U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION

DECISION DOCUMENT

CONCERNING THE

FINAL UPDATED PROPOSED ACTION

AND

NOAA FISHERIES' NOVEMBER 30, 2004, BIOLOGICAL OPINION CONSULTATION

ON REMAND FOR

OPERATION OF THE FEDERAL COLUMBIA RIVER POWER SYSTEM INCLUDING 19 BUREAU OF RECLAMATION PROJECTS IN THE COLUMBIA BASIN

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I. INTRODUCTION

This Decision Document sets forth the Bureau of Reclamation's determinations regarding the implementation of those actions in the Federal Action Agencies' November 2004 Updated Proposed Action (UPA)[1] for which it is responsible. The Action Agencies are the Bureau of Reclamation (Reclamation), the U.S. Army Corps of Engineers (Corps), and the Bonneville Power Administration (BPA). Each of the Action Agencies is preparing its own documentation of its final decision.

The UPA was the subject of an Endangered Species Act (ESA) Section 7 Biological Opinion issued on November 30, 2004 (the 2004 BiOp), by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce (NOAA Fisheries).[2] The implementing regulations for Section 7 consultations state that: "(F)ollowing the issuance of a biological opinion, the Federal [action] agency shall determine whether and in what manner to proceed with the [proposed] action in light of its Section 7 obligations and the Service's biological opinion." (50 CFR Part 402.15 (a)). This Decision Document fulfills this regulatory requirement.

II. BACKGROUND

Since the initial ESA listing of salmon runs in 1991, the Action Agencies have conducted several ESA Section 7 consultations with NOAA Fisheries regarding the operation of the FCRPS and Reclamation irrigation projects. Prior to the 2004 BiOp, the most recent BiOp covering the operation of the FCRPS was that issued on December 21, 2000 (the 2000 BiOp.) It addressed the operation of the same Corps and Reclamation projects as are included in the UPA.

The 2000 BiOp concluded that the Action Agencies' then proposed actions[3] would jeopardize the continued existence of certain listed salmon and steelhead. It therefore set forth a recommended reasonable and prudent alternative (RPA) to the Action Agencies' proposed actions. The Action Agencies decided to implement the RPA, as documented in individual agency decision documents prepared shortly after release of the 2000 BiOp.

The National Wildlife Federation and others challenged the adequacy of the 2000 BiOp in the U.S. District Court of Oregon, *National Wildlife Federation v. NMFS,* CR 01-640-RE (D.

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[1] Final Updated Proposed Action for the FCRPS Biological Opinion Remand, U.S. Army Corps of Engineers, Bureau of Reclamation, and Bonneville Power Administration, November 24, 2004.

[2] Biological Opinion on the Operation of the Federal Columbia River Power System including the 19 Bureau of Reclamation Projects in the Columbia Basin, November 30, 2004 (revised and reissued pursuant to court order, NWF v. NMFS, Civ. No. CV 01-640-RE (D. Oregon).

[3] Multi-species Biological Assessment of the Federal Columbia River Power System submitted to the National Marine Fisheries Service and U.S. Fish and Wildlife Service by Bonneville Power Administration, U.S. Bureau of Reclamation, and U.S. Army Corps of Engineers, December 21, 1999.

Oregon *filed* May 5, 2001). The Court found the 2000 BiOp legally invalid and remanded it to NOAA Fisheries for revision on June 2, 2003. The Court ordered that a revised BiOp be prepared by June 2, 2004, and later extended that deadline to November 30, 2004. The 2004 BiOp was prepared in fulfillment of the Court's order.

III. SUMMARY OF THE UPDATED PROPOSED ACTION

The UPA consists of multiple, separate actions, to include: (1) the operation and maintenance of the 14 Federal dams and powerplants which are operated by the Corps and Reclamation as an integrated system for flood control and power generation (referred to in the 2004 BiOp as the Federal Columbia River Power System, or FCRPS), two of which are Reclamation projects (Grand Coulee and Hungry Horse Dams and Powerplants), (2) the operation and maintenance of Reclamation's Columbia Basin Project (an irrigation project), and (3) the operation of 17 other Reclamation irrigation projects, to the extent of their aggregate hydrologic effects on flows in the mainstems of the Columbia and Snake Rivers. See Table 1 for a list of all 19 Reclamation projects.

