

SAN JOAQUIN RIVER RESTORATION PROGRAM
RESTORATION ADMINISTRATOR
2012 ANNUAL REPORT



Cover Photo: Hills Ferry Trap and Haul Activity – November 2012 – Rod Meade, Restoration Administrator

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Submitted to:
SJRRP Settling Parties
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EXECUTIVE SUMMARY

The Restoration Administrator (RA) is required by the San Joaquin River Restoration Program (SJRRP) Stipulation of Settlement (Settlement) to prepare a written report assessing progress toward achieving the SJRRP Restoration Goal during the previous year. After consulting with the Technical Advisory Committee (TAC), I am submitting my *2012 RA Annual Report (2012 Report)* to the Settling Parties to fulfill this responsibility. This is my sixth Annual Report.

My *2012 Report* provides the following information:

1. Summaries of SJRRP implementation activities during 2012;
2. Impediments to implementing the Settlement encountered during the past year;
3. Recommendations to remedy identified implementation impediments and priority actions for the SJRRP in 2013;
4. RA/TAC activities during 2012 and recommended priority actions for the RA/TAC in 2013; and
5. 2012 expenditures from the RA and TAC accounts.

This Executive Summary focuses on my assessment of implementation progress during 2012, impediments to progress, and my recommendations for remedying the observed impediments to implementation.

Assessment of Progress toward Achieving the Restoration Goal During 2012

The SJRRP achieved significant progress toward achieving the Restoration Goal during 2012. The signature accomplishments during 2012 the completion of final programmatic environmental compliance documentation for the SJRRP, preparation of a Working Draft Framework for Implementation (*Draft Framework, June*), and a successful trap and haul program that resulted in 116 adult fall run Chinook salmon being trapped upstream of the Hills Ferry Barrier in Reach 5 and then being translocated and released in Reach 1, near Highway 41. In spite of the best efforts of talented and hard-working agency staff, progress continues, but at a reduced pace and level of efficiency. The SJRRP continues to lag behind the Settlement schedule and will not be able to meet the deadlines for specific channel and structural improvements and other actions set forth in the Settlement. It will require more time to achieve Settlement milestones than provided for in the 2006 Settlement.

Impediments to SJRRP Implementation Progress Observed During 2012

Section 4 of my *2012 Report* discusses observed impediments to implementation. The Settlement relies on the ability of the SJRRP Program Management Team (PMT) to coordinate the efforts of the two state and three federal agencies that comprise the Implementing Agencies. A variety of impediments to progress were observed during 2012; however, the primary impediment to progress was the lack of collaborative program implementation oversight and direction provided by the five Implementing Agency directors. The SJRRP is confronted by challenges that cannot be effectively addressed by a single agency will continue to require coordinated action by multiple Implementing Agencies. Thus, while individual

directors reported good communication with their respective lead staff on the PMT, the lack of collaborative engagement by the directors resulted in the agencies functioning within five separate “silos” in many respects. Information flowed vertically from the staff to their respective directors, but information flow between the directors was insufficient to enable them to identify and act on emerging implementation problems before they became major impediments, and to be able to collaboratively evaluate potential solutions to those issues before they impacted implementation progress. For instance, collaborative involvement of the agency directors could have avoided or minimized delays in formulating a reintroduction plan for fall and spring-Chinook salmon. With a completed reintroduction plan in place earlier, then the agency directors also could have better managed and coordinated the USFWS schedule for completing the reintroduction permit and the NMFS schedule for completing the *Section 10(j)* and *Section 4(d)* rules.

These three actions/work products are essential to timely and successful reintroduction of Chinook salmon to the San Joaquin River consistent with the Settlement. As it turned out, the first two work products (USFWS permit application and NMFS permit action) were completed later than scheduled. The rule-making process will not be complete until later in 2013 and, consequently, Chinook salmon now will not be released to the river until 2014. Thus, the release of spring run Chinook salmon was not initiated in 2012, as required by the Settlement (Paragraph 14), and will be delayed until 2014.

A second impediment that is related to the lack of engagement by the agency directors, was the combination of communication and coordination issues that were particularly important to the planning and implementation of fishery actions. The communication and coordination issues involving the fish agencies also could be traced to the outdated 2007 Program Implementation Plan (*PMP*) that was intended to guide SJRRP management and implementation. The *PMP* was supposed to be updated after its completion, but it never was updated. As a result, the *PMP* does not provide the necessary designations of responsibility and authority, and other management tools needed to effectively guide implementation efforts. The combination of the lack of coordinated engagement by the five Implementing Agency directors during implementation, and the outdated *PMP*, contributed directly to a continuing inability of the SJRRP Implementing Agencies to establish and maintain effective communication, coordination and management during implementation.

RA Recommendations for Addressing Implementation Impediments to Progress

Section 5 recommends remedies to address the two overarching impediments to progress that contributed directly to ongoing communication, coordination and management difficulties that continue to impact implementation progress.

First, I recommend that the five Implementing Agency directors work collaboratively to provide oversight and direction to the PMT during implementation. The 2007 *Program Management Plan* (*PMP*) called for creation of an Agency Policy Team (APT) that would consist of senior managers of the Implementing Agency and provide a venue for resolving difficult implementation issues. I recommend regular meetings of the Implementing Agency directors, serving as the APT, with the PMT to assess implementation progress and identify ways that obstacles can be identified early and clear authority and responsibility for addressing those issues can be provided to the PMT. In addition, I recommend the directors convene regularly scheduled Executive Meetings with the non-federal Settling Parties and RA to discuss

implementation progress and course corrections, as needed (*Section 5.1*). These Executive Committee meetings should be substantive meetings, with items that require collaborative actions placed on the agenda for discussion and direction by the directors acting as the APT.

Second, I recommend that the PMT and agency directors collaboratively review the 2007 *PMP* and, in consultation with the non-federal Settling Parties and RA, revise and update the *PMP* to address the following management needs (*Section 5.2*):

1. Conflict resolution protocols and commitments by the Implementing Agencies to facilitate engaging agency executives on the Agency Policy Team (APT) with authority to resolve agency conflicts or impasses;
2. Clear designations of leadership and decision-making responsibilities for fishery management and reintroduction actions;
3. Processes for early identification of implementation issues and protocols for expediting elevation of problem actions to the APT to obtain guidance; and
4. Improved Program Action Tracking Systems, updated annually, to enable early identification by the SJRRP Program Management Team (PMT) of required improvements and actions that are in danger of falling behind the updated SJRRP schedule.

I provide additional recommendations designed to address impediments to implementation progress in *Section 5*. These recommendations include:

- Preparing a Reintroduction Plan for Chinook salmon (*Section 5.3*);
 - Commencing reintroduction of fall run Chinook salmon during 2013, and
 - Commencing spring run Chinook salmon no later than spring 2014
- Resolve outstanding objections expressed by the non-federal Settling Parties about the content of existing proposals in the *Draft Framework* (*Section 5.4*);
- Continuing efforts to improve the process for preparing the annual MAP reports, including efforts to improve MAP study designs and providing for mid-year report on MAP study results so that data will be available in time to inform preparation of the next scheduled MAP (*Section 5.5*);
- Continuing to pursue near-term seepage management options below Sack Dam (*Section 5.6*);
- Considering near-term options to address Reach 2 levee stability concerns (*Section 5.7*);
- Revising and updating the *Floodplain Habitat Assessment* to identify floodplain habitat needs, habitat restoration opportunities for meeting those needs and linking the evaluation of the designs for Reach 2B and Reach 4B projects to determine the extent to which those alternatives contribute to the needed floodplain (*Section 5.8*); and
- Possible Additional Measures Pending Update of the *Floodplain Habitat Assessment* (*Section 5.9*).

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1 Introduction and Overview

This *2012 Restoration Administrator Annual Report (2012 Report)* is the sixth Annual Report prepared and submitted by me to the Settling Parties as the Restoration Administrator (RA). My *2012 Report* fulfills the Settlement requirement that I provide an annual written report to the Settling Parties about progress made over the previous calendar year in implementing the Stipulation of Settlement (the Settlement). Prior to transmittal of my written report to the Settling Parties I consulted with TAC members. I will continue consultation with state agency TAC members and federal liaison representatives to the TAC during the 30-day review period that precedes transmittal of my *2012 Report* by the Settling Parties to the Court.

1.1 Settlement History

In 1988, a coalition of environmental groups, led by the Natural Resources Defense Council (NRDC), filed a lawsuit challenging the renewal of the long-term water service contracts between the United States and the Central Valley Project (CVP) Friant Division contractors. After more than 18 years of litigation of this lawsuit, known as *NRDC, et al., v. Kirk Rodgers, et al.*, Settling Parties reached agreement on terms and conditions of a settlement. On September 13, 2006, a Stipulation of Settlement (Settlement) was signed by the Settling Parties and subsequently approved by the Court on October 23, 2006. The “Settling Parties” include the Natural Resources Defense Council (NRDC), Friant Water Users Authority (now Friant Water Authority (FWA)), and the U.S. Departments of the Interior and Commerce. On the same day the state of California signed an MOU with the Settling Parties making them SJRRP implementation partners.

