



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
650 Capitol Mall, Suite 5-100
Sacramento, California 95814-4700

MAY 22 2014

Refer to NMFS No: WCR-2013-73

Drew Lessard
United States Department of the Interior
Bureau of Reclamation
Central California Area Office
7794 Folsom Dam Road
Folsom, California 95630-1799

Dear Mr. Lessard:

This letter is in response to the U.S. Bureau of Reclamation's (Reclamation) May 17, 2012, letter requesting the initiation of consultation with NOAA's National Marine Fisheries Service (NMFS) pursuant to section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Reclamation proposes to enter into a 40-year Warren Act (WA) contract with the El Dorado Irrigation District (EID) for the delivery of up to 17,000 acre-feet per annum (afa) of non-project water (*i.e.*, water not part of the Central Valley Project (CVP)) through the Folsom Reservoir for Municipal and Industrial (M&I) uses.

Reclamation has determined that the proposed project may affect, but is not likely to adversely affect, the federally listed as threatened California Central Valley steelhead (*Oncorhynchus mykiss*) distinct population segment (DPS), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*) evolutionarily significant unit (ESU), and endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*) ESU, or the designated critical habitats for the California Central Valley steelhead DPS and Central Valley spring-run Chinook salmon ESU. In addition, Reclamation has determined that the proposed project may adversely affect essential fish habitat (EFH) for Pacific salmon, and has requested initiation of consultation pursuant to provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This letter also serves as consultation under the authority of, and in accordance with, the provisions of the Fish and Wildlife Coordination Act of 1934 (FWCA), as amended.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The concurrence letter will be available through NMFS' Public Consultation Tracking System at <https://pcts.nmfs.noaa.gov>. A complete record of this consultation is on file at the California Central Valley Area Office of NMFS.



Consultation History

ESA section consultation was initially requested on December 15, 2011. On April 3, 2012, NMFS issued a letter requesting additional information before section 7 consultation could be initiated. In addition, the letter outlined additional information required in an EFH assessment.

On May 17, 2012, NMFS received an amended biological assessment and the additional materials required to initiate consultation. NMFS concluded that the information provided was adequate to initiate section 7 consultation and contained sufficient detail to determine the extent to which the proposed project may affect federally listed species.

Action Area

The action area includes the American River from Folsom Reservoir downstream to its confluence with the Sacramento River (lower American River). Quantification of potential changes to temperatures and flows on the lower American River, supported by additional analysis of potential changes in Folsom Reservoir cold water pool (CWP) volume, provides a reasonable metric for evaluating the range of potential effects to anadromous fish downstream in the lower American River that could result due to the proposed project.

The action area encompasses waterways where California Central Valley steelhead, Central Valley spring-run Chinook salmon, and Sacramento River winter-run Chinook salmon may be present, and includes waters that have been designated as critical habitat for the California Central Valley steelhead DPS and Central Valley spring-run Chinook salmon ESU. The primary constituent elements of the designated critical habitat for the California Central Valley steelhead DPS and Central Valley spring-run Chinook salmon ESU relevant to the action area are freshwater rearing habitat and freshwater migration corridors.

Project Description

The proposed project consists of Reclamation entering into a 40-year WA contract with EID to facilitate the delivery of up to 17,000 afa of non-project water through Folsom Reservoir's Federal facilities for M&I uses in the western portion of El Dorado County. The proposed quantity will come from the outflow of non-project water from bypassed flows at the Kyburz diversion dam and releases from the El Dorado Powerhouse. The water rights for the non-project water include EID's direct diversion rights for waters of the South Fork American River at the Kyburz diversion dam, and rights for diversion to storage at Caples Lake in Alpine County, Silver Lake in Amador County, and Lake Aloha in El Dorado County, California. The sources of non-project water will be made available by the operation of existing facilities of the Federal Energy Regulatory Commission El Dorado Hydroelectric Project No. 184 [State Water Resources Control Board (SWRCB) Permit 21112]. Direct diversion water rights from the South Fork American River are available from November 1 through July 31. Direct diversions are not available August 1 through October 31 pursuant to the conditions of SWRCB Permit 21112; therefore, water diverted to storage will be released from Caples Lake, Silver Lake, and Lake Aloha for downstream uses. EID utilizes gages to measure the volume of water introduced to and diverted from Folsom Reservoir to ensure compliance with minimum streamflows as required by the SWRCB Permit 21112.