The UPA also includes several activities (i.e. "actions" authorized, funded, or carried out by the Action Agencies) whose positive effects will offset the negative effects on listed species of the operation of the FCRPS and Reclamation's irrigation projects. These activities are generally referred to in the UPA as "non-hydro off-set" activities or measures. They are among the actions consulted upon and addressed in the 2004 BiOp.

TABLE 1
U.S. BUREAU OF RECLAMATION
PROJECTS IN OPERATION IN THE COLUMBIA RIVER BASIN

PROJECT NAME	STATE
UPPER COLUMBIA RIVER (upstream from Snake River confluence)	
Hungry Horse	Montana
Bitterroot	Montana
Big Flat Unit of the Missoula Valley	Montana
Frenchtown	Montana
Dalton Gardens	Idaho
Avondale	Idaho
Rathdrum Prairie	Idaho
Spokane Valley	Washington
Columbia Basin (Includes Grand Coulee Dam)	Washington
Chief Joseph[4]	Washington
Okanogan	Washington
Yakima	Washington
LOWER COLUMBIA RIVER (downstream of the Snake River confluence)	
Crooked River	Oregon
Deschutes	Oregon
Wapinitia	Oregon
The Dalles[4]	Oregon
Umatilla	Oregon
Tualatin	Oregon
SNAKE RIVER (upstream of the confluence of the Columbia and Snake Rivers)	
Lewiston Orchards	Idaho

[4]Chief Joseph and The Dalles projects are irrigation works that are owned and operated by Reclamation. They are separate from The Dalles and Chief Joseph Dams owned and operated by the Corps.

A general summary of the major components of the Action Agencies' proposal to improve salmon and steelhead survival can be found on pages 2-4 of the UPA. These components include actions to:

- Continue adult fish passage
- Improve juvenile fish passage
- Continue and enhance spill for juvenile fish passage
- Continue reservoir operations and river flows to benefit migrating fish
- Modify juvenile fish transportation to improve survival
- Expand predator control to manage impacts to juvenile fish
- Improve tributary spawning and rearing habitat
- Improve estuary habitat
- Implement hatchery actions
- Pursue harvest opportunities
- Continue to support regional research, monitoring, and evaluation
- Follow through on actions taken under the 2000 FCRPS BiOp.

All actions within the UPA are within the scope of one or more of the Action Agencies' respective statutory authorities, the discretion available to them under these authorities, and their expected funding resources. In reaching the determinations set forth in this Decision Document, I relied on the description of the actions for which Reclamation is responsible as set forth in the UPA, unless specifically noted to the contrary later in this Decision Document.

While the operation of the FCRPS and each of Reclamation's projects, which are primarily (though not necessarily exclusively) authorized for irrigation purposes, are separate actions, and while the operation of each project is independent of the operation of any other project, all of these legally and factually separate actions were the subject of the 2004 BiOp consultation at Reclamation's request as permitted, but not required, by 50 C.F.R. 402.14(c). On the other hand, the operation of the Reclamation projects which are located in the Snake River basin above Hells Canyon Dam, which projects are operated independently from the 14 FCRPS dams, primarily for non-power purposes, and the Reclamation projects included in the UPA, were not, at Reclamation's discretion, included in the 2004 BiOp consultation. Rather, the operation of these projects is the subject of a separate consultation with NOAA Fisheries and the U.S. Fish and Wildlife Service as permitted by the implementing regulations for Section 7 consultation.

For its tributary projects within the range of the listed species, Reclamation is proceeding with Sec. 7(a)(2) consultations, as appropriate, with NOAA Fisheries on the tributary effects to the listed species. This will provide coverage of total tributary and mainstem effect of those projects. Those Reclamation projects undergoing additional consultation include the Chief

Joseph, Okanogan, Yakima, Umatilla, Crooked River, Deschutes, Wapinitia, The Dalles, Tualatin, and Lewiston Orchards Projects.

