



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Date: November 5, 2021
To: Board of Directors
From: Adel Hagekhalil, General Manager
Subject: Recent Public Communications Related to SWP and CVP Operations and Voluntary Agreements

In recent days you may have heard about letters being sent to State and federal officials regarding potential State Water Project (SWP) and Central Valley Project (CVP) operations for calendar year 2022, processes related to federal Endangered Species Act consultation, and developments on the voluntary agreement process. Staff will provide an update to discuss the developments that led to some of these communications at the Bay Delta Committee on November 23. Staff will also provide an update on the litigation related to the 2019 federal Biological Opinion at the Legal and Claims Committee next Tuesday, November 9th. Please find attached public letters and documents regarding: (1) consultation under federal Endangered Species Act (ESA), (2) potential interim operations submitted to the federal court by State and federal parties in the litigation, and (3) voluntary agreement status regarding San Joaquin River tributary parties. Each is described below:

Reinitiation on Consultation on Long Term Operations of SWP and CVP:

Letter 1: Reinitiation of Consultation on Long Term Operations (dated 09.30.2021): Request from Federal Government (US Bureau of Reclamation) Ernest Conant to US Fish and Wildlife Service and National Marine Fisheries Service to reinitiate consultation under section 7 of the Endangered Species Act for operation of the State and Federal Projects. Metropolitan and other contractors submitted their requests to partake in this consultation process as part of Water Infrastructure Improvements for the Nation Act (WIIN Act).

Voluntary Agreements – State Administration’s next steps and position

Letter 2: Letter from Secretaries to Phase I General Managers (dated 10.20.21): Notifying the Phase I entities that State Administration will focus its efforts on Sacramento River basin agencies (State and Federal water projects) and will resume the State Board 2018 Bay-Delta Plan for the Phase I San Joaquin (Stanislaus, Tuolumne and Merced). State has initiated continued discussions with water contractors on voluntary agreements for phase II.

Interim Operations Plan developed by State and Feds and congressional and delegation communication:

Interim Ops Plan provided in Federal Court by Feds & State on 10.14.2021: This plan was provided in federal court to be implemented from the date of the court order until September 30, 2022. A number of communications ensued from congressional and delegation representatives in western water. In addition, both the state and federal water contractors have been in discussions with the state administration and federal government on suggested revisions and modifications to this interim operations plan. The court has not provided a court order on this operational plan, the final operations plan is still pending.

Letter 3: *Letter from Costa, Garamendi, Harder to United States Department of Interior and California Natural Resources Agency on Interim Operations (dated 10.14.2021)*

Letter 4: *Letter from Feinstein, Garamendi, Harder and Costa to Governor, US Department of Interior, and US Department of Commerce (dated 10.20.2021)*

Letter 5: *Letter from CA GOP on 2022 Water Year Interim Operations Plan (dated 10.21.2021)*



United States Department of the Interior

BUREAU OF RECLAMATION
2800 Cottage Way
Sacramento, CA 95825-1898



IN REPLY REFER TO:

CGB-100
2.2.1.06

VIA ELECTRONIC MAIL

Paul Souza, Regional Director
U.S. Fish and Wildlife Service
Interior Region 10, California-Great Basin
2800 Cottage Way, Suite W-2606
Sacramento, CA 95825
paul_souza@fws.gov

Barry Thom, Regional Administrator
National Marine Fisheries Service
West Coast Regional Office
1201 Northeast Lloyd Boulevard
Portland, OR 97232
barry.thom@noaa.gov

Subject: Reinitiation of Section 7 Consultation for the Long-Term Operation of the Central Valley Project (CVP) and State Water Project (SWP)

Dear Mr. Souza and Mr. Thom:

Reclamation, after coordination with you and the California Departments of Water Resources (DWR) and Fish and Wildlife (CDFW), requests reinitiation of consultation on the Long-Term Operation of the CVP and SWP. Pursuant to 50 CFR § 402.16, 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 anticipate a modified Proposed Action and associated biological effects analysis that would result in new Biological Opinions for the CVP and SWP. The goals 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. Reclamation understands that DWR will be an applicant in the consultation and that CDFW participation will facilitate updating DWR's Incidental Take Permit for the operation of the SWP.

INTERIOR REGION 10 • CALIFORNIA-GREAT BASIN

CALIFORNIA*, NEVADA*, OREGON*

* PARTIAL

Subject: Reinitiation of Section 7 Consultation for the Long-Term Operation of the Central Valley Project (CVP) and State Water Project (SWP) 2

I appreciate the efforts by you and your staff in working with Reclamation and the State of California to implement Long-Term Operations. Until new Biological Opinions are issued, and National Environmental Policy Act requirements are completed, the CVP will continue to operate pursuant to the existing consultation and Record of Decision as modified by interim measures, if any, as required by ongoing drought conditions or as ordered in conjunction with any ongoing litigation. Reclamation will remain in close coordination with USFWS and NMFS throughout reinitiation.

