UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

SEP 3 0 2011

Alicia Gasdick
Program Manager
U.S. Bureau of Reclamation
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825-1898

Dear Ms. Gasdick:

This letter is in response to your July 20, 2011, letter requesting concurrence from NOAA's National Marine Fisheries Service (NMFS) that the proposed San Joaquin River Restoration Program's (SJRRP) Water Year (WY) 2012 Interim Flows Project (Proposed Action) may affect but is unlikely to adversely affect threatened California Central Valley (CV) steelhead (*Oncorhynchus mykiss*), endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), the threatened Southern Distinct Population Segment (DPS) of North American green sturgeon (*Acipenser medirostris*), or the respective designated critical habitats of California CV steelhead and the Southern DPS of North American green sturgeon in accordance with the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et. Seq.*). In addition, the Bureau of Reclamation (Reclamation) has determined that the proposed action will have no adverse effect of the Essential Fish Habitat (EFH) of Pacific salmon or starry flounder (*Platichthys stellatus*), and has requested initiation of consultation pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This letter also serves as consultation under the authority of and in accordance with the provisions of the Fish and Wildlife Coordination Act of 1934 (FWCA), as amended.

The SJRRP was established in late 2006 to implement the Stipulation of Settlement (Settlement) in *NRDC, et al. v. Kirk Rogers et al.* Authorization for implementing the Settlement is provided in the San Joaquin River Restoration Settlement Act (Act: Public Law 111-11).

Reclamation is proposing to continue Interim Flow releases, as identified in the WY 2012 Interim Flows Project Environmental Assessment/Initial Study (EA/IS) and Biological Assessment (BA). The continuation of this action is consistent with the Settlement which states that Interim Flows shall continue from October 1, 2009, until full Restoration Flows begin or January 1, 2014, whichever occurs first. The Proposed Action will comply with the Settlement and the Act in WY 2012 by releasing water from Friant Dam for one additional year (WY 2012 or October 1, 2011 to September 30, 2012) in accordance with the flow schedule in Exhibit B of the Settlement. This will be done in a manner consistent with Federal, State, and local laws, and

existing or future agreements with downstream agencies, entities, and landowners. The Proposed Action also includes activities necessary to convey the flows in the San Joaquin River from Friant Dam to the Delta, and to collect relevant data on flows, temperatures, fish needs, seepage losses, recirculation, recapture, and reuse. A portion or all of the WY 2012 Interim Flows would be recaptured by existing water diversion facilities along the San Joaquin River and/or in the Delta, for agricultural, municipal, and industrial, and/or fish and wildlife uses. Potential diversion locations for recapturing releases of Interim Flows during WY 2012 are Mendota Pool, Arroyo Canal, Lone Tree Unit of the Merced National Wildlife Refuge (NWR), the East Bear Creek Unit of the San Luis NWR Complex, the Patterson Irrigation District (PID) facility, the West Stanislaus Irrigation District (WSID) facility, the Banta-Carbona Irrigation District (BCID) facility, and the Central Valley Project (CVP) Harvey O. Banks Pumping Plant (Banks), and State Water Project (SWP) C.W. "Bill" Jones Pumping Plant (Jones) in the Delta. Interim Flows will not be diverted at unscreened facilities until ESA authorization is complete. The action would not involve construction activities.

The Proposed Action includes one potential variation in flow/timing when compared to the previous WY 2010 and 2011 Interim Flows consultations. According to Table 3-2 in the Proposed Action's Biological Assessment, there will be 350 cfs released from Friant Dam from December 2, 2011, to January 31, 2012, if a wet year designation is determined. The actual flow amount would be less for other water year types. The comparable table in the previous two Interim Flows consultations had this release amount at 0 cfs during this time period. Based on Exhibit B of the Settlement, it is calculated that 350 cfs flows from Friant Dam would result in 155 cfs in December and 175 cfs in January of additional flow from the San Joaquin River at the Merced confluence.

