

RECLAMATION

Managing Water in the West

Remand Updates

November 5, 2014



U.S. Department of the Interior
Bureau of Reclamation

Agenda

- **Introduction**
- **Meeting Guidelines**
- **Update on Recent Court Opinions/Decisions**
- **Status of Collaborative Adaptive Management Team (CAMT)**
- **Draft Alternatives for Remand Environmental Impact Statement (EIS)**
- **Remand Section 7 Consultation**

Meeting Guidelines

- **Q&A following each section of the agenda**
 - **First – we will ask for comments from attendees in the room**
 - **Second – we will ask for comments from attendees who notify us about a question on Live Meeting**
 - **Third – we will ask for comments from attendees on the telephone**
- **Respect fro presenters and meeting participants**
- **Please help us to stay on topic and on schedule**

Delta Smelt Consolidated Cases – Ninth Circuit Court of Appeals

- **Petition for Rehearing En Banc**
 - **Opinion issued March 13, 2014**
 - **Mandate issued September 16, 2014**
 - **District Court issued Revised Final Order October 1, 2014**
 - **Judgment is entered in favor of San Luis Plaintiffs' Sixth Claim for Relief that Reclamation violated NEPA**
 - **Judgment is entered in favor of Federal Defendants and Defendant-Intervenors on all remaining claims**

Petition for Writ of Certiorari

- **Stewart & Jasper Orchards, Arroyo Farms LLC, and King Pistachio Grove**
 1. Is the Service obligated to demonstrate how a Reasonable and Prudent Alternative (RPA) is economically feasible?
 2. To what extent (if any) is the Service's interpretation of its own regulation defining RPA entitled to deference?
 3. Does the decision of this Court in *Tennessee Valley Authority v. Hill*, still require federal agencies to protect species and their habitat “whatever the cost”?

Petition for Writ of Certiorari

- **State Water Contractors, et al.**
 1. Whether the Secretary must address in the administrative record the economic and technical feasibility of RPAs including the effects of the proposed alternatives on third parties.
 2. Whether the Secretary may disregard the “best scientific data” on the ground that considering the data would lead to a less “conservative” result, because scientific certainty is impossible, or because the Secretary has considered a range of data in reaching a conclusion.

Salmonid Consolidated Cases

- Ninth Circuit Court of Appeals hearing was held on September 15, 2014, in San Francisco
- Several months to several years before an opinion may be given

Questions?

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Collaborative Adaptive Management Team

- **Co-chairs:**
 - Valerie Connor, State and Federal Contractors Water Agency
 - Leo Winternitz, GEI Consultants, Inc.

Questions?

- All CAMT agendas and minutes posted at www.SFCWA.org

Draft Alternatives for Remand EIS

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EIS Draft Alternatives Analyses

- **No Action Alternative (NAA)**
- **Second Basis of Comparison (SBC)**
- **Alternatives 1 – 6**
- **Alternatives compared to NAA and SBC**
- **Alternatives and SBC include sea level rise and climate change for 2030**
- **Analyses will consider potential for water transfers**

NEPA NAA and SBC

- **NAA**
 - Continuation of existing policy and management direction in Year 2030
 - CVP and SWP operations with the RPA actions from the 2008 Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) biological opinions
- **SBC**
 - CVP and SWP operations without RPA actions
 - Include actions that are:
 - Constructed (e.g., Red Bluff Pumping Plant)
 - Legislatively mandated (e.g., San Joaquin River Restoration)
 - Substantial progress (e.g., Yolo Bypass Salmonid Habitat Restoration and Fish Passage)

EIS Draft Alternatives

- **NAA**
- **Alternatives 1 -5**
 - **Comments and information received during preparation of the EIS**
- **Alternative 6**
 - **Consideration of all alternatives**
 - **Informed by preparation of the Draft ESA Proposed Action**

EIS Draft Alternatives

- Range of alternatives and major differences
- **Examples of major differences**
 - Old and Middle River (OMR) criteria
 - New Melones Reservoir operations
 - Delta outflow and other operational criteria
 - Non-operational concepts

Differences Between Alts & NAA

Action	NAA Description	Alt 1	Alt 2	Alt 3	Alt 4	Alt 5
FWS RPA 1-3: OMR	Included	Not Included	Same as NAA	Modified	Not Included	Modified
FWS RPA 4: Fall X2	Included	Not Included	Same as NAA	Not Included	Not Included	Same as NAA
NMFS RPA 4.2.1: I/E Ratio	Included	Not Included	Same as NAA	Not Included	Not Included	Same as NAA
NMFS RPA 4.1.2: DCC Gates	Included	Not Included	Same as NAA	Not Included	Not Included	Modified
NMFS RPA 3.1.2: Goodwin Minimum Flows	Included	Not Included	Same as NAA	Modified	Not Included	Same as NAA
New Melones - Vernalis Flow	D1641 and NMFS RPA	Modified	Same as NAA	Modified	Modified	Modified
Spring Delta Outflow	Included as D1641	Same as NAA	Same as NAA	Same as NAA	Same as NAA	Modified
Non- Operational	Included	Not Included	Not Included	Different than NAA	Different than NAA	Same as NAA

