

RECLAMATION

Managing Water in the West

Decision Document Concerning NOAA Fisheries May 2010 Biological Opinion and Essential Fish Habitat Consultation

For the Operation and Maintenance of the Lewiston
Orchards Project, Idaho

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U.S. Department of the Interior
Bureau of Reclamation
Pacific Northwest Region

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I. Introduction

The Bureau of Reclamation initiated formal consultation with the National Marine Fisheries Service (NMFS) under Section 7 (a)(2) of the Endangered Species Act (ESA) for the Lewiston Orchards Project (Project) to address the Project's impacts on ESA-listed species.

This consultation was also a result of the remand and settlement agreement under *Nez Perce Tribe v. NOAA Fisheries & Bureau of Reclamation*.

The species considered in the Opinion are the Snake River Basin steelhead, Snake River spring/summer Chinook salmon, Snake River fall Chinook salmon, and Snake River sockeye salmon. The action adversely affects Snake River Basin steelhead; the remaining species do not occur in Sweetwater, Webb, or Lapwai creeks, and the effects of the action are negligible outside the Captain John Creek and Lapwai Creek drainages.

Reclamation submitted a biological assessment to NMFS in October 2009 that described as the proposed action the future operation and routine maintenance of the Project. The assessment included potential effects of the proposed action on threatened Snake River Basin steelhead and its associated critical habitat, as well as on essential fish habitat (EFH) for Chinook and coho salmon. The description of effects on EFH is required under the Magnuson-Stevens Fishery Conservation and Management Act as amended by the Sustainable Fisheries Act of 1996.

Reclamation received a Biological Opinion from NMFS on April 15, 2010 in which NMFS determined that Reclamation's Proposed Action would not result in jeopardy to the affected Snake River Basin steelhead. The Opinion included an Incidental Take Statement (ITS) with Reasonable and Prudent Measures (RPM) and associated Terms and Conditions.

The Section 7 ESA implementing regulations at 50 CFR §402.15(a) state that "following the issuance of a biological opinion, the Federal agency shall determine whether and in what manner to proceed with the action in light of its Section 7 obligations and the Service's biological opinion." Reclamation is issuing this decision document to indicate how it will carry out the activities identified in the NMFS Biological Opinion and ITS. This document describes Reclamation's approach to addressing the ITS requirements, including Reasonable and Prudent Measures and Terms and Conditions set forth in the Opinion. It also describes those conservation actions Reclamation will take to address NMFS determinations on Essential Fish Habitat.

II. Background

A. Lewiston Orchards Project History and Description

The Lewiston Orchards Project facilities and features were privately constructed from 1906-1934 to provide irrigation water supply to orchards near Lewiston, Idaho. As the facilities gradually fell into disrepair, the operating entity, Lewiston Orchards Irrigation District (LOID), requested federal assistance to improve the Project. Under the Reclamation Project Act of July 31, 1946, Reclamation was authorized to construct and operate the Project "... for the purposes of irrigating lands and the purposes thereto."

Project facilities, located in three basins, include three small storage reservoirs (Soldiers Meadow, Lake Waha, and Reservoir A), four diversion structures located on Captain John Creek, West Fork

Sweetwater Creek, Webb Creek, and Sweetwater Creek, feeder canals and pipelines, and a domestic water system retained as a backup in case of groundwater system failure (domestic supply is now provided independently by LOID from groundwater sources). As explained below, some of the Project facilities are on the Nez Perce Reservation.

All operation and maintenance activities for the Project facilities were transferred to the LOID according to the 1947 repayment contract. A complete description of Project facilities and their current operation may be found in Reclamation's Biological Assessment.

B. Relationship of Project to Nez Perce Tribe

The Nez Perce Tribe (Tribe) entered into a treaty with the United States in June 1863 that set the current boundaries for the Nez Perce Reservation (resulting in a smaller reservation than had previously been agreed to under the Stevens Treaty of 1855). Some of the Project facilities, constructed several generations later, are located within the Reservation boundaries. Additionally, the Project collects drainage and alters the stream hydrology in Webb Creek, Sweetwater Creek, and Lapwai Creek. These streams run through the Reservation and are part of the treaty fisheries areas of the Tribe.

Snake River salmon and steelhead are a significant Tribal cultural resource and are important Trust Assets promised to the Tribe by the Federal government. The Lapwai Creek drainage has been important to the Tribe since time immemorial, and Sweetwater Creek was historically used for cultural and spiritual activities.

