

**4332-90-P**

**DEPARTMENT OF THE INTERIOR**

Bureau of Reclamation

[RR02800000, 15XR0680A1, RX.17868946.0000000]

Notice of Availability of the Draft Environmental Impact Statement for the Coordinated Long-Term Operation of the Central Valley Project and State Water Project

**AGENCY:** Bureau of Reclamation, Interior

**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation has prepared and made available for public review and comment, the Draft Environmental Impact Statement (DEIS) on impacts of implementing the 2008 U.S. Fish and Wildlife Service Biological Opinion and the 2009 National Marine Fisheries Service Biological Opinion, including the Reasonable and Prudent Alternatives, for the Coordinated Long-Term Operation of the Central Valley Project and State Water Project. This action will continue the operation of the Central Valley Project in coordination with the State Water Project. The DEIS was drafted in response to the November 16, 2009 United States Court of Appeals for the Ninth Circuit ruling that the Bureau of Reclamation must conduct a National Environmental Policy Act review to determine whether the associated 2008 U.S. Fish & Wildlife Service and 2009 National Marine Fisheries Service Reasonable and Prudent Alternatives cause a significant effect to the human environment.

**DATES:** Submit written comments on the DEIS on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Four public meetings will be held to receive oral and written comments:

- Wednesday, September 9, 2015, from 2 to 4 p.m., Sacramento, CA;
- Thursday, September 10, 2015, from 6 to 8 p.m., Red Bluff, CA;
- Tuesday, September 15, 2015, from 6 to 8 p.m., Los Banos CA; and
- Thursday, September 17, 2015, from 6 to 8 p.m., Irvine, CA.

Staff will be available to take comments and answer questions during this time.

**ADDRESSES:** Send written comments to Mr. Ben Nelson, Bureau of Reclamation, Bay-Delta Office, 801 I Street, Suite 140, Sacramento, CA 95814-2536; fax to (916) 414-2439; or via e-mail to [bcnelson@usbr.gov](mailto:bcnelson@usbr.gov).

Public meetings will be held at the following locations:

- Sacramento – Federal Building, 650 Capitol Mall, Stanford Room, Sacramento, CA 95814.
- Red Bluff – Red Bluff Community Center, 1500 S. Jackson Street, Red Bluff, CA 96080.
- Los Banos – Los Banos Community Center, Grand Room 645 7th Street, Los Banos, CA 93635.
- Irvine – Hilton Hotel Irvine/Orange County Airport, 18800 MacArthur Boulevard, Irvine, CA 92612.

The DEIS may be viewed at the Bureau of Reclamation's website at [http://www.usbr.gov/mp/nepa/nepa\\_projdetails.cfm?Project\\_ID=21883](http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=21883).

To request a compact disc of the DEIS, please contact Mr. Ben Nelson as indicated above, or call (916) 414-2424.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Piñero, Endangered Species Act Compliance Specialist, Bureau of Reclamation, via e-mail at *jpintero@usbr.gov*, or by phone (916) 414-2428. For public involvement information, please contact Wilbert Moore via e-mail at *wmoore@usbr.gov*, or phone at (916) 978-5102.

**SUPPLEMENTARY INFORMATION:**

**I. Agencies involved.**

We, the Bureau of Reclamation, are the lead Federal agency. We invited over 740 agencies to participate as cooperating agencies. Twenty-one agencies agreed to participate as cooperating agencies for preparation of the environmental impact statement in accordance with the National Environmental Policy Act (NEPA), including:

- U.S. Fish and Wildlife Service (USFWS),
- National Marine Fisheries Service (NMFS),
- U.S. Army Corps of Engineers,
- U.S. Environmental Protection Agency (EPA),
- Bureau of Indian Affairs,
- California Valley Miwok Tribe,
- California Department of Water Resources,
- California Department of Fish and Wildlife,
- State and Federal Contractors Water Agency,
- Friant Water Authority, and

- Eleven individual Central Valley Project (CVP) or State Water Project (SWP) water users.

## **II. Why we are taking this action.**

The CVP is the largest Federal Reclamation project. We operate the CVP in coordination with the SWP, under the Coordinated Operation Agreement between the Federal government and the State of California (authorized by Public Law 99-546). In August 2008, the Bureau of Reclamation submitted a biological assessment to USFWS and NMFS for consultation.

