



# United States Department of the Interior



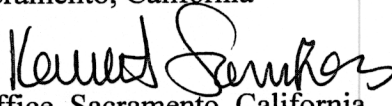
FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846

In reply refer to:  
81420-2009-I-0805

JUL 15 2009

## Memorandum

To: Program Manager, San Joaquin River Restoration Program,  
U.S. Bureau of Reclamation, Sacramento, California

From: Assistant Field Supervisor,   
Sacramento Fish and Wildlife Office, Sacramento, California

Subject: Concurrence on the San Joaquin River Restoration Program's Water Year 2010  
Interim Flows Project in Kern, Kings, Mariposa, Stanislaus, San Joaquin,  
Alameda, Contra Costa, Fresno, Madera and Merced Counties, California

This memorandum is in response to your May 22, 2009, memorandum requesting concurrence with your determination that your above-referenced project may affect, but is not likely to adversely affect the following federally-listed species or adversely modify the following critical habitats: California tiger salamander (*Ambystoma californiense*) and critical habitat, blunt-nosed leopard lizard (*Gambelia sila*), conservancy fairy shrimp (*Branchinecta conservation*) and critical habitat, colusa grass (*Neostapfia colusana*) and critical habitat, delta smelt (*Hypomesus transpacificus*) and critical habitat, Fresno kangaroo rat (*Dipodomys nitratoideis exilis*), giant garter snake (*Thamnophis gigas*), Greene's tuctoria (*Tuctoria greenei*) and critical habitat, hairy orcutt grass (*Orcuttia pilosa*) and critical habitat, Hoover's spurge (*Chamaesyce hooveri*) and critical habitat, Least Bell's vireo (*Vireo bellii pusillus*), longhorn fairy shrimp (*Branchinecta longiantenna*) and critical habitat, palmate-bracted bird's-beak (*Cordylanthus palmatus*), riparian brush rabbit (*Sylvilagus bachmani riparius*), San Joaquin kit fox (*Vulpes macrotis mutica*), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*) and critical habitat, San Joaquin (riparian) woodrat (*Neotoma fuscipes riparia*), succulent owl's-clover (*Castilleja campestris* ssp. *succulenta*) and critical habitat, vernal pool fairy shrimp (*Branchinecta lynchi*) and critical habitat, vernal pool tadpole shrimp (*Lepidurus packardi*) and critical habitat, western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), and valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). Your request was received by the Service on May 26, 2009. Our primary concern and mandate is the protection of federally-listed species pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

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Program Manager

We have reviewed the proposed project, including: (1) the U.S. Bureau of Reclamation's (Reclamation) May 22, 2009, memorandum requesting concurrence with a may affect, but not likely to adversely affect determination for the above-referenced species and critical habitat; (2) Reclamation's Biological Assessment for the Water Year 2010 Interim Flows Project (proposed project) dated May 22, 2009; (3) the May 1, 2007 *San Joaquin River Restoration Program Implementing the Stipulation of Settlement in Natural Resources Defense Council, et al., v. Kirk Rodgers, United States Bureau of Reclamation, et al.*, Program Management Plan (Settlement); (4) the draft Environmental Assessment and Finding of No Significant Impact/Initial Study and Mitigated Negative Declaration for Water Year 2010 Interim Flows Project dated June 2009; (5) electronic mail correspondence, discussions and meetings between Stephanie Rickabaugh with the U.S. Fish and Wildlife Service (Service) and Brad Hubbard with Reclamation clarifying avoidance measures and proposed project details through the biweekly Environmental Compliance and Permitting Working Group; and (6) other information available to the Service. The Service is an Implementing Agency in this San Joaquin River Restoration Program and has been working closely with Reclamation since early 2008 on the project planning and recommendations for avoidance and minimization measures for federally-listed species.

The proposed project, as described, is to increase the release of water from Friant Dam during two separate time frames, for one year (WY2010) in accordance with the Settlement and in a manner consistent with Federal, State, and local laws, and future agreements with downstream agencies, entities, and landowners. These releases would allow data to be collected to better evaluate flows, temperature, fish needs, biological effects and seepage losses, and water recirculation, recapture, and reuse opportunities. The proposed project would release Interim Flows to the San Joaquin River from Friant Dam during WY 2010, from October 1, 2009, through November 20, 2009 (first release) and from February 1, 2010, through September 30, 2010 (second release), in accordance with the flow schedule presented in Exhibit B of the Settlement. No releases specific to the proposed project would occur between November 21, 2009 and January 31, 2010. WY 2010 Interim Flows would be reduced or diverted as needed to avoid causing substantial adverse conditions in downstream reaches, as specified in the Environmental Commitments, Chapter 3 of the Biological Assessment. The proposed action also involves the potential for recapture of WY 2010 Interim Flows at specified locations along the San Joaquin River, in the Delta, or both to the maximum extent possible, and transferring this water back to the Friant Division Long-Term Contractors. The maximum downstream extent of WY2010 Interim Flows that could be recaptured would be at the CVP Harvey O. Banks Pumping Plant and the SWP C.W. "Bill" Jones Pumping Plant in the Delta.

Reclamation is currently conducting surveys for blunt-nosed leopard lizards within the proposed project. Because these surveys are currently on-going and will continue through the summer of 2009, we currently have insufficient information to make a decision regarding concurrence on any effects to this species until we have reviewed your survey report.

The maximum flow releases out of Friant Dam for the first and second releases is proposed to be 700 cfs and 1660 cfs, respectively. The proposed project flows are constrained by existing channel capacity of Reach 2B, which was determined to be 1,300 cfs. Data collected during the 1999, pilot flows determined seepage rates for these upper reaches which are the bases for the seepage data discussed in the Settlement. Additionally, the Settlement includes in the Interim Flows, the water releases required for existing water right holders (i.e. riparian releases). Therefore the initial release of 1,660 cfs from Friant Dam would be reduced by at least 360 cfs due to seepage and the required water contractors in the upper reaches, prior to reaching Reach 2B. Because the purpose of the proposed project is to collect data and the proposed project flows are equivalent, or less than current and historic flood flows that occurred in the channel, the Service concurs with your determination that the proposed project, as described may affect, but is not likely to adversely affect the above-referenced list of federally-listed species, with the exception of blunt-nosed leopard lizard, nor adversely modify the above-referenced list of designated critical habitats.

This memo does not conclude the Service's review of the San Joaquin River Restoration Program's Water Year 2010 Interim Flows Project because further coordination with the Service under the Act is necessary for blunt-nosed leopard lizard. Please note that this memorandum does not authorize take of listed species or adverse modification of designated critical habitat. This memorandum is provided specific to this action area, and for the proposed project action only as originally described within the request. Any change in the proposed project, as described, will result in withdrawal of this concurrence. Section 9 of the Act prohibits the "take" (e.g., harm, harass, pursue, injure, kill) of federally-listed wildlife species. If any take occurs during the implementation of the activities described for this proposed project, those activities must be discontinued and the Service contacted immediately.

If you have any questions regarding the proposed San Joaquin River Restoration Program's Water Year 2010 Interim Flows Project, please contact Stephanie Rickabaugh or Susan Jones, Chief, San Joaquin Valley Branch at (916) 414-6600. We look forward to coordinating further with you on this project.

cc:

Brad Hubbard, Reclamation, Sacramento, California

Leslie Mirise, National Marine Fisheries Service, Sacramento, California

Kevin Faulkenberry, Department of Water Resources, Fresno, California

John Battistoni, Department of Fish and Game, Fresno, California