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11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE EASTERN DISTRICT OF CALIFORNIA

14 **THE CALIFORNIA NATURAL**
 15 **RESOURCES AGENCY, ET AL.**

16 Plaintiffs,

17 v.

18 **GINA RAIMONDO, ET AL.,**

19 Defendants.

1:20-cv-00426-DAD-EPG

**[PROPOSED] ORDER GRANTING
 PLAINTIFFS' MOTION FOR INTERIM
 INJUNCTIVE RELIEF AND
 TEMPORARY STAY OF LITIGATION**

Date: February 1, 2022¹
 Time: 9:30 a.m.
 Dept: 5
 Judge: The Honorable Dale A. Drozd
 Trial Date: TBD
 Action Filed: February 20, 2020

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 25 ¹ The Court has ordered a briefing schedule and hearing date in late January 2022, with
 26 reply briefs due January 24, 2022. ECF 212–214. California understands that the Court hears civil
 27 law and motion on the first and third Tuesday of the month. California further understands from
 28 the previous minute orders of this Court that, pursuant to General Order No. 617, all civil motions
 set for hearing before Judge Drozd will be decided on the papers unless otherwise directed by the
 Court. In light of these orders, and because filers are required to select a hearing date when filing
 a motion using the ECF system, California has noticed this motion for a hearing on February 1,
 2022.

1 6. For Water Year 2022, Reclamation shall adopt the following provisions of DWR's ITP

2 (Where language states Permittee shall be Reclamation and DWR):

- 3 i. 8.5.2 Larval and Juvenile Delta Smelt Protection
- 4 ii. 8.6.1 Winter-run Single-year Loss Threshold
- 5 iii. 8.6.2 Early-season Natural Winter-run Chinook Salmon Discrete Daily Loss
6 Threshold
- 7 iv. 8.6.3 Mid- and Late-season Natural Winter-run Chinook Salmon Daily Loss
8 Threshold
- 9 v. 8.6.4 Daily Spring-run Chinook Salmon Hatchery Surrogate Loss Threshold
- 10 vi. 8.7 OMR Flexibility During Delta Excess Conditions
- 11 vii. 8.8 End of OMR Management

12 7. The following additions will apply to the OMR Flexibility During Delta Excess Condition

13 (ITP Cond. Of Approval 8.7) action described in paragraph 6(vi) above of DWR's ITP:

- 14 i. Any storm flexibility during the March- June period will be operated consistent
15 with the Incidental Take Statement in the 2019 FWS Biological Opinion
16 requiring OMR flows be no more negative than -5000 cfs on a 14-day moving
17 average.
- 18 ii. DWR will provide NMFS and FWS an analysis of how the action provides
19 similar or better protection as compared to the 2019 Biological Opinions.
- 20 iii. In 2022, DWR will provide information on how use of OMR flexibility will
21 help replenish storage South of Delta that was depleted in the 2020-2021 water
22 years.
- 23 iv. DWR will only implement OMR flexibility with approval of the Regional
24 Director of FWS and Regional Administrator of NMFS.

25 8. Water Operations Management Team (WOMT) Process (ITP Cond. Of Approval 8.1.4): The
26 State Water Resources Control Board (SWRCB) will be a member of WOMT, and the
27 SWRCB Executive Director will be included in Director level discussions.
28

1 9. Collaborative Approach to Real-Time Risk Assessment (ITP Cond. Of Approval 8.1.4): The
2 Smelt and Salmon Monitoring Teams shall communicate their advice to WOMT. WOMT
3 shall deliberate to seek agreement on project operations. If WOMT cannot reach consensus on
4 an operational issue, the issue will be elevated to the Directors. If a resolution is reached by
5 the Directors, Reclamation shall operate consistent with the decision regarding Project
6 operations from the Directors. If the Directors do not reach a resolution on operations, either
7 the Regional Director of FWS or Regional Administrator of NMFS, whichever agency with
8 ESA jurisdiction over the species will make an operational decision for protection of listed
9 species after conferring with the Director of the California Department of Fish and Wildlife
10 (CDFW). Reclamation will implement the operational decision.