Project Effects

The quantity of non-project water conveyed to EID through Folsom Reservoir's Federal facilities in any 30-day period will not exceed the quantity of non-project water previously introduced into the Folsom Reservoir's Federal facilities by EID. All non-project water conveyed to EID will be measured and recorded in accordance with EID's SWRCB Permit 21112 and the requirements and procedures for water measurement and water accounting specified in the proposed project's gauging plan. The water deliveries associated with the proposed project will be strictly limited each year to the actual gauged amount of water EID delivers to Folsom Reservoir. The proposed project would not result in measurable changes in flow or flow fluctuations downstream in the lower American River relative to the existing condition. However, the proposed project has the potential to increase the temperature in (or conversely, reduce the volume of the CWP in) Folsom Reservoir and result in a potential increase in water temperatures in the lower American River, which is designated critical habitat for the California Central Valley steelhead DPS and Central Valley spring-run Chinook salmon ESU.

Juvenile steelhead rear in the lower American River year round, and their exposure to mean daily water temperatures warmer than 65°F in the lower American River is associated with the prevalence of bacterial infections. Therefore, any proposed actions that would decrease Folsom Reservoir CWP volume would be expected to make it more difficult to meet the summer and fall (May 15 through October 31) temperature limit, as required in NMFS' June 4, 2009, biological opinion on the long-term operations of the CVP and State Water Project (SWP, CVP/SWP Opinion), and its associated reasonable and prudent alternative (RPA) as revised in 2011. Spring- and winter-run Chinook salmon, however, only utilize the lower American River for non-natal rearing and are believed to be present in the lower American River only during the winter and early spring. During this time of year, water temperatures are not a concern, and any potential effects of the proposed project on the Folsom Reservoir CWP volume would be discountable for winter-run Chinook salmon, and spring-run Chinook salmon and their designated critical habitat.

Depending on conditions in any one year, Folsom Reservoir's CWP is not always large enough to maintain cold water releases throughout the warmest months (July through September) to provide maximum thermal benefits to rearing juvenile steelhead. Consequently, lower American River temperature management is annually prescribed based on current conditions in an attempt to provide thermal benefits to steelhead. The objective of RPA Action II.3 of the CVP/SWP Opinion, Structural Improvements, is to improve the ability to manage the CWP to provide suitable temperatures for steelhead through physical and structural improvements at the dams. More specifically, improvements to the temperature control device (TCD) at the EID intake structure or the construction of the most effective device for conserving cold water in the Folsom Reservoir were required as part of the RPA.

The effects of the proposed project were included in the analysis in the CVP/SWP Opinion, which current CVP facilities are operating under. EID holds the rights to the proposed project's water supply. CVP water is not available for diversion under this proposed project and therefore would not be subject to Reclamation's policies for CVP M&I contracts or affect Reclamation's ability to implement the RPA actions specified in the CVP/SWP Opinion. Reclamation has a cooperative agreement with EID (No. 05FC201041) that will be enforced throughout the

duration of the proposed project. To ensure the re-diversion of up to 17,000 afa of non-project water will have no impact on Folsom Reservoir's CWP, EID will adhere to all restrictions on diversions set forth by Reclamation and/or applicable biological opinions. In addition, as part of the contract for conveyance of non-project water between the United States and El Dorado Irrigation District, and "as a precondition to diverting any quantity exceeding 8,500 afy under the proposed Warren Act Contract, EID would be required to install a TCD on a water supply intake in accordance with Public Law (P.L.) 105-295 as amended by P.L. 108-137 and P.L. 108-361 or to contribute toward the cost of a temperature control device or other modifications deemed to improve temperature management in Folsom Reservoir that would ensure Reclamation will achieve temperature management requirements on the American River in compliance with the ESA, and all applicable biological opinions." In no event will the Contractor withdraw water at the Contractor's Point(s) of Delivery from an elevation below 310 feet mean sea level (msl). Finally, EID will develop a Water Conservation Plan as required by Section 210(b) of the Reclamation Reform Act of 1982 and 43 CFR 427.1 to ensure no impacts on Folsom Reservoir's CWP would occur. For these reasons, the delivery of up to 17,000 afa of non-project water for M&I purposes will not result in any decreases to the CWP available in Folsom Reservoir. Therefore, the effects of the proposed project on the CWP and any resulting potential effects on California Central Valley steelhead and critical habitat designated for this DPS are discountable.

