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## MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: January 8, 2023

RE: Update on Water Policy/Resources Activities

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### Background

This memorandum is provided to briefly summarize the current status of various agency processes regarding water policy activities, including but not limited to the (1) Reinitiation of Consultation on Long-Term Operations of the Central Valley Project and State Water Project, including environmental compliance; (2) State Water Resources Control Board action; (3) San Joaquin River Restoration Program; (4) Delta conveyance; (5) Reclamation action; (6) Delta Stewardship Council action; (7) San Joaquin Valley Water Blueprint and San Joaquin Valley Water Collaborative Action Plan.

### Policy Items

#### Reinitiation of Consultation on Long-Term Operations of the Central Valley Project and State Water Project

In August 2016, the Bureau of Reclamation and California Department of Water Resources (DWR) requested reinitiation of consultation with NOAA Fisheries, also known as National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) due to multiple years of drought, low populations of listed species, and new information developed as a result of ongoing collaborative science efforts over the last 10 years.

On Jan. 31, 2019, Reclamation transmitted its Biological Assessment to the Services. The purpose of this action is to continue the coordinated long-term operation of the CVP and SWP to optimize water supply delivery and power generation consistent with applicable laws, contractual obligations, and agreements; and to increase operational flexibility by focusing on nonoperational measures to avoid significant adverse effects to species.

The biological opinions carefully evaluated the impact of the proposed CVP and SWP water operations on imperiled species such as salmon, steelhead and Delta smelt. FWS and NMFS documented impacts and worked closely with Reclamation to modify its proposed operations to minimize and offset those impacts, with the goals of providing water supply for project users and protecting the environment.

Both FWS and NMFS concluded that Reclamation's proposed operations will not jeopardize threatened or endangered species or adversely modify their critical habitat. These conclusions were reached for

several reasons – most notably because of significant investments by many partners in science, habitat restoration, conservation facilities including hatcheries, as well as protective measures built into Reclamation's and DWR's proposed operations.

On Oct. 21, 2019, FWS and NMFS released their biological opinions on Reclamation's and DWR's new proposed coordinated operations of the CVP and SWP.

On Dec. 19, 2019, Reclamation released the final Environmental Impact Statement analyzing potential effects associated with long-term water operations for the CVP and SWP.

On Feb. 18, 2020, Reclamation approved a Record of Decision that completes its environmental review for the long-term water operations for the CVP and SWP, which incorporates new science to optimize water deliveries and power production while protecting endangered species and their critical habitats.

On January 20, 2021, President Biden signed an Executive Order: "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis", with a fact sheet<sup>1</sup> attached that included a non-exclusive list of agency actions that heads of the relevant agencies will review in accordance with the Executive Order. Importantly, the NOAA Fisheries and U.S. Fish and Wildlife Service Biological Opinions on the Long-Term Operation of the Central Valley Project and State Water Project were both included in the list of agency actions for review.

On September 30, 2021, Reclamation Regional Director Ernest Conant sent a letter to U.S. FWS Regional Director Paul Souza and NMFS Regional Administrator Barry Thom requesting reinitiation of consultation on the Long-Term Operation of the CVP and SWP. Pursuant to 50 CFR § 402.16, Reclamation indicated that reinitiation is warranted based on anticipated modifications to the Proposed Action that may cause effects to listed species or designated critical habitats not analyzed in the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) Biological Opinions, dated October 21, 2019. To address the review of agency actions required by Executive Order 13990 and to voluntarily reconcile CVP operating criteria with operational requirements of the SWP under the California Endangered Species Act, Reclamation and DWR indicated that they anticipate a modified Proposed Action and associated biological effects analysis that would result in new Biological Opinions for the CVP and SWP.

Following this action, on October 20, 2021, the SLDMWA sent a letter to Reclamation Regional Director Ernest Conant requesting participation in the reinitiation of consultation pursuant to Section 4004 of the WIIN Act and in the NEPA process as either a Cooperating Agency or Participating Agency.

On February 26, 2022, the Department of the Interior released a Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Hold Public Scoping Meetings on the 2021 Endangered Species Act Reinitiation of Section 7 Consultation on the Long-Term Operation of the Central Valley Project and State Water Project<sup>2</sup>. In response to this, on March 30, 2022, the SLDMWA submitted a comment letter highlighting actions for Reclamation to consider during preparation of the EIS.

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<sup>1</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>

<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2022-02-28/pdf/2022-04160.pdf>

During May 2022, Reclamation issued draft copies of the Knowledge Base Papers for the following management topics and requested supplementary material review and comments, to which the Authority submitted comment letters in June:

1. Spring-run Juvenile Production Estimate- Spring-run Survival Knowledge Base Document, May 2022
2. Steelhead Juvenile Production Estimate-Steelhead Survival Knowledge Base Document, April 2022
3. Old and Middle River Reverse Flow Management – Smelt, Chinook Salmon, and Steelhead Migration and Survival Knowledge Base Document, May 2022
4. Central Valley Tributary Habitat Restoration Effects on Salmonid Growth and Survival Knowledge Based Paper, March 2022
5. Delta Spring Outflow Management Smelt Growth and Survival Knowledge Base Document, May 2022
6. Pulse Flow Effects on Salmonid Survival Knowledge Base Document, May 2022
7. Summer and Fall Habitat Management Actions – Smelt Growth and Survival Knowledge Base Document, May 2022
8. Shasta Cold Water Pool Management – End of September Storage Knowledge Base Document, May 2022

Subsequent to the Knowledge Base Paper review, a Scoping Meeting was held, to which Water Authority staff provided comments, resulting in the release of a Scoping Report<sup>3</sup> by Reclamation in June 2022.

