



MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: November 6, 2023

RE: Update on Water Policy/Resources Activities

Background

This memorandum is provided to briefly summarize the current status of various agency processes regarding water policy activities, including but not limited to the (1) Reinitiation of Consultation on Long-Term Operations of the Central Valley Project and State Water Project, including environmental compliance; (2) State Water Resources Control Board action; (3) San Joaquin River Restoration Program; (4) Delta conveyance; (5) Reclamation action; (6) Delta Stewardship Council action; (7) San Joaquin Valley Water Blueprint and San Joaquin Valley Water Collaborative Action Plan.

Policy Items

Reinitiation of Consultation on Long-Term Operations of the Central Valley Project and State Water Project

In August 2016, the Bureau of Reclamation and California Department of Water Resources (DWR) requested reinitiation of consultation with NOAA Fisheries, also known as National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) due to multiple years of drought, low populations of listed species, and new information developed as a result of ongoing collaborative science efforts over the last 10 years.

On Jan. 31, 2019, Reclamation transmitted its Biological Assessment to the Services. The purpose of this action is to continue the coordinated long-term operation of the CVP and SWP to optimize water supply delivery and power generation consistent with applicable laws, contractual obligations, and agreements; and to increase operational flexibility by focusing on nonoperational measures to avoid significant adverse effects to species.

The biological opinions carefully evaluated the impact of the proposed CVP and SWP water operations on imperiled species such as salmon, steelhead and Delta smelt. FWS and NMFS documented impacts and worked closely with Reclamation to modify its proposed operations to minimize and offset those impacts, with the goals of providing water supply for project users and protecting the environment.

Both FWS and NMFS concluded that Reclamation's proposed operations will not jeopardize threatened or endangered species or adversely modify their critical habitat. These conclusions were reached for

several reasons – most notably because of significant investments by many partners in science, habitat restoration, conservation facilities including hatcheries, as well as protective measures built into Reclamation's and DWR's proposed operations.

On Oct. 21, 2019, FWS and NMFS released their biological opinions on Reclamation's and DWR's new proposed coordinated operations of the CVP and SWP.

On Dec. 19, 2019, Reclamation released the final Environmental Impact Statement analyzing potential effects associated with long-term water operations for the CVP and SWP.

On Feb. 18, 2020, Reclamation approved a Record of Decision that completes its environmental review for the long-term water operations for the CVP and SWP, which incorporates new science to optimize water deliveries and power production while protecting endangered species and their critical habitats.

On January 20, 2021, President Biden signed an Executive Order: “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis”, with a fact sheet¹ attached that included a non-exclusive list of agency actions that heads of the relevant agencies will review in accordance with the Executive Order. Importantly, the NOAA Fisheries and U.S. Fish and Wildlife Service Biological Opinions on the Long-Term Operation of the Central Valley Project and State Water Project were both included in the list of agency actions for review.

On September 30, 2021, Reclamation Regional Director Ernest Conant sent a letter to U.S. FWS Regional Director Paul Souza and NMFS Regional Administrator Barry Thom requesting reinitiation of consultation on the Long-Term Operation of the CVP and SWP. Pursuant to 50 CFR § 402.16, Reclamation indicated that reinitiation is warranted based on anticipated modifications to the Proposed Action that may cause effects to listed species or designated critical habitats not analyzed in the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) Biological Opinions, dated October 21, 2019. To address the review of agency actions required by Executive Order 13990 and to voluntarily reconcile CVP operating criteria with operational requirements of the SWP under the California Endangered Species Act, Reclamation and DWR indicated that they anticipate a modified Proposed Action and associated biological effects analysis that would result in new Biological Opinions for the CVP and SWP.

Following this action, on October 20, 2021, the SLDMWA sent a letter to Reclamation Regional Director Ernest Conant requesting participation in the reinitiation of consultation pursuant to Section 4004 of the WIIN Act and in the NEPA process as either a Cooperating Agency or Participating Agency.

On February 26, 2022, the Department of the Interior released a Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Hold Public Scoping Meetings on the 2021 Endangered Species Act Reinitiation of Section 7 Consultation on the Long-Term Operation of the Central Valley Project and State Water Project². In response to this, on March 30, 2022, the SLDMWA submitted a comment letter highlighting actions for Reclamation to consider during preparation of the EIS.

¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>

² <https://www.govinfo.gov/content/pkg/FR-2022-02-28/pdf/2022-04160.pdf>

During May 2022, Reclamation issued draft copies of the Knowledge Base Papers for the following management topics and requested supplementary material review and comments, to which the Authority submitted comment letters in June:

1. Spring-run Juvenile Production Estimate- Spring-run Survival Knowledge Base Document, May 2022
2. Steelhead Juvenile Production Estimate-Steelhead Survival Knowledge Base Document, April 2022
3. Old and Middle River Reverse Flow Management – Smelt, Chinook Salmon, and Steelhead Migration and Survival Knowledge Base Document, May 2022
4. Central Valley Tributary Habitat Restoration Effects on Salmonid Growth and Survival Knowledge Based Paper, March 2022
5. Delta Spring Outflow Management Smelt Growth and Survival Knowledge Base Document, May 2022
6. Pulse Flow Effects on Salmonid Survival Knowledge Base Document, May 2022
7. Summer and Fall Habitat Management Actions – Smelt Growth and Survival Knowledge Base Document, May 2022
8. Shasta Cold Water Pool Management – End of September Storage Knowledge Base Document, May 2022

Subsequent to the Knowledge Base Paper review, a Scoping Meeting was held, to which Water Authority staff provided comments, resulting in the release of a Scoping Report³ by Reclamation in June 2022.

On October 14, 2022, Reclamation released an Initial Alternatives Report (IAR).

On May 16, 2023, Reclamation provided an administrative draft copy of the Proposed Action, titled “State and Federal Cooperating Agency Draft LTO Alternative” to agencies that have executed an MOU with Reclamation on engagement. Authority staff is reviewing the document and provided feedback to Reclamation, in coordination with member agencies and other CVP contractors.

On June 30, 2023, Reclamation released a draft Qualitative Biological Assessment for review by agencies that have executed an MOU with Reclamation on engagement, though Reclamation is not accepting formal comments. Note that this release does not initiate formal ESA consultation and is being provided to assist the fishery agencies in setting up their documents and resources for the formal consultation, which we expect to begin in late September/early October.

On July 21, 2023, Reclamation released an Administrative Draft Terrestrial Biological Assessment for review by agencies that have an MOU with Reclamation on engagement, though Reclamation is not accepting formal comments. Note that this release does not initiate formal ESA consultation and is being provided to assist the fishery agencies in setting up their documents and resources for the formal consultation, which we expect to begin in late September/early October.

On September 15, Reclamation released a Draft Environmental Impact Statement for 30-day NEPA Cooperating Agency review. The SLDMWA coordinated review of the document with member agencies

³ <https://www.usbr.gov/mp/bdo/docs/lto-scoping-report-2022.pdf>

and technical consultants and submitted both high-level and technical comments on the document⁴ on October 16.

On October 6, Reclamation held another Interested Parties meeting with an update⁵ on the current status of the consultation.

Current Milestones

- November 2023: Quantitative Biological Assessment released for PWA review and to US FWS and NMFS
- December 2023 – Public Draft EIS
 - The public draft EIS will be the avenue for comments to Reclamation
 - Cooperating agencies will receive an administrative draft of the EIS
- Summer 2024 – Record of Decision

State Water Resources Control Board (State Water Board) Activity

Bay Delta Water Quality Control Plan Update

Background

The State Water Board is currently considering updates to its 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (“Bay Delta Plan”) in two phases (Plan amendments). The first Plan amendment is focused on San Joaquin River flows and southern Delta salinity (“Phase I” or “San Joaquin River Flows and Southern Delta Salinity Plan Amendment”). The second Plan amendment is focused on the Sacramento River and its tributaries, Delta eastside tributaries (including the Calaveras, Cosumnes, and Mokelumne rivers), Delta outflows, and interior Delta flows (“Phase II” or “Sacramento/Delta Plan Amendment”).

