

**Whereas Clauses**

Whereas, the Federal agencies reinitiated consultation on October 1, 2021.

Whereas, the parties agree that the goals of the reinitiation will be to support species viability, protect life history diversity, support operational flexibility, provide regulatory certainty, support science and monitoring, and to create a single feasible adaptable coordinated operation for the CVP and SWP.

Whereas, Reclamation and DWR anticipate a modified Proposed Action and associated biological effects analysis that would result in new Biological Opinions for the CVP and SWP.

Whereas, in collaboration with CDFW, NMFS, USFWS, and DWR, Reclamation will seek to complete a comprehensive Biological Assessment (including the Proposed Action) with a goal of Reclamation submitting the Biological Assessment and all analyses necessary to support the document to NMFS and USFWS by December 2022.

Whereas, the parties agree to expeditiously pursue reinitiated consultation and review of the ITP with a goal of completion of new Biological Opinions and a new or amended ITP within 12 months of receipt of the Proposed Action by NMFS and USFWS.

Whereas, Reclamation will seek to complete its NEPA analysis and Record of Decision with a goal of completion by October 1, 2024.

Whereas, the parties acknowledge that the issues discussed during the reinitiated consultation and ITP review will be more comprehensive than the agreement on Interim Operations for Water Year 2022.

Whereas, Reclamation will provide drafts of the Biological Opinions to the CVP and SWP contractors and to Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, Golden State Salmon Association, Natural Resources Defense Council, Defenders of Wildlife, and The Bay Institute for review and comment.

Whereas, the parties anticipate that the relevant state and federal agencies will coordinate to enhance efficiencies and transparency in their related environmental review and permitting processes.

**Interim Operations (From date of the court order until September 30, 2022)**

- a. The parties agree that nothing in this agreement is precedential as to actions that may be included in future consultations, including the reinitiated consultation or ITP review described herein.
- b. In order to meet the Parties' interest in having a single set of operational requirements, Reclamation agrees to modify its operation of the CVP to be consistent with operations described in the ITP. Specifically, Reclamation agrees to adopt the following provisions of the ITP (Where language states Permittee shall be Reclamation and DWR):
  - i. 8.5.2 Larval and Juvenile Delta Smelt Protection
  - ii. 8.6.1 Winter-run Single-year Loss Threshold

- iii. 8.6.2 Early-season Natural Winter-run Chinook Salmon Discrete Daily Loss Threshold
  - iv. 8.6.3 Mid- and Late-season Natural Winter-run Chinook Salmon Daily Loss Threshold
  - v. 8.6.4 Daily Spring-run Chinook Salmon Hatchery Surrogate Loss Threshold
  - vi. 8.7 OMR Flexibility During Delta Excess Conditions (See additional conditions in paragraph c.)
  - vii. 8.8 End of OMR Management
  - viii. Summer-Fall Action Plan (ITP Cond. Of Approval 9.1.3.1): In coordination with DWR and consistent with the summer-fall habitat action plan, Reclamation will agree to share the water costs for DWR to operate the Suisun Marsh Salinity Control Gates in above and below normal years for a maximum of 60 days to maximize the number of days that Belden's Landing three-day average salinity is equal to or less than 4 ppt salinity.
  - ix. Delta April-May Operation: Reclamation agrees to meet the CVP volumetric share of the spring flow requirement.
- c. DWR agrees to the following additions to the OMR Flexibility During Delta Excess Condition (ITP Cond. Of Approval 8.7) action described in paragraph b.iv:
- i. Any storm flexibility during the March- June will be operated consistent with the Incidental Take Statement in the 2019 FWS BiOp requiring OMR flows be no more negative than -5000cfs on a 14-day moving average.
  - ii. DWR will provide NMFS and FWS an analysis of how the action provides similar or better protection as compared to the 2019 BiOps.
  - iii. In 2022, DWR will provide information on how use of OMR flexibility will help replenish storage South of Delta that was depleted in the 2020-2021 water years.
  - iv. DWR will only implement OMR flexibility with approval of the Regional Director of FWS and Regional Administrator of NMFS.
- d. The federal parties (NMFS, FWS, Reclamation) agree to participate in DFW's effort to develop a spring run Chinook salmon JPE. Specifically, the federal agencies will participate in the core team, guide development and implementation of the science plan, and to maintain permitting support. (ITP Cond. Of Approval 7.5)
- e. WOMT Process (ITP Cond. Of Approval 8.1.4): The parties agree that the State Water Resources Control Board will be a member of WOMT, and the SWRCB Executive Director will be included in Director level discussions.
- f. Collaborative Approach to Real-Time Risk Assessment (ITP Cond. Of Approval 8.1.4): The Smelt and Salmon Monitoring Teams shall communicate their advice to WOMT. WOMT shall deliberate to seek agreement on project operations and elevate to the Directors when agreement cannot be reached. If WOMT cannot reach consensus on an operational issue, the issue will be elevated to the Directors. If a resolution is reached by the Directors, Reclamation shall operate consistent with the decision regarding Project operations from the Directors. If the Directors do not reach a resolution on operations, either the Regional Director of FWS or Regional Administrator of NMFS, whichever agency with ESA jurisdiction over the species will make an operational

decision for protection of listed species after conferring with the Director of CDFW. Reclamation agrees to implement the operational decision.

g. Shasta operations

i. Drought Operations in 2022

1. Operational Priorities: The 2020-2021 Water Years have been the second driest two-year period in the historical record. Shasta, Oroville and Folsom have significantly low storage going into WY2022. Reclamation will be entering WY2022 with approximately one-million acre-feet in Shasta Reservoir. Additionally, ongoing drought conditions, compounded by a Thiamine deficiency, are expected to cause two consecutive years of winter-run Chinook salmon egg-to-fry survival that is less than 15% and trigger State and Federal agencies to confer on and implement all actions necessary to avoid a third year of low survival. The State has taken and will take actions regarding drought, including emergency drought proclamations and orders of the SWRCB. In recognition of this, and in consideration of end of year carryover storage goals pursuant to g.iii.1 below, DWR will coordinate with Reclamation on operations of the system, and Reclamation will operate Shasta Reservoir to meet the following priorities in the order described below.