IV. SUMMARY OF THE 2004 BiOp CONSULTATION PROCESS

NOAA Fisheries and the Action Agencies began work toward a new biological opinion immediately after the court remanded the 2000 BiOp. Several months into the remand, the States and Tribes proposed a collaborative process to discuss technical issues and the analytical framework for the 2004 BiOp. In response, NOAA Fisheries conducted nineteen facilitated sessions with State and Tribal representatives and other interested parties during the winter and spring of 2004. Participants included representatives from Reclamation and the other Action Agencies. Issues discussed included the intrinsic potential of habitat improvements, hatcheries, hydro operations and related actions including dam passage effects, the estuary, population trends, and the analytical framework for Section 7 jeopardy determinations.

On September 8, 2004, NOAA Fisheries released a draft BiOp for review by States and Tribes. The Action Agencies also released a draft UPA on the same date. After issuing the draft BiOp, NOAA Fisheries staff met with State and Tribal technical and policy staff. The purpose of these meetings was to provide an overview and to answer questions, thus facilitating the review of the draft BiOp. The meetings were also expected to help the participants brief their policy counterparts, in preparation for policy-level meetings scheduled for early October. Reclamation and other Action Agency representatives participated in the meetings and provided information on the draft UPA.

Reclamation considered all comments received on the draft UPA in preparing the final UPA. The Action Agencies have prepared a document that summarizes their responses to comments on the UPA[5]. I considered this document in reaching the determinations set forth in this Decision Document.

Throughout the remand process, Reclamation and the other Action Agencies worked extensively with NOAA Fisheries and with each other to prepare the UPA and provide input to NOAA Fisheries regarding the 2004 BiOp. As a result, Reclamation is thoroughly apprised of the content of the 2004 BiOp, the regulatory and analytical framework for, and analytical tools used in, the 2004 BiOp, and the basis for the conclusions reached by NOAA Fisheries in the 2004 BiOp.

[5] "Response to comments received on the 8/30/04 final draft Updated Proposed Action for the FCRPS Biological Opinion Remand", posted at www.salmonrecovery.gov on January 3, 2005

V. SUMMARY OF THE 2004 BiOp

NOAA Fisheries prepared the 2004 BiOp pursuant to the above-mentioned court-ordered remand. The actions included in the UPA were the actions upon which the Action Agencies consulted in fulfillment of their obligations under Section 7 of the ESA.

Table 2 identifies the ESU's currently listed and proposed for listing under the ESA. The 2004 BiOp addresses all these species.

There are critical habitat designations for the following three ESUs: the Snake River sockeye, the Snake River spring/summer Chinook, and the Snake River fall Chinook (58 FR 68543, published on December 28, 1993). The 2004 BiOp addresses these three critical habitat designations.

A proposed rule for the designation of critical habitat for Upper Columbia River spring Chinook, Upper Columbia River steelhead, Snake River steelhead, Middle Columbia River steelhead, Upper Willamette River Chinook, Willamette River steelhead, Lower Columbia River Chinook, Lower Columbia River steelhead, and Columbia River chum salmon was published in the Federal Register on December 14, 2004 (Docket No. 030716175-4327-03; RIN No. 0648-AQ77). The 2004 BiOp does not address these proposed critical habitat designations. The Action Agencies will fulfill their Section 7 ESA responsibilities on the proposed and final habitat designations in accordance with the ESA and its implementing regulations.