The San Joaquin River Restoration Program (SJRRP) restoration area extends 153 miles downstream from Friant Dam to the confluence of the San Joaquin and Merced rivers. The SJRRP is one of the largest river restoration projects of its kind in the country and is particularly complex because of its large scale, multiple implementing partners and need to provide for major channel and facility improvements as well as habitat restoration. The purpose is to restore river flows and natural habitat to levels capable of supporting reintroduced runs of Chinook salmon and other native fish populations. More than sixty miles of the historic mainstem of the San Joaquin River was dry in most years since the mid-1940s following construction and operation of Friant Dam. In 2004 a federal court determined that the Bureau of Reclamation was in violation Section 5937 of the California Fish and Game Code because the Bureau of Reclamation did not operate the Dam in a manner that released enough water to keep fish in good condition downstream of Friant Dam.

The Secretary of the Interior (Secretary) is required to implement the terms and conditions of the Settlement. The Bureau of Reclamation on behalf of the Secretary took the lead in establishing the SJRRP to implement the Settlement. Having completed its sixth year of implementation, the SJRRP continues to be staffed by three federal agencies and two state agencies. The federal agencies are the Bureau of Reclamation (Reclamation), the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). The state agencies are the Department of Water Resources (DWR) and Department of Fish and Wildlife (DFW). Collectively, these five agencies are referred to as the

“Implementing Agencies” and their representative lead supervisory staff serving on the Program Management Team (PMT) that oversees much of the implementation of the Settlement.

The Settlement establishes two primary goals: a “Restoration Goal” and a “Water Management Goal.” These goals are:

- 1. The Parties agree that a goal of this Settlement is to restore and maintain fish populations in “good condition” in the main stem of the San Joaquin River below Friant Dam to the confluence of the Merced River, including naturally reproducing and self-sustaining populations of salmon and other fish (the Restoration Goal).*
- 2. The Parties also agree that a goal of this Settlement is to reduce or avoid adverse water supply impacts to all of the Friant Division long-term contractors that may result from the Interim Flows and Restoration Flows provided for in this Settlement (the Water Management Goal).*

To assist the Secretary during implementation of the Settlement, the Settlement calls for appointing a Restoration Administrator (RA) and for establishing a Technical Advisory Committee (TAC) to provide consultation to the RA on technical issues. The roles and specific responsibilities for the RA and TAC are specified in the Settlement. The RA is required by Paragraph 10.c of Exhibit D in the Settlement to prepare an Annual Report that assesses progress toward implementing the Restoration Goal during the previous calendar year and to submit the Annual Report to the Settling Parties by February 1 each year. Once the Annual Report is received and reviewed by the Settling Parties, the Settling Parties will submit the Annual Report to the Court, and make it available to the public and post it on the SJRRP web site.

1.2 Phased Implementation of the Settlement

The Program Management Team (PMT) identified three (3) Settlement Implementation “Stages” in its 2008 SJRRP Annual Report. Each of these stages is briefly described below.

Stage 1 of the SJRRP began in 2007 and focused on program-level “pre-flow” planning and information gathering. Stage 1 ended with the commencement of October 1, 2009, releases of Interim Flows from Friant Dam.

Stage 2 of Settlement implementation began with the commencement of Interim Flow releases from Friant Dam on October 1, 2009. Stage 2 will end in 2014 and includes the following actions:

1. Continuation of Interim Flow releases from Friant Dam through the end of 2013;
2. Interim Flow monitoring and analyses;
3. Initial re-introduction of spring and fall run Chinook salmon to the San Joaquin River;
4. Commencement of Restoration Flows (no later than January 1, 2014); and
5. Completion of the Interim Flow Study Report by the PMT in mid-2014.

Stage 3 will begin with the commencement of Restoration Flows on January 1, 2014. It will involve the actions necessary to achieve full implementation of Restoration Flows, completion of SJRRP construction projects and ongoing related monitoring and management activities.

1.3 Overview of the RA 2012 Annual Report

The *RA 2012 Annual Report (2012 Report)* addresses the specified topics and issues required by the Settlement, including Exhibit D. My *2012 Report* is organized to address these issues in the manner described below.

1. *Section 2* addresses SJRRP activities and accomplishments during 2012;
2. *Section 3* assesses SJRRP progress toward achieving the Restoration Goal during 2012;
3. *Section 4* identifies impediments to SJRRP implementation progress during 2012;
4. *Section 5* presents RA recommendations for addressing impediments to implementation progress, additional measures pursuant to Paragraph 12 of the Settlement that may increase the prospects for achieving the Restoration Goal;
5. *Section 6* identifies RA and TAC activities and impediments to the RA ability to assist the Settling Parties during 2012, and high priority actions for 2013; and
6. *Section 7* summarizes RA/TAC expenditures during 2012 and remaining available funding under the existing RLF Agreement with the DWR.

2 2012 SJRRP Implementing Agency Activities and Accomplishments

This section summarizes those activities that were required to be completed prior to the end of 2012 by the Settlement and identifies the significant SJRRP activities and accomplishments that were achieved during 2012.

2.1 Major SJRRP Accomplishments Completed During 2012

SJRRP activities and accomplishments during 2012 constituted significant progress toward achieving the Restoration Goal. Several important actions and work products were completed during 2012 SJRRP, including those activities listed below in chronological order and discussed briefly.

1. **U.S. Fish and Wildlife Service (USFWS) Completion of the 10(a)1(A) Enhancement of Species Permit Application for the Reintroduction of Central Valley Spring run Chinook into the San Joaquin River, received by NMFS, in Late December 2011**

On December 31, 2011, the USFWS submitted its final 10(a)(1)(A) Permit Application to the National Marine Fisheries Service (NMFS) for review and action. The permit application submitted sought regulatory coverage only for select sources of donor fish, excluding Sacramento River tributary source populations (*e.g.*, Mill Creek, Deer Creek and Butte Creek). Supplemental permit coverage for these tributaries is currently being sought by USFWS to provide for a complete permit application. For practical purposes, the 10(a)(1)(A) Permit Application was not received until 2012; therefore, it is addressed as an accomplishment in my *2012 Report*. Submission of the 10(a)(1)(A) Permit Application by USFWS was necessary in order for NMFS to initiate its formal review of the USFWS efforts to reintroduction of spring run Chinook salmon to the Upper San Joaquin Rivers. As noted in *Section 4*, the SJRRP determined that it was necessary to limit the permit application to coverage for a single donor source population, rather than provide for multiple donor source populations as originally planned. The permit application submitted to NMFS by USFWS did not cover the full range of activities needed to reintroduce spring run Chinook salmon to the river.

2. **NMFS Action on the USFWS 10(a)1(A) Enhancement of Species Permit Application for Reintroduction of Central Valley Spring run Chinook, in October**

In October 2012 NMFS completed its review of the 10(a)(1)(A) Permit application filed by USFWS and issued a permit authorizing Incidental Take of spring run Chinook salmon from the Feather River Fish Hatchery for scientific research and enhancement activities. In October NMFS also completed its Final NEPA EA and FONSI determinations. However, the action completed in October did not provide all the permits necessary to reintroduce spring run Chinook salmon to the river. NMFS has committed to completing these and other necessary permits by the end of 2013. This approved permit enabled commencement of the broodstock efforts at the interim conservation hatchery facility. The approved 10(a)(1)(A) Permit is valid until December 31, 2017.

3. **Completion of the Working Draft Framework for Implementation (Draft Framework), in June**

In June the SJRRP completed the *Draft Framework* to provide a guide for implementing the Settlement based on experience and progress through 2011. The *Draft Framework* proposed to update the future

timing, sequencing, and funding for future Settlement projects (e.g., Paragraph 11 improvements) and Chinook salmon reintroduction activities. The *Draft Framework* proposes to deviate from Settlement requirements relating to completion of Paragraph 11 channel and facility improvements and, potentially, the scope of floodplain habitat restoration needed to achieve the Restoration Goal. The *Draft Framework* addressed key activities and work products required for completion by the Settlement on a timeline that either were already behind scheduled completion dates, or that were not anticipated to be completed consistent with Settlement requirements. The non-federal Settling Parties have not agreed to all of the provisions of the *Draft Framework* and have raised significant issues relating to it. The *Draft Framework* remains a draft document that is subject to revision. Discussion will be needed by the federal and non-federal Settling Parties continue concerning the status of unresolved issues relating to schedule and priorities.

4. Completion of Final Program Environmental Impact Statement/Report (PEIS/R), in July

Completion by the SJRRP of the Final PEIS/R (in July) and its Record of Decision (ROD) (in October) marked one of the most significant SJRRP achievements since the signing of the Settlement by the Settling Parties in 2006. These two documents, in combination with completion of the USFWS Biological Opinion (BO) (in August), DWR Notice of Preparation (NOP) (in September), and NMFS BO (in September), meant that the SJRRP finally had completed the programmatic environmental compliance documentation that was supposed to be complete by September of 2009. With completion of these compliance documents, the necessary environmental compliance documentation is in place to provide the foundation for the SJRRP to proceed with completion and review of the three major Paragraph 11 specific project environmental documents for the: (1) Arroyo Canal and Sack Dam; (2) the Reach 2B and Mendota Pool Dam Bypass; and (3) Reach 4BEastside Bypass. The completed programmatic environmental compliance documentation also provides program-level coverage for the Interim Flow and Restoration Flow programs (Paragraph 13), Chinook salmon reintroduction actions (Paragraph 14), and other SJRRP program activities that will be necessary to implement the Settlement and achieve the Restoration Goal.

Notably, the SJRRP was honored late in 2012 by the National Association of Environmental Professionals (NAEP), which bestowed its annual *Conservation Award* on the SJRRP for the Final PEIS/R.