Since 1992, the California Department of Fish and Game (CDFG) has typically operated the Hills Ferry Barrier (HFB) beginning in mid-September through early to mid-December to direct migrating salmonids toward suitable habitat in the San Joaquin River tributaries. CDFG applies annually for an ESA section 4(d) research permit and accompanying take limit for Central Valley steelhead from NMFS for operation of the HFB. The permit includes, monitoring, capture, and relocation of steelhead in the vicinity of the HFB. As part of the project description, Reclamation proposes to implement the Steelhead Monitoring Plan (SMP) included in the August 29, 2011, additional information letter. Upon the removal of the Hills Ferry Barrier, Reclamation would implement monitoring at specific points within the Restoration Area using specific sampling methods to detect steelhead that may migrate upstream of the confluence with the Merced River. Monitoring would continue until the start of the Vernalis Adaptive Management Plan (VAMP) like flows, estimated to occur on March 15. Take associated with the SMP is not covered in this consultation letter. Reclamation is in the process of applying for take coverage for implementation of the SMP under section 10(a)(1)(A) of the ESA.

Consultation History

Coordination and communication between Reclamation and NMFS on the Proposed Action have occurred regularly beginning January 21, 2011, primarily as part of the Environmental Compliance and Permitting Work Group (ECPWG), which includes staff from all implementing agencies, including Reclamation, the U.S. Fish and Wildlife Service (USFWS), and NMFS. This

group is also the focal point for the development of the Supplemental Environmental Assessment/Initial Study (SEA/SIS) for the Proposed Action, to meet the requirements of the National Environmental Policy Act and the California Environmental Quality Act. In addition, members of the Fisheries Management Work Group (FMWG), which also includes staff from the Implementing Agencies, were involved in stages of the consultation process and the development of the SMP. ESA compliance for the Proposed Action and the SJRRP as a whole has been discussed on a regular basis as summarized in Table 2-1 in the Proposed Action's Biological Assessment. The ECPWG and FMWG members continue to meet regularly, generally on a bi-weekly basis, to discuss ESA issues.

Informal consultation occurred for both WY 2010 and 2011 Interim Flows projects. NMFS issued concurrence letters dated September 23, 2009, and September 30, 2010, with the determination of "may effect, not likely to adversely affect" for ESA-listed species under our jurisdiction.

Following a 30-day sufficiency review, NMFS requested additional information by phone on August 23, 2011, on the following three topics: (1) A revised Steelhead Monitoring Plan for WY 2012, (2) Further explanation of flows between December 2011 and March 2012 analyzed in relation to flows at the Merced River confluence, and (3) Clarification on the timing of the Hills Ferry Barrier operation. Additional information was provided in a letter from Reclamation dated August 29, 2011.

Action Area

The action area described for the Proposed Action for WY 2012 is the same as that identified in the WY 2010 and WY 2011 Interim Flows Biological Assessments and is defined as all areas to be affected directly or indirectly by the Proposed Action. This includes all areas where flows and water levels could be altered as a result of the release of WY 2012 Interim Flows under the SJRRP, and includes the following: 1) Millerton Lake and the San Joaquin River between Kerkhoff Dam and Millerton Lake, 2) San Joaquin River from Friant Dam downstream to the Delta, 3) Eastside Bypass, downstream from the Sand Slough Control Structure, and the Mariposa Bypass, 4) Merced, Tuolumne, and Stanislaus rivers downstream from New Exchequer, Don Pedro, and New Melones dams, respectively, and 5) South and central Delta, defined as the San Joaquin River and its tributaries within the Delta west to its confluence with the Sacramento River.

Summary of Proposed Action

The release of Interim Flows during WY 2012 will be made according to the Settlement and the Act, as limited by downstream channel capacities and potential material adverse effects from groundwater seepage, and consistent with Federal, State, and local laws, and any agreements with downstream agencies, entities and landowners. The purpose of the Interim Flows is to allow the collection of relevant data concerning flows, temperatures, fish needs, seepage losses, recirculation, recapture and reuse of flows. Interim Flows would be released to the San Joaquin River from Friant Dam during WY 2012, from October 1, 2011, through September 30, 2012.

The magnitude and timing of flow releases will be in accordance with the average flow release schedule presented in Exhibit B of the Settlement. The estimated regulated non-flood flows for each reach of the San Joaquin River between Friant Dam and the confluence with the Merced River (Restoration Area) under the Proposed Action are included within the project BA by water year type. The water year type for 2012 cannot be determined until spring of 2012.