TABLE 2
SPECIES CONSIDERED UNDER THE BIOLOGICAL OPINION

Species/ESU	Scientific Name	Status
Snake River Sockeye Salmon	***Oncorhynchus nerka***	**Endangered**
Snake River Spring/Summer Chinook Salmon	***Oncorhynchus tshawytscha***	**Threatened**
Snake River Fall Chinook Salmon	***Oncorhynchus tshawytscha***	**Threatened**
Snake River Steelhead	***Oncorhynchus mykiss***	**Threatened**
Upper Columbia River Spring Chinook Salmon	***Oncorhynchus tshawytscha***	**Endangered**
Upper Columbia River Steelhead	***Oncorhynchus mykiss***	**Endangered**
Middle Columbia River Steelhead	***Oncorhynchus mykiss***	**Threatened**
Lower Columbia River Chinook Salmon	***Oncorhynchus tshawytscha***	**Threatened**
Lower Columbia River Steelhead	***Oncorhynchus mykiss***	**Threatened**
Columbia River Chum Salmon	***Oncorhynchus keta***	**Threatened**
Upper Willamette River Chinook Salmon	***Oncorhynchus tshawytscha***	**Threatened**
Upper Willamette River Steelhead	***Oncorhynchus mykiss***	**Threatened**
Lower Columbia River Coho Salmon	***Oncorhynchus kisutch***	**Proposed**

The ESA and the Section 7 consultation regulations require a Federal agency to consult on actions that it proposes to authorize, fund, or carry out that are within its discretionary authority. In analyzing the effects of the proposed action, and in accordance with ESA Section 7(a)(2) consultation regulations, NOAA Fisheries must distinguish the effects of the proposed future operation of the FCRPS and Reclamation's projects from the effects of their construction and operation. Thus, the effects of the existence of the FCRPS are properly part of the effect of the "environmental baseline," not the "effects of the action(s)" being consulted upon, as these terms are used in the consultation regulations. Consequently, the environmental baseline includes the effects of past actions, including those taken to construct and operate the ongoing projects. Furthermore, the effect of the continued existence of the dams is outside Reclamation's discretion and thus is also included in the environmental baseline.

In discussing the environmental baseline, Reclamation and the Corps were asked by NOAA Fisheries to distinguish between their discretionary and non-discretionary operations for the 50-year hydrologic modeling analyses. Both agencies concluded it was not possible to define all potential discretionary actions for 50 different hydrologic years, due to the numerous variables and factors that are taken into consideration when making operational decisions. As an example, real-time decisions for irrigation operations require consideration of the amount of available water supply, precipitation forecasts, crop needs, and other factors. Recognizing that some line must be drawn for purposes of facilitating consultation, the Action Agencies and NOAA Fisheries therefore agreed, for the practical purpose of identifying a surrogate for the hydro-effects component of the environmental baseline, that those non-discretionary operations necessary to provide for authorized project uses, such as irrigation, would not be incorporated into the environmental baseline, but rather would be treated as "effects of the action."

The "reference operation" analysis does not reflect an operation that Reclamation has discretion to implement, because it is not consistent with Reclamation's obligation to provide for congressionally authorized project uses. Rather, it was used to estimate a fish survival rate in the hydro system that was most protective of the species, given the existence of the FCRPS dams in their configuration at the time of this consultation. The "reference operation" survival rate for each ESU was then compared to the survival rate estimated for each ESU for the actions in the UPA. NOAA determined whether the UPA actions jeopardized the continued existence of the ESU by evaluating the magnitude of any differences. This approach gives the benefit of the doubt to the listed species.

For determining whether the action causes an alteration of an essential habitat feature that is likely to result in the destruction or adverse modification of designated critical habitat, NOAA Fisheries used two alternative methods in the absence of a regulatory definition of this standard.[6] The first method, the Environmental Baseline Approach, uses as a point of reference the

[6] Application of the definition of "destruction or adverse modification" is under review by the affected agencies in light of the *Gifford Pinchot Task Force v. USFWS* No. 03-35279 (9th Cir. August 6, 2004).

environmental baseline to which the effects of the action will be added. If NOAA Fisheries determines that the proposed action is likely to alter an essential feature of critical habitat compared to the condition under the environmental baseline, it then considers whether that alteration appreciably diminishes the value of critical habitat for survival or recovery.