During the December 12, 2018 Water Board Meeting, the Department of Water Resources (“DWR”) and Department of Fish and Wildlife presented proposed “Voluntary Settlement Agreements” (“VSAs”) on behalf of Reclamation, DWR, and the public water agencies they serve to resolve conflicts over proposed amendments to the Bay-Delta Plan update.⁶ The State Water Board did not adopt the proposed VSAs in lieu of the proposed Phase 1 amendments, but as explained below, directed staff to consider the proposals as part of a future Delta-wide proposal.

Phase 1 Status: The State Water Board adopted a resolution⁷ to adopt amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and adopt the Final Substitute Environmental Document during its December 12, 2018 public meeting.

⁴ See Appendix A.

⁵ See Appendix A.

⁶ Available at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Blogs/Voluntary-Settlement-Agreement-Meeting-Materials-Dec-12-2018-DWR-CDFW-CNRA.pdf>.

⁷ Available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf.

Most recently, on July 18, 2022, the State Water Resources Control Board issued a Notice of Preparation (NOP)⁸ and California Environmental Quality Act (CEQA) Scoping Meeting for the Proposed Regulation to Implement Lower San Joaquin River Flows (LSJR) and Southern Delta Salinity Objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta Plan).

The purpose of the NOP is: (1) to advise responsible and trustee agencies, Tribes, and interested organizations and persons, that the State Water Board or Board will be the lead agency and will prepare a draft EIR for a proposed regulation implementing the LSJR flow and southern Delta salinity components of the 2018 Bay-Delta Plan, and (2) to seek input on significant environmental issues, reasonable alternatives, and mitigation measures that should be addressed in the EIR. For responsible and trustee agencies, the State Water Board requests the views of your agency as to the scope and content of the environmental information related to your agency's area of statutory responsibility that must be included in the draft EIR.

In response to the release of the NOP, the Water Authority and member agencies provided scoping comments⁹.

Phase 2 Status: In the State Water Board's resolution adopting the Phase 1 amendments, the Water Board directed staff to assist the Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. Staff were directed to incorporate the Delta watershed-wide agreement as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments may be presented to the State Water Board for consideration as early as possible after December 1, 2019.

On March 1, 2019, the California Department of Water Resources and the Department of Fish and Wildlife submitted documents¹⁰ to the State Water Board that reflect progress since December to flesh-out the previously submitted framework to improve conditions for fish through targeted river flows and a suite of habitat-enhancing projects including floodplain inundation and physical improvement of spawning and rearing areas.

Since the March 1 submittal, work has taken place to develop the package into a form that is able to be analyzed by State Water Board staff for legal and technical adequacy. On June 30, 2019, a status update with additional details was submitted to the Board for review. Additionally, on February 4, 2020, the State team released a framework for the Voluntary Agreements to reach "adequacy", as defined by the State team.

⁸ Available at https://www.waterboards.ca.gov/public_notices/notices/20220715-implementation-nop-and-scoping-dwr-baydelta.pdf

⁹ Request from Authority staff

¹⁰ Available at http://resources.ca.gov/docs/voluntary-agreements/2019/Complete_March_1_VA_Submission_to_SWRCB.pdf

Further work and analysis is needed to determine whether the agreements can meet environmental objectives required by law and identified in the State Water Board's update to the Bay-Delta Water Quality Control Plan.

On September 28, The State Water Resources Control Board released a draft Staff Report in support of possible updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) that are focused on the Sacramento River watershed, Delta, and Delta eastside tributaries (Sacramento/Delta).

The draft Staff Report includes scientific information and environmental and economic evaluations to support possible Sacramento/Delta updates to the Bay-Delta Plan. The report assesses a range of alternatives for updating the Sacramento/Delta portions of the Bay-Delta Plan, including: an alternative based on a 2018 Framework document identifying a 55% of unimpaired flow level (within an adaptive range from 45-65%) from Sacramento/Delta tributaries and associated Delta outflows; and a proposed voluntary agreements alternative that includes voluntary water contributions and physical habitat restoration on major tributaries to the Delta and in the Delta. In addition, based on input from California Native American tribes, the draft Staff Report identifies the proposed addition of tribal and subsistence fishing beneficial uses to the Bay-Delta Plan.

The draft Staff Report is available for review on the [Board's website](#). Written comments on the report are due by **December 15, 2023**. During the public comment period, staff will hold two public workshops to explain the report where attendees can also ask questions. The workshops will be followed by a public hearing before the State Water Board to receive oral comments on the draft Staff Report.

A Frequently Asked Questions (FAQ) document providing information on the report and the Bay-Delta Plan generally are available on the [Bay-Delta webpage](#).

Upcoming opportunities for engagement on the draft Staff Report are highlighted below:

- November 17 (9:30 am), December 1 (9:30 am), and December 11 (4:00 pm): Public hearing
- December 15: Written comments due

In addition to the public workshops, Board staff will hold a separate workshop for tribal representatives only to explain the draft Staff Report and answer questions. A separate notice inviting tribal representatives to participate in the workshop will be sent directly to tribal representatives.

Please see the [notice](#) for additional information on how to submit comments and participate in the workshops and hearing.

Schedule

LSJR Flow/SD Salinity Implementation Next Steps Assuming Regulation Path (Phase 1)

- Winter/Spring 2024
 - Final draft Staff Report for Tuolumne River VA
 - Board workshop and consideration of Tuolumne River VA
 - Final draft EIR and regulation implementing Lower SJR flows and South Delta Salinity
 - Board consideration of regulation implementing Lower SJR flows and South Delta Salinity

Sac/Delta Update: Key Milestones

- Spring/Summer 2024: Response to comments and development of proposed final changes to the Bay-Delta Plan
- Summer/Fall 2024: Board consideration of adoption

Voluntary Agreements

On March 29, 2022, members of the Newsom Administration joined federal and local water leaders in announcing the signing of a memorandum of understanding¹¹ that advances integrated efforts to improve ecosystem and fisheries health within the Sacramento-San Joaquin Bay-Delta. State and federal agencies also announced an agreement¹² specifically with the Sacramento River Settlement Contractors on an approach for 2022 water operations on the Sacramento River.

Both announcements represent a potential revival of progress toward what has been known as “Voluntary Agreements,” an approach the Authority believes is superior to a regulatory approach to update the Bay-Delta Water Quality Control Plan.

The broader MOU outlines terms for an eight-year program that would provide substantial new flows for the environment to help recover salmon and other native fish. The terms also support the creation of new and restored habitat for fish and wildlife, and provide significant funding for environmental improvements and water purchases, according to a joint news release from the California Natural Resources Agency and the California Environmental Protection Agency (CalEPA). Local water agency managers signing the MOU have committed to bringing the terms of the MOU to their boards of directors for their endorsement and to work to settle litigation over engaged species protections in the Delta.

On June 16, the SLDMWA, Friant Water Authority and Tehama Colusa Canal Authority signed onto the VA MOU. Additionally, since that time, in September and November, four more agencies – Contra Costa Water District, San Francisco Public Utilities Commission (SFPUC), Turlock Irrigation District (TID) and Modesto Irrigation District (MID) – have signed onto the VA MOU.

Work continues to develop the working documents associated with execution and implementation of the VA’s and workgroups for participating agencies have been formed, with the formation of a VA Science Workgroup to develop the framework of the VA’s proposed Science program, as well as the recent formation of Scheduling and Funding workgroups to ensure that the program remains coordinated.

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Documents out for Comment

Draft Policy

- There are currently no Draft Policies out for review.

¹¹ Available at <https://resources.ca.gov/-/media/CNRA-Website/Files/NewsRoom/Voluntary-Agreement-Package-March-29-2022.pdf>

¹² Available at <https://calepa.ca.gov/2022/03/29/informational-statement-state-federal-agencies-and-sacramento-river-settlement-contractors-agree-on-approach-for-2022-water-operations-on-the-sacramento-river/>

Draft Directives and Standards

- [EMG 01-01 Emergency Management](#) (comments due 11/20/23)

Draft Facilities Instructions, Standards, and Techniques (FIST)

- [FIST 2-10 Maintenance, Inspection, and Testing of Electric and Hydraulic Elevators](#) (comments due 12/01/23)

Draft Reclamation Safety and Health Standards (RSHS)

- There are currently no Safety and Health Standards out for review.

