

## MEETING SUMMARY

### Remand Stakeholder Engagement (RSE) Process Meeting with Invited Stakeholders

October 19, 2012, 12:30 – 4:00 p.m.  
Bay-Delta Office, 4<sup>th</sup> Floor Conference Room  
801 I Street, Sacramento, CA

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#### **Attendees: See sign-in sheet (attached)**

Reclamation RSE Process Team

Name	Affiliation
Sue Fry	Manager, Reclamation Bay-Delta Office
Patti Idlof	Chief, Conservation and Conveyance Division, Reclamation Bay-Delta Office
Kristin White	Reclamation Planning Division
Janice Pinero	Reclamation Bay-Delta Office
Bob Lohn	Staff Tech, Inc.
Gwen Buchholz	CH2M Hill
J. Michael Harty	Kearns & West
Charlotte Chorneau	Kearns & West

#### **Meeting Summary:**

*This document summarizes the October 19, 2012, Remand Stakeholder Engagement (RSE) process meeting. It focuses on key agenda items and related Questions & Answers and next steps. The summary is not intended to be a transcript of the meeting.*

*The meeting Agenda, PowerPoint presentations for Items IV, and other handouts are available online at: [www.usbr.gov/mp/BayDeltaOffice/Documents/remand](http://www.usbr.gov/mp/BayDeltaOffice/Documents/remand).*

#### **Agenda Item I: Welcome and Greetings**

Sue Fry, Reclamation's Bay-Delta Office Manager, welcomed the Invited Stakeholders and other guests to this second Remand Stakeholder Engagement (RSE) process meeting. Sue introduced her staff and consultant team, including Bob Lohn, former National Marine Fisheries Service (NMFS) Northwest Regional Administrator who is working with Bill McDonald to assist with integration of the Endangered Species Act (ESA) Section 7 remand, the National Environmental Policy Act (NEPA) process, and the RSE process. Meeting participants also introduced themselves.

*Summary*

*October 19, 2012 Remand Stakeholder Engagement Process Meeting*

## **Agenda Item II: Remand and NEPA Process Schedules**

Sue briefly reviewed the RSE process objectives presented at the September 7 kickoff meeting and the court-ordered deadlines, including the deadlines for each biological opinion (BO) and associated environmental impact statement (EIS). Under the current schedule the U.S. Fish and Wildlife Service (USFWS) would issue a final BO and Reclamation would sign the Record of Decision (ROD) for the USFWS consultation in December 2013. For the NMFS consultation, NMFS would issue a final BO in February 2016 and Reclamation would sign a ROD in April 2016. The Draft Consultation Package deadline is March 2013, with the final version due in August 2013. While there are discussions about a possible schedule extension, Reclamation will be working under the current schedule until such time as the federal court issues a new order. A schedule with all known deadlines was available at the meeting and is posted on the Reclamation web page.

## **Agenda Item III: Overview of Comments on the 2011 Project**

### **Description**

Sue noted that Reclamation sent the Invited Stakeholders a link to the comments submitted. There were four categories of comments: (1) updated information, such as the completion of Red Bluff and Freeport Regional Water Agency facilities; (2) errata and/or clarifications, such as the description of San Felipe Division and requests for additional details; (3) future conditions, such as comments about the SWRCB and FERC proceedings; and (4) other recommendations, such as including 2008 USFWS and 2009 NMFS Reasonable and Prudent Alternatives (RPAs), as well as specific operational topics. Reclamation's focus for this meeting is a detailed discussion of one of the comments from Category 4, Old and Middle River flow criteria (next agenda item).

- Question: How will comments on new science will be addressed?
  - Response: Reclamation intends that any new available science will be considered during preparation of the effects analysis included in the Consultation Packages.

## **Agenda Item IV: Focused Discussion on Old and Middle River Flow Criteria Proposed Revision**

The 2008 USFWS RPA and 2009 NMFS RPA include criteria to manage flow in Old and Middle Rivers (OMR). OMR flow data are obtained from gages located near Bacon Island. An index of OMR flow can also be estimated from an equation using San Joaquin River and exports.

