



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Region
South-Central California Area Office
1243 N Street
Fresno, CA 93721-1813

IN REPLY REFER TO:

SCC-400

2.2.1.06

Cachuma Project

JAN 29 2020

VIA ELECTRONIC MAIL AND U.S. POSTAL SERVICE

Mr. Eric Oppenheimer
Chief Deputy Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Supplemental to the Water Rights Order WR-2019-0148 Term 18 Plan

Dear Mr. Oppenheimer:

On December 17, 2019 the Bureau of Reclamation (Reclamation) submitted its Term 18 Plan in accordance with the State Water Resources Control Board Final Order WR-2019-0148 (Order). As previously indicated, the Order did not provide adequate time for the completion of the Term 18 Plan in its entirety.

Pursuant to Term 17(4) of the Order, Reclamation provides the enclosed Supplemental written response(s) to the National Marine Fisheries Service and the California Department of Fish and Wildlife comments (see Attachment 4 of the Term 18 Plan).

Reclamation intends to discuss the time constraints further with the Executive Director and/or the Division of Water Rights Deputy Director and would like to schedule a meeting prior to the end of February 2020.

If you have any questions regarding this Term 18 Supplemental, please contact Mr. David E. Hyatt, Chief, Resource Management Division at (559) 262-0334, via electronic mail at dhyatt@usbr.gov, or for the hearing impaired at TTY (800) 877-8339.

Sincerely,

Michael P. Jackson, P.E.
Area Manager

Enclosure

Cachuma Order WR-2019-0148 Term 18 Plan

Introduction

On September 17, 2019 the State Water Resources Control Board (Water Board) adopted Final Order WR-2019-0148 (Order) amending the Bureau of Reclamation's (Reclamation) water rights permits 11308 and 11310 for the Cachuma Project in Santa Barbara County, California. On December 17, 2019, Reclamation submitted a Plan to the Water Board in accordance with Term 18 of the Order; however, as noted in our submittal, Reclamation did not have adequate time to prepare a written response to comments pursuant to Term 17(4) of the Order.

The following document supplements Reclamation's Term 18 Plan and is a written response to the Attachment 4 comments provided by the National Marine Fisheries Service (NMFS) and the California Department of Fish and Wildlife (CDFW). Reclamation considered all of the comments provided by NMFS and CDFW prior to finalizing the Term 18 Plan submitted to the Water Board on December 17, 2019.

Reclamation's response(s) to the comments on the Term 18 Plan, as well as any applicable reason(s) for not accepting or incorporating changes, are addressed below.

As included in Attachment 4 of the Term 18 Plan, Reclamation identified individual comments in each of the comment documents by abbreviating the agency and providing a sequential number (e.g., NMFS-1 and CDFW-1). The response to comments follow this convention.

Response to National Marine Fisheries Comments

NMFS-1: In this comment, NMFS asserts that Reclamation only focused on Term 15(a) and 15(c) and did not consider the entirety of Term 15 including implementation of conservation measures under existing and previously rescinded Endangered Species Act (ESA) consultations.

Reclamation has considered this comment. The Term 18 Plan as drafted was prepared to focus on the required measures necessary to comply with the Water Board's flow requirements in Tables 1 and 2 of the Order, as well as any potential fish rescues should flow interruptions occur in Hilton Creek. The referenced conservation measures from the Cachuma Project's 2000 Biological Assessment (2000 BA) and the 2000 Biological Opinion (2000 BiOp) are ongoing section 7 ESA requirements that Reclamation has been and continues to comply with. NMFS' referenced 2013 BA and 2016 Draft BiOp were terminated by NMFS on June 15, 2018 and have been superseded by Reclamation's 2019 BA which was provided to NMFS on November 8, 2019¹.

¹On October 16, 2019, Reclamation sent a Petition For Reconsideration to the Water Board which included the determination that the inclusion of the 2013 BA and 2016 Draft BiOp in the Final Order is Contrary to State Law.

Reclamation updated the Term 18 Plan to address this comment and will continue to comply with all existing section 7 ESA measures and requirements under NMFS' existing 2000 BiOp until such time as a new BiOp has been received and accepted.

NMFS-2: Reclamation disagrees with NMFS' comment that the draft Plan only focused on compliance and monitoring at Alisal. Term 15(a) as drafted and provided to NMFS and CDFW included compliance and monitoring for both required locations. However, Reclamation has updated the Plan to make compliance and monitoring at both locations clearer.

NMFS suggests that Reclamation consider "incorporating compliance with Term 25 into the Term 18 Plan". Reclamation has considered this recommendation but does not believe that addressing compliance with Term 25 is necessary or appropriate for the Term 18 Plan. Term 25 compliance will be addressed by Reclamation pursuant to the requirements of the Order.

