United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825-1898

IN REPLY
REFER TO:

MP-100
ENV-7.00

Memorandum

JUN 03 2002

To: Steve Thompson
Manager
U.S. Fish and Wildlife Service
Sacramento, California

From: Kirk Rodgers
Regional Director

Subject: Decision Regarding the Proposed Action Addressed in the U.S. Fish and Wildlife Service's May 31, 2002 Biological/Conference Opinion on the Proposed Operation of the Klamath Project.

This memorandum notifies you that the Bureau of Reclamation (Reclamation) will operate the Klamath Project (Project) consistent with the Fish and Wildlife Services (FWS) May 31, 2002 Biological Opinion (BO) this year.

Reclamation has reviewed the FWS's final BO on Reclamation's proposed operation of the Project as set out in Reclamation's February 25, 2002 biological assessment. The BO issued by the FWS addresses the endangered Lost River sucker *(Deltistes luxatus)* and shortnose sucker *(Chasmistes brevirostris)*, threatened bald eagle (*Haliaeetus Leucocephalus*) and proposed critical habitat for the Lost River/shortnose suckers. FWS found that the proposed action is not likely to jeopardize the continued existence of bald eagles and would not incidentally take bald eagles. FWS did, however, conclude that Reclamation's proposed action is likely to jeopardize the continued existence of the Lost River/short nose suckers and included a reasonable and prudent alternative (RPA) to avoid the likelihood of jeopardy.

Reclamation has serious concerns about FWS's conclusions regarding jeopardy to the species, particularly whether there is a scientific basis for those conclusions and whether the recommended alternatives go beyond what is needed to avoid jeopardy to the species. Despite what we believe to be the BA's plain language and assurances that the Klamath Project will be operated in the same manner as the decade of the 1990's (consistent with the NRC Report) the FWS attempts to show that these operations will not occur. We believe FWS mischaracterizes the proposed action, which, in turn, skews the effects analysis.

Given that the 2002 irrigation season is underway, Reclamation has decided to implement the RPA and the RPMs in the incidental take statement (ITS) as set out for this water year. We anticipate that future Project operations will require further discussion and consultation with the FWS and NMFS.

The following identifies Reclamation's key concerns about the FWS BO and should serve as a starting point for additional conversations between the agencies:

First, Reclamation disagrees with FWS's jeopardy opinion regarding the proposed action. The jeopardy opinion is based on three factors described in the BO: (1) sucker entrainment at Project dams and diversions from Upper Klamath Lake; (2) effects of Project operations on water quality in Upper Klamath Lake; and (3) sucker habitat loss in Upper Klamath Lake. FWS concludes that water quality and habitat loss are related to water depths (i.e., lake levels) and Project operations. While Reclamation does not dispute the finding that reduced lake levels result in reduced habitat availability, Reclamation does view the FWS's conclusions regarding effects on the species as being inconsistent with the National Research Council (NRC) Interim Report.

NRC found no substantial scientific evidence that demonstrates a clear relationship between lake levels (i.e. water depths) and sucker survival. Further, sucker entrainment at Project dams and diversions will be substantially eliminated when the A-Canal fish screen project becomes operational next year. Reclamation believes that entrainment at Link River Dam is not sufficient for a jeopardy determination because FWS and Reclamation have agreed to the discharge of entrained fish from the A-Canal fish screen to the Link River downstream from Link River Dam (via the secondary fish bypass). Entrainment into PacifiCorp's power canals is not a result of Reclamation's action.

The RPA requires Project operations to be based on the 50 percent exceedence inflow in the NRCS streamflow forecast. Reclamation is very concerned about FWS's request that we use a 50 percent exceedence forecast instead of our proposed 70 percent exceedence forecast. The 50 percent exceedence forecast is an optimistic forecast of hydrology, while the 70 percent exceedence is a more conservative forecast of water supply outlook. This exceedence level requirement appears to be an effort to require higher lake elevations than those proposed in the BA and is inconsistent with the findings published in the NRC Interim Report. This is because, in certain years, use of the 50 percent exceedence would put operations in a "wetter" year type. While the BO appears to allow for adjustment of the water year type as the irrigation season progresses, it nonetheless potentially subjects the Project to artificial shortages.

Second, we believe that there needs to be further discussions about whether FWS improperly includes actions at PacifiCorp's hydroelectric facility operation with Reclamation's proposed action. PacifiCorp should be included in these discussions.

Third, FWS continues to hold Reclamation responsible for curing non-Project effects. Reclamation believes FWS continues to use an approach of attempting to foster recovery by placing all of that burden on Reclamation's Klamath Project in the form of its RPA's. Reclamation believes that many of the RPA actions focus on problems that are not Project-

caused or require Project operations to solve problems that are caused elsewhere in the Klamath Basin. An example is RPA element 3 which requires Reclamation to be responsible for addressing all water quality issues in Upper Klamath Lake. Rather than requiring Reclamation to address all of these issues, whether or not they are within Reclamation's control, the FWS should be focusing on finding a solution to the actual cause of the problem instead of merely placing the entire burden on Reclamation to do so.

Finally, we believe that FWS fails to recognize the role of Reclamation's proposed water bank. The FWS indicates in the BO that Reclamation did not provide sufficient information on the water bank in its BA. The water bank is an element of the proposed action and should be considered in the BO's effects analysis. The purpose of the water bank is to provide additional water for fish and wildlife purposes and to enhance tribal trust resources. Reclamation believes that the FWS needs to incorporate the water bank into its effects analysis for the final BO. Reclamation intends to engage in further discussion with FWS on the water bank in the near future.

Given the concerns expressed in this memorandum and that additional scientific information will be available later this year, we anticipate reinitiating consultation prior to next year's operations. We may also choose to reinitiate consultation if additional actions or modifications of Project operations are proposed by the Klamath River Basin Working Group. We look forward to working closely with both FWS and NMFS in any ESA consultation process that occurs as a result.

By separate cover, we will be providing you with our 2002 operations plan. Additional cooperation between consultation agencies and Reclamation will be needed. Reclamation will be contacting you to set up future meetings to address the above concerns. If you have any questions or need additional clarification above the concerns raised above, please contact Mr. David Sabo, Area Manager, Klamath Project Office (541) 883-6935.