supersedes operations for temperature management. Also noted need to understand how COA reaches back to affect Delta operations – whether calls to Oroville for Delta operations needs are not granted because of potential COA debt is in conflict/contradiction with the state asking for take coverage for coordinated operations.

Reclamation reviewed that they did an environmental assessment resulting in FONSI – that the effect of the changed COA was within the effects of the consultations on the record at the time.

Maria noted that that was for NEPA, but what about ESA compliance? Reclamation responded that the changes are to reduce reliance on CVP storage, resulting in increased CVP storage in wetter years to be

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used for better temperature management when needed; also changes in export sharing to increase use of Jones, and therefore the effects were not expected to be worse for the species. NMFS requested documentation of that be provided by Reclamation to NMFS for our record.

Reclamation said that terms and conditions on COA-related actions are likely ok, and that resolution may be to replace “NCO” in Table 4-6 for COA to “No Change From Current Operations”.

Maria said that change would be very helpful to us, and that we will make assumptions. When asked by NMFS if we could assume that Reclamation won't go to Oroville for temperature management, and won't try to accrue COA debt, Jeff agreed, noting that this is more of a water rights issue than an operations issue. Kristen noted that long-term/programmatic debt accrual could be seen as not adhering to the “spirit” of COA.

Decision was reached to either replace “NCO” in Table 4-6 for COA to “No Change From Current Operations” or to remove it completely.

### **Shortage Policy**

Attendees noted that Jeff and Howard had recently spoken about this. The effect is a small sliver of allocation and therefore warrants a lower level technical discussion.

### **Fish Passage Program**

NMFS presented its case that the Fish Passage Program was included in the 2009 BiOp, and that NMFS believes it having multiple populations of winter-run Chinook salmon could allow for more flexibility in operations. Acknowledged that there is a concerted effort to not move it forward, and noted this as a poor decision with regards to risk management to not further the program.

Maria provided the issue paper from July 2018 that had been provided at that time. It documents the flexibility. NMFS continues to talk with water users on this topic, recognizing the opposition at the DOI level. Maria pointed to recent drought experience and how passage would have provided an opportunity to take a different temperature management approach than what was done, and that all parties suffered by not having this tool in the box. NMFS is doing science and modeling to show the alleviation of constraints on Shasta during drought due to benefits realized from reintroduction.

Paul noted that DOI did not think that this action was consistent with the baseline approach.

NMFS recognizes that this is a Reclamation decision and issue, and doesn't expect movement, but wanted to be sure the new director heard the utility of this approach to consider for future decisions.

### **Shasta Dam Raise**

NMFS introduced concerns that the BA includes a raised Shasta dam and requests consultation at a site-specific level, but that the information is lacking for perhaps even a programmatic level consultation (i.e. it is not included in the CalSim modeling, there's no indication of how temperature management would

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change, no characterization of changes in releases during different times of year). NMFS recommended that it be included in a future iteration of CVP operations consultation (expected within the next year due to NEPA/CEQA and VSA) because otherwise it would be a notable schedule impact.

The discussion noted that Reclamation believes that the required information is included in the Feasibility Study. However, Paul noted that that is 7 years old and may not be most reliable/reflective of likely action – and that he thinks the inclusion of the Feasibility Study in this consultation is confusing (and that it would be wise to look into whether it requires its own BiOp). Discussion did include question of how operations (and effects to species) could be expected to be the same as effects of current infrastructure if, for instance, flows are detained in the additional 634 TAF of new storage instead of being allowed to enter the river. However, Reclamation and Paul clarified that the existing operational constraints would be maintained and therefore it was expected that in-river conditions would not be different than what is characterized by the modeling in the BA (which does not include characterization of increased storage or resulting change in operations).

FWS noted that they preferred that it be included in this consultation in some capacity.

Agreement that this could be managed with a reinitiation trigger identifying that reconsultation would be required if Shasta Dam raise results in effects to the habitat condition and species outside of the bounds (positive or negative) of those covered by this consultation. NMFS and FWS will work with Russ to identify this reinitiation trigger.

### **Adaptive Management**

Reclamation began discussion by noting desire to avoid the term “adaptive management” and instead wanting to discuss how the PA and ITS could adjust over time by looking at effects of implementation. Dave noted that Reclamation looks across the CV and sees many groups, and wants to work with those structures.

Dan noted that this topic was the hardest topic to wrestle during the CWF development; it was one of the longest components of development; and that it is one of the few components that connects the state and Federal entities. He stressed the desire to revisit that framework and, acknowledging Reclamation’s desire for increased autonomy, attempt to revise that rather than try to develop a new process.

Maria noted that one key efficiency of the five-agency plan is that it can stand as a framework into which actions can be implemented; and that otherwise, each of those actions would require their own standalone section 7 ESA consultations. So from an efficiency perspective, this is a much more effective approach to being able to adjust the PA and ITS.

Paul offered that the five-agency plan exists, and while there is some discomfort with it, suggested that Reclamation take a look at remove what is alarming. Dave offered that the five-agency program was developed to address uncertainties related to operations with a new point of diversion, and that the uncertainties of existing (or PA) operations were not reflected in that program. Cathy offered that the drafters were very careful to make it applicable to the existing (and anticipated future) operations consultations rather than just to CWF-oriented operations. Dan commented that the five-agency plan

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was not developed because of CWF, but because it was needed to guide how the projects are operated today. Dave asked that the agencies outline the uncertainties that they have regarding current operations and PA operations (i.e., without CWF), and Maria said that those will start to surface as we get more into our effects analysis, and we could do so in a generic way and work those needs into a revised five-agency program.

Paul reiterated that it was better to start with the existing work, and Russ agreed that Reclamation could commit to trying to hash it out. Reclamation would like to see some removal of risk-management/decision-making authority from the existing document, and also see how other groups can fit into the five-agency approach.

Mike noted that this was useful on the Platte, and that it can be useful in understanding assumptions.

### **I:E Ratio**

NMFS introduced noting that it was the biggest issue in the 2009 BiOp, having the least consensus, and was a main litigation topic. Noted that since then there has been a lot of work, including multistakeholder efforts such as the SST report, attempting to address this issue. NMFS therefore thought that the PA would include more experimental actions as alternative for how to protect San Joaquin steelhead.

NMFS noted that the PA includes lower triggers, more negative flows than existing, and that the HORB is not included in the PA. NMFS is asking whether to use what is proposed, or whether there is opportunity to discuss something different, noting that if NMFS is expected to analyze what is proposed, Reclamation should be prepared to see unfavorable effects. Perhaps this could be addressed in a future amendment.

Dave requested that Reclamation's lack of control of many SJR facilities be given consideration, along with the studies on the effects of exports and survival through the facilities. There was some disagreement between NMFS and Reclamation of the shown effectiveness of the HORB based on Buchanan studies.

When asked by Paul how big of an issue this is, Maria offered that she suggested an experimental approach, recommending that a group be convened to recommend approach to study and development of an alternative to protect SJR steelhead.

Russ expressed discomfort at the comparison of the PA component to the existing protections/operations, asking that the project be evaluated for its effects as written, and not in comparison to the previous. Paul suggested doing the analysis and seeing the result, and whether it can be connected to the AM uncertainties and addressed that way if leaning towards jeopardy effect, but not to change anything in the PA now. Barry noted that we see changes in the PA that we expect to have a more negative effect, and that by making this decision we are consciously deciding to potentially affect the schedule.