5. Completion of the 2013 Management and Analysis Plan (2013 MAP), in November

The MAP process was initiated by the SJRRP in 2010 to provide updated, annual guidance for implementation of the studies, experiments and monitoring efforts that are needed to compile the scientific information that is necessary to effectively implement the SJRRP consistent with the requirements of the Settlement. Based on completion of the draft *2012 Annual Technical Report (2012 ATR)* that the SJRRP released in April, the *2013 MAP* was completed to identify and guide monitoring and research activities that would be conducted during the 2013 water year. The *2012 ATR* summarized monitoring and research activities and results to date and provided guidance to efforts that should be included in the *2013 MAP*.

6. Submitted Petition for Change of Water Rights at Friant Dam to the State Water Resources Control Board (SWRCB) to Enable Interim Flows to Continue After September 30, 2012, in May

The SJRRP submitted the Petition Application that required approval by the SWRCB in order to allow Interim Flow releases to continue after the current water rights order expired, on September 30, 2012. The Petition was essential to enabling Interim Flow releases to continue for the 2013 water year.

7. Obtained the State Water Resources Board (SWRCB) Temporary Transfer and Change Order (Temporary Urgency Permit) to Re-operate Friant Dam and Continue Releasing Interim Flows Starting October 1, 2012, in September

In September, the SJRRP obtained a temporary order approving transfer of water to continue the release of Interim Flows from Friant Dam, commencing October 1, 2012, and continuing for 180 days. Because of the lack of a Final PEIS/R prior to 2012, SWRCB approvals for such orders were needed by October 1 every starting in 2009, when Interim Flows commenced. Following completion of the PEIS/R and ROD in 2012, the SJRRP also is making progress toward receiving an order from the SWRCB authorizing the long-term transfer and change to implement the Interim Flows and Restoration Flows in accordance with the Settlement.

8. Completed the *Minimum Floodplain Habitat Area for Spring and Fall run Chinook Salmon (Floodplain Habitat Assessment)* report, in November

The SJRRP and RA convened a joint Workshop in February to discuss and evaluate potential approaches to estimating current floodplain habitat within the Study Area, opportunities for restoring floodplain habitat, approaches for estimating the need for floodplain habitat on a reach-by-reach basis for the overall Study Area, and strategies for linking study results to the planning and design of channel and facility improvements required by the Settlement to be provided in reaches 2B and 4B. Following the February Workshop, the SJRRP completed an initial assessment of floodplain habitat needs and opportunities within the Study Area. This assessment was an important step in identifying the quantity and quality of floodplain habitat that will be needed under different flow conditions (volume, velocities, depths and durations) and for different water year types. As discussed in *Section 3* and *Section 4*, the *Floodplain Habitat Assessment* needs additional revisions and analysis to enable it to be useful during ongoing planning and design of SJRRP Paragraph 11 improvements.

9. Conducting Fall run Adult Salmon Trap and Haul Operations and Commencing Fall run Chinook Broodstock Efforts, in November, and Continuing in Mid-December

The SJRRP fisheries agencies successfully implemented trap and transport operations that resulted in trapping 116 adult fall run Chinook salmon in Reach 5 of the river and transporting them to Reach 1 to evaluate spawning habitat use and suitability. The trap and haul operations resulted in the successful creation of 11 natural redds within Reach 1, acoustic tagging and mobile electronic tracking of 34 fish, artificial spawning of three pair of fish in Reach 1, and transport of an additional 59 fish from the Merced River Fish Hatchery to Reach 1. These actions were considered experimental and were not considered to constitute reintroduction of fall run Chinook salmon.



November 2012 Trap and Haul Activities at the Hills Ferry Barrier (photo by Rod Meade)

10. Completed 2012 Water Year Interim Flow Releases and Submitted All Documentation Needed to Initiate 2013 Interim Flow Releases

Completion of the 2012 Interim Flow releases included completion of related monitoring and water management activities. The prior discussion of the *ATR* and *MAP* efforts provides more information concerning the purpose and need for the *ATR* and *MAP*. Monitoring activities were based on installation of 23 flow gages and 30 additional locations recording river stage, and approximately 100 hourly temperature monitor locations documented in the *ATR*.

2.2 SJRRP Progress Toward Completing Restoration Activities Necessary to Support Reintroduction in 2012

11. Updating the MAP Process

Concurrent with completion of the 2013 MAP, SJRRP staff conducted interviews with other Implementing Agency staff, the Settling Parties, the RA and TAC to gain insights into strengths and weaknesses of past MAP efforts. Based on these interviews, SJRRP staff formulated an improved organization and schedule for preparation of the annual MAP products. Starting with the 2014 MAP exercise, an improved framework for formulating the MAP will be tested. The evolving approach uses thematic categories that are consistent with those used in the *Draft Framework*, and the use of newly formed technical subgroups that will be convened and coordinated as part of the overall MAP preparation process to improve the efficiency and effectiveness of the annual MAPs.

12. Updates to the Seepage Management Plan (Seepage Management Plan)

Following completion of the *Seepage Project Handbook* (December 2011) the SJRRP has continued to work toward addressing seepage impacts on adjacent landowners and to relieve the constraints placed on the release of Interim Flows past the Mendota Pool Dam and Sack Dam. Seepage management efforts have involved installing over 200 monitoring wells, many at the request of landowners. The Peer Review Panel convened to provide technical review of the seepage issue called the well monitoring network one of the most comprehensive networks they have seen.

In 2012, no Interim Flows were permitted past Sack Dam to prevent impacts of Interim Flows to groundwater levels on adjacent properties in Reach 2, Reach 3 and Reach 4A. During 2012, the SJRRP engaged a *Peer Review Panel (Panel)* of experts to work with the Seepage and Conveyance Management Work Group to study conditions in and adjacent to the mainstem in Reach 3 and Reach 4. The *Panel* was charged with reviewing current river flow and groundwater conditions and related technical data compiled by the SJRRP and landowners to determine whether restrictions on Interim Flows due to seepage concerns were appropriate and determining if the current seepage management approaches and thresholds maximize the potential to release Interim Flows and Restoration flows (*i.e.*, whether current restrictions were too conservative). The *Panel* also was charged with assisting the SJRRP in identifying alternative near-term approaches for addressing seepage impacts. Notably, Interim Flows were not permitted past Sack Dam during 2012, yet seepage impact indicators were triggered on several properties in Reach 3 and Reach 4A. The *Panel* completed its report in 2012 and presented its findings and recommendations to the SJRRP in November. The SJRRP is reviewing the *Panel's* findings/recommendations to determine appropriate actions with respect to measures for addressing seepage impacts. SJRRP responses to *Panel* recommendations, including possible amendments to its *Seepage Management Plan*, are expected early in 2013.

13. Discussions with Reach 3 and Reach 4 Landowners to Address Seepage Management Impact Concerns Below Sack Dam

Related to the continuing efforts being coordinated through the Seepage and Conveyance Work Group and the seepage management *Panel* discussed above, the SJRRP is continuing meetings with landowners in Reach 3 and Reach 4A. The purpose of these meetings is to discuss the potential for negotiated agreements to acquire easements or other interests in lands adjacent to the mainstem of the river that have been or could be affected by seepage related to Interim Flows downstream of Sack Dam. Other measures, including seepage protection through the use of tile drains are being addressed. These discussions have progressed. Land appraisals were initiated late in 2012 by Reclamation with the agreement of landowners to provide the basis for negotiations in early to mid-2013 concerning potential easements or other approaches that could acquire the right for the SJRRP to put Interim and Restoration Flows past Sack Dam on properties adjacent to the river where the SJRRP has obtained executed agreements, without the need to address future seepage impacts. If successful, these negotiations could enable Interim Flows to be restored below Sack Dam and re-establish continuous flows from Friant Dam to the confluence of the Merced River.

14. NMFS Preparation of the 10(j) Experimental Population Designation Rule and 4(d) Rule for the Central Valley Spring run Chinook Salmon (10(j) and 4(d) rules)

NMFS was not able to complete the 10(j) and 4(d) rules; therefore, USFWS was not able to achieve the Settlement requirement to begin reintroducing spring run Chinook salmon during 2012. This meant that USFWS also was forced to abandon its plans to release spring run Chinook salmon early in 2013 (see also *Section 4* discussion of impediments to progress). However, by the end of 2012 NMFS was progressing in its efforts to prepare and finalize the 10(j) and 4(d) rules for spring run Chinook salmon. Completion of these rules is necessary in order to permit the USFWS to reintroduce spring run Chinook salmon to the Upper San Joaquin River and to permit spring run Chinook salmon to be placed instream for captive and broodstock breeding in pens/cages in Reach 1. A NMFS determination on the 10(j) experimental population designation and the 4(d) rule is anticipated in late 2013. Until these two rules are prepared and the environmental documentation completed, spring run Chinook salmon cannot be placed in the river.

15. Planning, Preliminary Design and Compliance Documentation for Paragraph 11 Channel and Facility Improvements

Considerable progress during 2012 was achieved on the major infrastructure improvements that are required by Settlement Paragraph 11, including the Reach 2B and Mendota Pool Bypass Project, the Reach 4B/Eastside Bypass Project, and the Arroyo Canal/Sack Dam project. None of these improvements were required by the Settlement to be completed during 2012, but addition discussion of progress toward completing these improvements is provided in *Section 4*.

