

Congress of the United States
Washington, DC 20515

November 15, 2021

The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

The Honorable Gina M. Raimondo
Secretary
U.S. Department of Commerce
1401 Constitution Ave. NW
Washington, D.C. 20230

Dear Secretary Haaland and Secretary Raimondo:

We write to reiterate our grave concerns with the Bureau of Reclamation's (Reclamation) inexplicable request to reinitiate consultation on the 2019 Biological Opinions (BiOps) for Long-Term Operation of the Central Valley Project (CVP) and State Water Project (SWP).

On September 30, 2021, Reclamation sent a letter to the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) requesting reinitiation of consultation on the Long-Term Operation of the CVP and SWP. This action is extremely concerning because, despite repeated requests for an explanation of why potential modifications to the 2019 BiOps are needed, no explanation has been provided by Reclamation or other federal agencies. Nor has any federal agency expressed that the 2019 BiOps are not adequate. The only reasonable conclusion is that the decision to reinitiate consultation is a political decision, motivated by a desire to appease the State of California and non-governmental organizations that appear to only be interested in reducing water supply for millions of Californians who rely on these projects.

As we highlighted in our letter to you sent October 21, 2021, the 2019 BiOps: (1) were the product of a consultation that was initiated in 2016 by the Obama administration; (2) reviewed operations of the CVP and SWP proposed by Reclamation and the California Department of Water Resources, which operates the SWP; (3) were prepared and led by career staff in the FWS and the NMFS, many of whom were hired or appointed by the Obama administration; (4) were peer-reviewed in the course of their development; and (5) were based on the best scientific and commercial data available, including what had been learned about the

impact of CVP and SWP operations on species in the decade after adoption of the biological opinions they replaced. Furthermore, at the time of their release, these career staff extolled that the 2019 BiOps would provide greater protection of the listed species, while restoring operational flexibility for the CVP and SWP. Indeed, as explained by career staff in declarations filed in the consolidated litigation, operations under the 2019 BiOps and the 2020 Record of Decision (ROD) have shown demonstrative benefits to the species resulting from the adaptive, real-time management approach prescribed by the 2019 BiOps.

Reclamation's request seems incredibly misguided and sets a dangerous precedent. We believe it is critical to make decisions based on sound science and have outstanding questions as it relates to this action. We request you provide thorough answers to our questions below.

Inquiry 1

The 2019 BiOps analyzed long-term operations of the CVP and the SWP proposed by Reclamation and the Department of Water Resources (DWR). Reclamation and DWR submitted the initial proposed and biological assessment action in January 2019. During the consultation, Reclamation coordinated with numerous agencies, including FWS, NMFS, and the California Department of Fish and Wildlife, and over the course of the consultation process, the proposed action was modified multiple times to address concerns expressed by the federal and State fishery agencies about potential impacts on listed species. The agencies considered and planned for a variety of foreseeable circumstances, including a multi-year drought.

- **Given the range of scenarios contemplated in the 2019 BiOps, why are the federal agencies reinitiating consultation?**
- **What has changed since 2019 that merits the reinitiation of consultation?**
- **What specific analysis, data, or science has the Biden administration completed that justifies reinitiating consultation on the recently completed 2019 BiOps?**

Inquiry 2

In its letter requesting reinitiation of consultation, Reclamation states the goals of the new consultation are, "...to support species viability, protect life history diversity, support operational flexibility, provide regulatory certainty, support science and monitoring, and to create a single feasible adaptable coordinated operation for the CVP and SWP."

- **How does Reclamation reconcile those goals with the standards prescribed by Congress in Section 7 of the Endangered Species Act (ESA), that the proposed action will not jeopardize the continued existence of the listed species or cause adverse modification of designated critical habitat?**

Inquiry 3

The long-term operations plan analyzed in the 2019 BiOps and accepted through the 2020 ROD on Reinitiation of Consultation on the Coordinated Long-term Modified Operations of the Central Valley Project and the State Water Project established an improved approach to operations that enabled the action agencies, Reclamation and DWR, to better meet the real-time, biological needs of the many species native to the Bay-Delta watershed. Those real-time decisions were bound by a structured, science-based framework to ensure regulatory certainty.