On October 14, 2022, Reclamation released an Initial Alternatives Report (IAR).

On May 16, 2023, Reclamation provided an administrative draft copy of the Proposed Action, titled “State and Federal Cooperating Agency Draft LTO Alternative” to agencies that have executed an MOU with Reclamation on engagement. Authority staff is reviewing the document and provided feedback to Reclamation, in coordination with member agencies and other CVP contractors.

On June 30, 2023, Reclamation released a draft Qualitative Biological Assessment for review by agencies that have executed an MOU with Reclamation on engagement, though Reclamation is not accepting formal comments. Note that this release does not initiate formal ESA consultation and is being provided to assist the fishery agencies in setting up their documents and resources for the formal consultation, which we expect to begin in late September/early October.

On July 21, 2023, Reclamation released an Administrative Draft Terrestrial Biological Assessment for review by agencies that have an MOU with Reclamation on engagement, though Reclamation is not accepting formal comments. Note that this release does not initiate formal ESA consultation and is being provided to assist the fishery agencies in setting up their documents and resources for the formal consultation, which we expect to begin in late September/early October.

On September 15, Reclamation released a Draft Environmental Impact Statement for 30-day NEPA Cooperating Agency review. The SLDMWA coordinated review of the document with member agencies

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<sup>3</sup> <https://www.usbr.gov/mp/bdo/docs/lto-scoping-report-2022.pdf>

and technical consultants and submitted both high-level and technical comments on the document<sup>4</sup> on October 16.

On October 10, Reclamation transmitted an Aquatic species Quantitative Biological Assessment, and on October 18, Reclamation transmitted a Terrestrial Species Quantitative Biological Assessment to the Services and to consulting agencies pursuant to the WIIN Act.

Staff anticipates a second Administrative Draft EIS to be released in mid-January for Cooperating Agency review.

#### Current Milestones

- Spring 2023 – Public Draft EIS
  - The public draft EIS will be the avenue for comments to Reclamation
  - Cooperating agencies will receive an administrative draft of the EIS
- Fall 2024 – Record of Decision

#### State Water Resources Control Board (State Water Board) Activity

##### Bay Delta Water Quality Control Plan Update

###### *Background*

The State Water Board is currently considering updates to its 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (“Bay Delta Plan”) in two phases (Plan amendments). The first Plan amendment is focused on San Joaquin River flows and southern Delta salinity (“Phase I” or “San Joaquin River Flows and Southern Delta Salinity Plan Amendment”). The second Plan amendment is focused on the Sacramento River and its tributaries, Delta eastside tributaries (including the Calaveras, Cosumnes, and Mokelumne rivers), Delta outflows, and interior Delta flows (“Phase II” or “Sacramento/Delta Plan Amendment”).

During the December 12, 2018 Water Board Meeting, the Department of Water Resources (“DWR”) and Department of Fish and Wildlife presented proposed “Voluntary Settlement Agreements” (“VSAs”) on behalf of Reclamation, DWR, and the public water agencies they serve to resolve conflicts over proposed amendments to the Bay-Delta Plan update.<sup>5</sup> The State Water Board did not adopt the proposed VSAs in lieu of the proposed Phase 1 amendments, but as explained below, directed staff to consider the proposals as part of a future Delta-wide proposal.

**Phase 1 Status:** The State Water Board adopted a resolution<sup>6</sup> to adopt amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and adopt the Final Substitute Environmental Document during its December 12, 2018 public meeting.

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<sup>4</sup> Request from Authority staff.

<sup>5</sup> Available at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Blogs/Voluntary-Settlement-Agreement-Meeting-Materials-Dec-12-2018-DWR-CDFW-CNRA.pdf>.

<sup>6</sup> Available at [https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2018/rs2018\\_0059.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf).

Most recently, on July 18, 2022, the State Water Resources Control Board issued a Notice of Preparation (NOP)<sup>7</sup> and California Environmental Quality Act (CEQA) Scoping Meeting for the Proposed Regulation to Implement Lower San Joaquin River Flows (LSJR) and Southern Delta Salinity Objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta Plan).

The purpose of the NOP is: (1) to advise responsible and trustee agencies, Tribes, and interested organizations and persons, that the State Water Board or Board will be the lead agency and will prepare a draft EIR for a proposed regulation implementing the LSJR flow and southern Delta salinity components of the 2018 Bay-Delta Plan, and (2) to seek input on significant environmental issues, reasonable alternatives, and mitigation measures that should be addressed in the EIR. For responsible and trustee agencies, the State Water Board requests the views of your agency as to the scope and content of the environmental information related to your agency's area of statutory responsibility that must be included in the draft EIR.

In response to the release of the NOP, the Water Authority and member agencies provided scoping comments<sup>8</sup>.