Draft Reclamation Design Standards

- There are currently no Design Standards out for review.

San Joaquin Valley Water Blueprint

The Water Blueprint for the San Joaquin Valley (Blueprint) is a non-profit group of stakeholders, working to better understand our shared goals for water solutions that support environmental stewardship with the needs of communities and industries throughout the San Joaquin Valley.

Blueprint's strategic priorities for 2022-2025: Advocacy, Groundwater Quality and Disadvantaged Communities, Land Use Changes & Environmental Planning, Outreach & Communications, SGMA Implementation, Water Supply Goals, Governance, Operations & Finance.

Mission Statement: *"Unifying the San Joaquin Valley's voice to advance an accessible, reliable solution for a balanced water future for all."*

Committees

Executive/Budget/Personnel

The ad hoc Finance Committee is reviewing status of 2023 contributions and a more sub basin wide focus for 2024 contributions and a category for GSA's, attempting to coincide with irrigable acres for an equitable process and avoiding redundancy. The board has directed Hallmark to reduce its workload while contributions are received to build up depleted reserves.

- Urban Water Agency & OC Water Summit: The Blueprint hosted an Agricultural/Urban Water Agency meeting that was held at Fresno State. The meeting included urban water agency representatives from both northern and southern California. Discussion focused on mutual concerns/issues faced by water scarcity as well as opportunities for collaboration including recharge, conveyance, and funding. OC Water Summit included an overview of the Blueprint, recharge, and conveyance opportunities as well as the environmentally friendly pilot. Positive feedback was provided by OC Agencies about the Blueprint and its efforts and follow up meetings are being scheduled.

Technical Committee

Two specific priorities/efforts to help bridge the water deficit in the San Joaquin Valley, the Patterson ID conveyance project, and Delta Operations have been selected. The committee is evaluating total recharge opportunities and potential environmental enhancement and utilization.

Advocacy/Communications

The Blueprint will be hosting a informational meeting at ACWA in Indian Wells and will work with ACWA for a SJV tour. Blueprint will also be scheduling a meeting in the first of the year in Sacramento to brief legislative staff, policy makers, legislators, and Advisor Villaraigosa to highlight alignment with the Governor's water resiliency plan and priorities for a potential Water Bond, highlighting policy decisions that need to be made on reducing impacts to the central valley. The Farmer to Farmer Delta/SJV summit is rescheduled to November 2nd & 3rd.

Activities

SJV/Delta Water Leaders' Summit

Blueprint coordinated and invited a select group of agricultural and water leaders from the San Joaquin Valley and the Delta region to meet and tour the Delta and SJ Valley. Due to the high flood risk in the Delta, the Planning Committee rescheduled the Summit meetings tentatively for November 2-3 to ensure that full attention is given to protecting life and property, and after harvest.

Drinking Water Feasibility Study - CSU Fresno State, FWA, Self-Help, Sustainable Conservation

Fresno State is finalizing the scope of work and budget for subcontractors. They expect to have a project timeline ready by July. As a reminder the partners for the feasibility study have initially identified potential Fresno County districts/areas generally for recharge projects. Initial modeling for Fresno State/California Water Institute has preliminarily identified FID, Consolidated ID, Raisin City WD and North Fork Kings GSA for strong multi benefit recharge potential. The group is focused on multi-benefits for recharge with a focus on drinking water with measurable results.

Unified Water Plan for the San Joaquin Valley

The Blueprint and California Water Institute have kicked off the joint development of a Unified Water Plan for the San Joaquin Valley as called for in the recently awarded Bureau of Reclamation grant. Both Stantec and The Hallmark Group will be engaged on the development of the plan. The final water plan will include measures to address San Joaquin Valley needs and potential portfolios to address needs and objectives, this report will ultimately be transmitted to Congress by Reclamation in 2025. A copy of that scope is available upon request.¹³

San Joaquin Valley Water Collaborative Action Program (SJWV CAP)

Background

The CAP Plenary Group met on February 28 and approved the formation of work groups to advance the revised Term Sheet¹⁴, adopted on November 22, 2022. Phase II, Work Groups are beginning to meet and discuss priorities and drafting for their respective areas: Safe Drinking Water; Sustainable Water Supplies; Ecosystem Health; Land Use, Demand Reduction and Land Repurposing; Implementation.

¹³ Request from Authority staff

¹⁴ Request from Authority staff

Steering Committee members continue to meet to discuss the proposed budget and work with Reclamation regarding the requested funding.

The Steering Committee met on October 24 with the workgroup Chairs to streamline the proposed priority actions to address through the end of 2023, given the limited time remaining in the year. The original 20 priority actions were reduced to eight, with the following priorities for each workgroup:

Safe Drinking Water Workgroup

The Safe Drinking Water workgroup's actions for 2023 are the Domestic Well Protection Guidance and the SB 552 Drought Planning letters. Draft letters have been developed and will be sent to the workgroup soon. The proposal for domestic well protection guidance is still in development and will be presented to the workgroup. Justine wanted to ensure that the discussions around recharge incorporate water quality moving forward.

Sustainable Water Supply Workgroup

The Sustainable Water Supply workgroup's actions for 2023 are evaluating in-valley supplies of surplus water that can be used for various projects and developing recommendations on flexibility for groundwater recharge of flood water that may be available in the coming winter. The recharge subgroup focuses on the groundwater recharge portion. The group had a robust discussion on the language in the In-Valley Supply action about the "solicitation of projects" and what that means. The Sustainable Water Supply workgroup intends to develop a portfolio of projects that would benefit from the identified surplus water to achieve the CAP desired outcomes. The group has not fully fleshed out what the project evaluation or solicitation process will entail. However, there was concern that it may become a recharge heavy project list. It was suggested that the text around project solicitation be softened so as not to sound so prescriptive. The group also discussed the forthcoming recharge letter being drafted by the subgroup that is intended to go to the governor and seeks clarification on Senate Bill 122, which codified the theme of the Executive Orders of 2023 for diverting floodwaters to groundwater recharge, with modifications. The letter has not yet made it outside the recharge subgroup, but there is interest in broader participation and review. It was also suggested that the flood management community review the letter to ensure that concerns about liability are addressed. The letter will continue through the CAP process but with a requested sense of urgency, given the importance of establishing clarity before flood waters are present.

Ecosystem Health

The Ecosystem Health workgroup will have one priority action in 2023, which are the restoration principles that have already been developed and are with the Land Repurposing and Demand Reduction workgroup for review prior to moving through the remainder of the CAP process.

Land Repurposing and Demand Reduction Workgroup

The Land Repurposing and Demand Reduction workgroup proposed actions for 2023 are putting forth a letter with Utility Scale Solar Recommendations and the state Multibenefit Land Repurposing Program (MLRP) letter supporting state and federal funding and improvements to contract language for DAC benefits. The Utility Scale Solar Recommendations Letter is being revised and is close to making it to the workgroup for final review.

APPENDIX A: SUPPLEMENTAL MATERIAL



October 16, 2023

Via Email

Ms. Janice Piñero
Bureau of Reclamation, Bay-Delta Office
801 I Street, Suite 140
Sacramento, CA 95814-2536
Email: sha-MPR-BDO@usbr.gov

Re: Cooperating Agencies Draft Environmental Impact Statement for the Long-Term Operations of the Central Valley Project

Dear Ms. Piñero:

The San Luis & Delta-Mendota Water Authority (“Water Authority”) appreciates the opportunity to comment in response to the U.S. Bureau of Reclamation’s (“Reclamation”) Cooperating Agencies Draft Environmental Impact Statement for the Long-Term Operations of the Central Valley Project (“Draft EIS”). Through this ongoing National Environmental Policy Act (“NEPA”) process, Reclamation will be making policy decisions on a matter of vital importance to the future of California, including its protected fish and wildlife species, millions of people, and millions of acres of prime farmland.