The Proposed Action also involves recapturing WY 2012 Interim Flows to the maximum extent possible at several existing diversions along the San Joaquin River and the Delta. These locations include the following: (1) the Jones and Banks pumping plants in the south Delta, (2) the BCID's facility, (3) the WSID's facility, (4) the PID's facility, (5) the East Bear Creek Unit of the San Luis NWR, (6) the Lone Tree Unit of the Merced NWR, (7) Arroyo Canal at Sack Dam, and (8) Mendota Pool.

Of the list in the above paragraph, the Proposed Action would potentially utilize three existing screened recapture facilities downstream of the Merced River confluence. These include the Jones, Banks, and BCID facilities. The proposed recapture at the BCID facility would change the current operations in that BCID would divert some of the Proposed Action's flows at its facility in lieu of deliveries via the Delta-Mendota Canal (DMC). All proposed recapture at these three facilities would occur within the facilities' operating criteria, including biological opinions in place at the time of recapture, and no additional take would occur beyond that already allowed.

PID is currently in the process of installing a screen at its facility. WY 2012 Interim Flows would only be diverted after the fish screen is functional and operationally compliant, which is currently targeted for summer 2011. The WSID facility is currently unscreened and will remain unscreened during WY 2012. This facility would only be used for the diversion of WY 2012 Interim Flows with authority to take listed species under the ESA. Such authority is not being proposed as part of this Proposed Action, but may be proposed at some time in the near future as a separate project.

Under the Proposed Action, the water released under WY 2012 Interim Flows that is available for recapture and recirculation is estimated to be equal to the amount of water that reaches the Mendota Pool at the downstream end of Reach 2B. WY 2012 Interim Flows recaptured along the San Joaquin River may provide deliveries in lieu of DMC supplies. Recirculation would be subject to available capacity within CVP/SWP storage and conveyance facilities, including the Jones and Banks pumping plants, California Aqueduct, DMC, San Luis Reservoir, and related pumping facilities, and other facilities of CVP/SWP contractors. Under the Proposed Action, recaptured water would be exchanged for a like amount of CVP water and/or would be recirculated and held in storage in San Luis Reservoir. Reclamation is working with the Friant Division long-term water contractors to prepare an EA to determine possible mechanisms to either exchange or deliver to the Friant Division long-term contractors recaptured water stored in San Luis Reservoir.

The Proposed Action includes implementation of a monitoring plan that was initially developed by the FMWG in February 2011, to monitor Central Valley steelhead in the Restoration Area

during spring Interim Flows. Reclamation updated the plan in August 2011 to include specific monitoring locations and sampling methods.

The only difference in the projected flow schedule in the Proposed Action as compared to the WY 2010 and 2011 Interim Flows projects is a 350-cubic feet per second (cfs) base release from Friant Dam beginning December 2, 2011, and continuing through January 30, 2012, in a wet water year. This represents the maximum release and correlates with a wet water year type.

All recapture actions will be conducted in a manner consistent with Federal, State, and local laws, and any agreements with downstream agencies, entities, and landowners. No additional take of steelhead beyond that currently allowed, or allowed at the time of recapture if different from current take levels, would occur at these facilities as a result of the Proposed Action.

Implementing the Proposed Action could result in negligible increase in Delta inflow from the San Joaquin River. Delta export facilities would continue to operate consistent with existing operating criteria, and prevailing laws, regulations, Biological Opinions (BO), and court orders in place at the time the water is recaptured. Recirculation would be subject to available capacity within CVP/SWP storage and conveyance facilities. Furthermore, implementation of the WY 2012 Interim Flows would remain consistent with the Reasonable and Prudent Alternatives (RPA) as required by the U.S. Fish and Wildlife Service (USFWS) Delta Smelt BO of the Operating Criteria and Plan for the Continued Operations of the Central Valley Project and State Water Project (USFWS Operations BO) (USFWS 2008) and the NMFS Biological and Conference Opinion on the Long-Term Operations of the Central Valley Project and State Water Project (NMFS Operations BO) (NMFS 2009), respectively or as amended by court action. Continued implementation of the RPAs would avoid jeopardy of protected species, including California CV steelhead on the Stanislaus River and in the Delta, and spring- and winter-run Chinook salmon, the Southern DPS of North American green sturgeon, and Delta smelt (USFWS jurisdictional species) in the Delta.