Endangered Species Act Section 7 Consultation

NMFS has received the information necessary to initiate consultation on federally listed anadromous fish species and their designated critical habitat within the action area. Based on our review of the material provided and the best scientific and commercial information currently available, NMFS concurs with Reclamation's determination that the proposed project may affect, but is not likely to adversely affect, the threatened California Central Valley steelhead DPS, threatened Central Valley spring-run Chinook salmon ESU, endangered Sacramento River winter-run Chinook salmon ESU, or the designated critical habitats of the California Central Valley steelhead DPS and the Central Valley spring-run Chinook salmon ESU. This concurrence is supported by the following factors:

1. EID will utilize gages to measure the volume of water introduced to and diverted from Folsom Reservoir to ensure that the volume of water diverted from Folsom Reservoir is no more than equal to the volume introduced into Folsom Reservoir. EID will provide monthly reports to Reclamation, summarizing daily operations, before the 15th day of the succeeding month throughout the duration of the proposed project.
2. The quality of the non-project water entering CVP facilities will be monitored according to the SWRCB Permit 21112 Water Quality Monitoring Plan and will not degrade the quality of the CVP water in the Federal facilities.
3. EID will install a TCD on a water supply intake as a pre-condition to diverting any quantity exceeding 8,500 afa or contribute an equivalent amount of money towards the cost of modifications to improve temperature management in Folsom Reservoir, in coordination with Reclamation.

4. EID will develop a Water Conservation Plan as well as provide a Temperature Management Plan each year to ensure no impacts on Folsom Reservoir's CWP will occur.
5. EID will adhere to restrictions on diversions set forth by Reclamation and/or applicable biological opinions to ensure this project will not result in any decrease to the available CWP in Folsom Reservoir.
6. Until such time as EID has constructed a TCD or alternative modifications to improve temperature management in Folsom Reservoir have been made in coordination with Reclamation, any water removed from Folsom Reservoir for the purposes of this contract must be taken from the warmer surface layer in Folsom Reservoir or EID must identify in their submitted Temperature Management Plan the restrictions they will impose on themselves to ensure the CWP will not be negatively affected by the proposed project.

This concludes informal consultation for the proposed project. This concurrence does not provide incidental take authorization pursuant to section 7(b)(4) and section 7(o)(2) of the ESA, as amended. Reinitiation of consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law), and if: (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered, including but not limited to current or future biological opinion determinations; (2) the action itself is subsequently modified in a manner that causes an adverse effect to listed species or critical habitat that was not previously considered; or (3) a new species is listed or critical habitat designated that may be affected by this action.

Consultation for EFH and FWCA


With regards to EFH consultation, the action area has been identified as EFH for Pacific salmon in Amendment 14 of the Pacific Salmon Fishery Management Plan pursuant to the MSA. Federal action agencies are mandated by the MSA (Section 305[b][2]) to consult with NMFS on all actions that may adversely affect EFH, and NMFS must provide EFH conservation recommendations to those agencies for such actions (Section 305[b][4][A]). Based on our review of the material provided, and the best scientific and commercial information currently available, NMFS has determined that the proposed project will not adversely affect EFH for Pacific salmon. Therefore, EFH Conservation Recommendations are not being provided at this time. However, if there are revisions to the project description that could result in adverse effects to EFH, Reclamation will need to re-initiate EFH consultation.

The purpose of the FWCA is to ensure that wildlife conservation receives equal consideration, and is coordinated with other aspects of water resources development [16 U.S.C. 661]. The FWCA establishes a consultation requirement for Federal departments and agencies that undertake any action that proposes to modify any stream or other body of water for any purpose, including navigation and drainage. Consistent with this consultation requirement, NMFS provides recommendations and comments to Federal action agencies for the purpose of conserving fish and wildlife resources. Because the proposed project is designed to avoid

environmental impacts to aquatic habitat within the action area, NMFS has no additional FWCA comments to provide.

Please contact Gary Sprague at (916) 930-3615, or via e-mail at gary.sprague@noaa.gov if you have any questions concerning this correspondence or require additional information.

Sincerely,


William W. Stelle, Jr.
Regional Administrator

cc: Copy to file – ARN 151422SWR2011SA00584