The Tribe has been working throughout their usual and accustomed places to promote recovery of these listed species and is currently a co-manager, along with the state and federal agencies, of the fisheries resource throughout the Columbia and Snake river basins. The Project Action Area is part of that management area.

C. Nez Perce Water Rights Settlement

Under the Snake River Basin Adjudication (SRBA), the Tribe's water rights claims were resolved as part of a lengthy negotiation process. The resultant settlement was approved by Congress as the Snake River Water Rights Act of 2004. The State of Idaho and the Tribe approved the Settlement under separate processes in March 2005.

One of the three components of the 30-year agreement addresses fish habitat protection throughout the Salmon and Clearwater River basins. More than 200 rivers, streams and creeks in these basins were identified by the Tribe as priority streams for ESA-listed fish. Webb Creek, Sweetwater Creek, and Lapwai Creek are among those priority streams. Minimum instream flow rights established under State law for this component allow Reclamation to legally provide the minimum flows identified in the Proposed Action.

D. Reclamation Tribal Trust Responsibilities

The United States government has an Indian Trust responsibility to protect and maintain rights reserved by or granted to Indian Tribes or Indian individuals by treaties, statutes, and executive orders. Reclamation, as a federal executive agency, shares this responsibility.

E. Consultation History

Reclamation first initiated consultation on the Project with NMFS in 1998 within the context of a larger consultation; however, consultation with NMFS on the Project has proceeded as an independent consultation since 1999. On April 26, 2001, Reclamation submitted a supplemental Biological Assessment to NMFS describing the effects of the project. As parties to the SRBA were discussing Tribal water rights issues, NMFS postponed consultation pending the results of SRBA settlement discussions. When the Project was dropped from the SRBA negotiations, consultation on the Project resumed. NMFS delivered a non-jeopardy Biological Opinion for the Project on March 1, 2006.

The Tribe challenged NMFS and Reclamation decisions and on April 7, 2008, the U.S. District Court in Idaho ruled in favor of the Tribe. Reclamation, NMFS, and the Tribe reached a settlement that included a remand of the Biological Opinion, leaving its conditions in place while the agencies reconsulted.

III. Agency Response to Remand

A. Collaboration Process

During the remand period, NMFS and Reclamation agreed to collaborate with the Tribe to discuss and develop items to be included in the Proposed Action and to narrow areas of disagreement on scientific and technical information. From September 2008 through April 2009, the parties met eight times and conducted several conference calls between meetings as part of developing the Proposed Action, and continued to collaborate throughout the development of the Biological Assessment. This collaboration has resulted in modifications and improvements that are reflected in the Proposed Action.

Reclamation acknowledges the tremendous level of effort in the collaboration by the Tribe, and the time and effort all parties made to meet regularly and participate in the collaborative process. This process has contributed greatly to Reclamation's understanding of the Tribe's interests, concerns, and priorities in the Sweetwater, Webb, and Lapwai creeks.

More specifically, this process has resulted in mutual agreement on many elements of the Proposed Action, including:

- Elimination of the drought exemption, which had allowed for total dewatering of Sweetwater Creek in drought years;
- A minimum guaranteed flow in all years;
- Elimination of a transition period before full implementation of the proposed action;
- A gravel management plan to ensure replacement of spawning gravel that is removed during maintenance activities;
- Ramping criteria for Project operations at Sweetwater and Webb Creek diversion dams as requested by the Tribe.

Although differences in position or opinion remain between Reclamation and the Tribe, significant progress has been made in the collaboration, and areas of disagreement have been considerably narrowed. In addition, substantial efforts have been undertaken to obtain, develop, and employ the best available science.

As part of the remand collaborative process, more complete, site-based data were collected by Reclamation and the Tribe, which resulted in improved understanding of site-specific conditions and improved modeling and analysis capabilities. Specific improvements include:

- Collection of field data to characterize physical habitat conditions along Sweetwater and Webb creeks;
- Modeling of fish habitat in Sweetwater and Webb creeks using the physical habitat simulation (PHABSIM) program package;
- Development of improved hydrologic and operational analysis tools to test the feasibility, reliability and potential impacts associated with candidate flow regimes.

As is inherent in the scientific process, there is seldom agreement among experts on the conclusions reached from less than conclusive scientific evidence. Because of this, the federal government has established guidelines to determine the quality of scientific information produced or used to guide management and policy-related decisions. In determining best available science, Reclamation relied on peer-reviewed literature, basin-specific field data, and hydrologic modeling using local, quantifiable data.