11 10. Summer-Fall Action Plan (ITP Cond. Of Approval 9.1.3.1): In coordination with DWR and
12 consistent with the summer-fall habitat action plan, Reclamation will share the water costs for
13 DWR to operate the Suisun Marsh Salinity Control Gates in below normal years for a
14 maximum of 60 days to maximize the number of days that Belden's Landing three-day
15 average salinity is equal to or less than 4 ppt salinity.

16 11. Export Curtailments for Spring Outflow. DWR will implement ITP Cond. of Approval 8.17
17 and Reclamation shall reduce exports in the event Water Year 2022 is classified, based on the
18 San Joaquin Valley 60-20-20 index, as critical, dry, or below normal to ensure a volumetric
19 reduction consistent with DWR's implementation. Importantly, Cond. of Approval 8.17
20 includes an exception procedure for multi-year droughts that could allow adjustments.
21 Nothing herein shall require Reclamation and DWR to reduce exports to less than minimum
22 health and safety.

23 12. Shasta operations

- 24 i. Water Year 2022 Operational Priorities: The 2020-2021 Water Years have been the
25 second driest two-year period in the historical record. Shasta, Oroville and Folsom
26 have significantly low storage going into WY2022. Reclamation will be entering
27 WY2022 with approximately one-million acre-feet in Shasta Reservoir. Additionally,
28 ongoing drought conditions, compounded by a Thiamine deficiency, are expected to

1 cause two consecutive years of winter-run Chinook salmon egg-to-fry survival that is
2 less than 15% and trigger State and Federal agencies to confer on and implement all
3 actions necessary to avoid a third year of low survival. The State has taken and will
4 take actions regarding drought, including emergency drought proclamations and
5 orders of the SWRCB. In recognition of this, and in consideration of end of year
6 carryover storage goals pursuant to 16(i) below, DWR will coordinate with Reclamation
7 on operations of the system, and Reclamation will operate Shasta Reservoir
8 commencing in February 2022 to meet the following priorities in the order described
9 below. These priorities will only apply in critical or dry years, as determined by the
10 most current water year type projection, and subject to the decision process in
11 Paragraph 17.

- 12 a. Public Health and Safety: Defined as meeting Municipal and Industrial Delta
13 salinity requirements and minimum Municipal and Industrial deliveries for
14 Public Health and Safety.
- 15 b. Habitat Criteria: Winter Run Chinook Salmon habitat criteria (as described in
16 Paragraph 15 below). Reclamation will not schedule nor make deliveries of
17 stored water from Shasta for any reason other than specified in Paragraph
18 12(i)(a) above until Reclamation receives approval of a temperature
19 management plan from NMFS that shows Reclamation will meet winter run
20 Chinook salmon habitat criteria and end of September carryover storage per
21 Paragraph 16(i). NMFS will approve the temperature management plan,
22 pursuant to Paragraph 17. If Reclamation is unable to meet habitat criteria for
23 the entire period as described in Paragraph 15(i) for critical, dry, or below
24 normal years, then the agencies will agree on an operation to provide sufficient
25 habitat for the longest period possible. In such a situation, the agencies will
26 also coordinate with the “Meet and Confer Group” described in the 2019
27 NMFS Biological Opinion and brief *PCFFA* plaintiffs and defendant
28 intervenors.

1 c. Senior water contractor deliveries and Central Valley Project Improvement Act
2 (CVPIA) level 2 refuge supplies after ensuring any such deliveries are
3 consistent with Paragraphs 12(i)(b) and 16(i).

4 d. Other deliveries after ensuring any such deliveries are consistent with
5 Paragraphs 12(i)(b), 12(i)(c), and 16(i).

6 13. A six agency Shasta Planning Group consisting of Reclamation, DWR, USFWS, NMFS,
7 CDFW and SWRCB will meet monthly beginning in November 2021, and biweekly or more
8 frequently beginning in January 2022 (see Paragraph 17(ii) below). Further, starting February
9 1, 2022, Reclamation will confirm with the Shasta Planning Group on a weekly basis that the
10 multiple priorities identified in this interim operations plan for Water Year 2022 can
11 be satisfied in the order described above based on the latest forecast and hydrology, and will
12 adjust releases accordingly. Reclamation may make releases to meet Public Health and Safety
13 pursuant to Paragraph 12(i) year-round, and it may make other releases for deliveries as early
14 as April 1, 2022, provided that they are consistent with the terms of this interim operations
15 plan for Water Year 2022. The Shasta Planning Group will also coordinate with the “Meet
16 and Confer Group” described in the 2019 NMFS Biological Opinion consisting of the
17 Sacramento River Settlement Contractors, Reclamation, and NMFS.