**Phase 2 Status:** In the State Water Board's resolution adopting the Phase 1 amendments, the Water Board directed staff to assist the Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. Staff were directed to incorporate the Delta watershed-wide agreement as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments may be presented to the State Water Board for consideration as early as possible after December 1, 2019.

On March 1, 2019, the California Department of Water Resources and the Department of Fish and Wildlife submitted documents<sup>9</sup> to the State Water Board that reflect progress since December to flesh-out the previously submitted framework to improve conditions for fish through targeted river flows and a suite of habitat-enhancing projects including floodplain inundation and physical improvement of spawning and rearing areas.

Since the March 1 submittal, work has taken place to develop the package into a form that is able to be analyzed by State Water Board staff for legal and technical adequacy. On June 30, 2019, a status update with additional details was submitted to the Board for review. Additionally, on February 4, 2020, the State team released a framework for the Voluntary Agreements to reach "adequacy", as defined by the State team.

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<sup>7</sup> Available at [https://www.waterboards.ca.gov/public\\_notices/notices/20220715-implementation-nop-and-scoping-dwr-baydelta.pdf](https://www.waterboards.ca.gov/public_notices/notices/20220715-implementation-nop-and-scoping-dwr-baydelta.pdf)

<sup>8</sup> Request from Authority staff

<sup>9</sup> Available at [http://resources.ca.gov/docs/voluntary-agreements/2019/Complete\\_March\\_1\\_VA\\_Submission\\_to\\_SWRCB.pdf](http://resources.ca.gov/docs/voluntary-agreements/2019/Complete_March_1_VA_Submission_to_SWRCB.pdf)

Further work and analysis is needed to determine whether the agreements can meet environmental objectives required by law and identified in the State Water Board's update to the Bay-Delta Water Quality Control Plan.

On September 28, The State Water Resources Control Board released a draft Staff Report in support of possible updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) that are focused on the Sacramento River watershed, Delta, and Delta eastside tributaries (Sacramento/Delta).

The draft Staff Report includes scientific information and environmental and economic evaluations to support possible Sacramento/Delta updates to the Bay-Delta Plan. The report assesses a range of alternatives for updating the Sacramento/Delta portions of the Bay-Delta Plan, including: an alternative based on a 2018 Framework document identifying a 55% of unimpaired flow level (within an adaptive range from 45-65%) from Sacramento/Delta/tributaries and associated Delta outflows; and a proposed voluntary agreements alternative that includes voluntary water contributions and physical habitat restoration on major tributaries to the Delta and in the Delta. In addition, based on input from California Native American tribes, the draft Staff Report identifies the proposed addition of tribal and subsistence fishing beneficial uses to the Bay-Delta Plan.

The draft Staff Report is available for review on the [Board's website](#). Written comments on the report are due by **January 19, 2023**. During the public comment period, staff held two public workshops to explain the report where attendees can also ask questions. The workshops were followed by three public hearings before the State Water Board to receive oral comments on the draft Staff Report.

A Frequently Asked Questions (FAQ) document providing information on the report and the Bay-Delta Plan generally are available on the [Bay-Delta webpage](#).

Please see the [notice](#) for additional information on how to submit comments and participate in the workshops and hearing.

### *Schedule*

#### *LSJR Flow/SD Salinity Implementation Next Steps Assuming Regulation Path (Phase 1)*

- Winter/Spring 2024
  - Final draft Staff Report for Tuolumne River VA
  - Board workshop and consideration of Tuolumne River VA
  - Final draft EIR and regulation implementing Lower SJR flows and South Delta Salinity
  - Board consideration of regulation implementing Lower SJR flows and South Delta Salinity

#### *Sac/Delta Update: Key Milestones*

- Spring/Summer 2024: Response to comments and development of proposed final changes to the Bay-Delta Plan
- Summer/Fall 2024: Board consideration of adoption

### *Voluntary Agreements*

On March 29, 2022, members of the Newsom Administration joined federal and local water leaders in announcing the signing of a memorandum of understanding<sup>10</sup> that advances integrated efforts to improve ecosystem and fisheries health within the Sacramento-San Joaquin Bay-Delta. State and federal agencies also announced an agreement<sup>11</sup> specifically with the Sacramento River Settlement Contractors on an approach for 2022 water operations on the Sacramento River.

Both announcements represent a potential revival of progress toward what has been known as “Voluntary Agreements,” an approach the Authority believes is superior to a regulatory approach to update the Bay-Delta Water Quality Control Plan.

The broader MOU outlines terms for an eight-year program that would provide substantial new flows for the environment to help recover salmon and other native fish. The terms also support the creation of new and restored habitat for fish and wildlife, and provide significant funding for environmental improvements and water purchases, according to a joint news release from the California Natural Resources Agency and the California Environmental Protection Agency (CalEPA). Local water agency managers signing the MOU have committed to bringing the terms of the MOU to their boards of directors for their endorsement and to work to settle litigation over engaged species protections in the Delta.

On June 16, the SLDMWA, Friant Water Authority and Tehama Colusa Canal Authority signed onto the VA MOU. Additionally, since that time, in September and November, four more agencies – Contra Costa Water District, San Francisco Public Utilities Commission (SFPUC), Turlock Irrigation District (TID) and Modesto Irrigation District (MID) – have signed onto the VA MOU.