The Proposed Action could increase flows in the San Joaquin River, at the confluence of the Merced River, by up to 1,300 cfs. VAMP expires in WY 2012. NMFS expects tributary contributions from the Merced and Tuolumne rivers to continue through 2012, and that Reclamation shall seek supplemental agreement with the San Joaquin River Group Authority (SJRGA) for tributary contributions so as to not rely on New Melones Reservoir to meet required flows at Vernalis, California. Reclamation is working with the SJRGA to address the requirements of the NMFS Operations BO. However, at this time, no agreement has been reached on any future VAMP action, and although it is reasonable to assume that VAMP or a VAMP-like action would occur in WY 2012, there is no information as to how this action would be implemented. Therefore, the BA includes an analysis assuming that any future implementation of VAMP or a VAMP-like action would be similar to historical implementation.

Endangered Species Act Section 7 Consultation

The action area includes but also extends beyond the geographic boundaries of several ESA listed anadromous fish species. The species exposed to the effects of the Proposed Action vary within three distinct sub-areas within the action area. For clarity of our species analysis we have defined these as the Delta Area, the Tributary Area, and the Restoration Area. The Delta Area is the area downstream of the confluence of the Stanislaus and San Joaquin rivers that may be affected by operations of the CVP/SWP Jones and Banks export facilities. This is within the range of the Sacramento River winter-run Chinook salmon and the CV spring-run Chinook salmon evolutionarily significant units (ESUs) and the California CV steelhead DPS and is within the range of the Southern DPS of North American green sturgeon. Available information indicates Sacramento River winter-run Chinook salmon, CV spring-run Chinook salmon, California CV steelhead and the Southern DPS of North American green sturgeon utilize this portion of the action area for migration and rearing purposes. This area also includes designated critical habitat for the Southern DPS of North American green sturgeon and California CV steelhead. The Tributary Area includes the area of the San Joaquin River between its confluence with the Stanislaus and Merced rivers, including the Merced, Tuolumne, and Stanislaus rivers downstream from New Exchequer, Don Pedro, and New Melones dams. California CV steelhead is the only ESA listed anadromous fish that occurs in the Tributary Area, having small populations in the Merced, Tuolumne, and Stanislaus rivers. Designated critical habitat for California CV steelhead includes these tributaries and the main stem San Joaquin River from the Delta to the confluence of the Merced River. Available information indicates California CV steelhead use this portion of the San Joaquin River for migration to/from spawning areas in the tributaries and rearing. The Restoration Area includes the reaches of the San Joaquin River upstream of the confluence with the Merced River. Although these reaches of the San Joaquin River are within the historical range of California CV steelhead, present habitat conditions in these reaches generally have been unsuitable for California CV steelhead owing to no flow or lack of flow, since the operation of Friant Dam and associated water conveyance canals. California CV steelhead are rarely able to access this area except under currently unusual conditions of extended high flows. There is no designated critical habitat for anadromous fish species in the Restoration Area.

The potential adverse effects to listed salmonids and green sturgeon associated with the WY 2012 Interim Flows are expected to be insignificant or discountable due to the incorporation of several avoidance and minimization measures into the project description. These measures are discussed below in relation to the specific sub-area in which they will be applied.

The Restoration Area

The potential adverse effect of the Proposed Action on California CV steelhead in the Restoration Area could be the attraction of California CV steelhead above the confluence of the Merced River. Since the operation of Friant Dam and associated conveyance canals, habitat conditions in the San Joaquin River are unsuitable for California CV steelhead owing to flow limitations, passage barriers, and unscreened diversions. NMFS concurs that the likelihood of California CV steelhead moving into the Restoration Area as a result of WY 2012 Interim Flows is extremely low. The rare observations of individual adult California CV steelhead above the

confluence of the Merced River in recent record have only occurred during flood and extended high flow releases (e.g., 2,000-4,000 cfs for continuous months) that have occurred in wet years. WY 2011 was a wet year, and no California CV steelhead were detected in the vicinity of Hills Ferry Barrier while it was operated by the CDFG; although an active monitoring program was not in place. Historic streamflow conditions upstream from the Merced River confluence during the spring averaged 119 cfs to 13,050 cfs, with peak flows reaching 59,000 cfs in 1997 under flood conditions, when flood flows were released form Friant Dam.