- a. Public Health and Safety: Defined as meeting Municipal and Industrial Delta salinity requirements and minimum Municipal and Industrial deliveries for Public Health and Safety.
- b. Habitat Criteria: Winter Run Chinook Salmon habitat criteria (as described in paragraph ii below). Reclamation will not schedule nor make deliveries of stored water from Shasta for any reason other than specified in g.i.1.a. above until Reclamation receives approval of a temperature management plan from NMFS that shows Reclamation will meet winter run Chinook salmon habitat criteria and end of September carryover storage per g.iii.1. NMFS will approve the temperature management plan, pursuant to g.iv. If Reclamation is unable to meet habitat criteria for the entire period the agencies will agree on an operation to provide sufficient habitat for the longest period possible.
- c. Senior water contractor deliveries and CVPIA level 2 refuge supplies after ensuring any such deliveries are consistent with g.i.1.b. and g.iii.1.
- d. Other deliveries after ensuring any such deliveries are consistent with g.i.1.b., g.i.1.c., and g.iii.1.

2. The parties will establish a six agency Shasta Planning Group to meet monthly beginning in October 2021, and biweekly or more frequently beginning in January 2022. (see g.iv.2 below). Further, starting February 1, 2022, Reclamation will confirm with the Shasta Planning Group on a

weekly basis that the multiple priorities identified in this agreement can be satisfied in the order described above based on the latest forecast and hydrology, and will adjust releases accordingly.

Reclamation may make releases for deliveries as early as April 1, 2022 provided that they are consistent with the terms of this agreement.

3. To the extent there is a drought proclamation in effect in water year 2022, the parties anticipate the SWRCB will use its emergency authorities as appropriate to address critically dry conditions including protecting Reclamation's previously stored water releases. The other parties to this agreement will use their authorities to support the operational priorities and species needs.
- ii. Winter Run Chinook Salmon Habitat:
    1. Reclamation agrees to meet the following daily average temperatures at the Clear Creek Gauge from May 15 to October 31 by year type
      - a. 55°F in Critical Year
      - b. 54°F in Dry and Below Normal Year
      - c. 53°F in Above Normal and Wet Year
  - iii. End of September Shasta Storage for September 2022:
    1. Based on the commitment in g.i.1.b, Reclamation will determine final carryover storage volume planning goals by May 1, 2022 subject to water year 2022 hydrologic conditions, which may be amended by May 20, 2022 hydrology. This final goal will be developed pursuant to the decision process in g.iv. NMFS may approve a draft temperature management plan as soon as April 1, 2022, provided that the plan includes carryover storage volumes and temperature targets, consistent with g.i through g.iv.
    2. As of the time of this agreement, the following potential End of September Shasta carryover storage range volumes based on preliminary modeling\* have been identified (These range values represent the interquartile range for all year types except the Critical year low end and high end which represents a 39% exceedance and 21% exceedance, respectively.):
      - a. 1.2 million af to 1.8 million af in Critical year
      - b. 1.8 million af to 2.5 million af in Dry year
      - c. 2.5 million af to 3.2 million af in Below Normal year
      - d. 3.2 million af to 3.4 million af in Above Normal and Wet year

\*Modeling in Critical and Dry years assumes additional federal and state actions to bolster storage conditions.
  - iv. Decision Process
    1. The parties agree to use a collaborative approach to real-time risk assessments using technical teams for Shasta operations (Sacramento River Temperature Task Group, Upper Sacramento Scheduling Team).

2. The parties agree to establish a Shasta Planning Group comprised of the 6 agencies (i.e., NMFS, FWS, BOR, CDFW, DWR, SWRCB) that will work iteratively with the technical groups to solicit operational guidance and risk assessments and provide policy guidance as necessary. The Shasta Planning Group shall identify and attempt to resolve policy level issues associated with real time risk assessments.
  - a. The Shasta Planning Group shall begin meeting in October consistent with g.i.2. above.
  - b. The Shasta Planning Group will develop and implement a system for monitoring and tracking projected hydrologic and operational conditions compared to actual conditions.
  - c. Reclamation will meet with the Shasta Planning Group to discuss the technical input being sought through the Sacramento River Temperature Task Group (SRTTG) or the Upper Sacramento Scheduling Team (USST). Reclamation will ensure the documented outcome of the technical input includes the options put forth to the SRTTG and USST for consideration. After technical input is received from the SRTTG or USST, the Shasta Planning Group will confer and seek to achieve consensus on project operations.
3. If the Shasta Planning Group cannot reach consensus on an operational issue, the issue will be elevated to the Directors of the 6 agencies and the Directors will confer and seek to achieve consensus on Project operations. If a resolution is reached by the Directors, Reclamation shall operate consistent with the decision regarding Project operations from the Directors. If the Directors do not reach a resolution on operations, the Regional Administrator of NMFS will make an operational decision for protection of listed species after conferring with the Director of CDFW; provided however, for operations issues regarding temperature management and reservoir carryover goals that are not resolved at the Directors' level and therefore elevate to NMFS, the Regional Administrator will make those operational decisions after also conferring with the Executive Director of the SWRCB. Reclamation agrees to implement the operational decision.