The Water Authority is a public agency with its principal office located in Los Banos, California. It was formed in 1992 as a joint powers authority and has twenty-seven member agencies. Twenty-five of the Water Authority’s member agencies contract with the United States for the delivery of water from the federal Central Valley Project (“CVP”). A list of Water Authority member agencies is attached as Exhibit A. Most of the Water Authority’s member agencies depend upon the CVP as the principal source of water they provide to users within their service areas. That water supply serves approximately 1.2 million acres of agricultural lands within areas of San Joaquin, Stanislaus, Merced, Fresno, Kings, San Benito, and Santa Clara Counties, a portion of the water supply for nearly 2 million people, including in urban areas within Santa Clara County referred to as the “Silicon Valley,” and millions of waterfowl that depend upon nearly 200,000 acres of managed wetlands and other critical habitat within the largest contiguous wetland in the western United States. The operations of the CVP are therefore of vital interest and importance to the Water Authority, its member agencies, and the people, farms, businesses, communities, and wildlife refuges they serve. As a result of their functions and responsibilities, the Water Authority and its member agencies have special expertise regarding a number of the environmental issues related to potential changes to long-term operations of the CVP. The Water Authority will make additional comments, and perhaps changes to the following comments, when and as Reclamation makes additional NEPA documents available for review.



SLDMWA Comments on Cooperating Agency DEIS for the Long-Term Operations of the CVP and SWP

1. The Draft EIS is Materially Incomplete

The Water Authority is among the local agencies Reclamation agreed is a cooperating agency and appreciates the opportunity to provide input in this role. Unfortunately, the Draft EIS is materially incomplete. Many sections of the Draft EIS lack any content, and the remaining sections are at least partially incomplete. Relevant discussion and analysis are not included. Most of what has been provided consists of background descriptions, while analysis of the potential effects or impacts of the several alternatives for long-term operations of the CVP is missing. This incomplete state of the Draft EIS prevents the Water Authority and other cooperating agencies from effectively providing the benefit of their expertise in the NEPA process.

The Water Authority requests that Reclamation circulate a more complete version of the Draft EIS to cooperating agencies for review and comment prior to releasing a draft environmental impact statement to the public. This would allow cooperating agencies to help correct and improve the analysis in the Draft EIS before the public is asked to review and comment.

2. “Harmonizing” or “Reconciling” CVP Operations with State Water Project (“SWP”) Operations Required by CESA is Not an Authorized CVP Purpose

Various statements in the Draft EIS indicate Reclamation is considering “voluntary” changes to CVP operations to help meet requirements imposed on the State Water Project (“SWP”) pursuant to the California Endangered Species Act (“CESA”). For example, Chapter 1 says: “To address the review by Executive Order 13990 and to voluntarily reconcile CVP operating criteria with operational requirements of the SWP under the California Endangered Species Act, Reclamation and DWR anticipated a modified Proposed Action and associated biological effects analysis that would result in new Biological Opinions for the CVP and SWP.” Draft EIS, p. 1-1; see also *Id.*, p. 2-1. And, it states “[t]he preferred alternative will meet the purpose and need and best harmonize the operation of the CVP and SWP.” *Id.*, p. 1-6. It describes Alternative 2, the “Multi-Agency Consensus” alternative as “actions developed with the California Department of Fish and Wildlife, DWR, NMFS, and USFWS to harmonize operational requirements of CVP with California Endangered Species Act requirements for the SWP.” *Id.*, p. 1-3; p. 3-2. The more detailed description of Alternative 2 in Appendix E describes extensive involvement by the California Department of Fish and Wildlife (“CDFW”), the state agency which administers regulation under CESA, in decisions regarding operations of the CVP.

The United States has long maintained, correctly, that Reclamation’s operation of the CVP is not subject to CESA, because Congress has never waived the sovereign immunity of the United States against regulation by the State of California under CESA. The Draft EIS, though, refers to Reclamation’s proposed actions to comply with requirements imposed under CESA as “voluntary.” The Draft EIS nowhere cites authority or direction from Congress to operate the CVP to comply with CESA.

The approach in the Draft EIS assumes Congress has authorized Reclamation to choose to operate the CVP to comply with requirements imposed by CDFW pursuant to CESA. Congress has not. Where Congress has directed that the CVP be operated to comply with California law, it has conspicuously omitted reference to CESA. For example, in section 3406(b) of the Central



SLDMWA Comments on Cooperating Agency DEIS for the Long-Term Operations of the CVP and SWP

Valley Project Improvement Act (“CVPIA”), Congress directed Reclamation to “meet all obligations under state and federal law, including but not limited to the federal Endangered Species Act, 16 U.S.C. s 1531, et seq., and all decisions of the California State Water Resources Control Board establishing conditions on applicable licenses and permits for the project.” The express reference to the federal ESA, and the omission of CESA, indicates an intent that only the federal wildlife statute would apply. The express reference to state law decisions of the California State Water Resources Control Board, without reference to CESA, likewise indicates Congress did not intend Reclamation to comply with state law requirements imposed under CESA. Another example of such intent for the CVP is found in section 4002 of the Water Infrastructure Improvement for the Nation Act (“WIIN Act”). There, Congress expressly and extensively addressed Reclamation’s obligations under the federal ESA but made no mention of CESA. Similarly, in section 4005(b) of the WIIN Act Congress provided for an “offset” for SWP contractors where CESA requirements imposed on the SWP resulted in increased CVP yield. Congress presumed that in such circumstances that increased yield would be available for water supply purposes to offset impacts to SWP contractors, not that CVP operations would conform to CESA as well.

No federal agency, including Reclamation, has authority to “voluntarily” submit to regulation under CESA. “It is well settled that “[o]nly Congress enjoys the power to waive the United States’ sovereign immunity.” *Plaskett v. Wormuth*, 18 F.4th 1071, 1086 (9th Cir. 2021). “A waiver of the Federal Government’s sovereign immunity must be unequivocally expressed in statutory text. Moreover, a waiver of the Government’s sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign.” *Lane v. Pena*, 518 U.S. 187, 192 (1996). Congress has not adopted a statute waiving the United States’ immunity from regulation under CESA, and Reclamation has no authority to disregard that choice.

In sum, the CVP is unquestionably subject to regulation under the federal ESA, administered by the federal wildlife agencies. But Reclamation does not have the discretion to voluntarily submit to regulation under CESA, administered by CDFW, as well. If the operation of the CVP is to be subject to the requirements of CESA and the decisions of the CDFW, that is a decision only Congress can make. Unless and until Congress directs otherwise, Reclamation has no authority to “voluntarily” operate the CVP to satisfy requirements imposed under CESA.

3. The Draft EIS Includes Infeasible Alternatives That Would Violate Water Supply Contracts and Article 6(g) of the COA

As the Draft EIS states, “[r]easonable alternatives are a reasonable range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action. (40 Code of Federal Regulations [CFR] § 1508.1(z)).” Even based on the limited information provided in the Draft EIS, it is apparent that some alternatives are infeasible.

For example, Alternative 3 (Modified Natural Hydrograph) would not comply with CVP contractual requirements. Under Alternative 3, the CVP would be operated “to increase[] Delta outflow up to 65% of unimpaired flow and to carryover storage requirements in addition to other measures.” Draft EIS, p. 1-3. Specifically, Alternative 3 would change Delta outflow requirements to “limit water diversions by CVP and SWP water service contractors, settlement contractors, and exchange contractors under SWP and CVP water rights to human health and safety if outflow



SLDMWA Comments on Cooperating Agency DEIS for the Long-Term Operations of the CVP and SWP

requirements are not achieved, and limit releases of stored water beyond releases necessary to meet D-1641 in most months to prioritize achieving reservoir storage requirements[.]” *Id.*, p. 3-62. Alternative 3 provides it would allow the reduction of diversions and deliveries “by more than contract terms currently allow to meet operational requirements to protect listed species.” *Id.*

Additionally, Alternative 3, and perhaps other alternatives, would reduce or eliminate pumping during excess conditions in violation of the “Agreement Between the United States of America and the State of California for Coordinated Operation of the Central Valley Project and the State Water Project” (“COA”). CVPIA section 3411(b) directs Reclamation to comply with the COA. Article 6(g) of the COA requires Reclamation to “export and store as much water as possible within its physical and contractual limits” during excess conditions. A federal district court has determined Reclamation has a mandatory obligation to comply with Article 6(g) of the COA during excess conditions. *See San Luis & Delta-Mendota Water Authority v. U.S. Dept. of the Interior*, No. 1:11-cv-00952 LJO GSA, E.D. Cal. 2015, 2015 WL 893365. Any alternatives considered for adoption must provide for meeting this obligation to maximize export pumping during excess conditions.

