

# RECLAMATION

*Managing Water in the West*

## **Decision Document Concerning U.S. Fish and Wildlife Service June 2014 Biological Opinion**

**For the Future Operation and Maintenance of  
Reclamation Projects in the Snake River Basin  
above Brownlee Reservoir**



U.S. Department of the Interior  
Bureau of Reclamation  
Pacific Northwest Region  
Snake River Area Office, Boise, Idaho

September 2014

U.S. DEPARTMENT OF THE INTERIOR

PROTECTING AMERICA'S GREAT OUTDOORS AND POWERING OUR FUTURE

The Department of the Interior protects and manages the Nation's natural resources and cultural heritage; provides scientific and other information about those resources; and honors its trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities.

MISSION OF THE BUREAU OF RECLAMATION

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

# Table of Contents

<b>Introduction .....</b>	<b>1</b>
Consultation History .....	1
Summary of Proposed Actions .....	2
<b>June 2014 FWS Biological Opinion .....</b>	<b>3</b>
Conclusions .....	3
Incidental Take Statement.....	3
Reasonable and Prudent Measures, and Terms and Conditions .....	4
Reasonable and Prudent Measure.....	4
Term and Condition.....	4
Conservation Recommendations.....	4
Reporting and Monitoring.....	5
<b>Reclamation Determination .....</b>	<b>6</b>
<b>Reclamation Decision.....</b>	<b>6</b>
<b>Reinitiation of Consultation .....</b>	<b>6</b>

This page intentionally left blank

# INTRODUCTION

On June 27, 2014, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion (2014 Opinion) on the continued operation and maintenance (O&M) of Reclamation projects in the Snake River basin above Brownlee Reservoir (upper Snake River projects or proposed actions). The 2014 Opinion concluded the proposed actions are not likely to destroy or adversely modify designated critical habitat for bull trout (*Salvelinus confluentus*). The 2014 Opinion also concluded continued O&M of the Baker Project is not likely to jeopardize the continued existence of bull trout recently detected in the Powder River basin and included an incidental take statement (ITS) for this component of the proposed action.

The Endangered Species Act (ESA) implementing regulations state that “following the issuance of a biological opinion, the Federal agency shall determine whether and in what manner to proceed with the action in light of its Section 7 obligations and the Service’s (FWS) biological opinion” (50 CFS §402.15 (a)). Reclamation is issuing this decision document to indicate how it will carry out the O&M of the upper Snake River projects in light of the 2014 Opinion. This document also describes Reclamation’s approach to addressing the reasonable and prudent measures (RPMs) and terms and conditions (T&Cs) in the ITS.

## Consultation History

In March 2005, Reclamation received a biological opinion (2005 Opinion) from FWS concluding the O&M of the upper Snake River projects were not likely to jeopardize the continued existence of bull trout. The 2005 Opinion contained an ITS with associated RPMs and T&Cs aimed at reducing incidental take of bull trout at Federal facilities in the Boise, Payette, and Malheur river systems. The 2005 Opinion and ITS did not address effects to bull trout in the Powder River, because bull trout were not known to occupy the Powder River at that time.

In May 2008, Reclamation received a biological opinion (2008 Opinion) from NOAA Fisheries refining the proposed action from the 2004 Assessment to include the provision of salmon flow augmentation for salmon consistent with the terms of the 2004 Nez Perce Water Rights Settlement adjudication. T&Cs of the incidental take statements issued with the 2005 and 2008 Opinions are included as part of the proposed action.

In October 2010, the FWS designated revised critical habitat for bull trout in portions of the Boise, Payette, Malheur, and Powder rivers, and the mainstems of the Snake and Columbia rivers, all of which are hydrologically influenced in varying degrees by operation of Reclamation’s upper Snake River projects (75 FR 63898). In 2011, two bull trout were documented in Phillips Reservoir, in the Powder River basin. The designation of critical habitat and the discovery of bull trout in the Powder River triggered the need for Reclamation to initiate consultation (50 CFR § 402.16).

On December 30, 2013, Reclamation initiated formal consultation by submitting a biological assessment (Assessment) to FWS assessing the effects of the upper Snake River projects on bull trout critical habitat, and effects of Baker Project operations on bull trout and critical habitat in the Powder River. FWS issued a final biological opinion on June 27, 2014. The 2013 Assessment and the 2014 Opinion are companion documents to the 2004 Assessment and 2005 Opinion, which are incorporated by reference.