The Proposed Action would include year-round releases from October 1, 2011, through September 30, 2012. This differs from previous years of Interim Flows, which did not include flows between mid-November and February 1 of any given year. Based on Exhibit B of the Settlement, 350 cfs flows at Friant Dam is calculated to result in 155 cfs in December and 175 cfs in January of additional flow at the Merced Confluence. This additional flow amounts to approximately 5 percent of the flow at the Merced Confluence during a Dry Year. During non-flood conditions in WY 2012, Interim Flows could increase flows by an average of up to 220 cfs at this location beginning on February 1, 2012. Hydrologic data presented in the BA demonstrate that the average annual flows under the Proposed Action are within 7 percent of the average annual flows expected at this time and location under existing conditions. This small increase is not anticipated to trigger any change to California CV steelhead migration patterns in the San Joaquin Basin. Monitoring will be implemented to verify whether steelhead migrate into the Restoration Area. In the event steelhead are encountered in the Restoration Area, NMFS will be notified immediately. According to the Steelhead Monitoring Plan, steelhead captured in the Restoration Area would be tagged and transported downstream of the mouth of the Merced River. Coverage for take associated with the SMP will be covered under a section 10 (a)(1)(A) enhancement of the species permit. The change in the Interim Flow schedule discussed above may attract migrating adult CV steelhead. However, these flows are likely to be insignificant due to several factors as discussed in the two paragraphs below.

Although not a part of the Proposed Action, the Central California Irrigation District (CCID) is scheduled to perform routine maintenance on the Mendota Pool and Dam, and as a result would affect the quantity of Interim Flows released in the fall and early winter. This will include the need to drain Mendota Pool for routine inspection and potential maintenance of the dam. Mendota Pool is typically drained every other year, from mid-November to mid-January for regular maintenance activities. In order to accommodate this activity, Reclamation would make real-time flow adjustments as necessary to allow the work to proceed. This would involve reducing or stopping Interim Flow releases from Friant Dam upon notification of the start of work by CCID. Interim Flows would resume when the work is complete.

During WY 2011, and prior to non-SJRRP flood flows, Interim Flows were being held to 50 cfs past Sack Dam due to downstream seepage constraints and limitations. It is possible that these types of situations could occur in WY 2012. If this were to occur, this would not affect the straying of CV steelhead as 50 cfs would not result in any measurable detection of flow at the Merced River confluence that could cause steelhead to move up the San Joaquin River. Flows at such a low level are most likely to infiltrate into the river channel or the Eastside Bypass, and would not connect to the downstream extents of the San Joaquin River.

The Hills Ferry Barrier (HFB) is a type of resistance weir commonly used to exclude and/or trap anadromous fish in rivers. The HFB is operated by the California Department of Fish and Game each year from approximately mid-September to mid-December. The purpose of the HFB is to redirect upstream-migrating adult fall-run Chinook salmon into suitable spawning habitat in the Merced River and prevent migration into the mainstem San Joaquin River upstream, where conditions are currently unsuitable for Chinook salmon. California CV steelhead migrate during fall and winter in a manner similar to that of Chinook salmon, and they have a similar body type. The barrier is expected to be equally effective in redirecting any California CV steelhead.

The Proposed Action does include a monitoring and salvage component to redirect California CV steelhead in the unlikely event that they move into the Restoration Area. These activities are covered for take by other permitting mechanisms between NMFS and the California Department of Fish and Game during the operation of the HFB (approximately mid-September through mid-December). If WY 2012 Interim Flows occur in the San Joaquin River at the confluence of the Merced following the removal of the HFB in December, Reclamation will implement the Steelhead Monitoring Plan, included as an attachment to the BA and as updated by the additional information letter dated August 29, 2011. Coverage for take associated with the SMP will be addressed under a section10 (a)(1)(A) enhancement of the species permit.

The recapture of WY 2012 Interim Flows within the Restoration Area (i.e. upstream of the Merced River confluence) will not impact listed species because it is expected that they will not occur there and will not impact critical habitat because the Restoration Area is not included in the designated critical habitat for listed salmonids or sturgeon.

The Tributary Area

If the WY 2012 Interim Flows reach the Tributary Area, they would have the potential to affect California CV steelhead in terms of water temperature, potential introduction of contaminants, reduction of spring flows in the tributaries by affecting the VAMP-like flows, and potential water recapture.