Work continues to develop the working documents associated with execution and implementation of the VA's and workgroups for participating agencies have been formed, with the formation of a VA Science Workgroup to develop the framework of the VA's proposed Science program, as well as the recent formation of Scheduling and Funding workgroups to ensure that the program remains coordinated.

### U.S. Bureau of Reclamation

#### Reclamation Manual

#### *Documents out for Comment*

#### *Draft Policy*

- There are currently no Draft Policies out for review.

#### *Draft Directives and Standards*

- EMG 03-01 Critical Information Requirements Reporting and Duty Officer Program (comments due 02/02/24)
- EMG 04-01 Continuity of Operations (comments due 01/08/24)

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<sup>10</sup> Available at <https://resources.ca.gov/-/media/CNRA-Website/Files/NewsRoom/Voluntary-Agreement-Package-March-29-2022.pdf>

<sup>11</sup> Available at <https://calepa.ca.gov/2022/03/29/informational-statement-state-federal-agencies-and-sacramento-river-settlement-contractors-agree-on-approach-for-2022-water-operations-on-the-sacramento-river/>



- PEC 05-03 Funding and Extended Repayment of Extraordinary Maintenance Costs (comments due 12/21/23, comment period extended)<sup>12</sup>

*Draft Facilities Instructions, Standards, and Techniques (FIST)*

- FIST 2-10 Maintenance, Inspection, and Testing of Electric and Hydraulic Elevators (comments due 12/01/23)

*Draft Reclamation Safety and Health Standards (RSHS)*

- There are currently no Safety and Health Standards out for review.

*Draft Reclamation Design Standards*

- There are currently no Design Standards out for review.

## San Joaquin Valley Water Blueprint

The Water Blueprint for the San Joaquin Valley (Blueprint) is a non-profit group of stakeholders, working to better understand our shared goals for water solutions that support environmental stewardship with the needs of communities and industries throughout the San Joaquin Valley.

**Blueprint's strategic priorities for 2022-2025:** Advocacy, Groundwater Quality and Disadvantaged Communities, Land Use Changes & Environmental Planning, Outreach & Communications, SGMA Implementation, Water Supply Goals, Governance, Operations & Finance.

**Mission Statement:** *"Unifying the San Joaquin Valley's voice to advance an accessible, reliable solution for a balanced water future for all."*

## Committees

### *Executive/Budget/Personnel*

Blueprint Board changed booking services and appointed Kassy Chauhan as the Board Treasurer and a Finance Committee has been appointed to review contributions and provide recommendations for 2024 contributions and categories. These may coincide with irrigable acres for an equitable process and avoiding redundancy. Hallmark will be providing a revised scope for 2024.

- ACWA Collective Meeting & Presentation: The Blueprint hosted a presentation at ACWA for representatives from both northern and southern California. Discussion focused on mutual concerns/issues faced by water scarcity as well as opportunities for collaboration including recharge, conveyance, and funding. An overview of the Blueprint, recharge, and conveyance opportunities as well as the environmentally friendly pilot were shared.
- Urban Water Agency Partnerships: Several meetings took place at ACWA and a request for a letter agreement with Urban Water Agencies and the Blueprint has been requested for monetary participation and pursuit of water storage and conveyance opportunities.

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<sup>12</sup> SLDMWA submitted comments, included in Appendix A.



*Technical Committee*

Two specific priorities/efforts to help bridge the water deficit in the San Joaquin Valley, the Patterson ID conveyance project, and Delta Operations have been selected. The committee is evaluating total recharge opportunities and potential environmental enhancement and utilization.

*Advocacy/Communications*

Blueprint will be scheduling a meeting in the first of the year in Sacramento to brief legislative staff, policy makers, legislators, and Advisor Villaraigosa to highlight alignment with the Governor's water resiliency plan and priorities for a potential Water Bond, highlighting policy decisions that need to be made on reducing impacts to the central valley. The second phase of the Farmer to Farmer Delta/SJV summit is scheduled for January 29th and 30th here in the Central Valley.

*Activities*

*Drinking Water Feasibility Study - CSU Fresno State, FWA, Self-Help, Sustainable Conservation*  
Initial modeling for Fresno State/California Water Institute has preliminarily identified FID, Consolidated ID, Raisin City WD and North Fork Kings GSA for strong multi benefit recharge potential. The group is focused on multi-benefits for recharge with a focus on drinking water with measurable results.

*Unified Water Plan for the San Joaquin Valley*

The Blueprint and California Water Institute, Fresno State are developing a Unified Water Plan for the San Joaquin Valley, consistent with the Bureau of Reclamation grant. Both Stantec and The Hallmark Group are helping develop the plan. The final water plan will include measures to address San Joaquin Valley needs and potential portfolios to address needs and objectives, this report will ultimately be transmitted to Congress by Reclamation in 2025.

San Joaquin Valley Water Collaborative Action Program (SJWV CAP)

Background

The CAP Plenary Group met on February 28 and approved the formation of work groups to advance the revised Term Sheet<sup>13</sup>, adopted on November 22, 2022. Phase II, Work Groups are beginning to meet and discuss priorities and drafting for their respective areas: Safe Drinking Water; Sustainable Water Supplies; Ecosystem Health; Land Use, Demand Reduction and Land Repurposing; Implementation.