Overall, the result of this work is a significantly improved scientific and technical foundation on which to base a proposed instream flow regime and other aspects of the Proposed Action. While some limitations in the available data and associated uncertainty remain, Reclamation is confident that the empirical data informing the analysis are adequate to assess the hydrological effects of the Proposed Action and are superior to indirect, extrapolated sources.

B. Summary of the Proposed Action

The Proposed Action is LOID's operation and routine maintenance of the Project from present through January 31, 2020, including storage and release of water from Soldiers Meadow, Lake Waha, and Reservoir A; diversion of water at four diversion structures (Captain John, West Fork Sweetwater, Webb, and Sweetwater); and routine maintenance at the facilities and canals. A detailed description of the Proposed Action is provided in Chapter 4 of the Biological Assessment; briefly, the action includes:

- Storage and release of water in reservoirs and from dams that Reclamation owns and rehabilitated as authorized by Congress. Storage and releases occur in accordance with authorized purposes, Reclamation contracts, State law and Reclamation-held water rights;
- Carriage and diversion of water into facilities that Reclamation owns or operates and that are associated with the authorized Project;
- Routine maintenance at dams, reservoirs, and diversion structures;
- Foregoing storage in Reservoir A and diversions at Webb and Sweetwater diversion dams to provide minimum instream flows when the Project is being operated (February/March through October) as described in Table 1 of the Opinion.

The Proposed Action differs from the historical operation of the Project in several fundamental ways, all of which provide direct or indirect benefits to the listed fish. In addition to the actions agreed to during the collaboration process, the action will:

- Provide continuous stream flow measurement at the Webb and Sweetwater diversion dams and automatic adjustment of gates to maintain designated stream flows within the capabilities of the equipment;
- Provide stream connectivity in critical reaches of the Webb and Sweetwater creeks where Snake River Basin steelhead are known to occur;
- Provide for additional, opportunity-based flows for the summer for juvenile rearing under given hydrologic and storage conditions, with a priority on Sweetwater Creek.

In summary, Reclamation has developed a new Proposed Action that goes beyond the minimum ESA requirements while providing reasonable certainty for 10 years for the operation and maintenance of the project. The action being implemented improves on past conditions and provides continuous stream flow to 38.4 miles of stream in the action area that was previously discontinuous.

IV. Essential Fish Habitat

The Magnuson-Stevens Fishery Conservation and Management Act requires Federal agencies to consult with NMFS on all actions or proposed actions authorized, funded, or undertaken by the agency, that may adversely affect essential fish habitat (EFH). The Project action area includes areas described below that are designated by NMFS as EFH for various life-history stages of Chinook and coho salmon.

In its Biological Assessment, Reclamation analyzed the potential effects of the Proposed Action to Chinook and coho salmon freshwater EFH in the following streams:

- Captain John Creek, from the headwaters of the North Fork to its mouth;
- All portions of the Webb Creek and Sweetwater Creek drainages below impassable barriers and where flows are altered by the Project;
- The mainstem of Lapwai Creek from the confluence with Sweetwater Creek downstream to its mouth.

A. NMFS Findings and Recommendations

In its Opinion, NMFS found that salmonid habitat in Captain John Creek and the mainstem of the Clearwater River is not likely to be adversely affected by the Proposed Action. However, NMFS concluded that, in the Lapwai Creek drainage, the Proposed Action would have adverse effects on designated EFH for Chinook and coho salmon due to its impact on instream flows.

Pursuant to this Act, NMFS set forth three conservation measures that it believes are necessary to avoid, mitigate, or offset the impact of the proposed action on EFH.

1. Reclamation shall provide flows below the diversion dams in Sweetwater and Webb creeks, as described in the proposed action.
2. Reclamation shall monitor stream flows at the Sweetwater Creek diversion dam and mouth of Webb Creek to ensure that minimum flows are provided as planned, and adjust flows accordingly to meet the applicable minimum flows.
3. Reclamation shall determine the optimal flow allocation between Webb and Sweetwater creeks to maximize steelhead production, and adjust flows accordingly, as mutually agreed by LOID, the Tribe, Reclamation, and NMFS.