Sincerely,

Ernest A
Conant

Digitally signed by
Ernest A Conant
Date: 2021.09.30
12:40:39 -07'00'

Ernest A. Conant
Regional Director

ec: Karla Nemeth
Director, California Department of Water Resources
P.O. Box 942836, Room 1115-1
Sacramento, CA 94236-0001
karla.nemeth@water.ca.gov

Charlton Bonham
Director, California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 94244
chuck.bonham@wildlife.ca.gov



Gavin Newsom
Governor

October 20, 2021

Michael Carlin, Acting General Manager and Chief Operating Officer
San Francisco Public Utilities Commission
525 Golden Gate Avenue (at Polk St.)
San Francisco, CA 94102

Steve Knell, General Manager
Oakdale Irrigation District
1205 East F Street
Oakdale, CA 95361

Michelle Reimers, General Manager
Turlock Irrigation District
333 East Canal Drive
P.O. Box 949
Turlock, CA 95381

Peter Reitkerk, General Manager
South San Joaquin Irrigation District
P.O. Box 747
Ripon, CA 95366

Bill Schwandt, General Manager
Modesto Irrigation District
1231 11th Street
Modesto, CA 95352

John Sweigard, General Manager
Merced Irrigation District
744 W. 20th Street
Merced, CA 95340

Dear water district leaders,

Thank you for your engagement over the last several years to develop a Voluntary Agreement (VA) to improve conditions for fish and wildlife in the Sacramento-San Joaquin Delta and its major rivers, through a commitment to create habitat and increase flows while providing regulatory certainty to water users. Your collaboration and hard work have been truly appreciated.

We all recognize that a successful VA among water users and state and federal agencies must withstand legal and scientific scrutiny. This VA will be submitted to the State Water Resources Control Board (State Water Board) as a proposed pathway to implement its update to the San

Francisco Bay/Sacramento-San Joaquin Delta Water Quality Control Plan (Bay-Delta Plan). In that process, the VA will be subject to third-party scientific peer review and environmental analysis pursuant to the Water Code and the California Environmental Quality Act. The public will also have the opportunity to participate through the State Water Board's public proceedings.

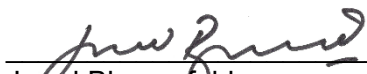
Given the need for a strong, durable VA, our state team has worked together with waters users to secure certain thresholds of increased water flows and habitat improvements necessary to make a VA scientifically defensible. Meeting these thresholds is essential to enable a VA that can be approved by the State Water Board as a pathway to implement the Bay-Delta Plan.

These thresholds of needed flow and habitat have been clearly communicated over the last two years by our state team, and we have worked together with you to explore how these thresholds can be met. In fact, we paused discussions among all parties during this summer and early fall to allow for more time for the proposals by the San Joaquin River tributaries to develop. However, at this point it is clear that despite considerable efforts, proposed voluntary actions by water agencies on the San Joaquin River tributaries have fallen short of needed flow and habitat improvements, and viable proposals are not being offered at this time.

Accordingly, at this point, we will focus our efforts on advancing a VA with the Sacramento River basin water users and water agencies who contract with the State and Federal water projects. On a dual track, we will ask the State Water Board to resume all activities necessary to implement the flow objectives established by the 2018 Bay-Delta Plan for the Lower San Joaquin River and its three major tributaries, the Stanislaus, Tuolumne, and Merced rivers.

We continue to believe that collaboration, adaptive management, and voluntary agreements are the best way to ensure water resilience for California's communities, economy, and environment. Accordingly, we maintain hope that water agencies that utilize the San Joaquin River and its tributaries can become part of the VA. Specifically, we are including a provision in the VA to enable additional water agencies to join the agreement at a later date if they propose necessary levels of additional water flows and habitat. We stand ready and eager to collaborate with you on this important effort.

Sincerely,



Jared Blumenfeld
Secretary
California Environmental Protection Agency



Wade Crowfoot
Secretary
California Natural Resources Agency

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.

Congress of the United States
Washington, DC 20515

October 14, 2021

The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
1849 C Street NW
Washington D.C. 20240

The Honorable Wade Crowfoot
Secretary
California Natural Resources Agency
715 P Street, 20th Floor
Sacramento, CA 95814

Dear Secretary Haaland and Secretary Crowfoot:

We write to express our strongest concerns over new court filings in the State of California's lawsuit challenging the 2019 Biological Opinions for the continued coordinated operations of the federal Central Valley Project and the State Water Project.