The Plenary Group met on December 5 and 6, at University of California, Merced, to finalize certain 2023 actions and to set priorities for 2024. A meeting summary can be found in Appendix A.

*Final Actions for 2023*

The group reviewed the actions intended to be completed by the end of 2023.

1. The letters to the Governor regarding the climate/natural resource bond and groundwater recharge are complete and will be sent to the Governor.<sup>14</sup>

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<sup>13</sup> Request from Authority staff

<sup>14</sup> SLDMWA signed onto the climate bond recommendations letter. See Appendix A.

2. The caucuses have approved the SB 522 letter to county elected officials and will be circulated to the Plenary Group requesting approval for CAP members who would like their names listed.
3. The caucuses have approved the on-farm habitat position statement and restoration principles, which will be used to guide future recommendations.
4. An issue regarding the Williamson Act recommendations in the letter to the Governor regarding process improvements to utility-scale solar needs additional discussion between the author and local government caucus members before it is finalized. However, it is supported by the other four caucuses.
5. Recommendations for protecting domestic shallow wells will be carried over into the new year.

The next meeting of the CAP Plenary Group will be held on January 23<sup>rd</sup>, from 3:00 – 5:00 pm.

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9 *Attorneys for Federal Defendants*

10 **UNITED STATES DISTRICT COURT**  
 11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

12 PACIFIC COAST FEDERATION OF  
 13 FISHERMEN'S ASSOCIATIONS, et al.,  
 Plaintiffs,

14 v.

15 GINA RAIMONDO, in her official  
 capacity as Secretary of Commerce, et  
 16 al.,

Defendants.

Case No. 1:20-cv-00431-JLT-EPG  
 Case No. 1:20-cv-00426-JLT-EPG

**[PROPOSED] ORDER**

17 \_\_\_\_\_  
 18 THE CALIFORNIA NATURAL  
 19 RESOURCES AGENCY, et al.,  
 Plaintiffs,

20 v.

GINA RAIMONDO, et al.,

Defendants.

1 The Court orders:

- 2 1. Per this Court's March 11, 2022 and March 14, 2022 Orders in these cases, the Biological  
3 Opinion on Long-term Operation of the Central Valley Project (CVP) and the State Water  
4 Project (SWP) issued by the National Marine Fisheries Service (NMFS) on October 21, 2019;  
5 the Biological Opinion for the Reinitiation of Consultation on the Coordinated Operations of  
6 the CVP and SWP issued by the U.S. Fish and Wildlife Service (FWS) on October 21, 2019  
7 (collectively, the "2019 Biological Opinions"); and the 2020 Record of Decision on  
8 Reinitiation of Consultation on the Coordinated Long-Term Modified Operations of the CVP  
9 and SWP issued by the United States Bureau of Reclamation (Reclamation) on February 18,  
10 2020 (2020 ROD) were remanded to their respective federal agencies without vacatur. That  
11 remand is ongoing.
- 12 2. The above captioned cases and all deadlines currently set in them are stayed until Reclamation  
13 issues a new Record of Decision on the Long Term Operations of the CVP and SWP (New  
14 ROD), or until December 20, 2024, whichever occurs first (Expiration Date).
- 15 3. From the date of this Order through the Expiration Date, SWP and CVP operations shall  
16 comply, as consistent with applicable law, with the interim operations set forth below in  
17 Paragraphs 6 through 10 and 18 for all water year types.
- 18 4. From the date of this Order through the Expiration Date, SWP and CVP operations shall also  
19 comply, as consistent with applicable law, with the interim operations set forth below in  
20 Paragraphs 11 through 17, as specified for the applicable water year type.
- 21 5. The coordinated operations of the CVP and SWP not governed by Paragraphs 6 through 18  
22 will continue to be governed by the 2019 Biological Opinions, 2020 ROD, the California  
23 Department of Water Resources (DWR) 2020 ITP for DWR's operations of the SWP (DWR's  
24 ITP), and any other applicable statutory or regulatory requirements.
- 25 6. Through the Expiration Date, Reclamation shall adopt the following provisions of DWR's ITP  
26 (Where language states Permittee shall be Reclamation and DWR):

- 27 i. 8.3.3 Adult Longfin Smelt Entrainment Protection

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- 1           ii.    8.4.1 OMR Management for Adult Longfin Smelt
- 2           iii.   8.4.2 Larval and Juvenile Longfin Smelt Entrainment Protection
- 3           iv.    8.4.3 High Flow Off-Ramp from Longfin Smelt OMR Restrictions
- 4           v.     8.5.2 Larval and Juvenile Delta Smelt Protection
- 5           vi.    8.6.1 Winter-run Single-year Loss Threshold
- 6           vii.   8.6.2 Early-season Natural Winter-run Chinook Salmon Discrete Daily Loss
- 7                 Threshold
- 8           viii.  8.6.3 Mid- and Late-season Natural Winter-run Chinook Salmon Daily Loss
- 9                 Threshold
- 10          ix.    8.6.4 Daily Spring-run Chinook Salmon Hatchery Surrogate Loss Threshold
- 11          x.     8.7 OMR Flexibility During Delta Excess Conditions
- 12          xi.    8.8 End of OMR Management