Contra Costa Water District (CCWD) submitted a comment to Reclamation in the form of a proposal to replace gage data with the index in the management of OMR flows in the RPAs. Reclamation identified five specific questions for further input and discussion as part of today's RSE process meeting:

1. Are gage data missing? With what frequency and duration are the gages not operating due to debris or other problems?

2. Is the index a better predictive tool than use of real data? What specific information supports this view?
3. To what extent does use of gage data result in different species-protective actions than use of an index with respect to actual changes in operations (e.g., although instantaneous conditions may change - changes may be too variable for operational changes)?
4. How can the index be modified as landscape changes: (e.g., sea level rise and/or tidal marsh restoration)?
5. What specific interests of your organization would be affected by this change if it is made?

### **CCWD Presentation (PDF version available on Reclamation's web page)**

Deanna Sereno, CCWD, provided some background about CCWD's location, water supply and permits. CCWD is proposing the use of an Index to forecast OMR flows because it will achieve two goals: resolve current implementation issues and provide fish protection equivalent to the current method that uses U.S. Geological Survey (USGS) OMR gage data.

**Implementation Issues:** According to CCWD, because of the way OMR is calculated and tidally filtered it sometimes does not produce real-time daily values, which makes regulatory compliance in real-time challenging. Missing data can also lead to a delay in the daily calculations because of the tidal filtering algorithm used by USGS. The gages now serve a regulatory purpose, and reliability has improved over time, meaning fewer missing measurements. Forecasting project operations is complicated by other factors that affect OMR such as changes in flow due to wind, precipitation, or local in-Delta diversions and return flows.

**Proposed Solution:** CCWD proposes that regulatory compliance should be based on a flow index, rather than the gage measurements. Benefits would include the index being based on readily available information, being representative of regional hydrodynamics, and being protective of fish.

### **Discussion:**

Pete Smith, USGS, agreed that what CCWD presented was factually accurate, and emphasized that since OMR gage information was used for regulatory purposes beginning in 2009 the gage data overall have improved and measurements have been more consistent. There are 15-minute data available, although USGS computes the daily average based on a 3-day average to account for tidal flows. The Department of Water Resources (DWR) computes the daily average at midnight each night.

Mike Ford, DWR, explained that DWR is not tied to using tidally based data and supports use of an index method. DWR uses a similar index method and then cross-references it with the USGS OMR averages.

Deanna explained that CCWD is proposing a test that would involve operating for a year based on the index. She suggested there could be water supply savings with the added efficiency.

Greg Gartrell, CCWD, explained that the independent variables are San Joaquin flows and exports and tidal flows, which can be adjusted for on a weekly basis.

Doug Obegi, NRDC, commented that he is open-minded about the index and would like to see more information. Doug is reluctant to take tidal filtering out of the equation because of tidal effects on fish. Doug would like the index to be applied to historical data (a specific water year type) to determine how it would compare to the gage measurements.

Pete explained that the index formula could under-predict OMR flows and indicate regulatory compliance when this is not the case. This under-prediction could cause more fish entrainment. The index is easier for operations, but the formula is not as precise as actual gage flows, i.e., plus or minus 2,000 cfs in the aggregate.

Question: Can this margin of error be remedied?

Response: Pete identified the need for a ratings curve with measurements over the last few years. He explained that the tidal range of flows at OMR is plus or minus 10-15 cfs, and for a 24-hour average the margin of error is 2.5%.

Comment: From the upstream perspective, a concern would be if use of an index caused any changes to reservoir supplies.

## **Agenda Item VI: Presentation on EIS Purpose and Need and Initial Range of Alternatives**

Gwen Buchholz, CH2M Hill, made a presentation about the NEPA process, including alternatives development. Gwen explained that the Invited Stakeholder homework assignment this month will be to provide feedback on the Initial Range of Alternatives (presented at today's meeting as part of the PowerPoint presentation). Gwen reviewed the No Action Alternative, the NEPA requirements for a Reasonable Range of Alternatives, the Purpose and Need per the Notice of Intent (NOI), the scoping comments received on the Purpose and Need (per the NOI), and the scoping comments received on the alternatives. She presented an initial range of alternatives which included:

- Initial Proposed Action (per NOI): 2011 Project Description with Operational Provisions of FWS & NMFS RPAs
- No Action Alternative: 2011 Project Description with FWS & NMFS RPAs
- Alternative 1: 2011 Project Description without FWS & NMFS RPAs
- Alternative 2: No Action Alternative plus Head of Old River Barrier
- Alternative 3: Alternative 2 without Fall X2 & San Joaquin River inflow/export ratio & more extensive habitat restoration and measures to reduce stressors
- Alternative 4: Alternative 2 with more stringent Delta outflow & San Joaquin River inflow/export ratio & more extensive habitat restoration and measures to reduce stressors

Gwen clarified that the 2011 Project Description mentioned in the alternatives will be modified based on the comments already received from Invited Stakeholders. The Initial Proposed Action does not need to be the Proposed Action; this is open for discussion. Currently, the Initial Proposed Action includes the operational provisions within the RPAs and does not include future construction projects such as RPA restoration actions associated with fish passage around Shasta Dam and Yolo Bypass effects, since it is not clear what those will look like.

Patti Idlof, Reclamation, clarified that Reclamation's obligation under NEPA is to compare the alternatives to the No Action Alternative, and that Reclamation also intends to compare each alternative against each other.

Question: How is it that the alternatives have to be reasonable, yet they include the RPAs that were deemed unlawful by the court?

Response:

(1) The RPAs were not vacated. Moreover, the court did not state that the RPAs, in their entirety, were unlawful, but expressed that there was not adequate scientific justification for some of the RPA actions in the BOs. Because we are anticipating a range of alternatives, the RPAs are included in some of the alternatives in case revised RPA actions are similar to actions in the 2008/2009 RPAs, but with more robust scientific justification.

(2) NEPA calls for a wide range of alternatives, which can mean alternatives that are outside of current laws or legislation.

(3) A set of screening criteria are needed for judging whether or not an alternative meets the Purpose and Need. These criteria have not been developed yet and the initial range of alternatives have not yet been screened. CH2MHill will be assisting Reclamation in creating this criteria-screening process as a next step.

Question: Why will Reclamation compare alternatives to one another and not just to the No Action Alternative?

Response: No Action for NEPA is the continuation of current policy, which includes the RPAs because they were remanded but not vacated. However, in order to capture the full range of environmental impacts, Alternative 1 will not include RPA actions.

Comparing alternatives to each other, including comparing all the alternatives to Alternative 1, will serve to characterize the impacts of provisionally accepting the RPAs.

Question: How was the 2030 timeframe selected?

Response: For multiple reasons: it will line up nicely with the BDCP timeline, the NMFS 2009 BO timeframe is up to 2030, and the existing models go to 2030 so it simplifies that process.

Question: Are modified Stanislaus Operations included?

Response: Modified operations will be reflected in the range of alternatives.

Question: How can stakeholders comment on the NEPA alternatives without knowing what is in the Section 7 Consultation Package? The parallel process and schedule pose difficulties.

Response: Reclamation plans to analyze a wide enough range of alternatives to bracket what is eventually included in the Consultation Package.

Comment: It is difficult to anticipate future operational improvements. It would be better to have more time for the NEPA alternative analysis.

Response: Reclamation intends to define bookends so that operational improvements can be accounted for in the analysis.

Questions: What if CEQA is required?

Response: Reclamation will need to coordinate with DWR and the Department of Fish and Game to address any non-Federal requirements.

Question: What RPAs are being considered in the alternatives? Is there flexibility in the RPA package?

Response: Reclamation is considering all the RPAs in the 2008 and 2009 BOs. If people have comments on the RPAs, the sooner they can get them in the better as the window for analysis is closing fast (comments on the alternatives have been requested by October 31<sup>st</sup>). Commentors do not need to write out all comments in detail, they can cite other documents as long as they send them in or they are publicly available documents.

Question: Will the actions be compared to No Action; for example, will the analysis show the percentage change in habitat?

Response: The impact analysis will compare to the No Action Alternative.

## **Action Items and Next Steps**

- Invited Stakeholders are asked to provide their comments on the initial range of alternatives in electronic format. Comments are due by October 31<sup>st</sup>, 2012 and should be sent to [RemandSEP@usbr.gov](mailto:RemandSEP@usbr.gov).
- The next RSEP Invited Stakeholder Meeting will be Friday, November 16<sup>th</sup> from 10:00am – 1:00pm at the same location.