NMFS-3: In this comment, NMFS requests clarification on what was meant regarding weekly field measurements by the U.S. Geological Survey (USGS) at Alisal as well as details on Reclamation's coordination with USGS. Reclamation has revised this section to address the coordination and monitoring that is done on an as-needed basis to ensure compliance with required flows.

NMFS-4: In this comment, NMFS requests incorporation of additional information on the real-time flow monitoring including (1) who will do the monitoring, (2) protocol/methodology and frequency of monitoring, (3) process/procedures for timely delivery of information, and (4) timing and format for providing monitoring information to Water Board, NMFS, and CDFW. Reclamation has updated its real-time flow monitoring to include additional information in the Plan to address this comment. However, as noted in the Plan, Reclamation is in the process of developing specific details of the monitoring plan and will not have a complete draft available until April 2020.

NMFS-5: In this comment, NMFS suggests including the decision tree as part of the Plan rather than incorporating by reference. Reclamation did not incorporate the decision tree by reference, rather, the decision tree was included as Attachment 2 of the Plan. No updates to the Plan are needed to address this comment.

NMFS-6: In this comment, NMFS states that Reclamation should incorporate into its Plan for complying with Term 15(c) recommendations provided in the 2016 Draft BiOp, "including Reasonable and Prudent Measure 3, and Terms and Conditions and proposed revisions provided to Reclamation in an e-mail and attachment dated March 14, 2017." As noted above in response to NMFS-1, the 2016 Draft BiOp was terminated by NMFS on June 15, 2018 and has since been superseded by Reclamation's 2019 BA. Reclamation included conservation measures in its 2019 BA to address fish rescue and is in ongoing consultation with NMFS regarding these measures. As specific measures are still in development, no

updates to the Plan have been made. Reclamation will continue to comply with all existing section 7 ESA measures and requirements under NMFS' existing 2000 BiOp until such time as a new BiOp has been received and accepted.

- NMFS-7:** In this comment, NMFS states that the draft fish rescue plan provided as Attachment 3 is not the most recently reviewed plan. Reclamation replaced the draft Attachment 3 with the fish rescue plan provided as part of the 2019 BA which is the most recently reviewed plan. See also Response to NMFS-6.
- NMFS-8:** In this comment, NMFS requests that Reclamation identify when information regarding a fish rescue will be posted to a publicly available website. Reclamation plans to provide reporting on fish rescue operations once it has completed its obligations pursuant to the ESA. Reports on a flow interruption would be posted once Reclamation's compliance efforts with NMFS has been satisfied.
- NMFS-9:** In this comment, NMFS suggests that Reclamation "propose operations (water releases) in the Term 18 Plan for the purpose of avoiding or minimizing habitat loss and potential stranding and death of steelhead when transitioning from one water year to the next."

Reclamation's interpretation of Term 16(b) differs from NMFS. As shown in Table 2, flow releases from Bradbury Dam are initiated during a Wet or Above Normal year at a specific amount depending on when the cumulative inflow ($\geq 33,707$ acre-feet) is triggered, i.e. 48 cfs if between 2/15 and 4/14 or 20 cfs if between 4/15 and 6/1, etc. These releases would continue pursuant to the schedule outlined in Table 2 **into** the next water year ending February 15. At that point, flows would then either be retriggered if cumulative inflow again designates the year as Above Normal or Wet or revert to Table 1 flows. It is unclear how this schedule would dewater 15 miles of the Lower Santa Ynez River after October 1 resulting in appreciable reduction in habitat or exceeding take specified in the 2000 BiOp.

Further, per Term 16(d) any proposed changes to Table 2 flows by NMFS require agreement between NMFS, CDFW, Reclamation, and the Member Units that the proposed change will not cause a greater water supply impact than that which would occur if water were released to meet the Table 2 flows in accordance with the existing schedule. If NMFS is proposing such a change, Reclamation suggests a meeting be scheduled with CDFW and the Member Units to discuss further.

- NMFS-10:** In this comment, NMFS suggests that Reclamation "include a water-release ramping protocol (rate of increase and decrease) for transitioning between flow targets (e.g. 48 cfs to 20 cfs minimum flow target)." Reclamation also noticed that ramping for the transition between February 15 – April 14 (48 cfs) and April 15 – June 1 (20 cfs) was not included in Table 2 although ramping was included for the transition between June 2 – June 9 (25 cfs) and June 30 – October 1 (10 cfs). Reclamation plans to continue implementation of previously consulted upon

ramping schedules that include the changes required in Table 2; however, Reclamation also noticed that Table 2 does not include a ramping period for the February to April transition as it does for the June transition. This would require at a minimum a 1.5 to 2 day ramping period not currently accommodated in the schedule.

NMFS-11: In this comment, NMFS suggests that Reclamation include a date in the plan for completion of the study that is currently being developed to determine releases needed to meet Table 2 flows. Comment noted. Reclamation has not included a date in the plan as the study is still under development and a final date is not available at this time.