Modeling results using a monthly time step presented in the BA indicated that Interim Flows that reach the confluence with the Merced River could raise water temperatures in the lower San Joaquin River from the existing condition. Further analysis indicates that the thermal effects of the Interim Flows likely would not be appreciatively different from the currently impaired status, based on the level of precision of the model analysis. The model results do not assess daily temperatures, which are of greater ecological and biological significance to fish, but they do suggest a potential for adverse temperature effects as a result of the Interim Flows downstream of the confluence of the Merced River. The Environmental Protection Agency (EPA) temperature standards for salmonids are based on the effect related to a 7-day maximum daily average (EPA 2003). As flood flows were released for a large portion of WY 2011 when Interim Flows would have been released, WY 2010 data was used in the analysis as flood flows may not accurately depict temperatures that would be indicative to Interim Flows. The WY 2010 temperature data collected on the San Joaquin River just upstream of the Merced River confluence indicates that water temperatures between March 1 and September 17 were lower and in some cases significantly lower than the modeled temperatures for that same time period. This

comparison was presented with a daily average, which more accurately represents the habitat conditions that listed fish would encounter. The actual water temperature effects for WY 2012 are unknown; however, results are expected to be similar to previous observations which were lower temperatures than anticipated in a normal-wet year type (*i.e.*, WY 2010). To avoid potential adverse temperature effects, the project description includes weekly coordination with NMFS to monitor temperatures above and below the confluence of the Merced River, with alternative implementation of Interim Flows if thermal conditions are determined to be worse than predicted.

The added volume from the Interim Flows could mobilize contaminants from within the channel that have accumulated in recent dry years. Although this effect is of comparable intensity to the contaminant flushing that occurs with precipitation and flood events, contaminants could have effects on the aquatic food supply through the Delta suppressing growth rates and survival. Water column toxicity testing in the fall of 2009 in the Project Area for organochlorine and pyrethroid pesticides found that all pesticides were below the reporting limits. The reporting limits are however above levels of concern to aquatic life and as such, the results are under review by the Central Valley Regional Water Quality Control Board. NMFS is working with Reclamation to develop new aquatic resources reporting limits for the sampling/monitoring procedures for WY 2012 and future project operations. The extent and effect of this potential stressor is unknown and cannot be determined at the time. Reclamation commits to coordinate with NMFS and other agencies engaged in contaminant monitoring to monitor water quality components on a weekly to bi-weekly basis. Interim Flows will be modified if high levels of contaminants are detected.

Added Interim Flow contribution to base San Joaquin River flow had potential to reduce or increase spring tributary releases based on past VAMP decision making processes. Modeling results in the BA also indicate that Interim Flow contributions can also result in increased spring tributary releases. The changes in flow as modeled are typically less than 12 percent, although some periods show a significant change on the Stanislaus River. The modeling in the BA of the VAMP flows does not incorporate the NMFS Operations BO RPA for the Stanislaus River. RPA actions for operational conditions for the Stanislaus River include minimum flows for salmonids and spring flow requirements. Implementation of Action suite III of the RPA will provide instream protection for California CV steelhead on the Stanislaus River during WY 2012 Interim Flows regardless of the VAMP action. VAMP terms for 2012 are uncertain, but the Proposed Action assumes that a VAMP-like action will occur in the spring of 2012. Reclamation and NMFS will monitor VAMP tributary flow determinations and coordinate to prevent Interim Flows from adversely modifying spring flow releases from tributaries.

The inclusion of a monitoring and coordination process between Reclamation and NMFS in the project description will assure that potential adverse effects relating to water temperature, contaminants, and tributary flows will be reduced to an insignificant and discountable level. Currently the Flow Scheduling Subgroup/Streamflow and Water Quality Subgroup meets on a weekly basis to review real-time data, including flow releases and water quality. The subgroups are comprised of staff from the Implementing Agencies.

Recapture in the tributary area may occur in three locations: BCID, WSID, or PID's facilities. Any Interim Flows captured at the BCID facility will fall within the current operational conditions which are covered under an existing Biological Opinion (Reference: F/SWR4: MH, October 26, 2000). Interim Flows recaptured at either WSID or PID's facilities would only occur after ESA consultation for the operations of these facilities has been completed. Therefore, no additional impacts to steelhead or critical habitat are expected from recapture in this section of the Action Area.