As an alternative to this approach, NOAA Fisheries used the Listing Conditions Approach. To determine if the proposed action adversely alters an essential feature of critical habitat, NOAA Fisheries refers to the condition of the essential feature (also known as a "primary constituent element," or PCE), as it existed at the time the species was listed. If the action reduces the function of the essential feature below that which existed at the time of listing, NOAA Fisheries considers the essential feature to have been altered. As with the first alternative, if there is an alteration of an essential feature of critical habitat compared to this reference point, then NOAA Fisheries considers whether the alteration appreciably diminishes the value of critical habitat for survival or recovery. With either approach, the determination for the destruction or adverse modification of critical habitat is influenced by the status of the ESU and the degree to which conditions of the affected essential features meet the biological requirements of the species for survival or recovery.

NOAA Fisheries concludes in its 2004 BiOp that the actions included in the Action Agencies' UPA are not likely to jeopardize the existence of 13 ESUs of salmon and steelhead. NOAA Fisheries further concludes that the UPA actions are not likely to adversely modify the designated critical habitat for three ESUs for which there is designated critical habitat. A summary of NOAA Fisheries' conclusions can be found in Section 8.1.3 of the 2004 BiOp. The 2004 BiOp included Terms and Conditions related to incidental take and Conservation Recommendations.

VI. FINDINGS REGARDING ESA COMPLIANCE

Based upon the 2004 BiOp and other relevant material considered in the consultation I conclude that the Action Agencies' UPA meets the regulatory requirements of Sec. 7(a)(2) of the Endangered Species Act and the implementing regulations in that the proposed action is not likely to "jeopardize the continued existence of any species" or "result in the destruction or adverse modification of critical habitat proposed to be designated" for the listed species. Reclamation similarly concurs with NOAA Fisheries that implementing the reasonable and prudent measures and terms and conditions identified in Section 10 of the 2004 BiOp will minimize and reduce the level of take associated with implementing the UPA.

Reclamation notes two areas in which it differs with NOAA Fisheries in their description of the effects of the 19 Reclamation projects and the scope of our Columbia Basin Project water quality monitoring action in Section 6.2.1.1.1 of the 2004 BiOp. Based on its knowledge of the 2004 BiOp analyses, Reclamation concludes that, despite these differences, the UPA complies with Section 7(a)(2) of the ESA and that these differences are not significant to NOAA Fisheries overall conclusions in the 2004 BiOp.

The first discrepancy deals with the mainstem effects of irrigation deliveries in the Yakima River. In the UPA, Reclamation estimated there was little net effect on the mainstem from the operation of the Yakima Project for ESA 7(a)(2) purposes as its irrigation requirements were considered part of the environmental baseline. In the 2004 BiOp NOAA Fisheries developed an alternate assumption that concluded there were irrigation diversions of an estimated 2 maf that could reduce reference operation mainstem flows by 11,000 cubic feet per second (cfs) in three summer months. While Reclamation understands NOAA Fisheries' rationale for an alternative assumption, it disagrees with the technical hydrologic results. Based on the *Cumulative Hydrologic Effects of Water Use, June 1999,* a study prepared by Reclamation for NOAA Fisheries, the average annual depletions on the Yakima River are about 1.5 maf of which non-Federal depletions are about .96 maf. The remaining Federal depletion would be about .5 maf. Storage capacity of the Yakima Project is about 1 maf. Theoretically, if 1 maf was released from storage over a 90 day period in summer (i.e., in a reference operation), the net increased flows in the Columbia River would be about 4,800 cfs (due to the effects of return flows), assuming the projects were full and the releases were not depleted. (Return flows from Federal irrigation currently increase Columbia River flows by 800 cfs above pre-project conditions.) Instead, NOAA concluded an increase of 11,000 cfs flows at the Columbia River, which Reclamation has determined is incorrect. Increasing summer flows to help meet flow targets at McNary and decreasing flows in winter to refill the projects would only add to Yakima River concerns identified by NOAA Fisheries. NOAA Fisheries would need to weigh the negative impacts to Yakima River with the positive impacts for the lower Columbia River before modifying a reference operation. With respect to conditions in the environmental baseline relative to the biological needs of the listed fish, it should be noted that flows at the mouth of the Yakima River prior to construction of the Yakima Project were generally lower than current summer flow conditions. This occurs in many tributaries with Reclamation facilities as the summer depletions are often offset by project storage releases.