OMR Criteria

NAA & Alt 2		Alt 1 & 4	Alt 3	Alt 5
2008 FWS RPA: Dec 1 - Jun 30	Action 1 - pre-spawning adult delta smelt, first flush: OMR no more negative than -2000 cfs	None	Jan 1 until larval delta smelt present: OMR -3500 to -5000 cfs	Dec 1 - Mar 31 & Jun 1 – Jun 30 Same as NAA
	Action 2 - pre-spawning adult delta smelt: OMR -1250 to -5000 cfs		When larval delta smelt present: OMR no more negative than -5000 cfs	
	Action 3 larval delta smelt: OMR -1250 to -5000 cfs		(until Jun 15, or when QWEST is greater than 12,000cfs, or when south Delta turbidity is below a threshold level)	
2009 NMFS RPA: Jan 1 - Jun 15	OMR -2500 to -5000 cfs			

New Melones/Vernalis Operations

	NAA & Alt 2	Alts 1 & 4	Alt 3	Alt 5
Vernalis Base Flow	D-1641	D-1641	OID 2012 Proposal	D-1641
Vernalis Salinity	D-1641	D-1641	OID 2012 Proposal	D-1641
Fish Flows	2009 NMFS RPA	1997 NMIPO	OID 2012 Proposal	2009 NMFS RPA
Vernalis Pulse Flows	2009 NMFS RPA	1997 NMIPO	OID 2012 Proposal	D-1641
Dissolved Oxygen	D-1641 @ Ripon	D-1641 @ Ripon	D-1641 @ Orange Blossom Bridge	D-1641 @ Ripon

NMIPO = New Melones Interim Plan of Operations

OID 2012 Proposal = from 9/21/12 email from Oakdale Irrigation District

Other Operational Criteria

Criteria	NAA & Alt 2	Alts 1, 3, & 4	Alt 5
Delta Cross Channel	2009 NMFS RPA	D-1641	Delta Cross Channel Pilot Study Criteria
Spring Delta Outflow	D-1641	D-1641	Jan 1 - Jun 30: D-1641 <u>or</u> 55% of unimpaired Sacramento River flow at Freeport up to 40,000 cfs, whichever is greater
Delta Export Restrictions	D-1641 & 2009 NMFS RPA	D-1641	D-1641 & 2009 NMFS RPA

Non-Operational Concepts

NAA & Alt 5	Alts 1 & 2	Alt 3	Alt 4	
<p>2008 FWS RPA</p> <p>2009 NMFS RPA</p>	<p>None</p>	<p>Predation control by increasing bag limits for black bass & striped bass; and rewards for pike minnow</p>		
		<p>Floodplain habitat restoration of 10,000 acres</p>		
		<p>Trap & haul fish passage across Delta</p>		
		<p>Change ocean harvest limits to reduce chinook salmon harvest</p>		
				<p>Additional floodplain development limitations</p>
				<p>Require vegetation on Delta levees</p>
				<p>Reduce nutrients from wastewater treatment plant discharges in Delta</p>

Environmental Consequences



Overall EIS Schedule

- **Next Remand Updates Meeting** **January 2015**
- **Administrative Draft DEIS** **Spring 2015**
- **Public DEIS** **Early Summer 2015**
- **Public Comments** **Summer 2015**
- **Administrative Draft Final EIS** **Early Fall 2015**
- **Final EIS** **Late Fall 2015**

Questions?

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Section 7 Consultation

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Section 7 Consultation

Preliminary Draft Proposed Action

- **Based on 2011 Proposed Action (PA) with modifications**
 - D-1641
- **Example of modifications**
 - 2008 FWS RPA
 - New Melones Revised Plan of Operations
 - Red Bluff Pumping Plant
 - Yolo Bypass Salmonid Habitat Restoration and Fish Passage
 - Drought Process Language