To make this point more generally, the Purpose and Need identified in the Draft EIS properly includes meeting “requirements under federal Reclamation law” as well as “Reclamation contractual obligations and agreements. Draft EIS, p. 2-1. To ensure that each alternative will comply with Reclamation’s contractual and statutory obligations, the EIS should be refined to identify and clarify the basis for each proposed operational element of CVP operations under each alternative. Specifically, for each proposed operational element of each alternative analyzed, including mitigation actions, the EIS should identify: the purposes being served and how each element ties to a Congressional direction, a regulatory requirement, or a contractual obligation. This approach is important for distinguishing between actions taken to further a project purpose versus regulatory requirements and to ensure that mitigation is not undertaken for actions that are taken to meet non-project regulatory requirements. Alternatives that prevent Reclamation from being able to meet its legal and contractual obligations or that are economically infeasible should be screened out from further consideration.

4. The Description of the Project Area and Species to be Studied is Inconsistent

NEPA requires an EIS to “succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration[.]” 40 C.F.R. § 1502.15. This discussion should include a “general description of the physical environment of the project area and a map defining the project area, the associated ecosystem(s), and the affected environment.” Reclamation’s NEPA Handbook at 8-13. The Draft EIS is currently inconsistent about which geographic areas are considered part of the project area.

For example, sometimes the Trinity and Klamath Rivers are included in the project area that will be considered in the Draft EIS, and sometimes these rivers are excluded. For example, the “Study Area Location and Description” section in Chapter 2 states that the study area includes CVP services areas and CVP facilities on the Trinity River, but Figure 2.2-1 in the same chapter does not include the Trinity River and areas of the Trinity Project that are impacted by operations considered in the Draft EIS. Draft EIS, pp. 2-2 - 2-3. Additionally, while the study area appears to



SLDMWA Comments on Cooperating Agency DEIS for the Long-Term Operations of the CVP and SWP

cover entire counties served by the SWP, it covers only the locations of CVP facilities rather than the entire area the CVP serves. *Id.*, Figure 2.2-1 on p. 2-3. An example is Merced County, which is served by the CVP but is not included in the Study Area Map. *Id.*

To ensure a complete analysis of potential impacts, the project area must include the CVP service areas and facilities located within the watersheds of rivers included in the project area. The Draft EIS must be clearer about which components of the Trinity River Division operations will be analyzed. Reclamation must decide on a project area for the Draft EIS and consistently apply that project area throughout the document.

In addition, the Draft EIS is inconsistent regarding which species will be studied and included for analysis in the Draft EIS. Reclamation must decide which species will be included, and then be consistent with that choice throughout the Draft EIS.

5. More Specific Comments are Included in Attachment B

Additional and more detailed comments are attached to this letter as Exhibit B. Please note that these comments should not be considered an exhaustive list of all the defects and problems we see in the Draft EIS. Instead, this is our effort, in the limited time allowed, to identify some basic needed changes to the Draft EIS as Reclamation reconsiders its approach before releasing a draft to the public.

Conclusion

The Water Authority and its member agencies hope to work in a cooperative manner with Reclamation to ensure that the final environmental impact statement addresses the significant issues that arise from potential modifications of CVP operations and includes an appropriate range of alternatives and a robust and complete impact analysis. Reclamation's analysis ultimately must foster a workable, environmentally sound plan for continued operations of the CVP that protects and restores the socioeconomic vitality of, and minimizes the adverse environmental impacts in, the regions the CVP serves, while ensuring legally and scientifically supportable, reasonable, and effective protection mechanisms for the listed species.

The Water Authority appreciates this opportunity to submit these comments and looks forward to working with Reclamation and others in this planning process.

Sincerely,

A handwritten signature in blue ink, reading "J. Scott Petersen".

J. Scott Petersen, P.E.
Director of Water Policy
San Luis & Delta-Mendota Water Authority



EXHIBIT A

San Luis & Delta-Mendota Water Authority Member Agencies

The Water Authority's members are:

- Banta-Carbona Irrigation District
- Broadview Water District
- Byron Bethany Irrigation District
- Central California Irrigation District
- City of Tracy
- Columbia Canal Company (a Friend)
- Del Puerto Water District
- Eagle Field Water District
- Firebaugh Canal Water District
- Fresno Slough Water District
- Grassland Water District
- Henry Miller Reclamation District #2131
- James Irrigation District
- Laguna Water District
- Mercy Springs Water District
- Oro Loma Water District
- Pacheco Water District
- Panoche Water District
- Patterson Irrigation District
- Pleasant Valley Water District
- Reclamation District 1606
- San Benito County Water District
- San Luis Water District
- Santa Clara Valley Water District (Valley Water)
- Tranquillity Irrigation District
- Turner Island Water District
- West Stanislaus Irrigation District
- Westlands Water District



SLDMWA Comments on Cooperating Agency DEIS
for the Long-Term Operations of the CVP and SWP

EXHIBIT B

**Detailed Comments on the Cooperating Agencies Draft Environmental Impact Statement
for the Long-Term Operations of the Central Valley Project**

[See attached Excel spreadsheet]



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LTO Interested Parties

October 2023

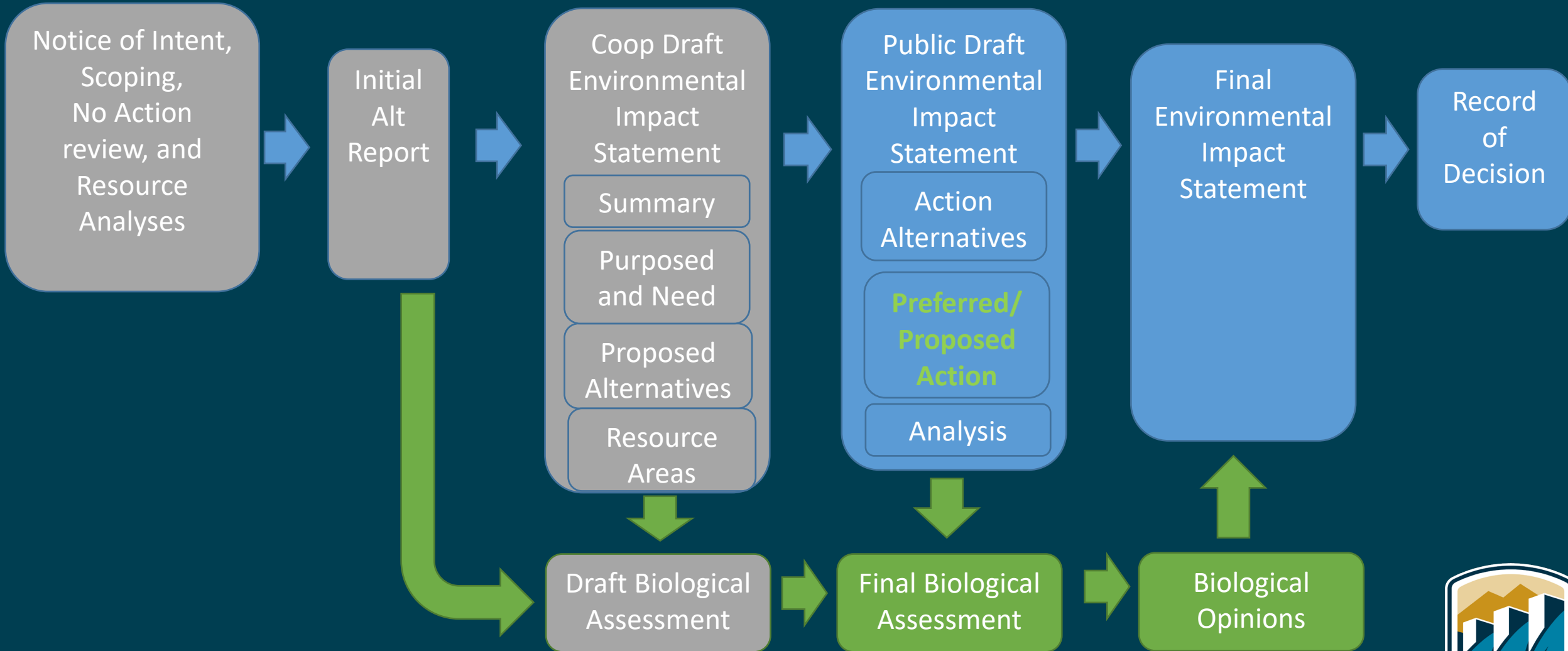


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Agenda

- Summary of current NEPA/ESA progress
- Biological Assessment Fish Chapters and Technical Appendix Updates
- Coordination/Remaining Schedule