The second discrepancy between the 2004 BiOp analysis and Reclamation's data is that Section 6.2.1.1.1 of the 2004 BiOp overstates the scope of Reclamation's proposed action to monitor the water quality of return flows from the Columbia Basin Project. NOAA Fisheries implies that Reclamation has proposed similar water quality monitoring at all of its 19 projects. However, the UPA actually includes only Reclamation's proposal to continue its Columbia Basin Project water quality monitoring program. In the UPA, Reclamation proposes to complete a multiyear study that analyzes water quality in the return flows of the Columbia Basin Project for conventional water quality parameters and aquatic plant growth control agents used in the operation and maintenance of the project. Potential future actions will depend on the results of the study. Under a separate agreement, Reclamation is working with USGS to gather pesticide information. This study is not proposed as part of the UPA. It should be noted that none of the pesticides detected in the samples taken in water year 2003 exceeded the U.S. Environmental Protection Agency (EPA) maximum contaminant levels or health advisories for drinking water. If future scientific studies are performed by others that determine that pesticide levels related to

the Columbia Basin Project are detrimental to salmonids, then Reclamation will notify NOAA Fisheries and those agencies responsible for pesticides regulation.

VII. FINDINGS REGARDING MAGNUSON-STEVENS CONSERVATION AND MANAGEMENT ACT

The Magnuson-Stevens Fishery Conservation and Management Act requires Federal agencies to consult with NOAA Fisheries on activities that may adversely affect Essential Fish Habitat (EFH). Section 11 of the NOAA Fisheries 2004 BiOp addresses the EFH designation for "ground-fish" that are limited to the estuary of the Columbia River and near shore ocean and designated EFH for chinook and coho salmon that includes all those streams, lakes, ponds, wetlands, and other water bodies currently or historically accessible to salmon in Washington, Oregon, Idaho, and California except areas upstream of certain impassable man-made barriers and longstanding, naturally impassable barriers. At Section 11.5 of the FCRPS 2004 BiOp, NOAA Fisheries found that the UPA would adversely affect EFH for Columbia basin chinook and coho salmon, English sole starry flounder, the northern anchovy, and the Pacific sardine. Reclamation concurs with this conclusion. In Section 11.6 NOAA Fisheries adopted the UPA and terms and conditions of Section 10 as EFH conservation measures. Reclamation will implement these actions as indicated in my following decision.

VIII. DECISION

In light of the above findings, it is my decision that Reclamation will implement each component of the UPA that pertains to Reclamation with recognition that the adaptive management framework may require adjustments to the actions to meet survival improvements identified in the 2004 BiOp. The UPA will be implemented in accordance with all applicable laws. Reclamation will also implement the Terms and Conditions of the Incidental Take Statement of the 2004 BiOp (Section 10) that pertain to Reclamation. Reclamation is generally amenable to implementing the discretionary Conservation Recommendations included in Section 9 of the NOAA Fisheries 2004 BiOp to the extent funding and staffing can be made available within its existing authorities.

At Section 11.6, NOAA Fisheries provided EFH conservation recommendations, which consist of the applicable conservation measures described in the UPA and the Terms and Conditions in Section 10.0 of the BiOp. Reclamation intends to comply with both the UPA and the Terms and Conditions and, consequently, Reclamation also intends to comply with the recommended EFH conservation measures.

Reclamation's ability to implement the UPA is subject to numerous factors, as described below:

Authority. Reclamation has sufficient authority to operate the 19 Reclamation projects in the manner described in the UPA. However, Reclamation has limited authority to conduct work

outside of authorized Reclamation projects. This limited authority is pertinent to the tributary habitat work proposed in the UPA. Generally, Reclamation can conduct appraisal-level studies and provide technical assistance but must seek authority from Congress to proceed with construction activities or formal feasibility studies. Reclamation is making efforts to obtain Congressional authorization for the Tributary Habitat Program construction authority in the three subbasins included in the UPA for Upper Columbia River steelhead and Upper Columbia River spring/summer chinook. Until Reclamation obtains the needed authority to fund construction related to entrainment and channel morphology limiting factor projects, BPA has agreed to fund those projects necessary to meet the metric goals. Reclamation and BPA will execute an agreement to memorialize this arrangement.