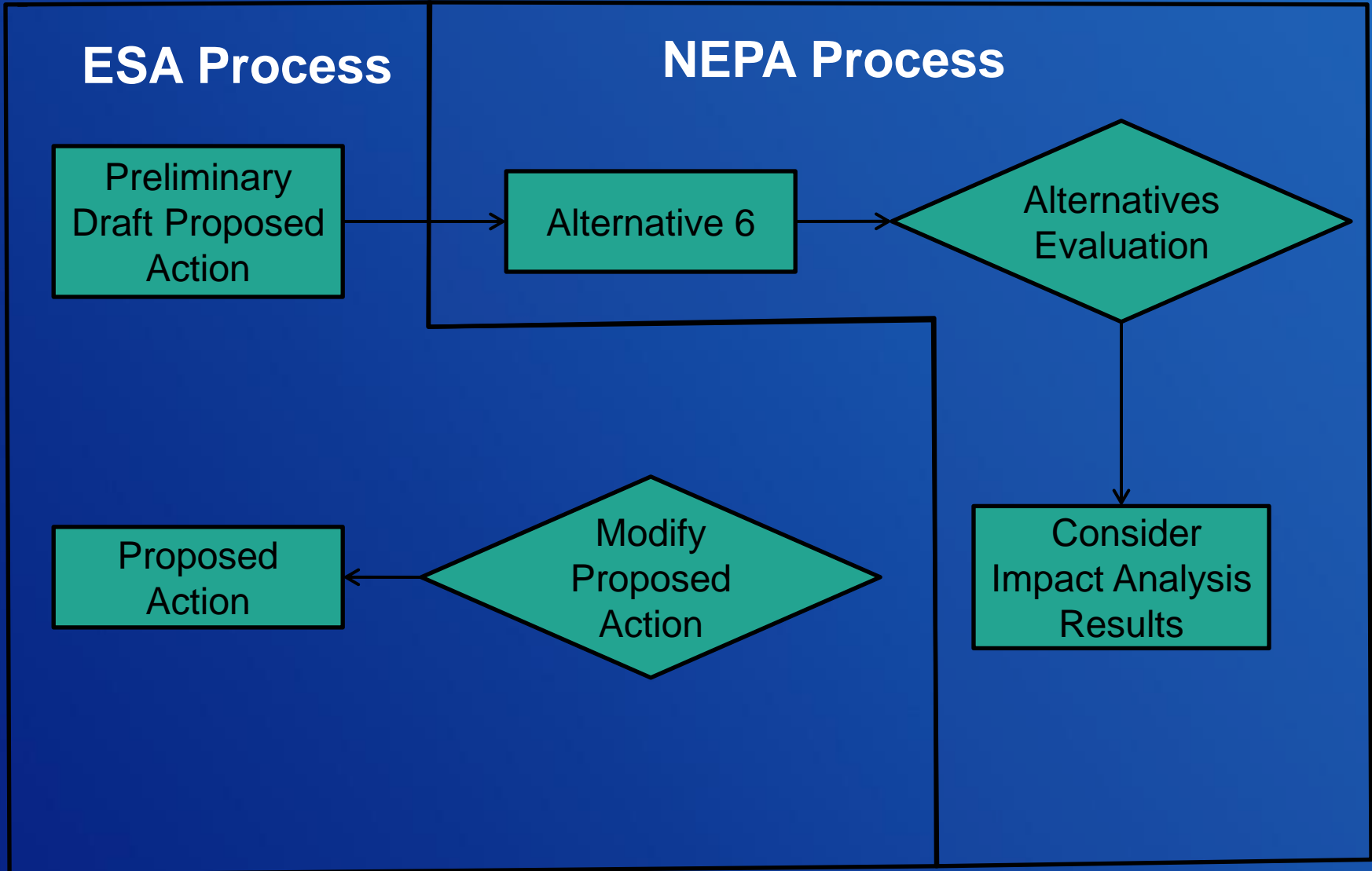
Section 7 Consultation Approach

- **Preliminary Draft Proposed Action in response to the Mandate**
- **The NEPA Process should inform the ESA Draft PA**
- **If changes result in effects not previously considered in the 2008 BO, then Reclamation and DWR would consult with FWS**

Section 7 Consultation Approach

- **Phase 1**
 - Complete Preliminary Draft PA to inform Alt 6
 - Analyze Alt 6 and other alternatives
 - Review preliminary assessment to determine if Draft PA should be modified
- **Phase 2: Public Draft EIS/Comment**
 - Consider public comments to inform if additional modifications to the PA are warranted

Section 7 Consultation Approach



Section 7 Consultation Schedule

- **Preliminary Draft Proposed Action** **Nov 2014**
- **Draft Proposed Action** **Feb 2015**
- **Draft Biological Assessment (BA)** **May 2015**
- **Final BA** **Sep 2015**
- **NMFS Draft BO** **Oct 2016**
- **NMFS Final BO** **Feb 2018**

Questions?

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Additional Questions

- Please send any questions to:
 - tolson@usbr.gov