

RECLAMATION

Managing Water in the West

Finding of No New Significant Impact

Delta Smelt Fall Outflow in 2017

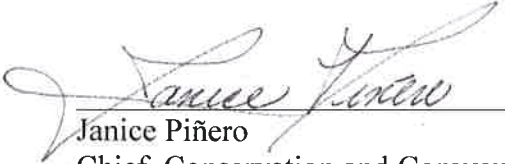
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Background

In 2008, the US Fish and Wildlife (Service) provided Reclamation a Biological Opinion (BO) on the Coordinated Long-Term Operation of the Central Valley Project (CVP) and State Water Project (SWP) under Section 7 of the Endangered Species Act (ESA). The 2008 BO set forth a Reasonable and Prudent Alternative (RPA) with actions that allow for continued operation of the CVP and SWP in compliance with ESA.

In 2016, Reclamation signed the Record of Decision (ROD) for the Coordinated Long-term Operation of the CVP and SWP Environmental Impact Statement (LTO EIS). Reclamation selected the No Action Alternative analyzed in the EIS, which included the RPA actions in the 2008 BO and 2009 National Marine Fisheries Service BO (2009 NMFS BO).

Changes in operations at Oroville Dam for public safety resulted in less carryover storage in 2017. In addition, new science and monitoring information on the Delta Smelt (*Hypomesus transpacificus*) are being considered as part of the adaptive management component of the 2008 BO.

On September 7, 2017, Reclamation submitted a request to the Service to modify the implementation of Action 4 of the 2008 BO for October of 2017. The Service responded on September 27th with a memo that amends the 2008 BO to allow Reclamation to operate to achieve an average X2 location no greater than 80 km in October of 2017. The Reclamation letter and Service memo response are included as Appendix C.

The Bureau of Reclamation (Reclamation) prepared the Delta Smelt Fall Outflow in 2017 Environmental Assessment (EA), which tiers (40 CFR 1502. 20 and 1508. 28) off the LTO EIS and 2016 ROD and incorporates it by reference. Analyses included in the EA are based on the information and analyses included in the LTO EIS and other information. The LTO EIS and ROD are available online at:

https://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=21883

Proposed Action

In its letter to the Service (September 7, 2017) and draft EA (released on September 22, 2017), Reclamation initially proposed to operate to achieve an X2 location of 74 km in September and no greater (more eastward) than 81 km in October. The Service issued a memo on September 27, 2017, amending the 2008 BO to allow Reclamation to operate to achieve an average X2 location no greater than 80 km in October of 2017. Reclamation now proposes to operate consistent with that Service's memo to achieve a monthly average X2 location of 74 km in September and no greater (more eastward) than 80 km in October, in accordance with the Service's September 27th memo. The Proposed Action is consistent with Action 4 of the RPA in that it seeks to work within the Adaptive Management

parameters of the action described in the 2008 BO and selected alternative in the LTO ROD. Additionally, the Proposed Action represents an X2 location downstream of the Action 4 prescription for an Above Normal Water Year. Upstream reservoir releases and storage would not change under the Proposed Action. The only operational changes that would occur under the Proposed Action are differences in south Delta exports.

Findings

The proposed modification for October 2017 to Action 4 of the 2008 USFWS BO would not create “substantial changes in the proposed action that are relevant to environmental concerns” or “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts” that were not fully discussed or did not exist at the time of the LTO EIS (40 CFR 1502. 9). The Proposed Action would not necessitate an updated analysis of range of alternatives or impacts. The analyses, potential impacts, and conclusions in the LTO EIS remain applicable and valid.

A Finding of No Significant Impact, or in this case Finding of No New Significant Impact (43 CFR 46. 140(c)) may discuss significance in terms of the context and intensity of the impact (40 CFR 1508. 27). Context in the Proposed Action would be related to local effects to the Delta. Intensity refers to the severity of the impacts, which may include whether the action may adversely affect an endangered or threatened species or adversely modify its critical habitat.

The following were considered in evaluating intensity (40 CFR 1508. 27):

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

The Proposed Action would have beneficial impacts to downstream storage and water supply, but may have some adverse effects to biological resources. Reclamation consulted with the Service under Section 7 of the Endangered Species Act on potential effects of the Proposed Action to Delta Smelt and its critical habitat, and the Service agreed to amend the 2008 BO consistent with the Proposed Action.

