

# Exhibit A

**11-29-12**  
**Federal and State Proposal**  
**for Modification to the Remand Schedule and an Alternative Process**  
**for Development of Operational Strategies and a Collaborative**  
**Science and Adaptive Management Program**

November 29, 2012

The time constraints of the current court ordered remand schedules do not afford the opportunity to undertake a collaborative adaptive management process within the framework of the existing NMFS (2009) and FWS (2008) Biological Opinions (BiOps). This document describes an alternative, more inclusive, and transparent approach to the development of operational strategies that State and Federal agencies (DWR, DFG, USBR, FWS, and NMFS) agree to employ with public water agencies and non-governmental organizations which are remand parties if the existing court ordered remand schedules for the BiOps and the associated NEPA process are extended for three years. An extension would enable a more efficient and focused evaluation of a number of specific Reasonable and Prudent Alternative (RPA) actions through a collaborative, science-based approach designed to reduce uncertainties and improve performance. The State and Federal agencies will seek a three year extension of the current court-ordered schedules and request new dates to complete two new BiOps and the associated NEPA process in favor of implementing the collaborative science and adaptive management program described herein, that is largely targeted at key Delta actions included in the RPAs. This collaborative science and adaptive management program will also be designed to test, on a limited scale, the type of science program contemplated for the larger, long-term proposed BDCP program.

In addition to targeting science and adaptive management for key Delta actions, this alternative remand process will allow Stanislaus River litigants additional time to continue efforts to engage with Federal and State agencies to develop an understanding of the fishery flow requirements and corresponding operational opportunities below New Melones Reservoir on the Stanislaus River. Additional time will allow development and evaluation of the execution of operational strategies and other management actions affecting the Stanislaus River. These operating strategies will take into account the ramifications on water supplies from New Melones and will be used in the development of a long-term operations plan for New Melones. To the extent that these discussions and the identified operations plan affect delta flow and/or delta operations, the CAMT team identified below will be informed of the discussions.

In addition to seeking a three year extension of time, State and Federal agencies will propose that if the court grants the requested extension, the remand parties will make annual status reports to the court, with the first such report due in January 2014. The State and Federal agencies will further propose that at any time a remand party may, by motion, request that the court establish a single schedule to complete the smelt and salmonid consultations. Further, the State and Federal agencies will propose that at any time prior to the status report to be filed by January 15, 2016, any remand party may set forth its views on whether it is necessary to continue consultation to obtain new BiOps through the remand process. If the parties agree that remanded consultation is no longer necessary in these cases, the parties shall so inform the Court, provide an explanation detailing their reasoning for reaching that conclusion, and request appropriate relief by motion. If an initial three year extension for the remands is granted, the three year extended timetable would remain in place, absent a court order to the contrary.

The enhanced processes for developing operational strategies and collaborative science that would be possible as a result of the extended remand schedules are also intended to encourage a "time out" on litigation

associated with annual SWP and CVP Delta operations under the existing BiOps. Participants in this alternative interim process would commit to the collaborative processes herein for developing annual operational strategies and criteria, with the non-binding goal of avoiding litigation over annual operations during the next several years. All participants acknowledge that the limited resources available for the collaborative science process may be diminished if new litigation nevertheless occurs.

If the court authorizes an extension of the remand schedules, then the State and Federal agencies will involve other participants, as described below, in the development of operational strategies and associated adaptive management processes and monitoring programs. The State and Federal agencies will also establish a Collaborative Adaptive Management Team (CAMT) which will assist in and oversee the design, implementation and evaluation of targeted operational strategies and the associated monitoring programs, as described below.

## **Key Elements of the Process for Development of Interim Operational Strategies and Evaluations**

- 1. A Collaborative Adaptive Management Team (CAMT)** will be established to assist DWR and Reclamation and the State and Federal fish agencies in designing, implementing, and evaluating a multi-year program to incorporate a scientifically robust adaptive management process into the implementation of the BiOps over the interim period.<sup>1</sup> Before forming and implementing the CAMT, the State and Federal agencies will informally engage with remand parties to solicit input and ideas on the purpose, composition and function of the team, including coordination with existing entities.

The adaptive management process will include the active evaluation of current hypotheses associated with key operating parameters that are associated with the Bay Delta oriented measures of the BiOps, synthesizing current scientific information, developing new modeling or predictive tools, and testing and evaluating alternative operational strategies and other management actions to improve performance from both biological and water supply perspectives.

The CAMT would be comprised of representatives of the State and Federal agencies, public water agencies, NGOs, and other remand parties, who possess, as a result of education, training, or experience, expertise or technical skills that would enable them to contribute, to the development and evaluation of these hypotheses and alternative operational strategies. Other senior scientists may be invited to participate by mutual consent (IEP, Delta Science Program, etc). Representation of remand parties on the CAMT would be limited in number to maintain effectiveness of the CAMT.