In December 2008, USFWS issued a Biological Opinion (BO) analyzing the effects of the coordinated long-term operation of the CVP and SWP in California on delta smelt and its designated critical habitat. The 2008 USFWS BO:

- Concluded that “the coordinated operation of the CVP and SWP, as proposed, [was] likely to jeopardize the continued existence of the delta smelt” and “adversely modify delta smelt critical habitat,” and
- Included a Reasonable and Prudent Alternative (RPA) for CVP and SWP operations designed to allow the projects to continue operating without causing jeopardy or adverse modification.

On December 15, 2008, we provisionally accepted and then implemented the USFWS RPA.

In June 2009, NMFS issued a BO analyzing the effects of the coordinated long-term operation of the CVP and SWP on listed salmonids, green sturgeon, and southern resident killer whale and their designated critical habitats. This BO concluded that the long-term

operation of the CVP and SWP, as proposed, was likely to:

- Jeopardize the continued existence of Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, Southern Distinct Population Segment of North American green sturgeon, and southern resident killer whales; and
- Destroy or adversely modify critical habitat for Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, and the Southern Distinct Population Segment of North American green sturgeon.

The NMFS BO included an RPA designed to allow the projects to continue operating without causing jeopardy to the analyzed species or adverse modification of their designated critical habitat. On June 4, 2009, we provisionally accepted and then implemented the NMFS RPA.

Several lawsuits were filed in the United States District Court for the Eastern District of California (District Court) challenging various aspects of the USFWS and NMFS BOs and acceptance and implementation of the associated RPAs.

### **III. Results of litigation.**

The results of the above lawsuits were as follows.

- On November 16, 2009, the Court ruled that we violated NEPA by failing to conduct a NEPA review of the potential impacts to the human environment before provisionally accepting and implementing the 2008 USFWS BO, including the RPAs.

- On December 14, 2010, the Court found certain portions of the USFWS BO to be arbitrary and capricious, and remanded those portions of the BO to USFWS. The Court ordered us to review the BO and RPA in accordance with NEPA.
- The decision of the District Court related to the USFWS BO was appealed to the United States Court of Appeals for the Ninth Circuit (Appellate Court). On March 13, 2014, the Appellate Court reversed the District Court and upheld the BO. Therefore, the remand order related to the USFWS BO was rescinded. However, the Appellate Court ruled that we were obligated to comply with NEPA and affirmed the judgment of the District Court with respect to the NEPA claims.
- A mandate of the Appellate Court was issued on September 16, 2014. Petitions for Writ of Certiorari were submitted to the U.S. Supreme Court; however, the U.S. Supreme Court decided to not hear the cases.
- On March 5, 2010, the Court held that we violated NEPA by failing to undertake a NEPA analysis of potential impacts to the human environment before accepting and implementing the RPA in the 2009 NMFS BO.
- On September 20, 2011, in the Consolidated Salmonid Cases, the District Court remanded the NMFS BO to NMFS.
- The decisions of the District Court related to the NMFS BO were appealed to the Appellate Court. On December 22, 2014, the Appellate Court reversed the District Court and upheld the BO. Therefore, the remand order related to the NMFS BO was rescinded. A mandate of the Appellate Court was issued on February 17, 2015.

In response to these requirements, we have prepared a combined NEPA process addressing both the USFWS and NMFS RPAs and alternatives.

#### **IV. Purpose and need for action.**

The purpose of the action is to continue the operation of the CVP, in coordination with the SWP, for its authorized purposes, in a manner that:

- Is similar to historic operational parameters with certain modifications;
- Is consistent with Federal Reclamation law; other Federal laws; Federal permits and licenses and; State of California water rights, permits, and licenses; and
- Enables the Bureau of Reclamation and the Department of Water Resources to satisfy their contractual obligations to the fullest extent possible.

Continued operation of the CVP and the SWP is needed to provide river regulation, improvement of navigation; flood control; water supply for irrigation and domestic uses; fish and wildlife mitigation, protection, and restoration; fish and wildlife enhancement; and power generation. The CVP and SWP facilities also are operated to provide recreation benefits and in accordance with the water rights and water quality requirements adopted by the State Water Resources Control Board.

