

AGENDA

Five Agency Principals Call

Date: Friday, September 8, 2017

Time: 12:00 PM – 1:00 PM

Call-in number: 916-574-2008

1. Welcome and Review of Agenda

Lead: DWR

2. California WaterFix (CWF) Updates

Discussion Items:

a. Biological Opinions Clarifications

Lead: BOR

- NMFS has not yet received any draft clarification correspondence
- See list of clarifications and status update (“Updated Aug 1 CWF Action Items.doc”)
 - Most issues being resolved or addressed by Reclamation and DWR
 - Issues without clear next steps:
 - Relationship to future consultations
 - Birmingham’s submitted Scenario 6 language
 - Spring outflow clarification
- Reclamation has a meeting next Monday (9/11) with the PWAs to discuss various CWF issues
 - NMFS & FWS asked to participate from 3:15-4pm to discuss BiOp clarifications
 - NMFS may not be available? And/or premature before seeing draft clarification letter from Reclamation. Reclamation notified of this on Thursday.
- **KEY MESSAGES/QUESTIONS:**
 - When can NMFS expect to see a draft clarification letter?
 - When is the final letter expected to be completed and transmitted?
 - What deadline is there, if any, for a response?

b. Relationship with Reinitiation of Consultation (ROC) on Long-term Operation (LTO)

Lead: BOR

- We aren’t 100% sure what the update here will be; our prelim intel suggests that Reclamation will discuss how the participation approach being discussed for CWF will affect the framework for the ROC on LTO process.

[Background on participation approach \(discussed briefly on a CV Water call a few weeks ago\):](#)

One of the clarifications identified in our discussion with Reclamation and the PWAs related to how DWR and Reclamation planned to “allocate responsibilities” between participants and non-participants

- The current allocation plan takes a rather mind-bending approach that doesn't just allocate the financial costs of CWF, but also the “operations costs”. That is, the approach assigns FULL responsibility for all CWF ops criteria to participants; non-participants need only comply with ops criteria in the 2009 (or subsequent) NMFS BiOp.
 - For example, this approach sets up a situation in which the SWP and participating CVP contractors are responsible for meeting the CWF OMR flows (often more restrictive than in the 2009 BiOp), while non-participating CVP contractors are responsible for meeting the I:E ratio in the 2009 BiOp that was NOT part of the CWF ops criteria.
 - How can that work, you ask? Good question.
 - As long as operations with CWF infrastructure meet the expected ops criteria, might not be our problem, but it will be very complicated to track and might be very difficult to model in CALSIM (not sure about this – might be an interesting question to ask Reclamation on the call)
- **KEY MESSAGES/QUESTIONS:**
 - Granting that participation not yet finalized, does Reclamation believe that there will be enough participants that the operations analyzed in the proposed action can be achieved?
 - Can Services be apprised of effort regularly in order to prevent “cementing” of any constraints that are not consistent with what was analyzed in consultation?

c. Corresponding Activities and Contractor Meetings

Lead: BOR

- We expect updates from Reclamation, including:
 - Reclamation has a meeting next Monday (9/11) with the PWAs to discuss various CWF issues
 - NMFS & FWS asked to participate from 3:15-4pm to discuss BiOp clarifications
 - NMFS may not be available? And/or premature before seeing draft clarification letter from Reclamation
- **KEY MESSAGES/QUESTIONS:**
 - Maybe need to set up alternate/additional meeting with PWAs when NMFS can attend?

3. BOR's Participation in the Adaptive Management Program

Leads: All

- This has not been discussed at the SCT level yet and is new to this agenda.
- Our intel reports that during recent development of Rec-DWR implementation agreement for CWF, Reclamation has indicated that **they will not agree to participate in the AMP** because the IICG does not include representation of all contractors and MOA was not signed.
- This is understandably surprising to DWR.
- **KEY MESSAGES/QUESTIONS:**
 - Really?!? This is from way beyond left field.
 - AMP was included as part of proposed action provided by Reclamation; it was not imposed by the Services.
 - It was developed with all agencies represented and PWAs reviewed and offered revisions.
 - This is a lynchpin of getting to a non-jeopardy determination.

4. ROC on LTO Memorandum of Understanding (MOU) Comments

Lead: BOR

- See NMFS comments on MOU (“ConsultationAgreement_FirstAmended....doc”)
- See Garwin’s background document for full background (“Background on NMFS Comments.....doc”).
- Three most likely issues copied here:
 - MOU page 7, section 5.1 Goals and Objectives:
 - NMFS comment: Undelete the text “existing operations of the CVP and SWP, and operation of potentially new components of the CVP and SWP.”
 - Current status: All agencies agree that the text should be undeleted. California Water Fix should be included to obtain durable BiOps. FWS needs the ROC on LTO to include CWF operations since their CWF BiOp covers construction only.
 - PWAs: Reclamation indicated that some of the PWAs want a very short duration CVP/SWP operations BiOp, in the tune of 5-10 years, which means operations pursuant to CWF would not need to be considered.
 - MOU page 8, section 5.1, 7th bullet:
 - NMFS comment: Undelete the text, “, or two closely coordinated BiOps issued separately by USFWS and NMFS.”
 - Current status: All agencies agree that the text should be undeleted so that we can keep our options option. For example, one of the objectives of the CWF consultation was to issue a joint BiOp, but because of political pressure, that was not feasible.
 - PWAs: Reclamation indicated that the PWAs want a joint BiOp, and may ask for an explicit definition of what is meant by “closely coordinated” if that language is retained.
 - The third issue (raised by FWS) relates to whether or not to include species proposed for ESA-listing in the ROC on LTO consultation.
- **KEY MESSAGES/QUESTIONS:**

- How will any disagreement with PWAs be handled?

5. State Water Resources Control Board (SWRCB) Permitting Process

Discussion Items:

a. Update on the SWRCB Hearings

Lead: DWR

- The SWRCB hearing process regarding the CWF-associated change in point of diversion requested by DWR and Reclamation is moving into Part 2 (related to impacts on fish & wildlife). Part 1 related to water quality impacts of the new North Delta Diversions.
- Part 2 hearings begin 1/18/18.
- Various deadlines for participants Sept-November, depending on level of involvement
- **KEY MESSAGES/QUESTIONS:**
 - None.

b. Agencies' Involvement

Leads: All

- We expect a round robin for all agencies to provide any updates on their planned level of involvement in Part 2 (e.g. will an agency be providing expert witnesses and preparing testimony? Providing behind-the-scenes support to DWR or Reclamation, the petitioners?)
- **KEY MESSAGES/QUESTIONS:**
 - NMFS is currently an "Interested Person" for Part 2, which allows us to give an oral or written policy statement.
 - Our interest is in ensuring our CWF BiOp is presented clearly and accurately, and are looking into options for supporting that interest.
 - Becoming a "party" may be problematic given current litigation and staff capacity
 - *[Internal comment: CCVO has not yet received GC guidance on whether becoming more involved in these hearings could cause problems. Note that we heard from Reclamation that participating behind the scenes does get formally put into the record – during Part 1, every witness was asked a variation of "Who did you talk to during the preparation of your testimony?"]*
 - Topic should continue to be coordinated by SCT representatives.

6. Next Steps and Action Items