2.3 Other SJRRP Accomplishments

The SJRRP achievements (completed efforts) and examples of important progress achieved during 2012 as described in *Section 2* do not constitute a comprehensive list of SJRRP activities during 2012. The progress described is, however, indicative of significant implementation progress during the last year, despite technical and organizational challenges. A more complete discussion of SJRRP accomplishments is found in the *SJRRP Annual Report 2012*, released in April.

3 Assessment OF SJRRP Progress During 2012

The Settlement requires that my written report include an assessment of progress toward achieving the Settlement Restoration Goal during the previous year. My assessment of progress during 2012 is provided below, starting with a brief summary of actions that the Settlement required to be completed by the end of 2012.

3.1 SJRRP 2012 Settlement Milestones (Exhibit C) and Enforceable Deadlines

The Settlement contains both Settlement Milestones (in Exhibit C) and Enforceable Deadlines (in paragraphs 11 and 14 of the Settlement). The Milestones in Exhibit are expected, but not required, to be completed during 2012. Enforceable Deadlines are required to be achieved by the specified. In the case of channel and structural improvements identified in Paragraph 11, different Milestone dates and Enforceable Deadline dates are provided for the same identified Paragraph 11 improvements. Exhibit C also included a September 30, 2009, milestone date for the expected completion of the “necessary and appropriate” NEPA, NHPA, ESA, CEQA review.

3.1.1 Exhibit C Milestone Dates for Paragraph 1 Improvements

Exhibit C identifies dates drawn from a schedule the Federal Defendants developed to assess the minimum period to complete the Paragraph 11 improvements. The introductory text in Exhibit C states that:

The parties recognize that this schedule is ambitious and reflects the Parties intent to complete the improvements in an expeditious manner. Many assumptions were made in developing the schedule and include, but are not limited to: technical understanding of the nature of the improvements given the current limited availability of detailed site-specific information, availability of sufficient funding and resources, timely acquisition of necessary land and entry rights, timely availability of detailed information and survey results for environmental analysis, time issuance of necessary permits, and no reduction in the estimated annual 120-day construction period due to weather, in-stream flows (sic) events, environmental or permitting requirements.

Exhibit C identifies the following Phase 1 improvements (also identified in Paragraph 11(a)) for completion by December 2012:

- Reach 2B-Mendota Pool 4,500 cfs bypass channel;
- Modification of San Slough Control Structure and San Joaquin River headgate for routing 500-4,500 cfs and fish passage;
- Screening of Arroyo Canal and construction of fish ladder at Sack Dam;
- Modification of structures in the East Side and Mariposa Bypasses for fish passage;
- Construction of low-flow channel in East Side and Mariposa Bypasses, if necessary; and
- Steps to enable deployment of fish barriers at Salt and Mud Sloughs.

3.1.2 Enforceable Deadlines Identified in Paragraph 11(a)

Paragraph 11(a) identifies enforceable deadlines that the Settlement requires to be achieved during implementation. In the case of the Phase 1 improvements identified in the Exhibit C discussion above, Paragraph 11(a) requires that these improvements be completed no later than December 31, 2013, rather than December 2012. Thus the enforceable deadline for completion of Phase 1 improvements is the end of 2013, not the end of 2012. The Exhibit C completion represent the “earliest dates” identified by the Settling Parties when these improvements could expect to be completed, under the best of circumstances considering all of the caveats set forth in the introductory text of Exhibit C (see above quotation). My assessment focuses on the enforceable deadlines in Paragraphs 11 and 14 of the Settlement rather than the Exhibit C dates.

3.1.3 Paragraph 14 Enforceable Deadlines

Paragraph 14 of the Settlement addresses Settlement requirements related to reintroduction of salmonids. Paragraph explicitly requires completion of the following actions during 2012:

- NMFS is required to issue a decision on the permit application for reintroduction of spring run Chinook as soon as possible, but no later than April 30, 2012;
- Reintroduction of spring run and fall run Chinook salmon to the San Joaquin River between Friant Dam and the confluence with the Merced River by December 31, 2012, consistent with all applicable law. Paragraph 14 also states that “...if factors determined to be beyond the control of the Parties make achieving the Restoration for both spring run and fall run Chinook salmon infeasible, then priority shall be given to restoring self-sustaining populations of wild spring run Chinook.” (Paragraph 14(a))

3.2 RA Assessment of Overall Implementation Progress During 2012

The Settlement requires me to evaluate implementation progress achieved during 2012 as part of my *2012 Annual Report*. Progress achieved by the SJRRP in implementing the Settlement during 2012 was substantial; however, it was not sufficient to achieve completion of key actions consistent with Settlement target dates. In its June 2012 *Draft Framework* report, the Implementing Agencies describe their intent to implement the Settlement by stating that they “...may implement the Stipulation of Settlement...based on the current status of projects and knowledge gained since the signing of the settlement in 2006” (page 1, *Draft Framework*, 2012). The *Draft Framework* proposed a revised schedule and budget to guide SJRRP activities because the SJRRP was not able to implement the Settlement consistent with the completion dates contained in the Settlement, including the enforceable deadlines in Paragraph 11 for completing Phase 1 and Phase 2 channel and facility improvements, and Paragraph 14 requirements to initiate Chinook salmon reintroduction by the end of 2012.

Prior to release of the *Draft Framework*, the SJRRP already had determined that program implementation was not achieving progress consistent with the Settlement schedule and that the SJRRP would not be able to achieve future Settlement target dates for key implementation actions. In its *SJRRP Annual Report 2011* (see the discussion of *Settlement Milestones* on page 35) the SJRRP stated that:

Recognizing that some actions required by the Settlement are unavoidably behind schedule, including Phase 1 channel and structural improvement projects that may be beneficial for the successful

reintroduction of salmon, the Program initiated consultation with the parties to the Settlement and have been working towards a more realistic revised schedule and budget based upon the Draft PEIS/R. Once fully coordinated and agreed upon, the revised Draft Implementation Plan will be made available publicly. The document is anticipated to be available in spring 2012, and from that point forward the revised schedule and budget will be used to guide Program and project actions and activities.

The SJRRP comments were a realistic “self-assessment” of overall progress through 2011 and early 2012. My current assessment of implementation progress to date and of the prospects for achieving future Settlement target dates agrees with SJRRP’s self-assessment. The *2011 SJRRP Annual Report* assessment served notice that the SJRRP believed that it needed to prepare the *Draft Framework* report.

Moving forward, effective implementation of the SJRRP will depend on a number of factors, including:

1. Settling Party agreement on an achievable schedule of target dates for completing required implementation actions;
2. Agreement among the Settling Parties on the definition of two key terms used in the Settlement, but not clearly defined by the Settlement:
 - Reintroduction – when does it start, what actions and outcomes are required to demonstrate success?
 - Restoration – what actions are considered essential to achieving the Restoration Goal?
3. An improved implementation framework, with clear designation of authority and responsibility for completing required implementation activities and work products.
4. A commitment by the Implementing Agency directors to work together to provide coordinated oversight and direction of SJRRP implementation.

3.2.1 Progress toward Achieving Paragraph 11 Enforceable Deadlines During 2012

Paragraph 11 of the Settlement identifies required channel and structural improvements that must be developed and implemented to support the Restoration Goal of the Settlement. Sub-paragraph 11(a) identifies the highest priority improvements that must be developed and implemented per the Enforceable Deadlines contained in Section 11(a), and sub-paragraph 11(b). These improvements also can be developed and implemented in accordance with the milestone dates included in Exhibit C of the Settlement.

Paragraph 11(a) identifies ten separate projects/actions (in subsections 11(a) (1) through 11(a)(10) that are to be completed by December 31, 2013, subject to the provisions of Settlement paragraphs 21(c), 24 and 36, which identify funding availability and *force majeure* events that may affect Paragraph 11(a) requirements. By December 31, 2012, none of the ten projects/actions set forth in Paragraph 11(a) were completed. In addition, according to Table 1 – Phases, Schedule and Costs in Millions for Core Actions, in the *Draft Framework*, none of the 11(a) projects/actions are scheduled to be completed by the Paragraph 11(a) December 31, 2013, deadline, with the possible exception being the Arroyo Canal and Sack Dam project, which Table 1 in the *Draft Framework* indicates will be constructed in 2013. All of

the other projects/actions specified in Paragraph 11(a) are now scheduled for completion between 2015 and 2019, two to six years later than the Paragraph 11 Enforceable Deadlines.

Therefore, although progress toward completion of the Paragraph 11 projects was substantial during 2012, the SJRRP is not going to be able to achieve the Settlement deadlines identified in Paragraph 11.

3.2.2 Progress toward Achieving Paragraph 14 Reintroduction Enforceable Deadlines and Other Requirements During 2012

Settlement Paragraph 14 and the enabling legislation require completion of several actions by NMFS and the USFWS relating to reintroduction of fall run and spring run Chinook salmon, including:

1. NMFS issuance of a permit decision on the USFWS reintroduction permit application for spring run Chinook salmon by April 30, 2012; and
2. Delays in Completing Actions Necessary to Commence Reintroduction of fall run and spring run Chinook by the USFWS no later than December 31, 2012.

In addition, the enabling legislation for the SJRRP requires that NMFS complete the rule-making process for a *10(j) Rule* for experimental population designation for the endangered spring run Chinook salmon and a *4(d) Rule* for incidental Take of spring run Chinook salmon prior to releasing spring run Chinook salmon into the river.