B. Reclamation Response

Federal agencies are required to provide a detailed written response to NMFS' EFH conservation recommendations within 30 days of receipt of these recommendations [50 CFR § 600.920(k)(1)]. Reclamation recommended the EFH response be combined with Reclamation's ESA Decision Document since the conservation measures in EFH are similar to the Terms and Conditions of the Incidental Take Statement. NOAA agreed with the recommendation in a letter dated May 20, 2010. Reclamation's response is embodied in this document as follows:

1. The explanation under Term and Condition 1 describes how Reclamation intends to implement and comply with the first of these three EFH conservation measures.
2. The explanation under Term and Condition 3 describes how Reclamation intends to implement and comply with stream flow monitoring, the second EFH conservation measure.
3. The explanation under Term and Condition 5 describes how Reclamation intends to implement and comply with the third and final EFH conservation measure.

Reinitiation of EFH consultation is governed by regulations set forth at 50 CFR §600.920(1)(1) and is required if the proposed action is substantially revised in a manner that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations. Reclamation will comply with this requirement.

V. NMFS 2010 Biological Opinion

A. Conclusions

After reviewing the status of the listed species affected by the Proposed Action, the environmental baseline for the action area, the effects of the Proposed Action, and cumulative effects, NMFS concluded that the action, as proposed, is not likely to jeopardize the continued existence of Snake River Basin steelhead, Snake River spring/summer Chinook salmon, Snake River fall Chinook salmon, Snake River sockeye salmon, and listed salmon and steelhead species in the Columbia River, nor likely to destroy or adversely modify designated critical habitat for any of these species. These conclusions are based on the considerations and analysis described in the Opinion.

The listed Snake River Basin steelhead distinct population segment is composed of 24 extant anadromous populations within five major population groups. This action affects a percentage of the Lower Mainstem population, one of the five extant populations within the Clearwater major population group. The Lower Mainstem population is described by NMFS as having a "large" population size designation based on intrinsic habitat potential.

NMFS determined that the proposed action would not jeopardize the continued existence of the Snake River Basin steelhead distinct population segment because steelhead production rate in the Lower Mainstem population is adequate for sustained persistence of the population and the proposed action does not significantly change the production rate of this population.

Based on an independent, full and candid consideration of this science and data, Reclamation agrees with the conclusions and determinations reached by NMFS, which reflect a reasoned analysis that incorporates the best available science.

B. Incidental Take Statement and Reasonable and Prudent Measures

Section 9 of the ESA defines and prohibits the taking of endangered or threatened species without a specific permit or exemption. Incidental take refers to takings that result from carrying out an otherwise lawful activity conducted by the Federal agency or applicant. Any such incidental taking that meets the terms and conditions of a written Incidental Take Statement is exempt from the taking prohibition.

In Section 2.2.1 of its Opinion, NMFS determined that the Proposed Action is expected to cause incidental take of juvenile Snake River Basin steelhead through the effects of stream flow alterations, which will diminish habitat suitability. The extent of take encompasses all areas of Sweetwater and Webb creeks where steelhead occur and Lapwai Creek downstream from the mouth of Sweetwater Creek. NMFS identified seven Reasonable and Prudent Measures (RPM) and associated Terms and Conditions to minimize take of the Snake River Basin steelhead.

Reasonable and Prudent Measures are non-discretionary measures to avoid or minimize take that Reclamation, or parties acting under Reclamation's authority, must carry out for the incidental take exemption to apply. As stated in the Opinion, Reclamation shall:

1. Provide flows below the diversion dams in Sweetwater and Webb creeks, as described in the proposed action.
2. Develop, in coordination with NMFS, a stream flow connectivity monitoring plan that will determine if the extent of take in Sweetwater Creek is being exceeded.
3. Monitor stream flows to determine if the extent of take exempted by this ITS is exceeded in Sweetwater and/or Webb creeks.
4. Develop and implement studies to answer critical uncertainties regarding the effects of the action.
5. Determine the optimal flow allocation between Webb and Sweetwater creeks to maximize steelhead production, and adjust flows accordingly.
6. Provide to NMFS an annual report of all reporting elements identified in the proposed action and this Opinion.
7. Notify NMFS as soon as possible of any steelhead that may have been injured or killed by the Project.

C. Terms and Conditions

This Decision Document is the first opportunity for Reclamation to provide necessary detail on how it will comply with the terms and conditions to ensure the implementation of the RPMs.

Reclamation's commitment follows each term and condition below.