13 7. The following additions will apply to the OMR Flexibility During Delta Excess Condition (ITP  
14 Cond. Of Approval 8.7) action described in Paragraph 6(vi) above of DWR's ITP:

- 15           i.    Any storm flexibility during the March-June period will be operated  
16                 consistent with the Incidental Take Statement in the 2019 FWS Biological  
17                 Opinion requiring OMR flows be no more negative than -5000 cfs on a 14-  
18                 day moving average.
- 19           ii.   DWR will provide NMFS and FWS an analysis of how the action provides  
20                 similar or better protection as compared to the 2019 Biological Opinions.
- 21           iii.  DWR will only implement OMR flexibility with approval of the Regional  
22                 Director of FWS and Regional Administrator of NMFS. Factors considered  
23                 in the decision shall include habitat conditions, potential effects, and seasonal  
24                 incidental take levels for species covered under the 2019 Biological Opinions.

25 8. During water year 2023, and likely due to very wet hydrology, the agencies discovered an  
26 unintended inconsistency between offramps in the "Turbidity Bridge Avoidance" action as  
27 described in the FWS 2019 Biological Opinion and ITP Condition of Approval 8.5.1. To  
28

1 address this inconsistency, Reclamation will not seek to off-ramp the “Turbidity Bridge  
2 Avoidance” action unless consistent with DWR’s action under the ITP Condition of Approval  
3 8.5.1, and the decision-making process outlined in Paragraph 10 of this IOP will be followed  
4 as to Reclamation’s operations.

5 9. Water Operations Management Team (WOMT) Process (ITP Cond. Of Approval 8.1.4): The  
6 State Water Resources Control Board (SWRCB) will be a member of WOMT, and the SWRCB  
7 Executive Director will be included in Director level discussions.

8 10. Collaborative Approach to Real-Time Risk Assessment (ITP Cond. Of Approval 8.1.4): The  
9 Smelt and Salmon Monitoring Teams shall communicate their advice to WOMT. WOMT shall  
10 deliberate to seek agreement on project operations. If WOMT cannot reach consensus on an  
11 operational issue, the issue will be elevated to the Directors. If a resolution is reached by the  
12 Directors, Reclamation shall operate consistent with the decision regarding Project operations  
13 from the Directors. If the Directors do not reach a resolution on operations, either the Regional  
14 Director of FWS or Regional Administrator of NMFS, whichever agency has ESA jurisdiction  
15 over the species, will make an operational decision for protection of listed species after  
16 conferring with the Director of the California Department of Fish and Wildlife  
17 (CDFW). Reclamation will implement the operational decision.

18 11. Summer-Fall Action Plan (ITP Cond. Of Approval 9.1.3.1): DWR will implement ITP Cond.  
19 Of Approval 9.1.3.1 and, in coordination with DWR and consistent with the summer-fall  
20 habitat action plan, Reclamation will share the water costs for DWR to operate the Suisun  
21 Marsh Salinity Control Gates in Below Normal years for a maximum of 60 days to maximize  
22 the number of days that Belden’s Landing three-day average salinity is equal to or less than 4  
23 ppt salinity.

24 12. Export Curtailments for Spring Outflow (ITP Cond. Of Approval 8.17): DWR will implement  
25 ITP Cond. Of Approval 8.17 and Reclamation shall reduce exports in the event Water Year  
26 2024 is classified, based on the San Joaquin Valley 60-20-20 index, as Critical, Dry, or Below  
27 Normal to ensure a volumetric reduction consistent with DWR’s implementation. In the event  
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1 Water Year 2024 is classified as Above Normal, Reclamation shall reduce exports by 100,000  
2 acre feet to contribute to Spring outflow except the action will be suspended during a high  
3 Delta outflow condition described in ITP Condition of Approval 8.17. This Spring outflow  
4 action is intended to benefit the survival of Longfin Smelt, Spring-run Chinook Salmon,  
5 Winter-run Chinook Salmon and Central Valley Steelhead. Documentation of biological  
6 rationale for scheduling and shaping of volumetric share or export reduction will be recorded  
7 in WOMT notes. Nothing herein shall require Reclamation and DWR to reduce exports to less  
8 than minimum health and safety.

9 13. Shasta operations

10 i. Operational Priorities through Expiration Date:

11 Water year 2023 was a significant hydrologic change from the dry conditions of 2020-2022  
12 with some areas in central and southern California experiencing their wettest year on record. The  
13 Shasta basin received average precipitation with inflow about 5.6 MAF. Although not a wet year  
14 for the Shasta basin, the reservoir was still able to fully recover and begin the temperature  
15 management season with a full reservoir. In 2023, Reclamation managed Shasta operations to  
16 achieve the 53.5 temperature objective with no exceedances. Reclamation began water year 2024  
17 with over 3.2 MAF and has a high chance of starting the temperature management season of 2024  
18 with adequate storage for meeting similar goals as set in WY 2023. However, should drought  
19 conditions return in WY 2024, the reservoir may not fill by the start of temperature management  
20 season. Additionally, a Thiamine deficiency is expected to further compromise winter-run  
21 Chinook salmon egg-to-fry survival. For water year 2024, based on current information,  
22 temperature management and flow remain the primary management tools within Reclamation's  
23 discretion for minimizing early life stage mortality.

