

Gasdick, Alicia E

From: Rhonda Reed [Rhonda.Reed@noaa.gov]
Sent: Friday, July 23, 2010 4:44 PM
To: Banonis, Michelle
Cc: Gasdick, Alicia E; Leslie Mirise; Erin Strange
Subject: Comments on Public Draft of WY 2011 Interim Flows Supplemental EA

e-Memo

To: Michelle Banonis, Bureau of Reclamation, San Joaquin River Restoration Program Office
From: Rhonda Reed, National Marine Fisheries service, San Joaquin River Basin Acting Branch
Chief Leslie Mirise, National Marine Fisheries service, Fishery Biologist

Included in this email are National Marine Fisheries Service's (NMFS) comments on the SJRRP Water Year (WY) 2011 Interim Flows Public Draft Environmental Assessment (EA). Some of the environmental consequences described in the EA are addressed by referencing analyses performed within the project Biological Assessment (BA); therefore, portions of these comments may apply more specifically to those analyses. NMFS' comments are as follows:

1) ****Recirculation and Recapture** - There must be a more specific discussion regarding recirculation and recapture including recapture rates and timing, and which facilities will be utilized. Estimated ranges at each facility are acceptable. This information must be in greater detail than what is currently in the EA and BA, and must be consistent with Reclamation's Petitions to the State Water Resources Control Board for WY 2011 Temporary Transfer Permitted Applications 234, 1465, and 5638, if this EA is intended to cover those petitions related to this project.

If screened facilities will be utilized for recapture, the following details for each specific screened diversion must be presented in the analysis: whether or not the screens meet NMFS criteria, the current pumping capacity and current use, how proposed recapture would change current operations, if the proposed recapture falls within their project and take limits, if there are existing biological opinion(s) for the facilities, and if any additional take is expected. Describe if the two proposed unscreened diversions are covered under any existing biological opinion(s). If so, describe how or if the proposed recapture falls within their project and take limits. In addition, justification must be provided within the environmental consequences analysis why there will be no take of steelhead as section 2.2.2 of the EA states, "Recapturing water downstream of the Restoration Area could increase fish entrainment risks." The species account in the BA states that steelhead are present within the system at all times of the year, and yet, an assumption is made that no take would occur at the unscreened diversions. The information provided does not support this assumption.

If the Proposed Action will recapture water from upstream locations within the Restoration Area (/i.e./, Mendota Pool), how will needed monitoring occur in the lower reaches (3, 4 and 5). How will this purpose of the Project be fulfilled?

If, as stated in the project description, there is no Vernalis Adaptive Management Program (VAMP) flow contribution from the tributaries, contributions from the Project could allow less water to be released from New Melones Reservoir to meet Delta water quality objectives, set forth by the State Water Resources Control Board Decision-1641 and the 1995 Bay-Delta Water Quality Control Plan. Would this water be considered part of the recaptured flows? The present analysis does not consider this potential effect or how such conditions would interface with the New Melones Dam operations covered by the NMFS Biological

Opinion for the Long-term Operations Criteria and Plan (Operations BO) for the Central Valley Project (CVP) and State Water Project (SWP)..

2) ****Hills Ferry Barrier (HFB) Operation and Effects on Steelhead** - The EA describes that the "Interim Flows will likely provide conditions that could allow emigrating juvenile salmon and steelhead to stray upstream of the [confluence of the] Merced River." Effects of this are not mentioned specifically in the Environmental Consequences Analysis.

In the BA, effects to adult steelhead from the Project are discounted due to the operation of the HFB. The analysis must be expanded beyond the time the HFB is in operation to include:

(1) impacts due to delayed spawning in the Merced River or other tributaries as a result of straying into the lower Restoration Area; and (2) impacts to steelhead in the spring when the barrier is not in operation. There must be clarification in the effects analysis (page 6-4 of the BA), where the argument states that the HFB is not operated in the spring time due to few juvenile steelhead being present upstream of the Merced River confluence, when in fact, the HFB is not operated due to high spring flows that exceed the barrier's capacity.