Even though the coordinated operation of the CVP and SWP provides these benefits, the USFWS and NMFS concluded in their 2008 and 2009 BOs, respectively, that the coordinated operation of the CVP and SWP, as described in the 2008 Bureau of Reclamation Biological Assessment, does not comply with the requirements of section 7(a)(2) of ESA. To remedy this, USFWS and NMFS provided RPAs in their BOs. The Appellate Court confirmed the District Court's ruling that the Bureau of Reclamation

must conduct a NEPA review to determine whether the RPA actions cause a significant effect to the human environment. Concepts associated with potential modifications to the coordinated operation of the CVP and SWP included in the NEPA process should be consistent with the intended purpose of the action, within the scope of our legal authority and jurisdiction, economically and technologically feasible, and avoid the likelihood of jeopardizing listed species or resulting in the destruction or adverse modification of critical habitat in compliance with the requirements of section 7(a)(2) of ESA.

## **V. Project area.**

The project area includes the CVP and SWP Service Areas and facilities, as described in this section.

*A. CVP Facilities.* The CVP facilities include reservoirs on the Trinity, Sacramento, American, Stanislaus, and San Joaquin rivers.

- A portion of the water from Trinity River is stored and re-regulated in Trinity Lake, Lewiston Reservoir, and Whiskeytown Reservoir, and diverted through a system of tunnels and powerplants into the Sacramento River. Water is also stored and re-regulated in Shasta and Folsom lakes. Water from these reservoirs and other reservoirs owned and/or operated by the SWP flows into the Sacramento River.
- The Sacramento River carries water to the Sacramento-San Joaquin Delta (Delta). The Jones Pumping Plant at the southern end of the Delta lifts the water into the Delta Mendota Canal (DMC). This canal delivers water to CVP contractors, whom divert water directly from the DMC, and exchange



contractors on the San Joaquin River, whom divert directly from the San Joaquin River and the Mendota Pool. CVP water is also conveyed to the San Luis Reservoir for deliveries to CVP contractors through the San Luis Canal. Water from the San Luis Reservoir is also conveyed through the Pacheco Tunnel to CVP contractors in Santa Clara and San Benito counties.

- The CVP provides water from Millerton Reservoir on the San Joaquin River to CVP contractors located near the Madera and Friant-Kern canals. Water is stored in the New Melones Reservoir for water rights holders in the Stanislaus River watershed and CVP contractors in the northern San Joaquin Valley.

*B. State Water Project Facilities.* The California Department of Water Resources operates and maintains the SWP, which delivers water to agricultural and municipal and industrial contractors in northern California, the San Joaquin Valley, the San Francisco Bay Area, the Central Coast, and southern California.

- SWP water is stored and re-regulated in Lake Oroville and released into the Feather River, which flows into the Sacramento River.
- SWP water flows in the Sacramento River to the Delta and is exported from the Delta at the Banks Pumping Plant. The Banks Pumping Plant lifts the water into the California Aqueduct, which delivers water to the SWP contractors and conveys water to the San Luis Reservoir.
- The SWP also delivers water to the Cross-Valley Canal, when the systems have capacity, for CVP water service contractors.

## **VI. Alternatives considered.**

As required by NEPA, we developed a reasonable range of alternatives, including a No Action Alternative. Development of the alternatives included discussions with the Department of Water Resources. Development of the alternatives also was informed by comments submitted to us during the scoping process and the subsequent public involvement process.

The DEIS analyzes five alternatives, in addition to the No Action Alternative, that consider modifications to operational components of the 2008 USFWS and the 2009 NMFS RPAs. All alternatives addressed continued operation of the CVP, in coordination with the SWP.

The No Action Alternative assumes continuation of existing policy and management direction in Year 2030, including implementation of the RPAs included in the 2008 USFWS and 2009 NMFS BOs. Many of the RPAs were implemented prior to 2009 under other programs, such as Central Valley Project Improvement Act implementation, or are currently being implemented in accordance with the 2008 USFWS and 2009 NMFS BOs.

In response to scoping comments, the DEIS also includes a Second Basis of Comparison that assumes coordinated operation of the CVP and SWP as if the 2008 USFWS and 2009 NMFS BOs had not been implemented. The Second Basis of Comparison includes several actions that were included in the RPAs of the 2008 USFWS and 2009 NMFS BOs and that would have occurred without the BOs, including projects that were being initiated prior to 2009 (*e.g.*, Red Bluff Pumping Plant; Battle Creek restoration; and Suisun Marsh Habitat Management,

Preservation, and Restoration Plan), legislatively mandated projects (*e.g.*, San Joaquin River Restoration Program), and projects with substantial progress that would have occurred without implementation of the BOs (*e.g.*, Yolo Bypass Salmonid Habitat Restoration and Fish Passage).