2021 NEPA and ESA Process



Prior Monthly Meetings

- March – Scoping
- April – NEPA and ESA Process
- May – Knowledge Base Papers
- Initial Alternatives (June – October)
- November – Alternative Formulation Update
- December – WIIN Act Quarterly Update
- January – No meeting
- February – Analytical Tools
- March – WIIN Act Quarterly Update
- April – Environmental Baseline
- May – Preliminary Alternatives
- June – WIIN Act Quarterly Update
- July – Qualitative Biological Assessment
- August – Cooperating Agency Draft EIS
- September – WIIN Act Quarterly Update



Cooperating Agency Draft EIS Input



- 30-day comment period
- Comments will be considered and addressed in the Public Draft EIS, which is anticipated in late 2023
- Cooperating Agencies also will have the opportunity to provide comments on the Public Draft EIS





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Biological Assessment- Species Analysis & Technical Appendix Updates

Effect Analysis on Federally Listed Species



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BA Effects Analysis Chapters

Status of the Species

Distribution and abundance

Life history and habitat requirements

Limiting Factors, threats, and stressors

Management Activities

Effects Analysis

by Life stage

Critical Habitat Analysis

by habitat element

Life Cycle Analysis

NMFS (2019) Framework for Effects Analysis

- Magnitude of the Stressor
 - Severity: Beneficial, Lethal, Sublethal, or Minor
 - Proportion of the Population: Large ($\geq 70\%$), Medium ($> 2\%$), or Small ($\leq 2\%$)
 - Frequency of Years: High ($\geq 75\%$), Medium (25-75%), or Low ($< 25\%$)
- Weight of Evidence
 - High: multiple publications, species specific, location specific, quantitative, and/or strong statistical power.
 - Medium: between high and low
 - Low: single studies, unpublished data, untested hypotheses, and/or weak statistical power
- Reclamation will address magnitude through “Lines of Evidence”
- “Lifecycle Analyses” combine stressors



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BA Chapter- Winter-run and Spring-run Chinook salmon, steelhead

Major Comments/Resolution

- Added citations about effects
- Added context on uncertainty of stressors
- Relying on quantitative methods for evaluating Effects: severity, proportion, frequency, weight of evidence





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BA Chapter- Delta Smelt



Major Comments/Resolution

- Incorporated migratory behavior into conceptual model
- Added contaminant stressor for larvae and juveniles
- Added citations about low salinity habitat and intersection with other habitat characteristics



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BA Chapter- Longfin smelt



Major Comments/Resolution

- Incorporated migratory behavior into conceptual model
- Added contaminants to larvae and juvenile stressors
- Added discussion of uncertainty with abundance-outflow relationship in relevant lines of evidence
- Revised distribution to include South SF Bay



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BA Chapter- green sturgeon



Major Comments/Resolution

- Added juvenile life stage to Sacramento River in fall and winter
- Reviewed and revised contaminant stressor



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Southern Res. Killer Whale

Reclamation Egg Mortality Model

Anticipated

Egg to fry survival

Trinity Chinook S3 model

Anticipated

smolt biomass reaching ocean





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App. I- OMR Management

Volumetric Influence- In progress

Fraction of inflow exported

DSM2 Flow into Junctions- In progress

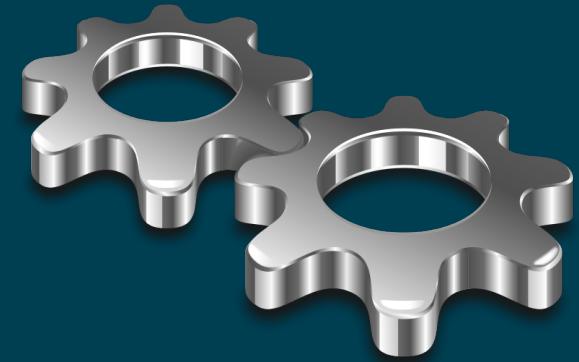
Fraction of flow routed

DSM2 Zone of Influence- In progress

Fraction of Delta regions hydrologically altered

DSM2 Particle Tracking- Anticipated

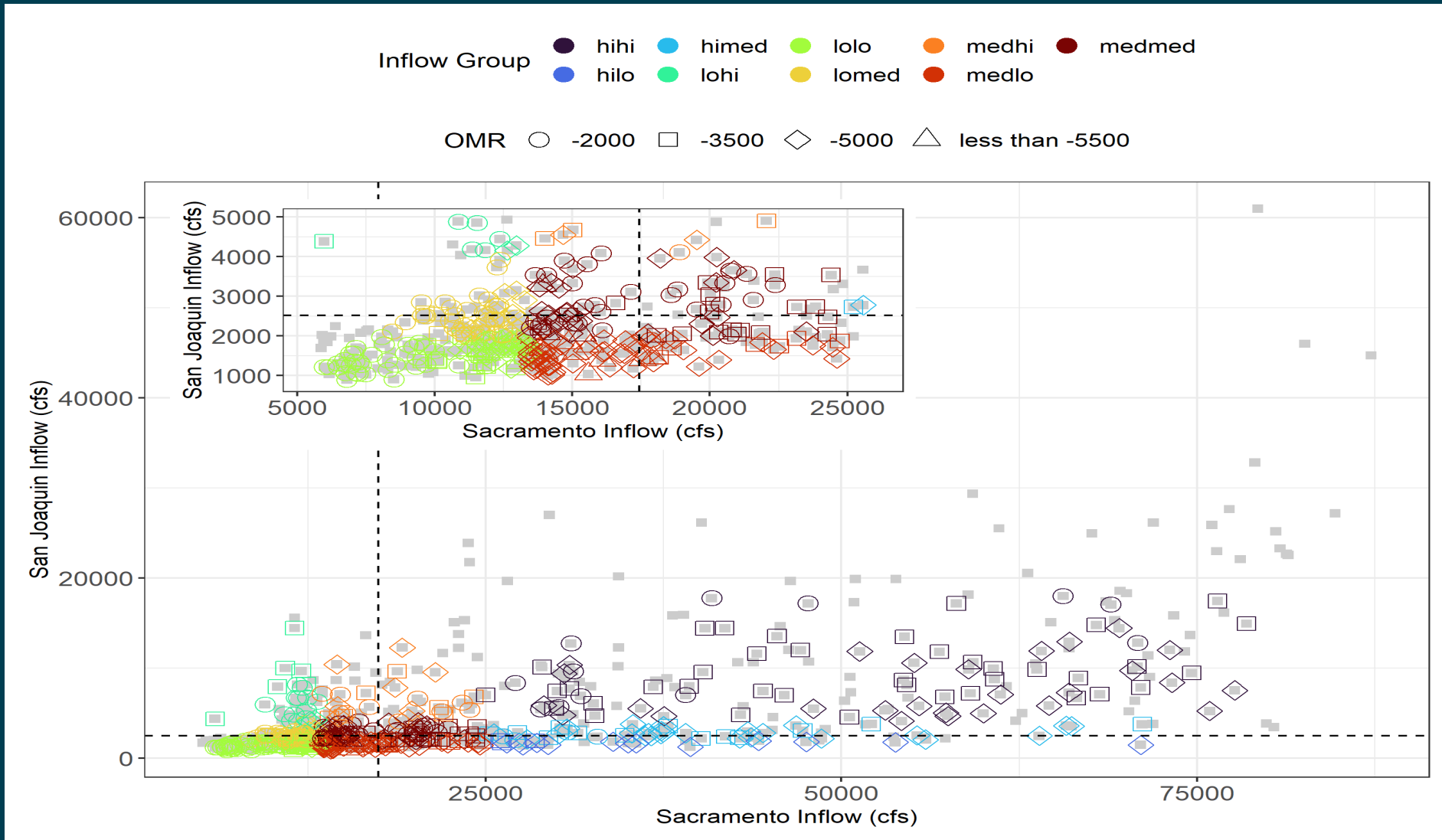
Fraction of particles entrained from Delta regions