The area analyzed within the BA's effects analysis for steelhead is not consistent with the action area. The analysis must include effects of the Project on the action area, including the San Joaquin River tributaries and the Delta.

3) ****Delta Operations and VAMP** - Please clarify the last paragraph on page 6-30 through the second paragraph on page 6-31 of the BA, and similar language that may appear in the EA. As it is written, it is stated that emigrating steelhead are at risk at upstream sections of the Old and Middle rivers. Provide justification for the may affect, not likely to adversely affect determination if the fish are "at risk" of entrainment. Also, it is stated numerous times throughout the document that the U.S. Fish and Wildlife Service (USFWS) and NMFS Operations BOs and reasonable and prudent alternative (RPA) will be implemented. How then can there be an increase in pumping at the CVP/SWP Jones and Banks pumping facilities? This needs to be re-stated that recapture of interim flows at these pumps, lies within the levels specified by the Operations BOs.

This BA and determination relies heavily on Delta operations according to the Operations BOs and implementing the RPA (reference sections 3.9.3 and 3.9.4). Consequently, should the Federal Court vacate or modify the Operations BOs/RPA such an action may trigger the need for reinitiation of consultation for the Project.

The environmental baseline in the Operations BO consultations, as well as the WY 2010 Interim Flows project, assumes that the VAMP, or VAMP-like, flows will be implemented. The baseline in this EA includes language that the VAMP agreement has expired. While this is true, on pages 642-643 of the NMFS Operations BO, NMFS expects tributary contributions from the Merced and Tuolumne rivers to continue through 2011, and that Reclamation shall seek supplemental agreement with the San Joaquin River Group Authority for tributary contributions so as to not rely on New Melones Reservoir to meet required flows at Vernalis, California. The EA does not identify the effect the Project might have in this range of potential scenarios. Therefore, there must be further analysis on the effects to the tributary flows and corresponding listed species and critical habitat as a result of the Project in the context of the analysis done for the WY 2010 Interim Flows project consultation.

Because the agreement for 2011 tributary contributions does not yet exist and because time is of the essence with respect to implementing the Project as identified in the Settlement, NMFS recommends that Reclamation's analysis should evaluate the effects of a range of possible flow conditions from the tributaries that could be affected by the Project in WY2011. The analysis must include a discussion of how the Project could change the amount of flow required from the Stanislaus River to meet Vernalis water quality objectives and provide potential beneficial/negative effects. For example, how will the Project modify water quality releases and related storage in New Melones Reservoir and the effects on steelhead in the Stanislaus River?

4) *Relationship To Other Programs* - In Section 2.2.4 of the EA, page 2-35 it would add clarity for the reader to add the species affected by the RPA at the end of the sentence "NMFS developed an RPA in accordance with ESA requirements". Section 4.4.4 of the BA blends the Delta Stewardship Council and the CALFED Bay-Delta Program, which is not strictly correct. The Delta Stewardship Council will take over the governance role and some implementation roles for CALFED; but the CALFED Bay-Delta Program is essentially a 25-year program, defined by a Record of Decision (ROD) signed by the consortium of agencies referenced, including all the SJRRP settling parties. The ROD has not been vacated, nor necessarily modified as yet. Reclamation has specific Congressional authorities to implement CALFED, but no specific authorities at this time to implement directives of the Delta Stewardship Council, which is authorized by state legislation. This section needs clarification to explain the program accurately in light of Reclamation's authorities to implement in relation to the Project.

Thank you for the opportunity to comment on this document. Please feel free to contact Leslie Mirise of my staff, or me, if you have any questions regarding these comments.

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Rhonda Reed

National Marine Fisheries Service

650 Capitol Mall, Suite 8-300

Sacramento, CA 95814

(916) 930-3609 desk

(916) 996-7249 mobile

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