The purpose of the CAMT is to provide an expanded opportunity for effective involvement of the public water agencies and the NGO community in the design, evaluation, and implementation of an active adaptive management program and operational strategies for the State and Federal water projects affecting the Bay Delta over this interim period, and thereby serve as an early start on the collaborative science processes contemplated for the BDCP. The specific functions of the CAMT will also be oriented to closely integrate into the existing groups and processes that guide implementation activities of the BiOps and avoid duplicating those processes.

In addition, the CAMT will work with the State and Federal agencies to improve the transparency of agency decisions regarding real time operations. The current Delta Conditions Team (DCT) will continue to be the principal forum where stakeholders participate in real-time operations. The CAMT would review the composition and role of the DCT and suggest ways to improve its effectiveness. Further, the State and

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<sup>1</sup> Interim period refers to the period from the present to the completion of a new comprehensive consultation on the long-term operation of the state and federal water projects.

Federal agencies will improve the opportunity for collaborative stakeholder engagement including timely, meaningful exchanges of information and views, within practical limits, with teams already formed under the BiOps, including the Water Operations Management Team (WOMT), the Delta Operations for Salmon and Sturgeon (DOSS) group, the Smelt Working Group (SWG) and Data Assessment Team (DAT).

Furthermore, as a part of the 2012 “Lessons Learned” exercise now underway, the State and Federal agencies, in consultation with the public water agencies and NGOs, will examine opportunities to adjust the organization and function of these existing implementation teams to integrate the functions of the CAMT into the implementation processes, with the goal of improving performance, increasing the quality and timeliness of communications with the CAMT and otherwise promoting the openness and efficiency in the functions within and across the several groups.

- 2. The Existing 2008 FWS BiOp and 2009 NMFS BiOps, Including Possible Adjustments to RPAs as Described Below, Will Provide the Legal Framework for Operations and Operational Strategies Over this Interim Period.** The RPAs will be evaluated and refined through the collaborative science and adaptive management program and may be modified through administrative action or judicial approval as appropriate . The operations and operational strategies implemented under the collaborative science and adaptive management program will incorporate adjustments , as determined by FWS or NMFS, using the flexibility currently authorized by the RPAs or other appropriate administrative or judicial mechanisms. Adjustments may be adopted and implemented if they are likely to provide equivalent or improved biological protection for listed species and may take into account effects on timing or amount of water supplies.
- 3. The Collaborative Adaptive Management Team Will Assist in the Implementation of a Collaborative Science and Adaptive Management Program on a Defined Set of High-Priority Actions.** The CAMT will assist the State and Federal agencies in the development, evaluation, and implementation of the Collaborative Science and Adaptive Management Program that targets key actions that affect the Bay Delta. Working within a rolling two year planning framework to promote advanced planning and preparations, the CAMT will assist the agencies in undertaking the following actions in developing interim operational strategies:

  - a. **Identify the Specific Set of Actions and CESA Long-Fin Smelt ITP Actions** that would be the subject of the evaluation, building upon the structure and approach of the 2012 Stipulated Agreement for spring-time south Delta operations under the NMFS BiOp. Other management actions that will be considered for evaluation include the BiOp RPA actions, as well as alternatives thereto, for OMR flows and seasonal outflow requirements, other south Delta management actions and operating criteria, experimental predation removal programs, early habitat restoration, long-fin smelt actions provided in the Incidental Take Permit (ITP) for SWP operations, and consideration of the DFG Consistency Determinations for DWR operations under the BiOps. When developing interim operational strategies the agencies will ensure compliance with the requirements of the California Endangered Species Act (CESA) as it pertains to the affected species and the SWP and, where necessary, DWR and DFG (DFW) will confer regarding new or amended CESA authorizations to cover changes in SWP operations.
  - b. **Develop and Evaluate the Execution of Operational Strategies and Other Management Actions Affecting the Bay Delta Including a Planning, Monitoring and Evaluation Program.** The Collaborative Science and Adaptive Management Program will design operational strategies targeting the identified high priority actions to test out alternative scenarios designed to achieve equivalent or better biological outcomes as those contemplated in the underlying RPAs and ITP while taking into account the ramifications on water supplies. These operating strategies will be accompanied by appropriate monitoring and evaluation programs. Monitoring would be designed to evaluate the operational

strategy success in providing equivalent or better biological protection efficiently and effectively and generate improved information by which to reduce uncertainties.