Alternative 1 was informed by scoping comments from CVP and SWP water users. Alternative 1 is identical to the Second Basis of Comparison and provides an opportunity for us to select an alternative with the same assumptions as the Second Basis of Comparison as the preferred alternative.

Alternative 2 is similar to the No Action Alternative because it includes the RPA actions, except for actions that consist of projects to be evaluated for future implementation. For example, Alternative 2 does not include fish passage programs to move fish from the Sacramento River downstream of Keswick Dam to the Sacramento River upstream of Shasta Dam.

Alternative 3 was informed by scoping comments from CVP and SWP water users. Alternative 3 is similar to the Second Basis of Comparison and Alternative 1 because it generally does not include the RPA actions, but it includes additional restrictions on CVP and SWP Delta exports to reduce negative flows in the south Delta during critical periods for aquatic resources. Alternative 3 also includes provisions to reduce losses to fish that use the Delta due to predation, commercial and sport fishing ocean harvest, and fish passage through the Delta.

Alternative 4 was informed by scoping comments from CVP and SWP water users. Alternative 4 is similar to the Second Basis of Comparison and Alternative

1 because it generally does not include the RPA actions, but it includes provisions to reduce losses to fish that use the Delta due to predation, commercial and sport fishing ocean harvest, and fish passage through the Delta.

Alternative 5 was informed by scoping comments from environmental interest groups. Alternative 5 includes assumptions similar to the No Action Alternative regarding the incorporation of RPA actions, with additional provisions to provide for positive Old and Middle River (OMR) flows and increased Delta outflow from reduced exports in April and May; and modified operations for New Melones Reservoir.

The DEIS does not identify a preferred alternative. Following receipt and evaluation of public comments on the DEIS, we will determine which alternative or combinations of features within the alternatives will become the preferred alternative. A discussion of the decision-making process used to define the preferred alternative will be included in the Final EIS.

#### **VII. Statutory authority.**

NEPA [42 U.S.C. 4321 *et seq.*] requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. In addition, as required by NEPA, the Bureau of Reclamation analyzed the potential direct, indirect, and cumulative environmental effects that may result from the implementation of the alternatives, which may include, but are not limited to, the following areas of potential impact:

- a. Surface water and groundwater;

- b. Energy generation and use by CVP and SWP;
- c. Biological resources, aquatic and terrestrial resources;
- d. Land use, including agriculture;
- e. Recreation.
- f. Socioeconomics;
- g. Environmental justice;
- h. Air quality;
- i. Soils and geology;
- j. Visual resources;
- k. Cultural resources;
- l. Public health; and
- m. Indian trust assets.

All alternatives and the Second Basis of Comparison were analyzed assuming conditions at Year 2030 with associated climate change and sea level rise.

#### **VIII. Public Review of DEIS.**

The notice of availability of the DEIS is being distributed to interested agencies, stakeholder organizations, and individuals that participated in the scoping process and subsequent public involvement activities. This distribution provides an opportunity for interested parties to express their views regarding the environmental effects of the project, and to ensure that the information pertinent to implementation of the project is provided to cooperating agencies. Copies of the DEIS are available for public review at the Bureau of Reclamation, Bay-Delta Office, 801 I Street, Suite 140, Sacramento, CA

95814-2536; and Bureau of Reclamation, Mid-Pacific Region, Regional Library, 2800 Cottage Way, Sacramento, CA 95825.

**IX. How to request reasonable accommodation.**

If special assistance is required to participate in the public meeting, please contact Mr. Ben Nelson at (916) 414-2424, or via e-mail at [bcnelson@usbr.gov](mailto:bcnelson@usbr.gov), or Wilbert Moore at (916) 978-5102, or via e-mail at [wmoore@usbr.gov](mailto:wmoore@usbr.gov), at least five working days before the meetings. If a request cannot be met, the requestor will be notified. A telephone device for the hearing impaired (TTY) is available at (800) 877-8339. The electronic version of the DEIS is published in accordance with the provisions of Section 508 of the Rehabilitation Act of 1973.

**X. Public disclosure.**

Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: 7/2/15

Signed: Pablo R. Arroyave  
Pablo R. Arroyave  
Deputy Regional Director  
Mid-Pacific Region