(2) The degree to which the proposed action affects public health or safety.

The Proposed Action would not affect public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

The Proposed Action area represents critical habitat designated for Delta Smelt. Reclamation consulted with the Service under Section 7 of the ESA on the effects of the Proposed Action on Delta Smelt and its critical habitat, and the Service agreed to amend the 2008 BO consistent with the Proposed Action.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

Reclamation received comments on the draft EA supporting the project (two) and opposing the project (three). While some commenters raised concern over the potential effects to biological resources, specifically Delta Smelt, Reclamation consulted with the Service under Section 7 of the ESA on potential effects of the Proposed Action on Delta Smelt and its critical habitat. The Service, the agency charged with implementing the ESA and that issued the 2008 BO, agreed to amend the 2008 BO consistent with the Proposed Action.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

There is some degree of uncertainty in the effects of the Proposed Action on biological resources, but Reclamation did consult with the Service on the effects of the Proposed Action on Delta Smelt. The analyses represent an updated look at connections between Delta Smelt and the low salinity zone. Reclamation (and the Service) used the best available scientific information in approving the project. There are no unknown or unique risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

The Proposed Action is limited to the month of October, 2017, and the need for it arises from the unusual circumstances at Oroville Dam this year. The Proposed Action does not represent a decision about a future consideration and would not establish a precedent for future actions with significant effects. Any future proposal to relax or modify Fall X2 would be based on the conditions at that time and must be approved by the Service and coordinated with the Collaborative Science and Adaptive Management Program.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

The Proposed Action would not result in cumulatively significant impacts on the environment, as described below.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

As described below, this type of undertaking does not have the potential to cause effects to historic properties and there would be no new construction or ground-disturbing activities and no changes in land use as a result of this action.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

Reclamation initially proposed to operate to meet an X2 location of 81 km for the month of October, 2017. To minimize effects to Delta Smelt and its critical habitat, the Service agreed to amend the 2008 BO to allow Fall X2 to be no greater than 80 km in October, 2017. While the Proposed Action may adversely affect Delta Smelt critical habitat, specifically river flow affecting the extent and salinity influencing the location and extent of the low salinity zone, the Service agreed to amend the 2008 BO consistent with the Proposed Action. The Proposed Action should, therefore, not jeopardize the continued existence of Delta Smelt or adversely modify its critical habitat.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The Proposed Action would not violate requirements under Federal, State, or local laws imposed for protection of the environment. On September 27, 2017, the Service responded with a memo that amends the 2008 BO to allow Reclamation to operate to achieve an average X2 location no greater than 80 km in October of 2017. The Service determined that under the Proposed Action there may be some effect to Delta Smelt related to the effects to Critical Habitat. As described in the Service response and this EA, 80 km represents an inflection point where key regions for Delta Smelt provide habitat with favorable salinities.

In accordance with the National Environmental Policy Act (NEPA), Reclamation has found that the Proposed Action to operate to achieve an X2 no greater (more eastward) than 80 km in October does not create significant impacts not identified in the LTO EIS.

Reclamation has found that the Proposed Action is not a major Federal action that would significantly affect the quality of the human environment. Therefore, an additional EIS is not required for carrying out the Proposed Action.

Potential impacts on several environmental resources were examined and found to be similar to those in the LTO EIS and include:

- Air Quality and Greenhouse Gas Emissions; Geology and Soil Resources; Socioeconomics; Recreation Resources; Land Use; and Agriculture.

Potential impacts on several environmental resources not evaluated in detail in the LTO EIS were also found to have minimal or nonexistent impact:

- Aesthetic Resources; Hazards and Hazardous Materials; Noise; Transportation; and Utilities, Public Services, and Service Systems.

Cultural Resources: This type of undertaking does not have the potential to cause effects to historic properties pursuant to 36 CFR Part 800. 3(a)(1). There would be no new construction or ground-disturbing activities and no changes in land use as a result of this action.

Indian Trust Assets: The Proposed Action does not have a potential to affect Indian Trust Assets. There would be no new construction or ground-disturbing activities and no changes in land use as a result of this action.