NMFS-12: In this comment, NMFS suggests that Reclamation include an analysis of groundwater pumping and water rights release criteria as part of the study as they can affect the rates of releases to meet instream target flows. Reclamation is aware that various conditions along the LSYR can impact meeting target flow requirements and would continue to incorporate adaptive management into its operations to ensure that target flows are being met. As noted on page 4 of the Term 18 Plan, "The operating guidelines will be modified as necessary through calibration and adaptive management to achieve the flows required in Table 2."

Response to California Department of Fish and Wildlife Comments

CDFW-1: In this comment, CDFW suggests that all direction given by the Water Board be included in the Plan to show responsiveness to the Order. Comment noted. Reclamation did include reference to the Order in the draft Plan and does not believe repeating verbatim what is in the Order is necessary to show responsiveness.

CDFW-2: In this comment, CDFW states that the introduction should describe in more detail documents that are being used to inform the Plan and that the document should be standalone. It is unclear what documents are being referenced in this comment. Reclamation did include as attachments the documents that are being referenced to show how Reclamation plans to comply with Term 15 and Term 16 of the Order.

CDFW-3: In this comment, CDFW suggests that table references should include the Order number in order to differentiate between the Order and other outside documents with the same number. Comment noted. Tables are referenced under Order headings and include numbering consistent with the Order. No changes have been made to the Plan.

CDFW-4: In this comment, CDFW states that they support Reclamation's proposal to implement independent verification of flows at the USGS gage. They also suggest that who and how this will be done be included in the Plan. Reclamation has updated this section to address this comment.

- CDFW-5:** In this comment, CDFW states that the decision tree from the 2011 Stetson Report be incorporated within the Plan. Reclamation provided the decision tree as part of Attachment 2 to the draft Plan (see page 6 of Attachment 2). No changes have been made to the Plan.
- CDFW-6:** In this comment, CDFW states that this section lacks details. Reclamation has revised this section based on feedback from the comments. As noted in the version submitted to the Water Board, “Reclamation in coordination with the Member Units is developing a table similar to Table ES-1 that would recommend maximum releases from Bradbury Dam that would meet required flows at Alisal Road/Alisal Bridge. Until such time as the table is developed and approved by the Executive Director, Reclamation plans to provide and monitor the recommended flows to Alisal Road/Alisal Bridge pursuant to Table 1 of Term 15(a) by implementing Stetson’s 2011 Operating Guidelines for Monitoring Target Flow of 1.5 cfs at Alisal Bridge (Attachment 2).”
- CDFW-7:** In this comment, CDFW acknowledges that their comment is not a requirement of the Order but suggests that a table be appended to the draft Plan to identify what barriers listed in the 2000 BA have been completed. Comment noted. It is unclear how the proposed table would assist in showing how Reclamation plans to comply with Term 15 and Term 16 of the Order. Further, this comment is in conflict with Term 15(b) of the Order. No changes have been made to the Plan.
- CDFW-8:** In this comment, CDFW states that the current NMFS-reviewed rescue plan be incorporated in full within the Plan. Reclamation has included the most recent NMFS-reviewed rescue plan in its entirety as Attachment 3 of the Plan. See also Response to NMFS-7.
- CDFW-9:** In this comment, CDFW states that a paragraph be included that describes rescue notification and to include CDFW South Coast Region staff should NMFS not be reachable. Reclamation intends to continue coordination with NMFS and CDFW during rescue operations as it has in the past. The proposed rescue plan included as Attachment 3 to the Plan is currently in consultation and final review with NMFS; however, Reclamation plans to update the notification list and will add CDFW staff notification to the Plan.
- CDFW-10:** In this comment, CDFW notes an error regarding cumulative inflow. Reclamation has corrected this.
- CDFW-11:** In this comment, CDFW states that “actual” language from the Order be included throughout the document. See Response to CDFW-1. CDFW’s requested clarification on the intent of the Water Board is outside Reclamation’s purview. Reclamation recommends that CDFW seek clarification from the Water Board on their intent.

- CDFW-12:** In this comment, CDFW asks whether they and NMFS will be invited to participate in Reclamation's safe yield reduction discussions. This question is outside the scope of the Term 18 Plan. No change has been made to the Plan.
- CDFW-13:** In this comment, CDFW states that relevant sections from the 2011 Stetson Report in whole or in part be incorporated within the main body of the Plan. Reclamation has considered this; however, rather than piecemealing out portions of the report, Reclamation provided the entire report as Attachment 2 to the Plan.
- CDFW-14:** In this comment, CDFW suggests CDFW staff be included in the Fish Rescue Points of Contact list for the Fish Rescue Plan. See Response to CDFW-9.