The Delta Area

If the WY 2012 Interim Flows reach as far as the Delta, they would have the potential to affect Sacramento River winter-run Chinook salmon, CV spring-run Chinook salmon, California CV steelhead, and the Southern DPS of North American green sturgeon by potentially increasing export operations as a result of recapturing WY 2012 Interim Flows. The 2009 NMFS Operations BO has analyzed the effects of proposed Delta export operations and provided an RPA for operations. Implementation of the RPA actions III and IV in particular will address potential effects of export operations relating to Interim Flows on Sacramento River winter-run Chinook salmon, CV spring-run Chinook salmon, California CV steelhead, and the Southern DPS of North American green sturgeon. On June 4, 2009, Reclamation responded to this Opinion that Reclamation will begin immediate implementation of the RPA to comply with the NMFS Operations BO, but they are also continuing to review the NMFS Operations BO and RPA. NMFS concurs that the potential effects of the WY 2012 Interim Flows in the Delta Area will be reduced to an insignificant and discountable level, as long as the recapture of Interim Flows via the CVP/SWP export facilities is conducted under the NMFS Operations BO and RPA.

NMFS concurs that the proposed WY 2012 Interim Flows project is not likely to adversely affect Sacramento River winter-run Chinook salmon, CV spring-run Chinook salmon, California CV steelhead, and the Southern DPS of North American green sturgeon and the respective designated critical habitats of California CV steelhead and the Southern DPS of North American green sturgeon. This concurrence is based on implementing all conservation and protective measures intended to avoid or minimize adverse effects to fish and fish habitat as identified in the project description.

This concludes informal consultation for the proposed action. Re-initiation of consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) 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; (2) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered; or (3) a new species is listed or critical habitat is designated that may be affected by the action.

Essential Fish Habitat (EFH) Consultation

With regard to EFH consultation, the entire proposed action area has been identified as EFH for Central Valley fall/late-fall Chinook salmon (*O. tshawytscha*) in Amendment 14 of the Pacific

Salmon Fishery Management Plan pursuant to MSA. The Delta portion of the Action Area has been designated as EFH for starry flounder (*Platichthys stellatus*) in the Pacific Coast Groundfish Fishery Management Plan. The RPAs in the 2008 USFWSDelta Smelt Biological Opinion of the Operating Criteria and Plan for the Continued Operations of the Central Valley Project and State Water Project that protect delta smelt will also be protective of starry flounder. The Proposed Action includes conservation measures to avoid impacts to salmon habitat, and is in fact designed in the long-term to improve salmonid habitats and contribute to the recovery of fall-run and spring-run Chinook salmon. Because of the reasons discussed in the ESA Section 7 Consultation section, NMFS finds that the project activities will not adversely affect EFH for Pacific salmon and starry flounder; therefore, EFH conservation recommendations will not be provided at this time. Written response as required under section 350(b)(4)(B) of the MSA and Federal regulations (50 CFR 600.920) will not be required. Should there be substantial revision to the Proposed Action, however, the lead Federal agency will need to re-initiate EFH consultation.

Fish and Wildlife Coordination Act (FWCA)

The purpose of the FWCA is to ensure that wildlife conservation receives equal consideration, and is coordinated with other aspects of water resources development (16 U.S.C. 661). The FWCA establishes a consultation requirement for federal departments and agencies that undertake any action that proposes to modify any stream or other body of water for any purpose, including navigation and drainage (16 U.S.C. 662(a)). Consistent with this consultation requirement, NMFS provides recommendations and comments to Federal action agencies for the purpose of conserving fish and wildlife resources. The FWCA allows the opportunity to offer recommendations for the conservation of species and habitats beyond those currently managed under ESA and MSA. Because the Proposed Action is designed to avoid environmental impacts to and restore aquatic habitat within the action area, NMFS has no additional FWCA comments to provide.

Please contact Ms. Leslie Mirise at (916) 930-3638, or via email at Leslie.Mirise@noaa.gov, if you have any questions regarding this project or require any additional information.

Sincerely,

Maria Rea

Maria Rea
Supervisor, Sacramento Area Office

cc: Copy to file – ARN 151422SWR2009SA00275
NOAA Fisheries-PRD, Long Beach, CA