18 14. To the extent there is a drought proclamation in effect in water year 2022, the Federal
19 Defendants and State Plaintiffs anticipate the SWRCB will use its emergency authorities as
20 appropriate to address dry conditions including protecting Reclamation’s previously stored
21 water releases and implementing water curtailments in a timely manner. USFWS, NMFS,
22 CDFW, and Reclamation will use their authorities to support the operational priorities and
23 species needs.

24 15. Winter Run Chinook Salmon Habitat:

25 i. Reclamation will meet the following daily average temperatures at the Clear Creek
26 Gauge from May 15 to October 31 by year type

27 a. 55°F in Critical Year

28 b. 54°F in Dry and Below Normal Year

1 16. End of September Shasta Storage for September 2022 in critical, dry, or below normal water
2 years:

3 i. Reclamation will determine final carryover storage volume planning goals by May 1,
4 2022, subject to water year 2022 hydrologic conditions, which may be amended by May
5 20, 2022 hydrology. This final goal will be developed pursuant to the decision process
6 in Paragraph 17. NMFS may approve a draft temperature management plan as soon as
7 April 1, 2022, provided that the plan includes carryover storage volumes and
8 temperature targets, consistent with Paragraphs 12 through 17.

9 ii. At the time Federal Defendants and State Plaintiffs submitted their proposed interim
10 operations to the Court, the following potential End of September Shasta carryover
11 storage range volumes based on preliminary modeling* had been identified. (These
12 range values represent the interquartile range for all year types except the Critical year
13 low end and high end which represents a 39% exceedance and 21% exceedance,
14 respectively.):

15 a. 1.2 million af to 1.8 million af in Critical year

16 b. 1.8 million af to 2.5 million af in Dry year

17 c. 2.5 million af to 3.2 million af in Below Normal year

18 *Modeling in Critical and Dry years assumes additional federal and state
19 actions to bolster storage conditions.

20 17. Decision Process Related to Shasta Operations for Water Year 2022 for All Water Year Types

21 i. Reclamation, DWR, NMFS, USFWS, SWRCB and CDFW will use a collaborative
22 approach to real-time risk assessments for Water Year 2022 using technical teams for
23 Shasta operations (Sacramento River Temperature Task Group, Upper Sacramento
24 Scheduling Team). Any modeling used for these decisions shall be publicly available,
25 and the State Plaintiffs and Federal Defendants anticipate that SWRCB decisions will be
26 similarly transparent.

27 ii. A Shasta Planning Group shall be established by the federal and state agencies
28 comprised of the 6 agencies (i.e., NMFS, FWS, BOR, CDFW, DWR, SWRCB) that will

1 work iteratively with the technical groups to solicit operational guidance and risk
2 assessments and provide policy guidance as necessary. The Shasta Planning Group shall
3 identify and attempt to resolve policy level issues associated with real time risk
4 assessments.

5 a. The Shasta Planning Group shall begin meeting in November consistent with
6 Paragraph 13 above.

7 b. The Shasta Planning Group will develop and implement a system for
8 monitoring and tracking projected hydrologic and operational conditions
9 compared to actual conditions. The group will ensure this information is
10 distributed to defendant-intervenors and *PCFFA* plaintiffs in a timely manner.

11 c. Reclamation will meet with the Shasta Planning Group to discuss the technical
12 input being sought through the Sacramento River Temperature Task Group
13 (SRTTG) or the Upper Sacramento Scheduling Team (USST). Reclamation
14 will ensure the documented outcome of the technical input includes the options
15 put forth to the SRTTG and USST for consideration. After technical input is
16 received from the SRTTG or USST, the Shasta Planning Group will confer and
17 seek to achieve consensus on project operations.

