United States Department of the Interior

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

JUN 0 3 2002

IN REPLY
REFER TO:

MP-100
ENV-7.00

Rodney R. McInnis
Acting Regional Administrator
National Marine Fisheries Service
Long Beach, California

Subject: Decision Regarding the Proposed Action Addressed in the National Marine Fisheries Service's May 31, 2002 Biological Opinion on the Proposed Operation of the Klamath Project

Dear Mr. McInnis:

This letter notifies you that the Bureau of Reclamation (Reclamation) will operate the Klamath Project consistent with the National Marine Fisheries Service's (NMFS) May 31, 2002 Biological Opinion (BO) this year.

Reclamation has reviewed NMFS's final BO on Reclamation's proposed operation of the Klamath Project (Project) as described in Reclamation's February 25, 2002 biological assessment. NMFS concluded that Reclamation's proposed action is likely to jeopardize the continued existence of the threatened Southern Oregon/Northern California (SONC) coho salmon (*Oncorhynchus kisutch*) and adversely modify its designated critical habitat. The BO included a reasonable and prudent alternative (RPA) to avoid the likelihood of jeopardy. The Fish and Wildlife Service (FWS) has also provided Reclamation with a BO on the on the effects of Reclamation's proposed operation of the Klamath Project on 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.

As you know, based on our discussions about the draft BO, Reclamation has serious concerns about NMFS's conclusions, particularly whether there is a scientific basis for those conclusions and whether the RPA goes beyond what is required to avoid jeopardy to the species. We do, however, plan to operate in conformance with the BO, the RPA, and the Incidental Take Statement (ITS) and accompanying reasonable and prudent measures (RPMs) for this year pending further discussions and negotiations with NMFS and the FWS. Operations for this year, therefore, will follow those specified in the NMFS and FWS BOs.

The following identifies Reclamation's key concerns about the NMFS BO and serves as a starting point for additional discussions between NMFS and Reclamation.

Reclamation disagrees with NMFS's jeopardy opinion regarding the proposed action. NMFS determined that Reclamation's proposed action is likely to result in incremental depletions in flows over the course of the 10-year period (2002-2011) and will result in increased risk to the continued existence of threatened coho salmon in the Klamath River. Reclamation believes its proposed action is consistent with Project operations in the 1990s that were considered appropriate in the NRC Interim Report, and that average river flows will remain consistent with the 10-year average and will not be incrementally reduced over time. The NRC's recent Interim Report concluded that available information provides little support for benefits presumed to occur through the increase of flows beyond those that occurred through operations in the 1990s. NMFS based its jeopardy determination on what it perceived as adverse effects to coho salmon and a corresponding reduction in the numbers and distribution of coho salmon in the Klamath River over time. Specifically, NMFS concluded the following were effects of the proposed action:

1) The operation of the Project during the fall and winter of drier years may adversely affect passage conditions for migrating coho salmon in the mainstem and access to tributaries;

2) During the spring months, coho fry survival could decrease as a result of decreases in available mainstem habitat, increased predation, and decreased feeding success;

3) During the spring, out-migration success of smolts may be reduced due to slower travel time with higher mortality due to migratory delays, predation, and exposure to potentially poor mainstem habitat conditions;

4) The tributary access for juvenile coho that attempt to move from the mainstem to tributaries may be adversely affected;

5) During the summer, Iron Gate Dam flows make up a substantial portion of Klamath River flows, particularly in drier years. NMFS concludes that juvenile coho salmon survival may decrease associated with reduced mainstem rearing habitat;

6) During the summer, thermal refuge areas where tributaries enter the Klamath River may be adversely affected, potentially decreasing juvenile coho survival.

In addition, NMFS requires specific ramping flows in the RPA. It should be noted that these are controlled by PacifiCorps operations, and we need to have further discussions about whether the requirement is appropriately included in the BO as being within the scope of Reclamation's consultation and authority.

Reclamation believes that all of the effects described above are inconsistent with the NRC Interim Report. We believe that the NRC Report, which has received extensive peer review

through an established process in the science community, represents the best available science. As a result, Reclamation believes that NMFS's conclusions regarding jeopardy are unsupported and unfounded. It is our position that the NMFS RPA focuses on conservation and recovery measures that go beyond what is required to avoid the likelihood of jeopardy to the species. Reclamation believes NMFS has fashioned the RPA to focus on recovery rather than address any identified effects of the proposed action.

We believe that NMFS has also mischaracterized Reclamation's proposed action. In our written comments on the draft BO, Dated May 24, 2002, Reclamation raised concerns about how NMFS addressed the proportionate responsibility concept. In the draft BO, the RPA included both the 57 percent component (which Reclamation recognized as a fair estimation of its proportionate requirements to avoid the likelihood of jeopardy to the species.) and the 43 percent component (which Reclamation viewed as an effort to assist NMFS in recovery efforts). Reclamation's written comments stated that the 43 percent component should not be included as part of the proposed action. This was not changed in the final BO as we requested. Although Reclamation agreed to aid in recovery efforts (i.e., the 43 percent component) we did not agree that any actions beyond our 57 percent proportional share should be characterized as an RPA needed to address effects of the action contributing to jeopardy. Instead, NMFS and Reclamation should work cooperatively with other water users in the Basin to design and develop a program to comprehensively address the needs of the species.

Reclamation is also concerned with the requirements in the ITS. Generally, we are concerned that the ITS does not comport with what we believe the intent of an ITS to be. We are also concerned that several of the ITS "term and conditions" require actions by Reclamation in watersheds that are not part of the Project or not in the Project area. These actions are better characterized as conservation measures rather than requirements of an ITS.

Given that the 2002 irrigation season is underway, Reclamation has decided to operate in compliance with the BO for this water year. In addition to complying with the terms of the NMFS BO this year, Reclamation has decided to work with Project water users and other water users in the Basin to require an additional 20,000 acre-feet of water for use in Reclamation's water bank. This water will be managed in cooperation and coordination with the downstream Tribes to help protect and conserve the SONC Coho salmon through the remainder of this water year. We are undertaking this action to provide an additional level of operational flexibility in furtherance of our tribal trust responsibilities.

Given the concerns expressed in this letter 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 President's 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.

Sincerely,

Kirk Rodgers
Regional Director