24 In consideration of end of year carryover storage goals pursuant to 17(i) below, DWR will  
25 coordinate with Reclamation on operations of the system, and Reclamation will operate Shasta  
26 Reservoir commencing in February 2024 to meet the following priorities in the order described  
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1 below. These priorities will only apply in Critical or Dry years, as determined by the most current  
2 water year type projection, and subject to the decision process in Paragraph 18.

- 3 a. Public Health and Safety: Defined as meeting Municipal and Industrial Delta  
4 salinity requirements and minimum Municipal and Industrial deliveries for  
5 Public Health and Safety.
- 6 b. Habitat Criteria: Winter-Run Chinook Salmon habitat criteria (as described in  
7 Paragraph 16 below). Reclamation will not schedule nor make deliveries of  
8 stored water from Shasta for any reason other than specified in Paragraph  
9 13(i)(a) above until Reclamation receives approval of a temperature  
10 management plan from NMFS that shows Reclamation will meet winter-run  
11 Chinook salmon habitat criteria and end of September carryover storage per  
12 Paragraph 17(i). NMFS will approve the temperature management plan,  
13 pursuant to Paragraph 18. If Reclamation is unable to meet habitat criteria for  
14 the entire period as described in Paragraph 16(i) for Critical, Dry, or Below  
15 Normal years, then a six-agency Shasta Planning Group, consisting of  
16 Reclamation, DWR, FWS, NMFS, CDFW and SWRCB, will agree on  
17 temperature management that provides sufficient habitat for the longest period  
18 possible. Factors to be considered in the temperature management plan shall  
19 include available cold water in Shasta Reservoir, forecasted hydrologic and  
20 meteorological conditions, estimated winter-run Chinook salmon adult  
21 escapement, and strategies to protect winter-run Chinook salmon egg  
22 incubation to maximize balance of juvenile production and life-history  
23 diversity. In such a situation, the agencies will also coordinate with the “Meet  
24 and Confer Group” described in the 2019 NMFS Biological Opinion and brief  
25 *PCFFA* plaintiffs and defendant intervenors.

1 c. Deliveries of stored water to senior water contractors and Central Valley Project  
2 Improvement Act (CVPIA) level 2 refuge supplies after ensuring any such  
3 deliveries are consistent with Paragraphs 13(i)(b) and 17(i).

4 d. Other deliveries after ensuring any such deliveries are consistent with  
5 Paragraphs 13(i)(b), 13(i)(c), and 17(i).

6 14. The Shasta Planning Group began meeting monthly in November 2023, and will meet  
7 biweekly or more frequently beginning in January 2024 (see Paragraph 18(ii) below). Further,  
8 starting February 1, 2024, Reclamation will confirm with the Shasta Planning Group on a  
9 weekly basis that the multiple priorities identified in this interim operations plan through the  
10 Expiration Date, can be satisfied in the order described above based on the latest forecast and  
11 hydrology, and will adjust releases accordingly. Reclamation may make releases to meet  
12 Public Health and Safety pursuant to Paragraph 13(i) year-round, and it may make other  
13 releases for deliveries as early as April 1, 2024, provided that they are consistent with the terms  
14 of this interim operations plan through the Expiration Date. The Shasta Planning Group will  
15 also coordinate with the “Meet and Confer Group” described in the 2019 NMFS Biological  
16 Opinion consisting of the Sacramento River Settlement Contractors, Reclamation, and NMFS.  
17 Additionally, the six agencies will utilize the Shasta Planning Group to discuss any potential  
18 effects of the operations described in Paragraph 13 on other CVP/SWP streams.

19 15. To the extent there is a drought proclamation in effect in Water Year 2024, the Federal  
20 Defendants and State Plaintiffs anticipate the SWRCB will use its emergency authorities as  
21 appropriate to address dry conditions including protecting Reclamation’s previously stored  
22 water releases and implementing water curtailments in a timely manner. FWS, NMFS, CDFW,  
23 and Reclamation will use their authorities to support the operational priorities and species  
24 needs.

25 16. Winter-Run Chinook Salmon Habitat:

26 i. Reclamation will meet the following daily average temperatures at the Clear Creek  
27 Gauge from May 15 to October 31 by year type:

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- a. 55°F in Critical Year
- b. 54°F in Dry and Below Normal Year

17. End of September Shasta Storage for September 2024 in Critical, Dry, or Below Normal water years:

- i. Reclamation will determine final carryover storage volume planning goals by May 1, 2024, subject to Water Year 2024 hydrologic conditions, which may be amended by May 20, 2024 hydrology. This final goal will be developed pursuant to the decision process in Paragraph 18. NMFS may approve a draft temperature management plan as soon as April 1, 2024, provided that the plan includes carryover storage volumes and temperature targets, consistent with Paragraphs 13 through 18.
- ii. The following potential End of September Shasta carryover storage goals have been identified to inform the development of a final target as described in Paragraph 17(i), above, recognizing these goals may not be achievable:
  - a. 1.2 MAF to 1.8 MAF in Critical year
  - b. 1.8 MAF to 2.5 MAF in Dry year
  - c. 2.5 MAF 3.2 MAF in Below Normal year