We understand the new filings include an unprecedented operations plan for the coming water year, submitted by the State with the federal Bureau of Reclamation. Amid ongoing extreme drought conditions facing California and across the West, a court-ordered water management plan for a single water year, which has not been subject to adequate scientific or public review, is the worst possible outcome.

The recently concluded water year was the worst drought year since 1976-1977. Lack of water has brought hardship and lost jobs to farms, farmworkers, and communities in the Central Valley. We must do all we can to provide reliable water supply to our communities, safeguard our environment, and to ensure that we grow the food needed to feed our nation. The drought has had equally devastating impacts on protected fisheries in the Central Valley, which the interim water operations plan would not fix but, instead, undercut any continued voluntary habitat restoration efforts for protected species.

When the State of California and federal government began developing different water project operation requirements, we warned in April 2020 that protracted litigation was likely to occur that would have dire impacts for California. We fear that is now becoming reality.

The interim operations plan submitted to the court seemingly reverts to a calendar-based approach using historical averages predating 2009, which neither account for changing hydrological conditions due to climate change nor conditions on the

ground for protected fish species such as habitat restoration efforts. It simply makes no sense and is both bad public policy and a backslide to an outdated approach.

Moreover, the interim water operations plan prevents progress on reaching voluntary agreements that most agree would improve California's water system and sustainability. Governor Newsom committed to finalize such voluntary agreements in his 2020 California Water Resilience Portfolio. This court filing by the State and federal government undermines that commitment.

A sustainable operations plan needs to incorporate real-time monitoring, adaptive management, and other flexibility so that water can get to areas experiencing extreme drought and water supply shortages. Any such water operations plan also needs to account for the needs for fisheries as determined by conditions in real time, not calendar-based flow averages. The interim operations plan falls flat on both accounts.

If the federal court process continues to unfold as we expect, we foresee more lawsuits driving operational decisions, which are best left to operations, environmental, and water professionals, not judges and attorneys. Court-ordered management throws California's water supply into chaos, ignoring an already punishing drought year. Simply put, it would inflict avoidable harm on our state's economy, people, and the environment.

We urge you to commit to resolving operational differences through compromise instead of prolonged litigation detrimental to the people we all serve. Thank you for your consideration.

Sincerely,



JIM COSTA
Member of Congress



JOHN GARAMENDI
Member of Congress

/s/

JOSH HARDER
Member of Congress

Congress of the United States

Washington, DC 20515

October 20, 2021

The Honorable Gavin Newsom
Governor
State Capitol, Suite 1173
Sacramento, CA 95814

The Honorable Deb Haaland
Secretary, Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

The Honorable Gina M. Raimondo
Secretary, Department of Commerce
1401 Constitution Ave. NW
Washington, D.C. 20230

Dear Governor Newsom and Secretaries Haaland and Raimondo:

We appreciate your extensive efforts to collaborate with each other on the proposed interim operating plan for the Central Valley Project and the State Water Project recently filed in the *PCFFA v. Raimondo* consolidated litigation. However, it has come to our attention that there has been limited analysis and disclosure of the plan's impacts, and a lack of consultation with affected interests to refine the proposal and mitigate its adverse impacts. We therefore request that you defer implementation of any proposed plan until its effects are more thoroughly analyzed and options to reduce its impacts are carefully vetted in discussions with interested parties. We believe this effort could be completed before the start of the winter operations season in January.

The environmental plaintiffs and the water agency defendant-intervenors in the *PCFFA v. Raimondo* litigation have nearly diametrically opposed views on how the state and federal water projects should be managed. Yet their recent status reports in the litigation are in complete agreement that they have been provided neither information on the effects of the proposed plan, nor analysis of how it will comply with relevant legal standards. Unfortunately, the parties were given very little time to review and comment on the draft plan, with no supporting analysis provided to evaluate it until the Court required the Federal defendants to release such analysis in its October 15, 2021 order.

There are critically important questions that we urge your agencies to reevaluate following informed discussion with affected interests, including:

- whether the proposed changes are necessary to adequately protect the listed fish species, compared to actions under the 2019 Biological Opinions;
- whether alternatives, including non-flow actions that may provide equal or greater protection for those species, should be part of the proposal;
- whether greater flexibility to adapt to real-time information, which has become much more available over the past decade, could avoid jeopardizing fish while reducing hardships to multiple interests that depend on water supply; and
- how to address likely second-order effects of the proposal, including limited availability of water from other reservoirs besides Shasta for critically needed purposes and effects on other species.

While we commend you on reaching agreement in this matter, there is simply too much at stake to rush this plan. The actions taken by your agencies will affect millions of people and more than two-million acres of farmland and wildlife in California. We recognize that navigating the drought is extremely challenging, and appreciate the dedication of you and your staff to make the best of a very difficult situation. Going forward, we urge you to take the two months before the start of the winter operations season in January to engage with stakeholders and develop a more fully informed analysis of a revised interim operations proposal.