18 iii. If the Shasta Planning Group cannot reach consensus on an operational issue, the issue
19 will be elevated to the Directors of the 6 agencies and the Directors will confer and seek
20 to achieve consensus on Project operations. If a resolution is reached by the
21 Directors, Reclamation shall operate consistent with the decision regarding Project
22 operations from the Directors. If the Directors do not reach a resolution on operations,
23 the Regional Administrator of NMFS will make an operational decision for protection of
24 listed species after conferring with the Director of CDFW; provided however, for
25 operations issues regarding temperature management and reservoir carryover goals that
26 are not resolved at the Directors' level and therefore elevate to NMFS, the Regional
27 Administrator will make those operational decisions after also conferring with the
28

1 Executive Director of the SWRCB. Reclamation will implement the operational
2 decision.

3 18. The interim operations set forth above are specific to the hydrologic conditions of Water Year
4 2022 and may not be appropriate as part of 2023 or 2024 Water Year operations or long-term
5 operations; and shall expire on September 30, 2022. Accordingly, Federal Defendants and
6 State Plaintiffs shall collaborate with each other as needed on development of interim
7 operations for Water Years 2023 and 2024, and in doing so confer with public water agencies
8 that contract for delivery of water from the CVP and the SWP and the *PCFFA* plaintiffs.

9 19. Nothing in this order shall be interpreted as precedential as to actions that Federal Defendants
10 or State Plaintiffs may take in future consultations, including the reinitiated consultation and
11 ITP review that Federal Defendants and State Plaintiffs are currently undertaking.

12 20. The Court retains jurisdiction to modify this Order as may be necessary and in the interests of
13 justice and to decide disputes among the Parties to the above captioned cases (“Parties”)
14 regarding compliance with this Order notwithstanding the stay also ordered here. In the event
15 such a dispute arises, the Parties will confer in good faith about the dispute. A Party may
16 initiate proceedings in this Court to enforce the terms of Paragraphs 6 through 17 of this order
17 no earlier than four calendar days after such meet-and-confer efforts begin, and the Parties
18 agree to facilitate the prompt determination of any such dispute, including by agreeing to
19 resolution of the dispute on shortened time. The first remedy shall be a motion to enforce the
20 terms of this order. This order shall not, in the first instance, be enforceable through a
21 proceeding for contempt of court.

22 21. On August 31, 2022, Federal Defendants and State Plaintiffs will file a joint status report
23 describing the status of discussions regarding a plan for interim coordinated operations to
24 govern for the water year beginning October 1, 2022, or some other interval of time.

25 22. On September 30, 2022, Federal Defendants and State Plaintiffs will file a joint status report:
26 1) describing the status of the reinitiated CVP and SWP consultation; 2) recommending a plan
27 for interim CVP and SWP operations to govern for the 2023 water year or some other interval
28

1 of time, if consultation remains ongoing; and 3) requesting a continued stay or other path
2 forward in the litigation.

3 23. The State Plaintiffs intend to preserve and do not waive any other state agency's Eleventh
4 Amendment immunity. Because the California Constitution creates a structure of divided
5 executive power, each agency of the State acts on behalf of the State within its own statutory
6 and regulatory authority. *See Marine Forests Soc. v. Cal. Coastal Comm'n*, 36 Cal. 4th 1, 31
7 (2005); *People ex rel Lockyer v. Superior Court*, 19 Cal. Rptr. 3d 324, 337–39 (2004).
8 Accordingly, the State Plaintiffs' submission is made solely on their own behalf.

9
10
11 IT IS SO ORDERED.

12
13 DATED: _____

14 Hon. Dale A. Drozd
15 United States District Judge

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EXHIBIT 1

Whereas Clauses

Whereas, the Federal agencies reinitiated consultation on October 1, 2021.

Whereas, Reclamation and DWR anticipate a modified Proposed Action and associated biological effects analysis that would result in new Biological Opinions for the CVP and SWP.

Whereas, in collaboration with CDFW, NMFS, USFWS, and DWR, Reclamation's goal is to develop a Proposed Action by December 2022.

Whereas, the parties agree to expeditiously pursue reinitiated consultation and review of the ITP with a goal of completion of new Biological Opinions within 12 months of receipt of the Biological Assessment by NMFS and USFWS, and issuance of a new or amended ITP concurrent with Reclamation's adoption of the Biological Opinions.