1. To implement RPM #1, Reclamation shall provide minimum flows at the points of diversion in Sweetwater and Webb Creeks as described in Table 1 of this Opinion and the additional instream flows under the storage conditions as shown in Table 2 of this Opinion.

Reclamation Commitment

Reclamation and LOID will provide the specified stream flows at the diversion dams as measured by a target daily average as described in the Proposed Action and allowing for up to a 20% error rate as allowed in the Opinion. As NMFS recognizes, occasional deficits in daily average minimum flows may occur due to circumstances such as rapid drops in natural flows, natural events that prevent

normal operation, operational limitations including gage errors (such as those caused by debris buildup) and mechanical breakdowns, or emergency repairs or maintenance. Reclamation and LOID will strive to resolve, within 24 hours, such issues when deficits in minimum flow might occur. There may occasionally be equipment malfunctions or failure that requires repair or replacement of gate operation hardware or water measurement equipment. Reclamation will communicate with NMFS as soon as possible in this situation, and LOID will revert to a manual operation of the gates and adjust as needed once each day to provide the intended daily average minimum bypass stream flow, as directed in the Opinion (p. 12 item 1.c) in the event of equipment failure.

Further, Reclamation has committed to supply water in addition to the minimum flow for the summer juvenile rearing period when conditions permit. Additional flows are based on the status of the combined storage in Soldiers Meadow Reservoir and Reservoir A as assessed on June 1 of each year and as shown in Table 2 of the Opinion.

2. To implement RPM #2, Reclamation shall develop in coordination with NMFS a monitoring plan to ensure connectivity in Sweetwater Creek. This plan shall be developed prior to July 15, 2010, and implemented immediately thereafter.

Reclamation Commitment

Connectivity has been established on Sweetwater Creek at 1 cfs through previous studies and data collection. It is with that threshold that Reclamation will develop the monitoring plan to ensure connectivity in Sweetwater Creek.

A critical concern is that actions by private parties may affect connectivity. Reclamation's obligations do not extend to mitigating flows for any such actions, but Reclamation will work with willing landowners and within existing authorities and funding to restore connectivity in those instances.

The plan was combined with the Webb Creek monitoring plan required in Term and Condition 4.b below and provided to NMFS July 15, 2010.

3. To implement RPM #3, at a minimum, Reclamation shall continue operation of the stream gages at the Sweetwater Creek diversion dam and mouths of Sweetwater and Webb Creeks.

Reclamation Commitment

As stream flow is used by NMFS as a surrogate indicator of take, it follows that stream flow monitoring would be an appropriate surrogate for monitoring take. Thus, Reclamation will continue to operate and maintain the gages at the diversion dams and canals to document compliance with the daily average minimum bypass stream flows in the Opinion.

Gages at the mouths of Sweetwater and Webb creeks were installed by Reclamation to collect data for a better understanding of the hydrology of the basin; however, they do not provide data pertinent to determining extent of take exempted or exceeded by the ITS that results from Project operations.

4. To implement RPM #4, Reclamation shall:

- a. Cooperate with NMFS to develop and implement a monitoring plan to answer critical uncertainties regarding the effects of the action on water temperatures and steelhead abundance in Sweetwater and Webb Creeks. This plan shall be completed no later than 6 months after the signing of this Opinion. The plan shall monitor fish densities in Sweetwater and Webb creeks and shall be implemented annually starting in 2011 and;
- b. Develop in coordination with NMFS a monitoring plan to assess connectivity in Webb Creek. This plan shall be developed prior to July 15, 2010, and implemented immediately thereafter.

Reclamation Commitment

- a. A monitoring plan that addresses the relationship of the proposed action stream flows to fish habitat, water temperature, bioenergetics and fish production has been underway since 2007. This study is funded to continue through 2012-2013 and is currently being modified to meet the Terms and Conditions of the NMFS 2010 Opinion. A revised monitoring plan will be submitted to NMFS no later than October 15, 2010, which is 6 months after the signing of the Opinion.
 - b. Preliminary surveys indicate connectivity is established in Webb Creek at around 1.0 cfs. Reclamation will develop a monitoring plan for Webb Creek to verify these results under the proposed flow regime. The plan was combined with the Sweetwater Creek monitoring plan required in Term and Condition # 2 and provided to NMFS July 15, 2010.
5. To implement RPM #5, Reclamation shall determine the optimal flow allocation between Webb and Sweetwater creeks to maximize aggregate steelhead production, and adjust flows accordingly and in a manner consistent with this Opinion, as mutually agreed by LOID, the Nez Perce Tribe, BOR, and NMFS. A completed study and report shall be submitted to NMFS no later than 4 years after the signing of this Opinion.