- How do the agencies plan to continue this careful balance of creating sufficient operational flexibility to meet often competing demands of listed fish species and the demands of California's people and businesses, including agriculture, local communities, and other wildlife like refuges critical to the Pacific Flyway and listed terrestrial species?

Inquiry 4

The 2019 BiOps focus on anadromous fish and Delta smelt. The anadromous species have a three-four year-life cycle.

- Inasmuch as the 2019 BiOps have been in place for less than two years, what analysis has the Biden administration undertaken and on what data has it relied to conclude the 2019 BiOps may need revisions to adequately protect the listed species?

Inquiry 5

The federal agencies, including Reclamation, and state agencies recently filed with the District Court an "interim operations plan" for this water year. Those proposed operations deviate significantly from those analyzed in the 2019 BiOps and accepted by the 2020 ROD.

- How does Reclamation plan on complying with its obligations under the National Environmental Policy Act and Section 7 of the ESA, prior to implementing those proposed operations, as Reclamation has done previously when modifying operations during a reconsultation?

Inquiry 6

The 2019 BiOps underwent extensive reviews by FWS and NMFS and underwent independent, outside peer review to ensure that the biological opinions were based on best available science.

- **Are you aware of these scientific reviews and can you explain your understanding of the scope of the reviews?**
- **What specific analysis was done by federal agencies to determine that the BiOps may need revision to adequately protect the listed species?**

Inquiry 7

- **Is it the position of the Biden administration that operating the CVP in a manner that deliberately creates significant water shortages for water contractors, disadvantaged communities, and farms is an acceptable result of reinitiation of consultation?**

Inquiry 8

Our constituents have informed us that the annual groundwater overdraft in the San Joaquin Valley is around 2-3 million acre-feet, due in large part to surface water shortages caused by previous unmitigated federal regulations. Further shortages of CVP deliveries will exacerbate this problem.

- **How will the Biden administration evaluate impacts on the existing overdraft problem, or consult with San Joaquin Valley water professionals before making the decision to take action that will almost certainly reduce water deliveries by more than career staff of the federal agencies have said is required to comply with Section 7 of the ESA?**

Inquiry 9

Reduced CVP deliveries will inevitably result in less farming in the Central Valley, which has been identified as the most productive farming region in the United States. This outcome is not in our nation's best interest and is a national security concern.

- **Does the Biden administration feel it is appropriate, or wise, to outsource America's food supply to other countries, many of whom are likely adversarial to U.S. interests and who use farming techniques that cause more harm to the global environment?**

Again, we understand fully that California is experiencing extraordinary drought conditions, despite the recent "bomb cyclone" weather event. However, those extraordinary drought conditions make it all the more important that decisions regarding the management of water be carefully evaluated and explained. Those decisions will affect millions of people, in nearly every region of the State, millions of acres of farmland, and the environment. Care must be taken to ensure that additional, avoidable hardships are not imposed on people already experiencing hardships because of the pandemic and ongoing drought.

Thank you for your attention to this matter. We look forward to your prompt response and request we receive your response no later than November 29, 2021. We eagerly await your

response from the letter we sent to you on October 21, 2021, regarding the proposed interim operations plan, which we requested the response by November 4, 2021, and still have not received.

Sincerely,



David G. Valadao
Member of Congress



Ken Calvert
Member of Congress



Darrell Issa
Member of Congress



Doug LaMalfa
Member of Congress



Devin Nunes
Member of Congress



Michelle Steel
Member of Congress



Kevin McCarthy
House Republican Leader



Mike Garcia
Member of Congress



Young Kim
Member of Congress



Tom McClintock
Member of Congress



Jay Obernolte
Member of Congress