Whereas, Reclamation will seek to complete its NEPA analysis and Record of Decision with a goal of completion by October 1, 2024.

Whereas, the parties acknowledge that the issues discussed during the reinitiated consultation and ITP review will be more comprehensive than the agreement on Interim Operations for Water Year 2022.

Whereas, Reclamation will provide drafts of the Biological Opinions to the CVP and SWP contractors and Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, Golden Gate Salmon Association, Natural Resources Defense Council, Defenders of Wildlife, and the Bay Institute for review and comment.

Whereas, the relevant state and federal agencies will coordinate to enhance efficiencies and transparency in their related environmental review and permitting processes.

Whereas, the Interim Operations described in this document for Water Year 2022 were developed by the Federal agencies in anticipation of urgent hydrologic conditions as they contemplated in Reclamation's 2019 Biological Assessment (including section 4.12.5), and after conferring with the State agencies and public water agencies that contract for delivery of water from the CVP and SWP, and conferring with the PCFFA plaintiffs

Water Year 2022 Interim Operations

1. Nothing in this agreement is precedential as to actions that may be included in future consultations, including the reinitiated consultation or ITP review described herein.
2. The Water Year 2022 Interim Operations (Interim Operations Plan (IOP)) are specific to the hydrologic conditions of Water Year 2022 and may not be appropriate as part of 2023 or 2024 Water Year operations or long-term operations.
3. This document shall be in effect until September 30, 2022.
4. The IOP includes commitments to ensure operational alignment between the CVP and SWP for Water Year 2022 and specific measures limited to critical, dry, or below normal water years.
5. The federal and state agencies subject to the IOP agree to collaborate with each other as needed on development of interim operations for Water Years 2023 and 2024, and in

doing so to confer with public water agencies that contract for delivery of water from the CVP and the SWP and the *PCFFA* plaintiffs.

Alignment for Water Year 2022 Between CVP and SWP Operations for All Water Year Types

6. In order to meet the federal and state agencies' interest in having a single set of operational requirements for Water Year 2022, Reclamation agrees to modify its operation of the CVP to be consistent with operations described in the ITP. Specifically, Reclamation agrees to adopt the following provisions of the ITP for Water Year 2022 (Where language states Permittee shall be Reclamation and DWR):
 - i. 8.5.2 Larval and Juvenile Delta Smelt Protection
 - ii. 8.6.1 Winter-run Single-year Loss Threshold
 - iii. 8.6.2 Early-season Natural Winter-run Chinook Salmon Discrete Daily Loss Threshold
 - iv. 8.6.3 Mid- and Late-season Natural Winter-run Chinook Salmon Daily Loss Threshold
 - v. 8.6.4 Daily Spring-run Chinook Salmon Hatchery Surrogate Loss Threshold
 - vi. 8.7 OMR Flexibility During Delta Excess Conditions
 - vii. 8.8 End of OMR Management
7. DWR agrees to the following additions to the OMR Flexibility During Delta Excess Condition (ITP Cond. Of Approval 8.7) action described in paragraph 6(vi):
 - i. Any storm flexibility during the March- June period will be operated consistent with the Incidental Take Statement in the 2019 FWS BiOp requiring OMR flows be no more negative than -5000cfs on a 14-day moving average.
 - ii. DWR will provide NMFS and FWS an analysis of how the action provides similar or better protection as compared to the 2019 BiOps.
 - iii. In 2022, DWR will provide information on how use of OMR flexibility will help replenish storage South of Delta that was depleted in the 2020-2021 water years.
 - iv. DWR will only implement OMR flexibility with approval of the Regional Director of FWS and Regional Administrator of NMFS.
8. WOMT Process (ITP Cond. Of Approval 8.1.4): The State Water Resources Control Board (SWRCB) will be a member of WOMT, and the SWRCB Executive Director will be included in Director level discussions.
9. Collaborative Approach to Real-Time Risk Assessment (ITP Cond. Of Approval 8.1.4): The Smelt and Salmon Monitoring Teams shall communicate their advice to WOMT. WOMT shall deliberate to seek agreement on project operations. If WOMT cannot reach consensus on an operational issue, the issue will be elevated to the Directors. If a resolution is reached by the Directors, Reclamation shall operate consistent with the decision regarding Project operations from the Directors. If the Directors do not reach a resolution on operations, either the Regional Director of FWS or Regional Administrator of NMFS, whichever agency with ESA jurisdiction over the species will make an operational decision for protection of listed species after conferring with the Director of CDFW. Reclamation agrees to implement the operational decision.