During 2012, NMFS did not complete either the *10(j)* or the *4(d) Rules*. In addition, because the *10(j)* and *4(d) rules* were not complete, USFWS could not commence reintroduction of spring run Chinook salmon during 2012. NMFS was able to complete its decision on the 10(a)1(A) Incidental Take permit for spring run Chinook salmon in October 2012, about 5 months after the April 30, 2012, deadline contained in Paragraph 14 of the Settlement. The NMFS delay in completing action on the Incidental Take permit was related partially to the late date of completion of the 10(a)1(A) permit application by USFWS (late December 2011).

Some factors contributing to the slow progress toward achieving Paragraph timelines were outside the control of both NMFS and USFWS, including the residual effects of delays in legislative authorization and funding for the SJRRP and the delay in completions of the programmatic environmental compliance documentation (PEIS/R) for the SJRRP.

3.3 2012 Was a Pivotal Year

2012 was a pivotal year for SJRRP implementation. I say this for two reasons: (1) first, the SJRRP finally completed the programmatic environmental compliance documentation that was supposed to be completed in 2009 pursuant to Exhibit C of the Settlement; and (2) the SJRRP completed its *Draft Framework*, which provided a much-needed review of the Settlement implementation schedule and funding availability.

When the SJRRP completed the Final PEIS/R and related documentation in 2012, the SJRRP significantly decreased its vulnerability to legal challenges based on the recurrent need to seek approvals for implementing pieces of the SJRRP without having the overall programmatic environmental compliance approvals in place. With completion of the Final PEIS/R and related compliance documents, the SJRRP gained the ability to purchase land, finalize permitting actions for Paragraph 11 projects, carry

out water management projects and obtain other needed state and federal permits. For instance, after the long-term SWRCB permit is obtained, the SJRRP no longer will need to focus limited SJRRP resources on preparing and processing one-year approvals of Interim Flows by the SWRCB, which also need to include environmental compliance documentation. In the future, the SJRRP no longer should be subject to potential permit processing delays or denials that can occur in the course of seeking short-term permits. Thus, completion of the programmatic PEIS/R reduces the potential for unnecessary implementation delays.

The *Draft Framework* was prepared in consultation with the Settling Parties; however, the non-federal Settling Parties were not asked to concur with the revised schedule and descriptions of future actions. Based on personal communication with non-federal Settling Party representatives, it is clear that there still are areas of disagreement among the Settling Parties with respect to key proposals contained in the *Draft Framework*. These areas of ongoing disagreement apparently date to earlier *Framework* drafts and issues that were never resolved, even though additional written comments subsequent to release of the current *Draft Framework*.

While the *Draft Framework* is a first step toward formulating a more functional strategy for implementing the Settlement and achieving the Restoration Goal; the *Draft Framework* is still in the proposal stage because it contains provisions that are not consistent with the Settlement and the *Draft Framework* will not be functional until the SJRRP Implementing Agencies are able to obtain the support of the non-federal Settling Parties on the revised implementation schedule, funding and other elements. The non-federal Settling Parties previously submitted comments outlining concerns and disagreements with important elements of the *Draft Framework*. The concerns of the non-federal Settling Parties need to be discussed directly with the Implementing Agencies and addressed by the SJRRP during 2013 to the extent feasible. I also believe successful resolution of these concerns will require the collaborative engagement of the five agency directors.

4 Impediments to SJRRP Implementation Progress During 2012

In *Section 3*, I assessed progress during 2012 and prior years in implementing the Settlement. The Settlement also requires me to discuss those impediments to SJRRP implementation that I observed during the previous year as part of my written annual report. This section addresses the specific impediments to progress that I observed during 2012.

4.1 Overview of Impediments to SJRRP Progress

The Secretary of the Interior has the ultimate responsibility for implementing the SJRRP consistent with the terms of the Settlement and applicable legislation. However, the SJRRP involves both state and federal agencies and only two of the five implementing agencies report to the Secretary. Further, no single agency has the responsibility or authority for achieving individual or overall SJRRP schedule deadlines. During the first six years of SJRRP implementation, there has not been a commitment on the part of the Implementing Agency directors to collaboratively work together to provide the level of SJRRP implementation direction and oversight that it needed.

Without such oversight and direction, the Program Manager and PMT found themselves in a situation where they were confronting issues and decisions that required the support of multiple agencies. However, the Program Manager did not have the authority to resolve those issues because resolution, timely decision making required both cooperation and commitments from other Implementing Agency staff and an ability on the part of the Program Manager to require completion of assigned implementation tasks within a specified period of time.

The predicament that the SJRRP staff has found itself is illustrated by the following. A hypothetical project proponent wishes to build a large and complex project on a tight budget and tight schedule. The project proponent goes to great expense to bring together skilled teams of planners, architects, engineers, carpenters, plumbers, and so forth; however, no one is selected to serve in the role of the overall project supervisor. In addition, the project team is not given the tools it needs to successfully plan, design and build the large and complex project they have been hired to complete on the very tight schedule and limited budget that is available.

The PMT and staff have been working under conditions very similar to those in this illustration: without a project supervisor for six years (*i.e.*, there has been no collaborative oversight/direction from the five agency directors). No individual or agency has the authority to assign duties and enforce schedules, and it was not given the tools that it needs to be successful (*i.e.*, staff with authority and responsibility to resolve issues and assign accountability for achieving schedule deadlines). The result is that each PMT agency works hard but only does what they are sure they have the authority to do, at the pace dictated by their individual agency assessments of available resources. The PMT performance under these conditions has been reasonable, given the lack of oversight and lack of “cover” provided by, or available from, the directors of their respective agencies.

During recent conversations that I had with the directors and staff of four of the five Implementing Agencies, both the staff and the agency directors reported that there was open and direct communication within their agency that, as far as they knew, there had not been any implementing issues that had

suffered problems because staff did not have adequate access to communicate concerns to their senior management regarding SJRRP implementation issues. However, during these same conversations it also was apparent that substantive discussions involving the five agency directors and staff rarely occurred during recent years. My conversations with the agencies were consistent with what I had observed during 2012 and previous years: each agency management team tends to plan and make decisions on SJRRP implementation based on priorities set by the individual agency, in effect working within five separate decision-making “silos.” Without collaborative engagement by the five agency directors in implementation deliberations, there has been little effective consultation in a timely manner among the agency directors regarding implementation issues that required agreement and cooperation by more than one agency in order to support implementation and funding actions. Without a collective awareness among the directors about significant obstacles to progress (e.g., the implications for Settlement implementation related to emerging impediments to completing work products such as the reintroduction plan or a floodplain habitat need assessment).

My observations on the need for the agency directors to become collectively and collaboratively engaged in program implementation came more sharply into focus in the past two years as the RA. After twenty-seven years of prior experience as the person responsible for managing the planning, design and regulatory/entitlement processes for large-scale projects that required permits from multiple local, state and federal agencies, I’ve learned some hard lessons about the importance of collaborative leadership. The PMT and staff are diligently working as part of the SJRRP; collaborative oversight and direction by the five agency directors is the missing ingredient needed to successfully implement the SJRRP. The lack of collaborative engagement has meant that the agency directors were not available to work with each other to:

1. Identify and understand the nature of impediments being encountered by their staff early enough to minimize delays;
2. Collaboratively formulate corrective management measures to identified problems; or
3. Identify potential cooperative arrangements among their agencies that could respond to potential jurisdictional or regulatory overlaps or conflicts that make effective response more difficult.

Collaborative management approaches could have enabled the directors to assign authority and responsibility to individual agencies, to the Program Manager or to individual PMT lead staff, as the responsible and accountable person/agency for assuring that problematic implementation decisions would be brought to the PMT and agency directors for consideration and resolution in a timely manner. Without a clear message from the agency directors that they expect to be consulted as necessary, those decisions most likely to needing the immediate attention of agency directors has not been elevated.

As explained below in *sections 4.3 and 4.4*, the lack of collaborative direction and oversight contributed directly to communication, coordination and management practices that impeded SJRRP implementation progress before and during 2012, particularly with respect to planning and implementation of fish management activities, and preparation of a Chinook salmon reintroduction plan. However, before addressing those issues it is necessary to discuss issues early in SJRRP implementation that continued to impede progress during 2012, including the residual effects of delayed congressional authorization, the tight implementation schedule required by the Settlement, and completion of the PEIS/R.

4.2 Early Impediments that Contributed to Implementation Delays During 2012

In discussions with Implementing Agencies there was agreement among the agency staff that significant delays occurred early in the program due to impediments outside the control of one or all of the Implementing Agencies. There also was agreement that some of those early impediments outside the agencies' control have had residual effects on SJRRP implementation progress. I refer to these early impacts as "legacies" of the first stages of SJRRP implementation. They include: (1) Congressional approval of enabling legislation authorizing the SJRRP and funding that occurred more than two years later than the date specified in the Settlement Milestone Schedule; and (2) the tight completion deadlines demanded by the Settlement for completion of Paragraph 11 and Paragraph 14 actions and other Milestones included in Settlement Exhibit C. Completion of the programmatic environmental compliance documentation (PEIS/R, etc.) was within the control of the PMT and should have been completed in 2009 as provided for in Exhibit C of the Settlement; however, I include it in this discussion of the "legacy" category because the delay in completing the programmatic documentation until 2012 also contributed to delays to a number of other SJRRP implementation actions. These "legacy" impediments to progress were discussed in my previous *Annual Reports*, but I reference those delays again in deference to the recent comments during my discussions about my March draft *2012 Annual Report* with Implementing Agency staff.