Indian Sacred Sites: There would be no new construction or ground-disturbing activities and no changes in land use as a result of this action; therefore this project would not inhibit use or access to any Indian Sacred Sites.

Environmental Justice: There would be no new construction or ground-disturbing activities and no changes in land use as a result of this action; therefore the Proposed Action would not result in adverse human health or environmental impacts to minority or low-income populations.

This determination is also supported by the following factors, as further described in the attached EA:

Hydrology

- The Proposed Action is not estimated to change upstream storage or releases for the months of September through December.
- The Proposed Action is estimated to result in additional water stored in San Luis Reservoir. Therefore, the Proposed Action would have beneficial impacts to downstream storage.
- The Proposed Action is estimated to result in decreased outflow in the Delta over the month of October and result in no change to outflow for the months of September, November, and December.

Water Quality

- The proposed action is not anticipated to exceed the D-1641 water quality requirements for the monthly average in October.
- Data suggest Fall X2 has little potential influence on mean water temperature in October. Therefore, the Proposed Action is anticipated to not result in a change to temperature based on the location of X2.

Delta Smelt

- Under the Proposed Action, compared to the No Action Alternative, X2 would occur further upstream and the LSZ would overlap areas with

marginally greater mean water temperature, although well within the range of Delta Smelt tolerance, and therefore likely to have little influence on habitat quality.

- In Appendix A, an X2 location of 80 km results in parts of Grizzly Bay and all of Honker Bay (key regions) remain at salinities favorable to Delta Smelt for 100% of the month of October. As such, Reclamation has modified the Proposed Action to lessen the impacts to critical habitat, as compared to 81 km.
- The Service determined in their September 27th memo that under the Proposed Action, an X2 location of 80 km, there may be some effect to Delta Smelt related to the effects to Critical Habitat but less than if X2 were located at 81 km.
- An X2 location of 81 km would adversely affect Delta Smelt critical habitat, specifically river flow affecting the extent and salinity influencing the location and extent of the low salinity zone. The Proposed Action, of an X2 location of 80 km, would not significantly impact Delta Smelt in a way that was not considered in the previous 2008 BO and/or LTO EIS.

Salmonids

- The Proposed Action would temporarily affect Delta outflow which could reduce attraction of adult salmonids migrating into the Delta and upstream. Impacts would be temporary and limited to the month of October, which follows Wet Water Year 2017.
- Flows upstream of the Delta would be the same so the ultimate success of adult salmonids reaching the spawning areas is anticipated to be unaffected.
- The Proposed Action would not obstruct freshwater or estuarine corridors, would not create excessive predation, and would not substantially alter the water quantity or quality suitable for movement and survival of adult salmonids.
- Effects to listed salmonids from the Proposed Action are unlikely to occur, and are thus, discountable. The Proposed Action would not have a significant effect to salmonids, their critical habitat, or Essential Fish Habitat, in a way that was not considered in the previous 2009 NMFS BO and/or LTO EIS.

Cumulative Effects

Past, present, and reasonably foreseeable future actions were identified and considered in the analysis in the LTO EIS (Sections 3. 5). Cumulative Effects analyses in the LTO EIS are included at the end of each chapter (e. g. , Section 9. 4. 3. 9 for Fish and Aquatic Resources).

No past, present, or probable future projects were identified in the project vicinity that when added to project-related impacts, would result in a significant cumulative impact, and that would be cumulatively considerable. Other projects

occurring in and around the Delta, but outside of the waterway, would not be affected by changes in outflow.

Public Review

Reclamation released the draft EA for public review and comment from September 22, 2017 through September 27, 2017. The document and appendices were made available on Reclamation's website at:

https://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=30266

Publishing a draft EA is not required under NEPA (43 CFR 46. 305(b)). Reclamation is required to provide public notification and public involvement, to the extent practicable ((43 CFR 46. 305(a)), such as a public notice, press release, or posting to Reclamation's website.

On September 25, 2017, the Natural Resources Defense Council (NRDC) submitted comments to Reclamation and the Service. On September 27, 2017, James Hay, Tom Cannon, and James Hobbs submitted comments individually. The State Water Contractors also submitted comments on September 27, 2017. The comments and responses are included in Appendix D to the EA.