## Summary of Proposed Actions

The proposed actions include discretionary O&M activities for water storage and release; diversion and pumping; power generation; routine maintenance activities; and the provision of salmon flow augmentation water. The proposed actions are consistent with the terms of the 2004 Nez Perce Water Rights Settlement in the upper Snake River basin adjudication. The T&Cs of the ITS issued with the 2005 Opinion and the 2008 NOAA Fisheries Opinion (2008 Opinion) are included as part of the proposed actions and incorporated by reference. The proposed actions, including detailed information regarding the O&M of each project, are the same as described in the 2004 biological assessment and the 2007 Upper Snake biological assessment.

The action areas associated with the proposed actions are the same as described in the 2004 biological assessment (2004 Assessment). Action areas discussed in the 2004 Assessment that have designated bull trout critical habitat are:

- Boise River system
- Payette River system
- Malheur River system
- Powder River system

Not all of the action areas discussed in the 2004 Assessment have designated bull trout critical habitat. The following project areas have no designated bull trout critical habitat:

- Snake River above Milner Dam (Michaud Flats, Minidoka, Palisades, and Ririe projects)
- Little Wood River system (Little Wood River Project)
- Owyhee River system (Owyhee Project)
- Mann Creek system (Mann Creek Project)
- Burnt River system (Burnt River Project)

# JUNE 2014 FWS BIOLOGICAL OPINION

## Conclusions

After reviewing the current status of bull trout critical habitat, the environmental baseline in the action area, effects of the proposed actions, and cumulative effects, the FWS concluded that Reclamation's O&M of the upper Snake River projects is not likely to destroy or adversely modify designated critical habitat for bull trout. The FWS (2014 Opinion pages 157-158) reached this conclusion because "given the amount of habitat in the area, combined with the habitat in the Snake and Columbia rivers systems, and the significance and extent of effects, impacts to critical habitat will not affect the functioning or conservation value of the Boise River, Payette River, Malheur River, or Powder River ... [and] will not reduce the functionality of the Southwest Idaho River Basin, Malheur River Basin, Powder River Basin CHUs [critical habitat units], or by extension, critical habitat rangewide in providing for the conservation of bull trout."

The FWS also concluded that O&M of Reclamation facilities in the Powder River system is not likely to jeopardize the continued existence of bull trout. The FWS reached this conclusion because the bull trout populations are assumed to be resident, although a migratory component associated with Phillips Reservoir may still exist. However, reservoir operations maintain minimum storage that protects the prey base at sufficient levels to maintain prey diversity for migratory bull trout that may over-winter in the reservoir. Additionally, no bull trout are anticipated to be entrained through the intake at Mason Dam.

Based on a thorough evaluation of the best available scientific information and data available to Reclamation, Reclamation concurs with FWS' 2014 Opinion.

## Incidental Take Statement

Pursuant to Section 4(d), the FWS prohibits take of bull trout outside of exceptions (50 CFR § 17.44 (w)). Section 7(b)(4) and section 7(o)(2) provide that taking incidental to an otherwise lawful agency action is not considered to be prohibited under the ESA, if that action is performed in compliance with the T&Cs of an ITS.

The 2014 Opinion identified that O&M of Reclamation facilities in the Powder River system may result in incidental take of bull trout through harm or harassment, including impairing essential behavioral patterns such as breeding, feeding, or sheltering. The expected incidental take may result when fish passage to the upper Powder River and Deer Creek is blocked during annual low reservoir levels or when drawdown and fill operations result in reservoir levels that are not suitable for bull trout. The FWS anticipates that the amount of incidental take from the proposed action will be small and that the spatial scope of the action area relative to the recovery unit (FWS draft recovery plan) is small. Consequently, the FWS anticipates that the incidental take will not have a meaningful impact on reproduction, numbers, or distribution of bull trout within the Powder River system.

## Reasonable and Prudent Measures, and Terms and Conditions

To minimize the take of bull trout in the Powder River system, the 2014 Opinion identified one RPM. Reasonable and prudent measures are non-discretionary measures to avoid or minimize take that Reclamation must carry out for the incidental take exemption to apply. The ITS also provides one T&C designed to identify what steps Reclamation must take to implement the RPM. In the following paragraphs, Reclamation describes the RPM and the associated T&C, and describes Reclamation's commitments.