Sincerely,



Dianne Feinstein
United States Senator



John Garamendi
United States Representative



Jim Costa
United States Representative



Josh Harder
United States Representative

cc: Secretary Wade Crowfoot
Secretary Jared Blumenfeld

Congress of the United States
Washington, DC 20515

October 21, 2021

The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

The Honorable Gina M. Raimondo
Secretary
U.S. Department of Commerce
1401 Constitution Ave. NW
Washington, D.C. 20230

Dear Secretary Haaland and Secretary Raimondo:

We are writing to express our grave concerns with the proposed interim operations plan for the Central Valley Project (CVP) and the State Water Project (SWP) submitted on October 14, 2021, by Federal and State agencies to the United States District Court in the consolidated litigation challenging the 2019 biological opinions for long-term operations of the CVP and SWP (2019 BiOps) and the 2020 Record of Decision on Reinitiation of Consultation on the Coordinated Long-Term Modified Operations of the Central Valley Project and State Water Project (2020 ROD).

The proposed interim operations plan represents a huge step backward in California's effort to protect, restore and enhance the Delta ecosystem and provide reliable water supplies. We are at a complete loss as to why the U.S. Bureau of Reclamation (Reclamation) would agree to the proposed changes in operations, which deviate significantly from operations described in the 2019 BiOps and the 2020 ROD.

The 2019 BiOps and the 2020 ROD: (1) were the product of a consultation that was initiated in 2016 by the Obama administration; (2) reviewed operations of the CVP and SWP proposed by Reclamation and the California Department of Water Resources, which operates the SWP; (3) were prepared by career staff in the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service, under the leadership of the Regional Director of the FWS, an appointee of the Obama administration; (4) were peer-reviewed in the course of their development; and (5) were based on the best scientific and commercial data available, including

what had been learned about the impact of CVP and SWP operations on species in the decade after adoption of the biological opinions they replaced. Furthermore, at the time of their release, these career staff extolled that the 2019 biological opinions would provide greater protection of the listed species, while restoring operational flexibility for the CVP and SWP. Indeed, as explained by career staff in declarations filed in the consolidated litigation, operations under the 2019 BiOps and the 2020 ROD have shown demonstrative benefits to the species resulting from the adaptive, real-time management approach prescribed by the 2019 biological opinions.

Now, less than two years after the 2019 BiOps were issued and accepted through the 2020 ROD, the Reclamation and State agencies have proposed, without any explanation, an interim operations plan that seemingly reverts to a calendar-based approach using historical averages, which accounts for neither changing hydrological conditions nor real-time biological needs or environmental information concerning listed fish species, such as their distribution. At a minimum, any changes in operations adopted through an interim operations plan that further restrict water supply must be based on an analysis that employs the best available science and provides a clear explanation of why the changes are required to avoid jeopardy or adverse modification of designated critical habitat. (It must be noted that for some species, which have a three-to-four-year life cycle, it would be difficult to reach that conclusion because the 2019 biological opinions have not been given time to work.) In addition, prior to the adoption of changes in operations through an interim operations plan, Reclamation must prepare an adequate analysis under the National Environmental Policy Act, as it did in 2019 prior to the adoption of an interim operations plan for Klamath Project.

Accordingly, we request that you defer implementation of the proposed interim operations plan until the agencies in your respective departments: (1) evaluate whether the proposed changes are required to avoid jeopardy to federally listed species or adverse modification of designated critical habitat; and, (2) analyze potential impacts of the proposed operational changes on the environment, species, and water supply. During that process, it is our expectation that, consistent with Section 4004 of the Water Infrastructure Improvements for the Nation Act, you will involve public water agencies that contract for the delivery of water from the CVP and SWP.

We understand fully that California is experiencing extraordinary drought conditions. However, those extraordinary drought conditions make it all the more important that decisions regarding the management of water be carefully evaluated and explained. Those decisions will affect millions of people, in nearly every region of the State, millions of acres of farmland, and the environment. Care must be taken to ensure that additional, avoidable hardships are not imposed on people already experiencing hardships because of the pandemic and ongoing drought.

Thank you for your attention to this matter. We look forward to your prompt response and request we receive your response no later than November 4, 2021.

Sincerely,



David G. Valadao
Member of Congress



Ken Calvert
Member of Congress



Darrell Issa
Member of Congress



Doug LaMalfa
Member of Congress



Devin Nunes
Member of Congress



Michelle Steel
Member of Congress



Kevin McCarthy
House Republican Leader



Mike Garcia
Member of Congress



Young Kim
Member of Congress



Tom McClintock
Member of Congress



Jay Obernolte
Member of Congress