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App. I- OMR Management





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App. I- OMR Management

STARS- Drafted

Estimated routing probability and
through-Delta survival

Delta Passage Model

In progress

Estimated Delta survival to Chipps
Island

EcoPTM – Anticipated

Estimated Delta survival to Chipps Island





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App. I- OMR Management

Longfin smelt salvage-OMR model

Anticipated

Estimated LFS adult salvage

Negative Binomial & Salvage Density

Drafted

Estimated monthly loss

Winter-run Chinook CWT proportional loss

Anticipated

Estimated CWT group loss





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App. J- Spring Delta Outflow

Delta outflow vs. Bay species abundance- In progress

Abundance index trends

Delta outflow vs. Sturgeon Index- Drafted

YCI index trends

Zooplankton-Delta Outflow Analysis- Drafted

Estimated CPUE of key zooplankton species seasonally

Flow-Survival Juvenile Salmon Modeling- Anticipated

Estimated river outmigration survival

XT Juvenile Salmon Survival Modeling- Anticipated

Estimated river outmigration survival





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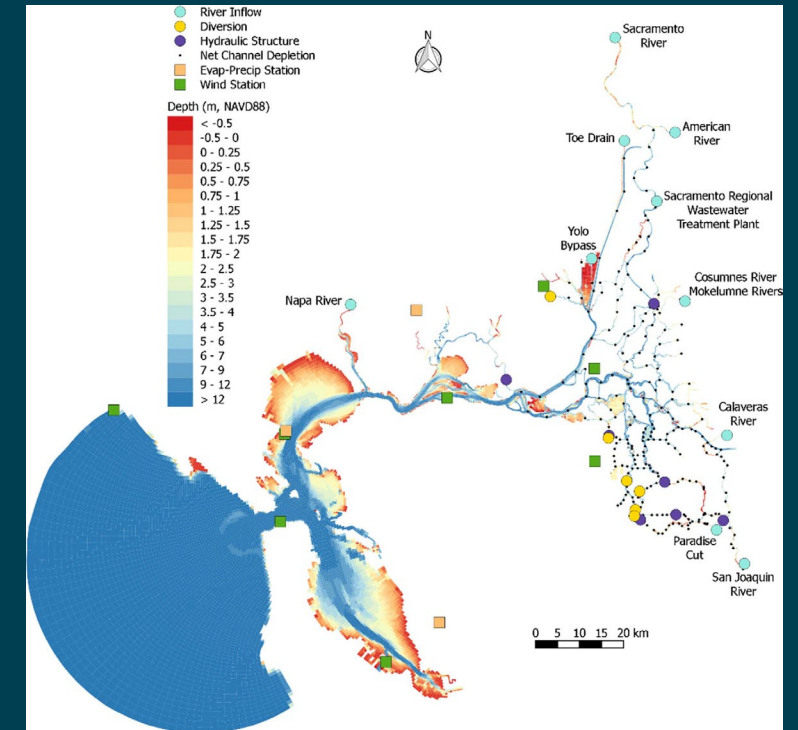
App. K- Summer/Fall X2

Delta Smelt Habitat Modeling- Anticipated

Estimated HSI

Maunder & Deriso Delta Smelt – Anticipated

Estimated populations growth rates



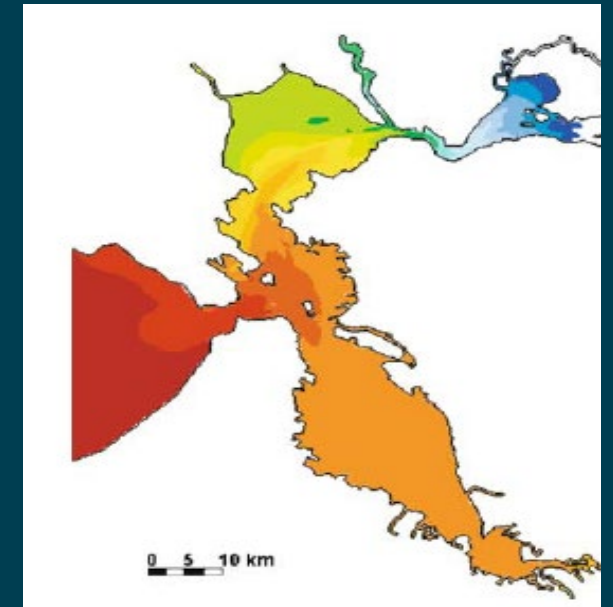
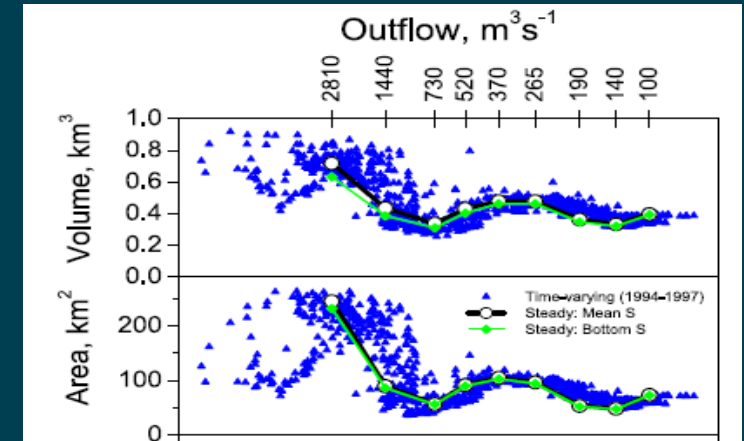


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App. K- Summer/Fall X2

Major Comments/Resolution

- Added relevant literature about zooplankton observations, salinity, and temperatures in relation to Delta Smelt tolerances
- Added relevant literature about SCHISM validation
- Added Maunder and Deriso model





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App. L- Shasta CWP Mgt.

Shasta CWP Carryover and Refill Analysis- In Progress

Frequency of Bin Criteria Met

Shasta Temp Analysis- Anticipated

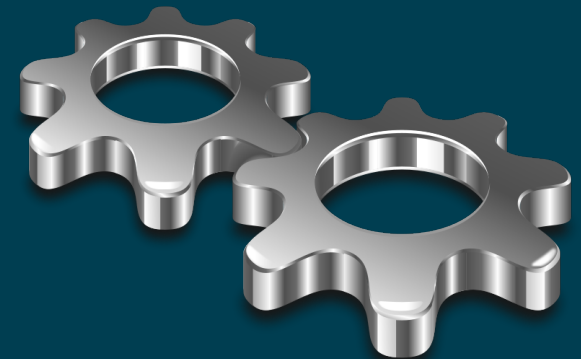
Frequency of Temperature Criteria Met

Temperature Dependent Mortality Analysis- Anticipated

Predicted TDM

Winter-run Juvenile Production Index- Anticipated

Predicted winter-run JPI





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App. L- Shasta CWP Mgt.