4.3 Delays in Achieving Progress Toward Completion of Paragraph 11 Structural and Facility Improvements

As noted in *Section 3*, the SJRRP will not achieve the enforceable deadline (December 31, 2013) for completing at least nine of the ten improvement projects identified in Paragraph 11(a). Even if the SJRRP is able to meet the schedule set forth in *Table 1 of the Draft Framework*, those Phase 1 projects will not be completed until between 2015 and 2019.

A lack of oversight and direction by the Implementing Agency directors contributed to, but was not necessarily the dominant factor responsible for the inability to achieve the Paragraph 11 deadlines. Delayed progress toward completion of the physical channel and facility improvements required by Paragraph 11 primarily was also a product of the very tight schedule for completion of improvements provided by the Settlement (*i.e.*, the December 31, 2013, Enforceable Deadline). The 2013 deadline for completion of the Paragraph 11(a) improvements did not adequately factor in problems related to coordinating five separate state and federal agencies. The Settlement schedule also did not adequately take into account the importance of identifying one entity or agency that would have the authority to require that specific implementation actions be completed in accordance with the deadlines established in Paragraph 11. The fact is, the time required to plan, design, and to manage the labyrinth of environmental and regulatory approval processes for large, complex projects almost always requires significantly more time than originally projected by project proponents. The desire to have a tight schedule that demands a high level of performance is normal during negotiations and early planning.

The Settling Parties agreed to the timeline with an understanding that it was an aggressive schedule that would require full commitments by the Implementing Agencies to be successful. Not all of the Settling Parties agreed that the schedule was achievable. The Settlement schedule did not allow sufficient time for the cumulative impacts resulting from early implementation surprises (*e.g.*, delays in Congressional

funding, consultant contract issues, and landowner entry permit issue delays to baseline studies on private lands). The Settlement also did not accurately predict the agencies' ability and/or willingness to allocate the staff resources necessary to achieve the aggressive timeline.

At the beginning of a complex planning and implementation process such as the SJRRP you often “don't know what you don't know” and surprises early in implementation tend to cumulatively add up to increase the effect of each sequential delaying incident. After six years of SJRRP implementation, I have concluded that all of the optimal possible conditions, in other words, the best of circumstances would have been necessary in order for the Phase 1 projects to be completed on time. Clearly, the “best” circumstances did not line up for the SJRRP.

As SJRRP progresses in 2013 and future years, I expect the PMT, APT and non-federal Settling Parties to, in the words of Paragraph 14 of the Settlement, to “...*be evaluating such appropriate agreements, memoranda of understanding, contracts, cost-sharing agreements or other relationships.... as may promote the timely and cost-effective completions of the improvements.*” However, in order to identify and implement the range of potential agreements, measures, or relationships that may be available, and to then be able to manage implementation more effectively, in the future, the directors of the five Implementing Agencies will need to be collaboratively engaged in ongoing SJRRP implementation efforts.

4.4 Communication, Coordination and Management Impediments to Progress

The following discussion briefly describes examples of communication, coordination and management challenges experienced by the SJRRP. This discussion focuses on reintroduction and fisheries issues because that is the element of the implementation that has suffered most due to lack of oversight and direction by the Implementing Agency directors. It is fair to say that the inability of the SJRRP to meet Phase 1 project enforceable deadlines also were impacted by the same events and issues identified in *Section 4.3*; however, based on my experience, I would argue that the rate of Phase 1 project progress was affected less than completion of key fishery management documents and actions. Completion of a reintroduction plan or assessment of floodplain habitat needs do not require the planning, design, environmental, and construction timeframes as the kind of physical improvements required in Paragraph 11. Thus, in my assessment is that delays in completing fishery management actions and work products during 2012 and prior years are best explained by the lack of an entity (*i.e.*, the APT) that would provide the needed oversight and direction and assure that required Settlement actions and work products be completed in accordance with the Settlement requirements.

4.4.1 Types of Communication, Coordination and Management Impediments

Examples of SJRRP communication, coordination and leadership impediments that I observed during 2011 and 2012 are listed below. These impediments tend to be interactive, with one impediment leading to and/or being influenced by one or more of the other identified impediments. These impediments generally are related to the lack of engagement in SJRRP implementation by the five agency directors and the failure to update the 2007 *PMP* that continues to guide SJRRP management and implementation.

The limitations of the *PMP* also deserve mention. The *PMP* was intended to be periodically updated to reflect changing conditions and implementation experience. Six years into implementation of the SJRRP,

the *PMP* has not been updated and it does not provide the expected program management guidance. For instance, the *PMP* is deficient in the following respects:

1. Delineating clear lines of authority and responsibility to guide supervisory lead staff;
2. Designating agency responsibility and accountability for completing Settlement requirements;
3. Establishing conflict resolution protocols for the Program Manager and lead supervisory staff; and
4. Providing a process for timely engagement of the APT to facilitate oversight and resolve conflicts.

Although all of the Implementing Agencies are committed to implementing the Settlement, there appears to be different levels of commitment, and varying capacities and flexibility among the Implementing Agencies. Also, there is no agency or entity authorized to direct all of the other agencies and there is an ongoing willingness to allow the slowest Implementing Agency to set implementation timing, regardless of consistency with Settlement Milestones or Enforceable Deadlines. An update of the *PMP* would be helpful, but the priority action would be for a commitment by Implementing Agency directors to provide in implementation oversight as a team (the APT) and implement a more effective management model.

4.4.2 Work Products and Actions Impacted by Communication, Coordination and Management Problems

Communication, coordination and management issues observed in 2012 impeded progress toward completing the following tasks:

1. Completing the work products necessary to initiate Chinook salmon reintroduction during 2012;
2. Completing a reintroduction plan for fall run and spring run Chinook salmon;
3. Assessing floodplain habitat area needed, and the location of needed floodplain habitat, necessary to support Chinook salmon target populations identified by the Fish Management Plan; and
4. Coordinating monitoring and research reporting activities with the MAP preparation schedule.

Example actions are discussed below in *Section 4.4.3* and recommended corrective actions in *Section 5*.

4.4.3 Agency Communication and Coordination on Fisheries Management Actions

Communication and coordination involving fisheries management actions that were discussed in my previous Annual Reports continued to impede implementation progress during 2012. Notable communication, coordination, and management problems during 2012 are illustrated by a lack of timely coordination and communication during planning for future activities, making management decisions, and conducting monitoring and experimental activities. These factors combined to result in late completion of some activities and work products, and an inability to complete other actions that were supposed to be completed during 2012. Examples of delayed work products and actions are discussed below.

4.4.3.1 Delays in Completion of Actions Necessary to Reintroduce Salmon to the Upper San Joaquin River During 2012

Settlement Paragraph 14 and the legislation require several actions by NMFS and the USFWS relating to reintroduction of fall run and spring run Chinook salmon. These actions include:

- USFWS completion by September 2010, of a reintroduction permit for spring run Chinook;

- NMFS issuance of a permit decision on the USFWS reintroduction permit by April 30, 2012; and
- Reintroduction of fall run and spring run Chinook by December 31, 2012.

Also, the enabling legislation required that NMFS complete the rulemaking process for *4(d) and 10(j) rules* prior to releasing spring run Chinook to the river.

At the beginning of 2012, the understanding of the SJRRP Implementing Agencies, Settling Parties and me was that, following submittal of the USFWS reintroduction permit application, NMFS would complete at least the first two of the three actions identified immediately above during 2012: (1) action on the USFWS permit application; and (2) completion of the rule-making actions. Based on NMFS assurances, all of the same parties understood that the rulemaking required by the enabling legislation also would be completed by 2012. I refer readers to my *2011 Annual Report* for additional discussion of communication and coordination problems that continued to impede progress during 2012.

It became apparent to many by late 2011 that spring run Chinook salmon might not be able to be released to the river during 2012. However, until September of 2012, the Settling Parties and other Implementing Agencies were confident that spring run Chinook would be released to the river in 2013 because of NMFS assurances that “paperwork” (*i.e.*, rulemaking) would not delay SJRRP implementation. In September of 2012, NMFS notified the other Implementing Agencies and Settling Parties that spring run Chinook could not be released to the river until 2014. The September 2012 notification by NMFS that spring run Chinook could not be released in 2013 came as a surprise to the other Implementing Agencies, to the non-federal Settling Parties and to me.

Both the *Draft Framework* that was published in June 2012, and the July 31, 2012, *Planned Fall 2012 and Spring 2013 Fall run and Spring run Chinook Salmon Activities* report scheduled the release of spring run Chinook salmon to the river in 2013. Those two SJRRP documents were both negotiated among the Implementing Agencies, including NMFS, and the July 31 report in particular was the product of careful vetting of the date for spring run Chinook release to the river. Because of the sensitivity of this action, specific discussions with Reclamation staff in Washington, D.C. was necessary. Nevertheless, in September of 2012, barely a month after the release of the carefully-vetted June and July 31, 2012 SJRRP reports, NMFS announced that the rule-making processes would not be completed in time to permit the 2013 release of spring run Chinook salmon to the river. NMFS stated that releases of spring run Chinook would need to be delayed until 2014. What changed between July 31 and September that would explain the sudden NMFS change in the spring run Chinook release date? The sudden and unexpected change in the spring run Chinook release date, following NMFS assurances over a long timeframe, serves as a good example of the lack of effective communication and coordination of fishery actions during 2012. My *2011 Annual Report* identifies additional examples of communication and coordination issues that have delayed important, but more limited, fish management actions.