18. Decision Process Related to Shasta Operations through the Expiration Date, for All Water Year Types

- i. Reclamation, DWR, NMFS, FWS, SWRCB and CDFW will use a collaborative approach to real-time risk assessments through the Expiration Date, using technical teams for Shasta operations (Sacramento River Temperature Task Group, Upper Sacramento Scheduling Team). Any modeling used for these decisions shall be publicly available, and the State Plaintiffs and Federal Defendants anticipate that SWRCB decisions will be similarly transparent.
- ii. A Shasta Planning Group shall be established by the federal and state agencies comprised of the six agencies (i.e., NMFS, FWS, BOR, CDFW, DWR, SWRCB) that will work iteratively with the technical groups to solicit operational guidance and risk

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1 assessments and provide policy guidance as necessary. The Shasta Planning Group shall  
2 identify and attempt to resolve policy level issues associated with real time risk  
3 assessments.

- 4 a. The Shasta Planning Group began meeting in November consistent with  
5 Paragraph 14 above.
- 6 b. The Shasta Planning Group will monitor projected hydrologic and operational  
7 conditions compared to actual conditions, which are available online.
- 8 c. Reclamation will meet with the Shasta Planning Group to discuss the technical  
9 input being sought through the Sacramento River Temperature Task Group  
10 (SRTTG) or the Upper Sacramento Scheduling Team (USST). Reclamation  
11 will ensure the documented outcome of the technical input includes the options  
12 put forth to the SRTTG and USST for consideration. After technical input is  
13 received from the SRTTG or USST, the Shasta Planning Group will confer and  
14 seek to achieve consensus on project operations.

15 iii. If the Shasta Planning Group cannot reach consensus on an operational issue, the issue  
16 will be elevated to the Directors of the six agencies and the Directors will confer and seek  
17 to achieve consensus on Project operations. If a resolution is reached by the  
18 Directors, Reclamation shall operate consistent with the decision regarding Project  
19 operations from the Directors. If the Directors do not reach a resolution on operations,  
20 the Regional Administrator of NMFS will make an operational decision for protection of  
21 listed species after conferring with the Director of CDFW; provided however, for  
22 operations issues regarding temperature management and reservoir carryover goals that  
23 are not resolved at the Directors' level and therefore elevate to NMFS, the Regional  
24 Administrator will make those operational decisions after also conferring with the  
25 Executive Director of the SWRCB. Reclamation will implement the operational decision.

26 19. The interim operations set forth above are specific to the hydrologic conditions through the  
27 Expiration Date and may not be appropriate for the remainder of Water Year 2025 operations  
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1 or long-term operations, and they shall expire on the Expiration Date. Accordingly, if  
2 Reclamation will not issue a ROD by December 20, 2024, Federal Defendants and State  
3 Plaintiffs shall collaborate with each other as needed on development of interim operations for  
4 the remainder of Water Year 2025, and in doing so confer with public water agencies that  
5 contract for delivery of water from the CVP and the SWP and the *PCFFA* plaintiffs.

6 20. Nothing in this order shall be interpreted as precedential as to actions that Federal Defendants  
7 or State Plaintiffs may take in future consultations, including the reinitiated consultation and  
8 ITP review that Federal Defendants and State Plaintiffs are currently undertaking.

9 21. The Court retains jurisdiction to modify this Order as may be necessary and in the interests of  
10 justice and to decide disputes among the Parties to the above captioned cases (“Parties”)  
11 regarding compliance with this Order notwithstanding the stay also ordered here. In the event  
12 such a dispute arises, the Parties will confer in good faith about the dispute. A Party may initiate  
13 proceedings in this Court to enforce the terms of Paragraphs 6 through 18 of this order no  
14 earlier than four calendar days after such meet-and-confer efforts begin, and the Parties agree  
15 to facilitate the prompt determination of any such dispute, including by agreeing to resolution  
16 of the dispute on shortened time. The first remedy shall be a motion to enforce the terms of  
17 this order. This order shall not, in the first instance, be enforceable through a proceeding for  
18 contempt of court.

19 If Reclamation issues a New ROD before December 20, 2024, thereby lifting the stay of  
20 this case pursuant to Paragraph 2, Federal Defendants will file a notice of the New ROD’s issuance  
21 within five business days of it occurring. No later than twenty-one days after any such notice is  
22 filed, the parties will file a joint status report informing the Court of their positions regarding  
23 termination or resumption of the litigation. If Reclamation does not issue a New ROD by  
24 December 20, 2024, and the stay lifts on that date pursuant to Paragraph 2, Federal Defendants  
25 and State Plaintiffs will file a joint status report by December 20, 2024: 1) describing the status of  
26 the reinitiated CVP and SWP consultation; 2) recommending a plan for interim CVP and SWP  
27 operations to govern for the remainder of Water Year 2025 or some other interval of time, if  
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1 consultation remains ongoing; and 3) requesting a continued stay or other path forward in the  
2 litigation.

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IT IS SO ORDERED.

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8 DATED: \_\_\_\_\_

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Hon. Jennifer L. Thurston  
United States District Judge

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