Sacramento WUA analysis- Anticipated

Estimated area available

Sacramento Dewatering analysis-

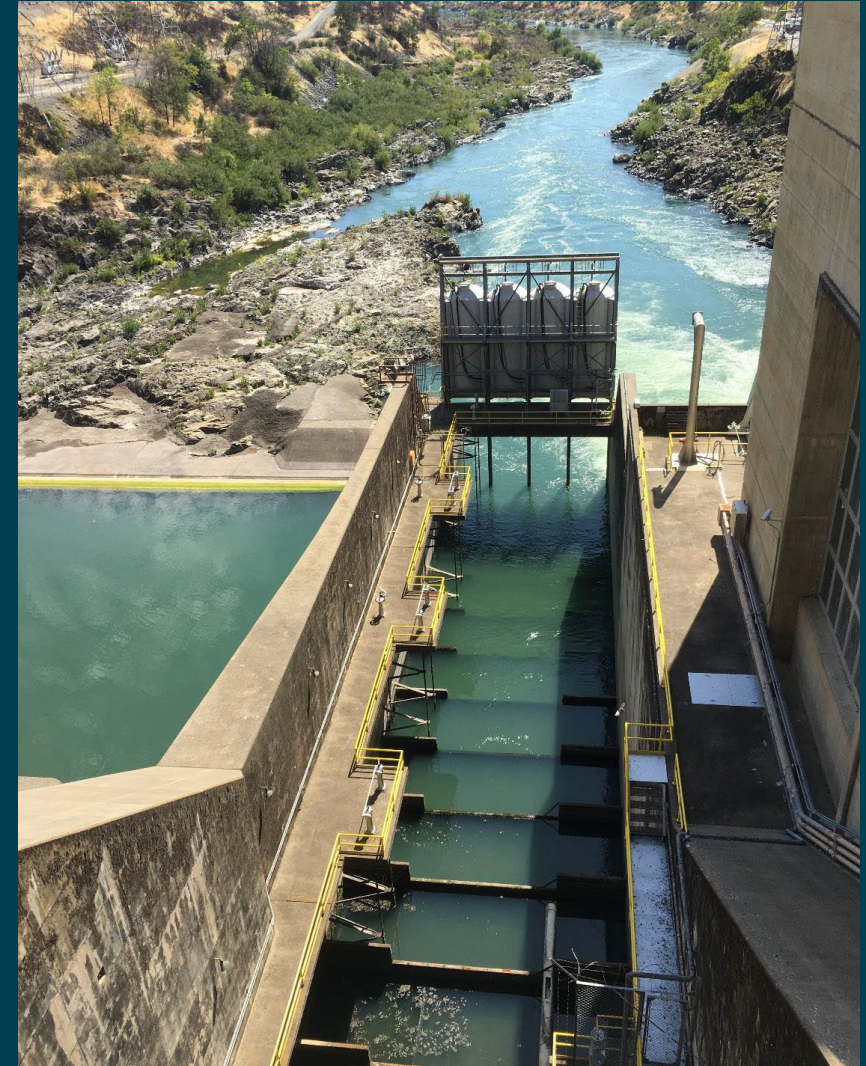
Anticipated

Estimated proportion of redds dewatered

Sacramento Juvenile stranding analysis-

Anticipated

Estimated proportion of juveniles stranded





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App. L- Shasta CWP Mgt.

Major Comments/Resolution

- Reviewed and updated Central Valley temperature criteria for ESA and other aquatic species



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App. M- Folsom Flow & Temp.

American River spawning WUA-

Anticipated

Estimated area available

American River temperature analysis-

Anticipated

Frequency of temperature criteria met

American River salmonid redd dewatering-

Anticipated

Estimated proportion of redds dewatered





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App. N- Stanislaus SRP

Stanislaus River temperature analysis- Anticipated

Frequency of Temperature Criteria Met

Major Comments/Resolution

- Considering adding a WUA rearing and spawning analysis, based on availability.



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App. O- Tributary Habitat

SIT DSM habitat modeling

Drafted

Estimated area available

Clear Creek WUA for spawning and rearing

Anticipated

Estimated area available

Clear Creek Temp Analysis- Anticipated

Frequency of Temperature Criteria Met





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App. P- Delta Habitat

No quantitative lines of evidence

Major Comments/Resolution

- Added literature regarding Delta habitat and contaminants, lower trophic food web, clams, and predation





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App. Q- Georgiana Barrier

No quantitative lines of evidence

Major Comments/Resolution

- Reviewing and adding relevant DWR barrier effectiveness modeling, monitoring study plan, and performance measures



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App. U-Monitoring

No quantitative lines of evidence

Major Comments/Resolution

- Reviewed and included some ITP monitoring (i.e. FRP, Yolo Bypass monitoring projects)



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Lifecycle Analyses

IOS- Anticipated

pop'n growth rate, abundance and production trends

OBAN- Anticipated

pop'n growth rate, abundance and production trends

SIT Winter-run and Spring run LCA- In progress

pop'n growth rate, abundance and production trends

Delta smelt LCM-E- Drafted

pop'n growth rate



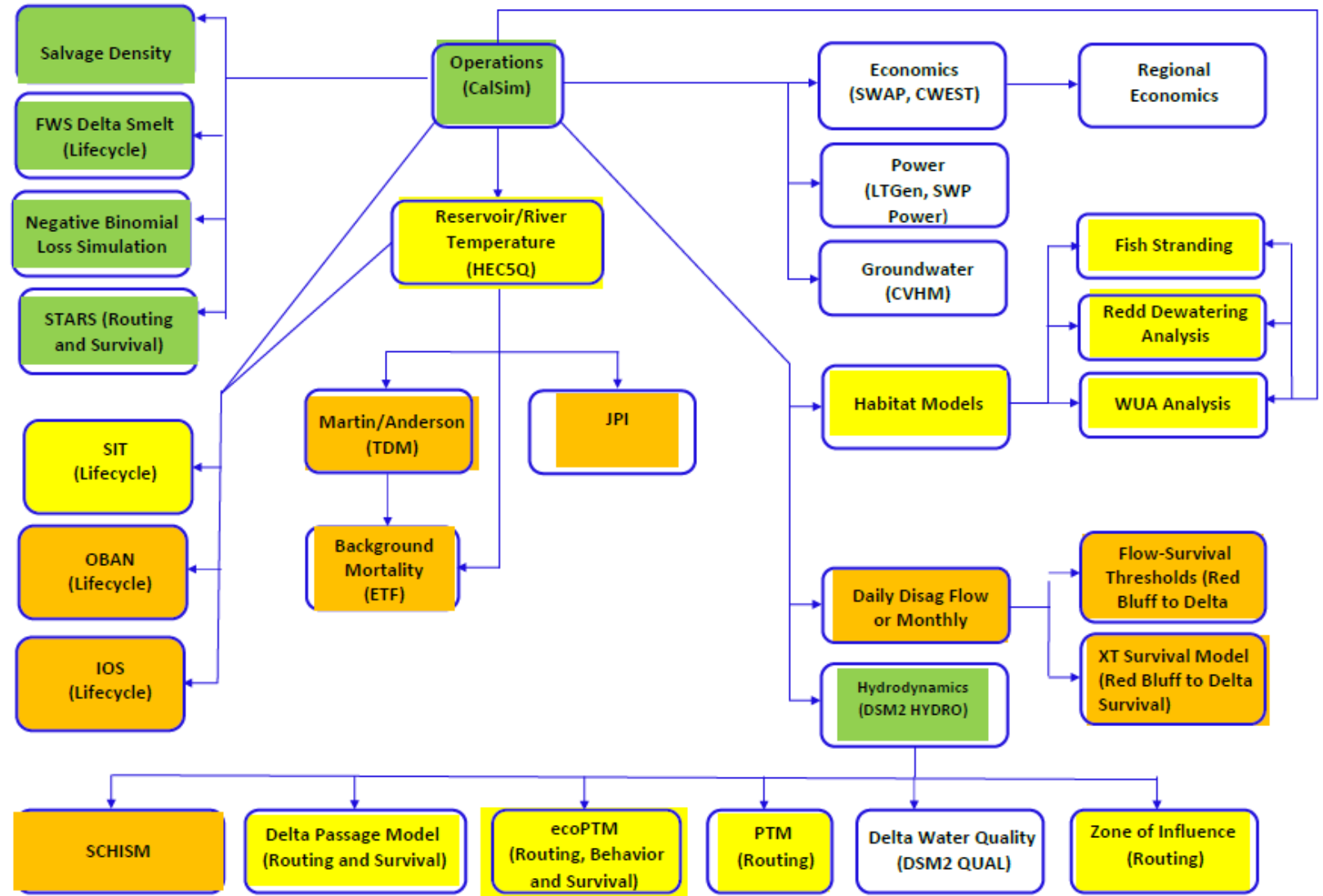
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Drafted

In progress

Anticipated

DRAFT – SUBJECT TO REVISION



Coordination and Remaining Schedule

- Cooperating Agency Draft Environmental Impact Statement
- Public Draft EIS and Final Biological Assessments
- Record of Decision





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Thank you