Appropriations. Reclamation prepares an annual budget request approximately 2 years before actually receiving an appropriation from the Congress. Interim program modifications may require funds that were not listed in the annual request; further, Congress may appropriate less than the amount requested by the Administration. Funding shortfalls are possible. If this happens, Reclamation will work with NOAA Fisheries and other Federal and State agencies and Tribes to prioritize the work using available funding. Congress occasionally adds funding to the Administration's budget request. Reclamation will also work with NOAA Fisheries to prioritize use of these ESA implementation funds.

Environmental Compliance. The UPA includes certain performance goals for completion under specific schedules. All of the actions in the UPA are intended and thought to be in compliance with applicable environmental laws. However, some of these items may require additional environmental compliance activity such as the preparation of NEPA documents, Clean Water Act actions, and/or specific Section 7(a)(2) consultation prior to implementation. Environmental compliance activities may increase costs and delay final implementation of the action items. Reclamation will work with NOAA Fisheries to address and coordinate any delays in schedule due to environmental compliance.

Litigation. In view of the contentious history of these issues in the region, litigation will likely occur during the implementation phase of this 2004 BiOp. Reclamation will work with NOAA Fisheries to address and coordinate any delays in scheduling resulting from litigation.

Emergencies. Power emergencies, safety considerations, emergency/critical maintenance, drought and other natural disasters can occur and may require modifications in operations at Reclamation projects. Reclamation will coordinate any deviations in operations with NOAA Fisheries and other parties affected by the actions to the extent feasible.

Tribal Consultations. Reclamation will comply with the Executive Order on Consultation and Coordination with Indian Tribal Governments in formulating and implementing activities that have Tribal implications, Reclamation will consult with the affected Tribes.

Development of Implementation Plans. It is impractical to detail all implementation and schedule requirements for the UPA action items in this Decision Document. Therefore, Reclamation will use the UPA implementation plans process to coordinate actions and identify work with the other Action Agencies. These plans will serve as blueprints for anticipated actions for respective periods of time; the plans will be updated periodically and coordinated with NOAA Fisheries, other appropriate Federal agencies, State agencies, and Tribes. These plans are not decision documents but will be used as planning tools. Prioritization of work and any changes in schedule will be addressed in the plans. These plans will also be used to identify and coordinate actions from the Incidental Take Statement (2004 BiOp Section 10).

Tributary Habitat Improvement. Site specific Section 7 consultations may be necessary for the implementation of certain tributary habitat improvement projects. In the core subbasins and where BPA funds the construction of projects, BPA will utilize the Section 7 coverage provided by its 2003 Biological Opinion on its Habitat Improvement Program. For all other projects in the core subbasins and for all projects in conservation measure subbasins, Reclamation will assist project sponsors in meeting the requirements of applicable Federal environmental laws including the Endangered Species Act. In all subbasins, Reclamation will comply with the National Environmental Policy Act, the Clean Water Act, and all other Federal laws, as applicable, in the implementation of habitat improvement projects. Reclamation will also assist project sponsors in identifying and applying for construction funding.

IX. REINITIATION OF CONSULTATION

Reinitiation of consultation is governed by regulations set forth at 50 CFR 402.16 and is required: "(a) If the amount or extent of taking specified in the incidental take statement is exceeded; (b) If 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; (c) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (d) If a new species is listed or critical habitat designated that may be affected by the identified action." Reclamation will, in cooperation with the other Action Agencies and NOAA Fisheries, apply these criteria to determine whether reinitiation of consultation is necessary.

Signed: J. William McDonald Date: Jan. 12, 2005

J. William McDonald
Regional Director
Bureau of Reclamation