Reclamation Commitment

The flow allocation identified in the proposed action and analyzed in the Opinion was determined with the best available scientific information and represents the optimal allocation. Reclamation anticipates a milestone in 2013, when several years of monitoring data will be analyzed. At that time, Reclamation intends to evaluate these results and make the best management decisions that the information allows.

A completed report based on this analysis will be provided to NMFS prior to May 10, 2014. Reclamation is willing to confer with other agencies prior to making any adjustments to the Proposed Action; however, any resulting decision will be based on the scientific data and the potential to minimize take to the species. Achievement of consensus may not be within Reclamation's control, especially given the highly controversial nature of Project operations.

6. To implement RPM #6, Reclamation shall provide to NMFS an annual report of all reporting elements identified in the proposed action and in this Opinion. All completed monitoring reports and other written correspondence related to the proposed action shall be sent to the address provided in the Opinion no later than May 20 of each year.

Reclamation Commitment

Reclamation will submit a report to NMFS by May 20 of each year documenting annual operations, monitoring, and implementation activities conducted to meet the RPMs and terms and conditions associated with the 2010 Opinion.

7. To implement RPM #7, Reclamation shall notify NMFS as soon as possible if Reclamation employees or parties acting under its authority find any steelhead that may have been injured or killed by the Project.

Reclamation Commitment

Reclamation will notify NMFS of any dead or injured steelhead according to the procedures described in the Opinion.

VI. Reclamation Determination

Reclamation has been fully engaged in the remand consultation and the collaboration process with the Tribe and other parties. In addition to its compliance with ESA and other pertinent Federal laws, Reclamation's commitment to Tribal trust responsibilities, State water law, and the authorizing legislation for the Lewiston Orchards Project remain inviolate.

The Proposed Actions for the future operation and maintenance of the Lewiston Orchards Project, incorporating the Opinion's Reasonable and Prudent Measures and Terms and Conditions, meet the regulatory requirements of Section 7 (a)(2) of the ESA, 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.

Additionally, Reclamation is supporting actions that meet the regulatory requirements of Section 7(a)(1) of the ESA for recovery of the Snake River Basin steelhead distinct population segment. A key example of this is the provision for additional flows during the summer juvenile rearing period when storage conditions allow. In its Opinion, NMFS recognized the value of these additional, opportunity-based flows, stating, on page 105, "The proposed action provides larger minimum flows than the past and improves the prospects for greater steelhead abundance in Webb Creek...."

In summary, based on the body of documented information, I conclude:

1. The Proposed Action is consistent with the ESA and with other Federal laws and responsibilities, including tribal trust responsibilities, the Snake River Water Rights Act of 2004, and the Clean Water Act.
2. Reclamation concurs with the Opinion's findings and Incidental Take Statement and will implement the required terms and conditions.

VII. Decision

Reclamation has reviewed the consultation record including Reclamation's biological assessment, NMFS' Biological Opinion and Incidental Take Statement, and other relevant materials considered in the consultation. Reclamation is committed, subject to authorities and appropriations, to implementing the Reasonable and Prudent Measures and Terms and Conditions contained in the ITS.

These commitments extend to the conservation recommendations for the Magnuson-Stevens Fishery Conservation and Management Act consultation on Essential Fish Habitat. Furthermore, Reclamation intends to continue to explore opportunities to restore Tribal cultural and natural resource values in Sweetwater and Webb creeks to the extent practicable and consistent with legal and statutory requirements and funding.

Reclamation has determined that these actions will meet its responsibilities under the ESA to avoid jeopardy and contribute to recovery of the Snake River Basin steelhead and will minimize incidental take, will not modify or destroy designated critical habitat, and will also comply with Magnuson-Stevens Act requirements. Reclamation will implement its Proposed Action consistent with the preceding sections.

VIII. Reinitiation of Consultation

Reinitiation of consultation is governed by regulations set forth at 50 CFR §402.16 and is required based on the following criteria:

- 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 comply with these requirements of the law.

Signed:  Date: July 21, 2010
Jerrold D. Gregg
Snake River Area Manager
Bureau of Reclamation
U.S. Department of the Interior

I concur:

Signed:  Date: 7-22-10

Acting For

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