### Reasonable and Prudent Measure

*Minimize incidental take of bull trout resulting from operations of Phillips Reservoir (decreased water levels and increased temperatures) and from impaired fish migration above Phillips Reservoir.*

### Term and Condition

*Enhance knowledge of project impacts to bull trout and refine the amount of take anticipated by collaborating with the FWS and Oregon Department of Fish and Wildlife to develop and implement a 5-year sampling plan to better determine bull trout use of Phillips Reservoir. The bull trout sampling plan must be completed by March 1, 2015, and must be implemented as soon as funding can be programmed and budgeted.*

Reclamation commits to initiate discussions with the FWS and the Oregon Department of Fish and Wildlife to identify and explore monitoring options that will help to better determine bull trout use of Phillips Reservoir. Subject to appropriations, Reclamation commits to implement a Monitoring (5-year sampling plan) to ensure that it does not exceed the amount and extent of take anticipated and defined in the ITS.

Many of the RPMs and associated T&Cs identified in the FWS's 2005 and 2014 incidental take statements are general in nature and/or involve making more specific decisions in the future following completion of additional studies and investigations. It is our intent to make such future decisions in consultation and collaboration with the FWS and other affected stakeholders, and to ensure that such decisions are within Reclamation's authorities and both reasonable and prudent as required by regulation.

## Conservation Recommendations

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery programs, or to develop new information on listed species.



The 2014 Opinion contains the following discretionary conservation recommendations for bull trout and the critical habitat.

- Agency Valley Dam/Beulah Reservoir – Preparation of a reinitiation strategy to address water discharged over the spillway.
- Powder River basin – Restore bull trout foraging, overwintering, and migratory habitat in mouth of Deer Creek by implementing restoration actions that include the removal of two abandoned road beds that currently act as seasonal fish passage barriers.
- Boise River and Payette River basins – Evaluate how reservoir elevations influence the varial zones of the tributaries, particularly during the fall migration period. If possible, adjust operations to improve depth and structure within the varial zones where needed and to minimize length of the varial zone.

Reclamation commits to annually consider implementation of conservation recommendations that are within its existing authorities and to the extent that staff and funding are available. Reclamation will notify the FWS of the status of its activities with respect to these conservation recommendations.

## Reporting and Monitoring

Reclamation provides an annual report to FWS by March 31 of each year through the duration of the incidental take coverage (through 2034). The T&C from the 2014 Opinion will be reported in conjunction with the T&Cs from the 2005 Opinion under the same cover. The annual report, which covers activities from the previous fiscal year, provides information on three components:

- Monitoring – Summarizes operational conditions, study results and/or estimated take at Anderson Ranch, Arrowrock, Deadwood, Agency Valley, and Mason dams, associated reservoirs, and downstream river reaches.
- RPMs and T&Cs – Describes the results and progress on implementation of RPMs and associated T&Cs.
- Conservation Recommendations – Provides the status of any work related to conservation recommendations.

Reclamation commits to continue to annually report to the FWS progress of the action and its impact on the species as specified in the ITS.

# RECLAMATION DETERMINATION

In summary, based on the body of documented information Reclamation determines that:

- The actions and analysis in the 2013 Assessment and 2014 Opinion are based on the best available science.
- The proposed actions for the O&M of the upper Snake River projects, and the RPMs and T&C meet the regulatory requirements under Section 7 of the ESA.
- The RPMs and T&C are reasonably necessary to reduce the likelihood of take and maintain incidental take coverage for the O&M of the upper Snake River projects.
- Development of a Monitoring Plan can occur consistent with existing Reclamation authority, relevant repayment contracts, and state water rights.


# RECLAMATION DECISION

Reclamation has reviewed the consultation record, including Reclamation's 2013 Assessment, the 2014 Opinion and ITS, and other relevant materials considered in this consultation. Reclamation is committed, subject to authorities and appropriations, to implementing the proposed actions and the RPMs and T&Cs consistent with the ITS as described above.

# REINITIATION OF CONSULTATION


When a Federal agency retains discretionary involvement in or control over the action, reinitiation of formal consultation is required if any of the following four circumstances arises: (1) the amount or extent of take specified in the ITS has been exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the Opinion; or (4) a new species is listed or new critical habitat designated that may be affected by the identified action (50 C.F.R. § 402.16).

Reclamation will comply with these requirements of the law.

Signed:  Date: September 8, 2014

Jerrold D. Gregg  
Snake River Area Manager  
Bureau of Reclamation  
U.S. Department of the Interior

I concur:

Signed:  Date: 9/9/14

Lorri J. Lee  
Regional Director  
Bureau of Reclamation  
U.S. Department of the Interior