Specific Measures Limited to Critical, Dry, or Below Normal Water Year Types for Water Year 2022

10. Summer-Fall Action Plan (ITP Cond. Of Approval 9.1.3.1): In coordination with DWR and consistent with the summer-fall habitat action plan, Reclamation will agree to share the water costs for DWR to operate the Suisun Marsh Salinity Control Gates in below normal years for a maximum of 60 days to maximize the number of days that Belden’s Landing three-day average salinity is equal to or less than 4 ppt salinity.
11. Export Curtailments for Spring Outflow. DWR will implement ITP Cond. of Approval 8.17 and Reclamation shall reduce exports in the event Water Year 2022 is classified, based on the San Joaquin Valley 60-20-20 index, as critical, dry, or below normal to ensure a volumetric reduction consistent with DWR’s implementation. Importantly, Cond. of Approval 8.17 includes an exception procedure for multi-year droughts that could allow adjustments. Nothing herein shall require Reclamation and DWR to reduce exports to less than minimum health and safety.

12. Shasta operations

i. Water Year 2022

Operational Priorities: The 2020-2021 Water Years have been the second driest two-year period in the historical record. Shasta, Oroville and Folsom have significantly low storage going into WY2022. Reclamation will be entering WY2022 with approximately one-million acre-feet in Shasta Reservoir. Additionally, ongoing drought conditions, compounded by a Thiamine deficiency, are expected to cause two consecutive years of winter-run Chinook salmon egg-to-fry survival that is less than 15% and trigger State and Federal agencies to confer on and implement all actions necessary to avoid a third year of low survival. The State has taken and will take actions regarding drought, including emergency drought proclamations and orders of the SWRCB. In recognition of this, and in consideration of end of year carryover storage goals pursuant to 16.i. below, DWR will coordinate with Reclamation on operations of the system, and Reclamation will operate Shasta Reservoir commencing in February 2022 to meet the following priorities in the order described below. These priorities will only apply in critical or dry years, as determined by the most current water year type projection, and subject to the decision process in 17.

- a. Public Health and Safety: Defined as meeting Municipal and Industrial Delta salinity requirements and minimum Municipal and Industrial deliveries for Public Health and Safety.
- b. Habitat Criteria: Winter Run Chinook Salmon habitat criteria (as described in paragraph 15 below). Reclamation will not schedule nor make deliveries of stored water from Shasta for any reason other than specified in 12(i)(a) above until Reclamation receives approval of a temperature management plan from NMFS that shows Reclamation will meet winter run

- Chinook salmon habitat criteria and end of September carryover storage per 16.i. NMFS will approve the temperature management plan, pursuant to 17. If Reclamation is unable to meet habitat criteria for the entire period as described in 15(i) for critical, dry, or below normal years, then the agencies will agree on an operation to provide sufficient habitat for the longest period possible. In such a situation, the agencies will also coordinate with the “Meet and Confer Group” described in the 2019 Biological Opinion and brief *PCFFA* plaintiffs and defendant intervenors.
- c. Senior water contractor deliveries and CVPIA level 2 refuge supplies after ensuring any such deliveries are consistent with 12(i)(b) and 16.i.
 - d. Other deliveries after ensuring any such deliveries are consistent with 12(i)(b), 12(i)(c), and 16.i.
13. A six agency Shasta Planning Group consisting of Reclamation, DWR, USFWS, NMFS, CDFW and SWRCB will meet monthly beginning in November 2021, and biweekly or more frequently beginning in January 2022. (see 17(ii) below). Further, starting February 1, 2022, Reclamation will confirm with the Shasta Planning Group on a weekly basis that the multiple priorities identified in this IOP for Water Year 2022 can be satisfied in the order described above based on the latest forecast and hydrology, and will adjust releases accordingly. Reclamation may make releases to meet Public Health and Safety pursuant to 12(i) year-round, and it may make other releases for deliveries as early as April 1, 2022 provided that they are consistent with the terms of this IOP for Water Year 2022. The Shasta Planning Group will also coordinate with the “Meet and Confer Group” described in the 2019 Biological Opinion consisting of the Sacramento River Settlement Contractors, Reclamation, and NMFS.
14. To the extent there is a drought proclamation in effect in water year 2022, the parties anticipate the SWRCB will use its emergency authorities as appropriate to address dry conditions including protecting Reclamation’s previously stored water releases and implementing water curtailments in a timely manner. USFWS, NMFS, CDFW, and Reclamation will use their authorities to support the operational priorities and species needs.
15. Winter Run Chinook Salmon Habitat:
- i. Reclamation agrees to meet the following daily average temperatures at the Clear Creek Gauge from May 15 to October 31 by year type
 - a. 55°F in Critical Year
 - b. 54°F in Dry and Below Normal Year
16. End of September Shasta Storage for September 2022 in critical, dry, or below normal water years:
- i. Reclamation will determine final carryover storage volume planning goals by May 1, 2022 subject to water year 2022 hydrologic conditions, which may be amended by May 20, 2022 hydrology. This final goal will be developed pursuant