Clearly, there was a significant breakdown in communication between NMFS and the other Implementing Agencies and SJRRP participants concerning the timing of spring run Chinook releases to the river. The lack of coordination and communication among the three fish agencies and Reclamation about the schedule for reintroducing spring run Chinook provides one of the latest examples of communication and coordination problems among the three fish agencies and between the fish agencies and other parties. More important, it underscores the need for a fully engaged APT where the five agency directors can

work together to assure that the preliminary steps needed to precede required Settlement actions and the schedule for achieving those steps are fully understood by all of the agencies. At that point there can be a mutual understanding among the Implementing Agencies about what actions each agency will be required to achieve and when.

Other factors arguably could be considered as contributing to the delay in releasing spring run Chinook salmon to the river in 2013, including the residual impacts associated with the delayed Congressional authorization for the SJRRP, the delayed programmatic environmental compliance documentation, a delayed funding agreement between NMFS and Reclamation, and, to some extent, the delays in providing for continuous flows between Friant Dam and the confluence of the San Joaquin River with the Merced River. However, these factors had been recognized for years (since 2008) as working realities of the SJRRP, and I find it less than credible to regard them as major factors that would rise to the level of the lack of oversight and direction by the agency directors in explaining the communication and coordination breakdowns that led to the lengthy delays in completion of a reintroduction plan, a floodplain habitat need assessment, and other fish management actions.

Lack of coordinated engagement by the five agency directors, and particularly the three fisheries directors, meant there was no “job supervisor” or equivalent entity responsible for assuring that necessary planning and regulatory tasks that needed to precede reintroduction were completed on time (*i.e.*, timely USFWS preparation of the Section 10(a)(1)(A) permit application, NMFS action on that permit application, and completion of the *10(j)* and *4(d) rules*). The lack of collaborative engagement by the Implementing Agency directors (*i.e.*, the APT), meant that there was no venue or entity to: (a) set priorities, (b) assist in formulating multiple agency solutions to difficult challenges; and (c) require accountability for completing priority reintroduction actions.

4.4.3.2 Inability to Complete a Reintroduction Plan for Fall run and Spring run Chinook Salmon

Despite the fact that the Settlement required reintroduction of Chinook salmon to commence prior to the end of 2012, completion of a reintroduction plan for fall- and spring run Chinook salmon was not achieved by the end of 2012. After six years of implementation, the SJRRP should have: (a) completed a draft reintroduction plan; (b) reviewed and approved a final reintroduction plan; and (c) started implementing the approved plan, with the possible exception of release of spring run Chinook salmon to the river. In addition, the SJRRP already should have been evaluating the interaction between the reintroduction plan and the design alternatives for the Reach 2B and Reach 4B specific projects.

As noted by the Implementing Agency staff, the process of Chinook salmon reintroduction was addressed in previous SJRRP documents. Prior discussions of reintroduction were included in the *Fish Management Plan (SJRRP 2010)*, the *Reintroduction Strategies for the Reintroduction of Spring run Chinook Salmon (SJRRP 2011)*, and the *Planned Fall 2012 and Spring 2013 Fall run and Spring run Chinook Salmon Activities (SJRRP 2012)* reports. However, these documents provide fragmented, rather than comprehensive, presentations of the sequence and timing of the actions needed to accomplish reintroduction of fall and spring run Chinook salmon. The non-federal Settling Parties and I have been asking for a reintroduction plan for the last few years, without success. The best demonstration of the current need for preparation of a reintroduction plan is the intensive reintroduction planning process that was initiated by USFWS in early 2013 that lays out the reintroduction process in sufficient detail to be called a plan (Note: the plan vs. strategy or other label for the document is still under discussion). The

2013 USFWS-led effort is including all of the Implementing Agencies, the non-federal Settling Parties and me and it intends to complete the proposed reintroduction document by the end of July 2013.

Perhaps another factor contributing to the delay in preparing the requested reintroduction plan has been the assertion by both NMFS and USFWS that the Settlement does not specifically call out the need for such a plan. However, the reasoning that a reintroduction plan is not specifically identified by the Settlement ignores the clear need for an overall plan in order to effectively identify and accomplish the numerous planning steps and obtain the regulatory approvals needed in order to commence release of federally-endangered spring run Chinook into the river. In addition, if there was any question about the need for a reintroduction plan to supplement the incomplete treatment of the issue presented in the 2010 and 2011 SJRRP fish management documents referenced above, those questions should be answered by the SJRRP's intensive effort initiated early in 2013 to prepare a reintroduction plan.

I believe the major contributor to the slow progress of reintroduction planning by the FMWG was the lack of oversight and direction provided by the respective FMWG agency directors. Without the collaborative engagement of the agency directors, acting as the APT, the ongoing delay in preparing a coherent reintroduction plan was allowed to continue. The FMWG was forced to rely on consensus among the agency staff and consultants to move fisheries planning forward and a discussion among the Implementing Agencies at the director level never occurred in a way that allowed the participants to understand the significance of delaying preparation of a specific plan for reintroduction. The FMWG relied primarily on progress by consensus, wherein individual technical issues were identified and debated on a piecemeal basis, and focus on the broader need for a clear action plan was left for future discussion. Lack of consensus on technical issues became an obstacle to progress toward formulating an overall reintroduction plan. Reintroduction planning was slowed to the point that after six years, the FMWG and SJRRP were not able to complete the reintroduction plan.

4.4.4 Need to Update the Floodplain Habitat Assessment Completed in November

The lack of collaborative direction and oversight by the agency directors also was a decisive factor in the SJRRP's delays in completing an assessment of how much floodplain habitat will be needed to support the Chinook salmon population targets contained in the *Fish Management Plan* (2010), how much habitat is available now, and where the floodplain habitat will be needed in the future, consistent with achieving the SJRRP Restoration Goal.

In November 2012, the SJRRP completed a *Floodplain Habitat Assessment*. Publication of the report was a significant accomplishment (see the Section 2 discussion of accomplishments); however, it is important to note that the *Floodplain Habitat Assessment* report was prepared only after repeated requests by the non-federal Settling Parties and me over a three-year period.

The *Floodplain Habitat Assessment* failed to address the full range of questions that needed to be answered by an assessment of floodplain fish habitat needs. For instance, the SJRRP report did not quantify the total floodplain habitat area that would be needed to support the long-term target populations of Chinook salmon, by reach, acreage and habitat type. At the same time, the report noted that, within the overall Study Area, there might not be sufficient floodplain habitat area available in the optimum locations under future conditions to support the long-term population targets contained in the *Fish Management Plan*. I am concerned by these SJRRP preliminary findings about the potential inadequacy

of available and proposed floodplain habitat, and the recommendation by the Reach 2B/Mendota Pool Bypass project team to delete the widest levee alignment alternative in Reach 2B Project Description TM then under consideration (the FP 5 Alternative). Dropping FP-5 from consideration would preclude the widest floodplain alternative from further consideration during preparation of the project EIS/R.

Because it is on a later preparation timeline, it may still be possible for the SJRRP to select a preferred alternative for the Reach 4B project that would provide enough floodplain acreage to meet future needs; however, the analysis provided in the *Floodplain Habitat Assessment* (see the *Deficit Habitat Results* presented in Tables 25 to 27), does not provide a compelling case for the future adequacy of overall floodplain habitat to support target salmon populations given the current Reach 2B and Reach 4B alternatives. It is not clear that simply providing for a larger floodplain approach in Reach 4B, much farther downstream from Reach 2B, requiring longer transits for juveniles and resulting in higher water temperatures upon arrival, would provide the needed floodplain habitat type and quality, or optimal water quality conditions, including temperatures.

The preliminary findings of the *Floodplain Habitat Assessment* underscore the need for the SJRRP to be able to link a full and complete assessment of future floodplain habitat availability within the Study Area to future SJRRP decisions on alternative floodplain widths and project design alternatives for the Reach 2B and Reach 4B projects, and to identification of potential habitat restoration opportunities in other river reaches. The potential inability of the project improvements in these two reaches to address future Study Area floodplain needs, calls for the ability of the SJRRP to assess potential alternatives within the Study Area outside Reach 2B and Reach 4B to provide for missing floodplain habitat (*e.g.*, in Reach 2A or Reach 3). Restoration actions in Reaches 2A and 3 may be critical to the ability of the SJRRP to successfully reintroduce Chinook salmon and to achieve the Restoration Goal.

Based on my review of the draft Reach 2B Project Description TM the *Floodplain Habitat Assessment*, and following consultation with the TAC, I submitted Reach 2B comments to the SJRRP recommending that levee alignment alternative FP 5 be retained in the Project Description TM, so that it could continue to receive consideration during preparation of the Project EIS/R. Subsequently, I also submitted comments to the SJRRP recommending that the November *Floodplain Habitat Assessment* be revised and updated to address the range of data needs discussed above.

Credible assessments of existing floodplain fish habitat availability and future needs are essential to supporting both the site-specific project designs that will be selected as the preferred alternatives under Paragraph 11 and completion of the related environmental compliance documents (*e.g.*, the Reach 2B/Mendota Pool Bypass and Reach 4B/Eastside and Mariposa Bypass projects). Calculating existing floodplain fish habitat availability in all water year types, under different flow conditions (velocities and inundation depths and durations also are needed so that the SJRRP will be able to: (1) assure that future floodplain fish habitat will be adequate to support target fish populations within the Study Area; and (2) that assessments of potential land impacts and need for acquisition of easements, licenses or implementation of other mitigation measures can be identified and evaluated to determine what is necessary to achieve the Restoration Goal with respect to support for target populations of Chinook salmon. Finally, it is important to reconsider the SJRRP focus on providing for “minimum” habitat needs and to shift to a more realistic measure of what will be needed to support future target populations; a

focus on minimum habitat needs risks understating the actual need to reasonably expect to support target salmon populations.

