



Cachuma Project Hearing, Phase 2
United States Bureau of Reclamation Applications 11331 and 11332
Statement of James A. Lecky

Introduction

I am the Assistant Regional Administrator for Protected Resources in the Southwest Region of the National Marine Fisheries Service (NOAA Fisheries). The intent of my statement today is to review the purpose of the interagency consultation process embodied in section 7 of the Federal Endangered Species Act, to discuss briefly the limitations of a biological opinion and incidental take statement, specifically with respect to the Cachuma Project, and to set the stage for the remainder of the panel from NOAA Fisheries.

Biological Opinion

Section 7(a)(1) of the Endangered Species Act requires each Federal Agency in consultation with and with the assistance of the Secretary of Commerce, to utilize its authorities in furtherance of the purposes of the act by carrying out programs for the conservation of endangered and threatened species. In addition, Section 7(a)(2) requires each Federal agency, in consultation with and with the assistance of the Secretary, to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction of adverse modification of critical habitat. In fulfilling the requirements of this section of the act, each agency is to use the best scientific and commercial data available, no matter how limited it might be.

In situations where a Federal project was implemented prior to a listing (e.g. most Federal water projects in California), the Federal action agency's discretion in operation of the project is subjected to the section 7 consultation process upon a determination that the exercising of that discretion in the operation of the project may adversely affect the newly listed species.

If in the course of the consultation a finding of jeopardy or adverse modification is made, then the Secretary is responsible for suggesting reasonable and prudent alternatives which would not result in jeopardy or adverse modification and which can be implemented by the action agency. If after consultation is complete and a finding of no jeopardy or no adverse modification is made or a reasonable prudent alternative is identified, then any remaining take that may occur incidental to the federal action is authorized in an incidental take statement. The incidental take statement specifies the impact of such

incidental taking, specifies reasonable and prudent measures necessary or appropriate to minimize such impact, and sets forth the terms and condition that must be complied with to implement the reasonable and prudent measures. Finally, conservation recommendations may be appended to the biological opinion to assist the federal agency in implementing its obligations under section 7(a)(1).

During the conduct of consultations with the Bureau of Reclamation, NOAA fisheries frequently engages in a discussion of the project description so that the actions proposed to be implemented, including those that are meant to mitigate or avoid adverse affects of the project can be incorporated in the project description and the analysis of jeopardy. The Bureau of Reclamation frequently provides its contractors and other interested parties access to the process by including them in the development of the project description or if necessary in the development of reasonable and prudent alternatives. In our experience this cooperative effort usually leads to more durable biological opinions, and we encourage the Bureau to include these interests in the process.

The requirements for reinitiation of a biological opinion include deviations from the project description that may have adverse effects on a listed species, violation of the terms and condition of incidental take statement, and the development of new information indicating the project may be having an adverse affect to listed species that was not considered in the original analysis of the project.

In NOAA Fisheries view, the most important factors to consider in deciding how or whether to incorporate the biological opinion and incidental take statement on the Cachuma Project in a board order are: (1) that it was based on the best available science at the time of the analysis, which was limited, (2) the analysis addresses a jeopardy threshold for a single species, the analysis does not address a recovery standard, and (3) it does not balance competing public trust obligations. Also in the opinion, NOAA Fisheries defers to the recovery planning process to determine whether passage at Bradbury Dam is essential for recovery of the southern California Steelhead evolutionarily significant unit (ESU).

NOAA Fisheries Testimony

Mr. Wingert and Mr. Capelli will provide more detailed explanation of the recovery planning process, and current knowledge of the status of southern California steelhead trout ESU as well as our understanding of its current status in the Santa Ynez River watershed. They will also discuss the status of our Recovery planning process and the need to maintain flexibility in the water right order to respond to new information that becomes available, either under the authority of the State Water Resources Control Board, or as a result of recovery plan development.

In the consultation with the Bureau of Reclamation on the Cachuma project we focused on the lower river in addressing the jeopardy standard. We did this because, we did not include whatever remnant steelhead that may exist above Bradbury Dam in the listing of this ESU, rather we chose to rely on our recovery team to evaluate the need for restoring

the connection between the upper and lower river. Based on their evaluation we will decide whether or not the consultation should be reinitiated to address the issue of restoring passage.

We worked with the Bureau, the Cachuma Operations Management Board, and other interests in the development of the project description. In addition to the operation of the Dam and appurtenant facilities, several components of the Lower Santa Ynez River Fish Management Plan were proposed as part of the project description for the consultation. Including them in the project description conveys a commitment from the Bureau to see that they are accomplished. These included restoration of and improved access to tributary habitat in the lower river, flows to maintain and improve existing rearing habitat in the mainstem of the Santa Ynez River, and to provide migration opportunities between the lower reaches of the Santa Ynez River and the spawning and rearing habitat in the mainstem and tributaries below Bradbury Dam. These flows are to be provided by drawing on water available in the fish account derived from incremental increases in reservoir surcharge. The fish account is anticipated to grow to 9,200 AF by 2005 as a result of adding an additional 3-ft of storage space in Cachuma reservoir. This water is allocated between the fish rearing and support measures and the fish passage account. Absent the surcharge, NOAA Fisheries and the Bureau of Reclamation would likely reinitiate consultation to review whether that volume of water was necessary to avoid jeopardy or adverse modification and if so how the project would be operated to provide it.

The flow recommendations were developed to maintain existing habitat and to provide adequate passage downstream of Bradbury Dam. The passage recommendations were based in part on assumptions of when steelhead migrate in the Santa Ynez River during storms, and how the project could best mimic flow conditions suited to their migration. These assumptions along with others regarding habitat use in the Santa Ynez River need further testing and verification before long-term flow requirements can be specified. Dr. Stacy Li is an instream flow specialist at NOAA Fisheries, and he will describe the studies needed to test those assumptions, to quantify habitat requirements for steelhead in the Santa Ynez River, including refining information on how steelhead are using the system, determine where valuable habitat is located, and to establish a relationship between flow and habitat quantity and quality throughout the Santa Ynez River system, including above Bradbury Dam.

Dr. Brian Cluer is a fluvial geomorphologist who will present information on studies that are needed to better understand the dynamic processes that maintain the Santa Ynez River, including effect that the dams on the Santa Ynez River have had on sediment transport, channel formation, and the ability of the river to create and sustain suitable spawning and rearing habitat for steelhead.

And Mr. Jonathan Mann is a hydraulic engineer from NOAA Fisheries Fish Passage Program in Santa Rosa. He will discuss the studies that will be needed to design an appropriate fish passage facility/strategy to either meet identified public trusts interest in the steelhead of the Santa Ynez River, or in the event we determine that conservation of

the Southern California Steelhead ESU is dependent on restoring access to the reaches and tributaries above Bradbury Dam.

These studies will provide the foundation for recovery planning (as well as informing the State Water Resources Control Boards Public Trust decision making process), as well as providing a much clearer picture to all concerned regarding whether or not the criteria for reinitiating of consultation have been met.

Recommendations

NOAA Fisheries, therefore, recommends that at a minimum the Board (1) initiate the studies called for in today's testimony (2) establish a schedule for the completion of these studies; (3) review progress toward their completion at three to five year intervals; (4) and retain sufficient flexibility in the water right order to be able to modify it as appropriate to respond new information relates to the State's obligation to conserve its anadromous fish resources.