to the decision process in 17. NMFS may approve a draft temperature management plan as soon as April 1, 2022, provided that the plan includes carryover storage volumes and temperature targets, consistent with 12 through 17.

- ii. As of the time of this agreement, the following potential End of September Shasta carryover storage range volumes based on preliminary modeling* have been identified (These range values represent the interquartile range for all year types except the Critical year low end and high end which represents a 39% exceedance and 21% exceedance, respectively.):
 - a. 1.2 million af to 1.8 million af in Critical year
 - b. 1.8 million af to 2.5 million af in Dry year
 - c. 2.5 million af to 3.2 million af in Below Normal year

*Modeling in Critical and Dry years assumes additional federal and state actions to bolster storage conditions.

17. Decision Process Related to Shasta Operations for Water Year 2022 for All Water Year Types

- i. The parties agree to use a collaborative approach to real-time risk assessments for Water Year 2022 using technical teams for Shasta operations (Sacramento River Temperature Task Group, Upper Sacramento Scheduling Team). Reclamation, DWR, NFMS, USFWS, and CDFW agree that any modeling used for decisions shall be publicly available. The parties anticipate SWRCB decisions will be similarly transparent.
- ii. The federal and state agencies agree to establish a Shasta Planning Group comprised of the 6 agencies (i.e., NMFS, FWS, BOR, CDFW, DWR, SWRCB) that will work iteratively with the technical groups to solicit operational guidance and risk assessments and provide policy guidance as necessary. The Shasta Planning Group shall identify and attempt to resolve policy level issues associated with real time risk assessments.
 - a. The Shasta Planning Group shall begin meeting in November consistent with 13 above.
 - b. The Shasta Planning Group will develop and implement a system for monitoring and tracking projected hydrologic and operational conditions compared to actual conditions. The group will ensure this information is distributed to defendant-intervenors and *PCFFA* plaintiffs in a timely manner.

- c. Reclamation will meet with the Shasta Planning Group to discuss the technical input being sought through the Sacramento River Temperature Task Group (SRTTG) or the Upper Sacramento Scheduling Team (USST). Reclamation will ensure the documented outcome of the technical input includes the options put forth to the SRTTG and USST for consideration. After technical input is received from the SRTTG or USST, the Shasta Planning Group will confer and seek to achieve consensus on project operations.
- iii. If the Shasta Planning Group cannot reach consensus on an operational issue, the issue will be elevated to the Directors of the 6 agencies and the Directors will confer and seek to achieve consensus on Project operations. If a resolution is reached by the Directors, Reclamation shall operate consistent with the decision regarding Project operations from the Directors. If the Directors do not reach a resolution on operations, the Regional Administrator of NMFS will make an operational decision for protection of listed species after conferring with the Director of CDFW; provided however, for operations issues regarding temperature management and reservoir carryover goals that are not resolved at the Directors' level and therefore elevate to NMFS, the Regional Administrator will make those operational decisions after also conferring with the Executive Director of the SWRCB. Reclamation agrees to implement the operational decision.