4. **Adopt Annual Operational Plan.** Working collaboratively with the CAMT, by no later than December 15 of each year, DWR, Reclamation, DFG, FWS, and NMSF would develop and adopt an Annual Operational Plan that identifies the operational priorities in the Bay Delta for both fishery and water supply for the coming year and which will implement the Collaborative Science and Adaptive Management Program as described in section 3 above. Initial implementation would be based upon, and build off of, the real-time operational ranges identified in the existing BiOps, as refined or otherwise adjusted by the Collaborative Science and Adaptive Management Program. The Annual Operational Plan will also describe and provide for such in-season management adjustments as may be necessary and appropriate based upon the overall evaluation and where adjustments provide equivalent or better biological protection efficiently and effectively taking into account the ramifications on water supplies.
  - a. **Seasonal Operational Update** - No later than October, February, and May of each year, DWR, Reclamation, DFG, FWS, and NMFS, in collaboration with the Public Water Agencies, would seasonally evaluate operational performance, consistent with current conditions and the provisions of paragraph 2, and other operational considerations; and update seasonal operating forecasts. Seasonal updates are intended to exercise existing flexibility to maximize opportunities to meet water deliveries and fisheries protection.
  - b. **Real Time Operations Response Team** - DFG, FWS and NMFS will continuously monitor Delta conditions and, with input from DWR, Reclamation, and the Public Water Agencies, will provide real-time operating information to DWR and Reclamation consistent with the processes described in the BiOps. The CAMT would have a role in review and evaluation of real time operation actions, as discussed in section 1 and 3 above.
5. **Conduct Annual Independent Science Reviews of Operations and Effects on Species.** No later than September 30<sup>th</sup> of each year, DWR and Reclamation, with participation from DFG, FWS and NMFS and in active consultation with the CAMT, will develop a report on implementation of the prior year's RPA actions, the effects of the prior water year's operations on listed species and designated critical habitat addressed in the BiOps and the long-fin smelt ITP, identify new data collected, and evaluate the effectiveness of actions and new scientific research.<sup>2</sup> The report would consider whether any specific management actions or operating criteria should be refined in light of new information. The agencies would present this report, as well as an initial draft of the Annual Operational Strategy for the next year, for review by an independent science review panel, to be established by the Delta Science Program or other peer review provider, in an open, public forum which will afford members of the CAMT and other stakeholders with an opportunity to comment and otherwise participate. The CAMT will develop direction, by general consensus, regarding the panel members, panel charges and materials to be provided to the panel to help them prepare for the review. This direction will be transmitted to the peer review provider selected by the CAMT to convene the panel for their consideration and use, consistent with that peer review provider's policies. In addition to the evaluation of the annual operations and management measures, the independent science panel will be afforded an opportunity to evaluate additional measures or actions as may be recommended that may

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<sup>2</sup> The FWS Fall Outflow action is the subject of an ongoing adaptive management program that includes independent scientific review of findings. The review cycle for that AMP is the subject of ongoing consideration by participants and the review panel and may be adjusted to be 2 years in length in the future. To allow the Fall Outflow AMP to continue to accommodate the practical realities of implementing a complex investigation, its review schedule will not be subject to the annual reporting requirement described in this paragraph. The Fall Outflow AMP will, however, be subject to other provisions of this agreement assuring CAMT participation in the formulation of study elements and charges to the review panel.

contribute to the conservation of State and Federal listed species and their habitats, including evaluation of reducing predators, pollutants, and invasive species.

6. **Periodic Meetings of Agency and NGO Principals.** During the interim period, the regional directors or managers of the Federal agencies, the directors of the State agencies, the chief executive officers of the public water agencies, and the chief executive officers of non-governmental organizations shall meet as needed, but not less than quarterly, to review activities under this alternative process for the development of operational strategies and a collaborative science and adaptive management program. These periodic meetings will also serve as a forum for the evaluation of the effectiveness and success of this alternative process for the development of operational strategies and a collaborative science and adaptive management program.
7. **Support “Time Out” on New Litigation Based upon Biological Opinions and Interim Operational Strategies.** During the interim period pending the issuance of new biological opinions governing the long-term operation of the State and Federal water projects, the State and Federal participants will seek to avoid litigation where possible related to the operation of the Annual Operational Strategies and will use their best good faith efforts to resolve differences in advance of filing any litigation related to the BiOps or agency action in implementing the annual operating strategies. The State and Federal agencies will encourage the other remand parties to join in this effort.
8. **Reservation of Rights.** The process explained herein creates no new rights or legal remedies for any person or party. Nothing in this process modifies or delegates the authorities and legal obligations of the State and Federal agencies. Nothing in this document shall serve as an admission of any issue of fact or law, nor shall be deemed a waiver of any claim or defense or basis for appeal by any party in the Consolidated Salmonid Cases or the Delta Smelt Consolidated Cases. Nor shall this document limit, restrict, or modify the right of any party to the BiOp litigation to seek interim injunctive relief against any interim operational criteria imposed on the projects before new BiOps are issued or to seek interim injunctive relief with respect to any other matter over which the district court has retained jurisdiction. The agencies will consider methods to best develop the CAMT consistent with State and Federal requirements and authorities with the intent that CAMT would not be a FACA-chartered entity.
9. **NMFS Will Continue to Pursue Timely Development of a Central Valley Life-Cycle Model for Chinook Salmon During the Interim Period.**