4.5 Impeded Progress on Other Important Actions and Work Products During 2012

In addition to the impediments to progress discussed in *Section 4.2* above, other impediments involved lack of action on issues that impacted implementation activities during 2012 and previous years. The impediments to progress in this category involved the following:

- Identifying near-term alternatives capable of addressing the need for levee stability improvements in Reach 2A and 2B without needing to wait six (6) years (until at least 2018) for Phase 1 and 2 improvements to be completed;
- Conservation Hatchery Facility water supply adequate to enable full operation of the facility; and
- PMT consultation with the RA.

Each of these impediments is discussed below.

4.5.1 Near-term Levee Stability Concerns in Reach 2 and Reach 4A/Eastside Bypass

DWR has identified levee stability concerns within the Study Area and it has applied a standard that would restrict instream flow elevations to the ground elevation at the outside toe of levee. Due to a lack of hard data, DWR has taken what it regards to be this cautious approach, thereby acting as if the levees do not exist. This standard is not applied outside the Study Area by DWR and Flood Protection Board members are on record as questioning the application of this standard within the Study Area. While DWR does not “require” flows to be restricted to these conditions, Reclamation has applied DWR’s flow elevation criteria to limit “conveyance capacity” in Reaches 2A, 2B and 4A to the flow elevation criteria applied by DWR. The effect of this DWR approach has been to limit Friant Dam releases of Interim Flows to 1,100 cfs, the maximum release that is projected to maintain flows below 810 cfs at the upper end of Reach 2B. Given the projected time for completion of the DWR levee stability studies, and construction time needed to complete levee repairs, the effect of this approach will be to limit Interim Flow and Restoration Flow releases from Friant Dam to 1,100 cfs until at least 2018 (see *Draft Framework*, Table 1 – Phases, Schedule, and Costs in Millions for Core Actions). Clearly, this would affect ongoing Interim and Restoration Flow management capabilities, the ability to conduct fish management experiments and monitoring, and the pace of reintroduction efforts if not addressed.

Interim Flow releases from Friant Dam also may be limited in Reach 2B by seepage management concerns and Interim Flows below Sack Dam currently are limited for seepage management reasons in addition to levee stability concerns. However, the levee stability concerns in Reaches 2A and 2B establish the maximum flow releases from Friant Dam for the foreseeable future based on currently available data.

4.5.2 Construction of the Conservation Hatchery and Provision for its Long-term Water Supply

DFW has stated that construction of the Conservation Hatchery will be necessary to fully initiate reintroduction of Chinook salmon, in the near term. The RA agrees that the Conservation Hatchery is a needed tool for use in the reintroduction strategy in the early years, for a limited time, but recommend phasing out human intervention measures as soon as it is practicable.

A workable solution for the water supply has been discussed for several years. Settling the water supply questions is essential to enabling full operation of the Conservation Hatchery and it needs to be resolved as soon as possible. Management of the Conservation Hatchery for both spring run and fall run Chinook salmon needs to be articulated as part of the overall reintroduction strategy, and integration of genetics management as a key element of the reintroduction strategy is necessary with respect to both conservation management and in-river production alternatives. The reintroduction plan should include contingency plans in the event that water supply assurances for the Conservation Hatchery are delayed, not included as a future element of the reintroduction plan, or if the Conservation Hatchery proves to be less effective in producing juvenile salmon than originally anticipated.

4.6 Impediments to Effective PMT Consultation with the Restoration Administrator

Effective consultation by the Program Manager and PMT with the RA continues to be a challenge. During 2012 questions began to re-emerge about the role of the RA in assisting implementation of the Settlement. As noted above, my *Annual Report* recommendations and consultation comments did not receive a response by the SJRRP, and efforts by me and the TAC as my designated representative to consult with FMWG staff in a timely manner were often discouraged by the FMWG.

4.6.1 Lack of SJRRP Response to RA Recommendations Contained in My 2011 Report

As previously discussed, the Settlement requires me to prepare a written annual report that includes: (a) an assessment of progress during the previous year; (b) identifies observed impediments to implementation progress during the previous year; and (c) provides the Settling Parties and the Court recommendations on measures that would remedy the cited impediments to progress.

I did not receive a response from the SJRRP to the June transmittal of my *2011 Report* recommendations from the SJRRP. The non-response by the SJRRP was disappointing given the importance I attributed to my SJRRP implementation impediment findings, and the specific remedies that I recommended. I am required by the Settlement to provide these findings and recommendations to the Secretary. Therefore, I now feel compelled to re-submit the earlier core findings and recommendations that were contained in my *2011 Report* because of their importance to future SJRRP prospects for implementing the SJRRP consistent with the Settlement and, accordingly, achieving the Restoration Goal.

At this point in the SJRRP implementation process, I see the lack of response by the SJRRP program managers to my *2011 Report* as an impediment to implementation progress, and contrary to the intent of the Settlement with respect to the Settlement intent for the Secretary to consult with me concerning my findings and recommendations.

4.6.2 Continuing Consultation Challenges Involving the Fisheries Agencies

The approach used by the FMWG to manage RA and TAC consultation on fisheries management issues continues to be an impediment to SJRRP implementation progress (see *Section 4.4*). After six years without producing a reintroduction plan, the fisheries agencies continue to struggle to communicate effectively with each other and with other SJRRP Implementing Agencies (see also *2011 Report, Section 3.2*). The FMWG's choice to limit the forums for open conversations with the RA and TAC on reintroduction and fish management issues needs to transition to a more collegial implementation approach. Hopefully, the recent discussions initiated by USFWS in early 2013 to formulate a strategy for

preparing the reintroduction plan signals a willingness by the SJRRP fisheries agencies to consider more open communication in the future.

4.7 Past Impediments and Future Progress

The implementation impediments observed during 2012 and preceding years could dramatically impede SJRRP progress during 2013 and subsequent years, unless the SJRRP takes corrective actions, starting with my recommended measures for remedying the impediments in *Section 5*.

I was concerned by the SJRRP's failure to acknowledge or respond to the findings and recommendations presented in my *2011 Report* and I was not encouraged, following transmittal of my report in June 2012, by little or no identifiable changes in the level of collaborative oversight by the agency directors during the remainder of 2012. As noted previously, I regard the lack of collaborative director engagement in implementation to have been a critically important impediment to progress during 2012 and prior years; I am convinced that such oversight and direction will be of paramount importance in 2013 and future years. Due to the lack of response to my *2011 Report* recommendations by the SJRRP, I decided to include many of the *2011 Report* findings and recommendations as part of my *2012 Report*. I also suggest that reviewers read my *2011 Annual Report* (see the SJRRP web site) for context and additional information.

Without more direct and collaborative involvement during implementation by the directors, the pace of SJRRP implementation will likely continue to be set by the agency with the least resources committed to SJRRP implementation. Under such conditions, the adverse impacts on the rate of SJRRP progress will continue to compound.

Starting in Paragraph 9, and continuing in each following paragraph through Paragraph 18, the Settlement requires the Secretary to consult with me and/or consider my recommendations. These Settlement requirements apply to issues ranging from Paragraph 11 channel and structural improvements, to "additional measures" not addressed by the Settlement (Paragraph 12), implementation of Restoration Flows and Interim Flows (Paragraphs 13 15 and 18), and reintroduction of Chinook salmon (Paragraph 14). Sometimes, as in Paragraph 14(b), the Secretary is required to respond in writing if my recommendations are not followed.

Effective consultation always requires reciprocal communication between the parties involved, in this case the Secretary and me. An exchange of views between me and the Implementing Agencies did not happen following transmittal of my *2011 Report* last June; it needs to happen following my transmittal of this *2012 Annual Report* and it needs to involve the agency directors, in addition to agency staff.

5 Recommendations for Addressing Impediments and Priority SJRRP Tasks for 2013

Section 5 provides recommended measures for the impediments to progress cited and discussed in *Section 4*. My intent is that the recommendations in *Sections 5.1* through *5.11* serve a dual purpose as my recommendations for priority SJRRP actions during 2013.

The following measures are recommended to address and remedy impediments to implementation progress identified in *Section 4*:

- Amending the 2007 PMP and making changes to SJRRP management (*Section 5.1*);
- Engaging the Implementing Agency directors directly in SJRRP oversight and direction (*Section 5.2*);
- Preparing a Reintroduction Plan for Chinook salmon (*Section 5.4*);
- Complete preparation of a Reintroduction Plan for fall and spring run Chinook salmon, including provisions for (*Section 5.3*);
 - Commencing reintroduction of fall run Chinook salmon during 2013, and
 - Commencing spring run Chinook salmon no later than spring 2014
- Resolve outstanding objections expressed by the non-federal Settling Parties about the content of existing proposals in the *Draft Framework* (*Section 5.4*);
- Continuing efforts to improve the process for preparing the annual *MAP* reports, including efforts to improve *MAP* study designs and providing for mid-year report on *MAP* study results so that data will be available in time to inform preparation of the next scheduled *MAP* (*Section 5.5*);
- Continuing to pursue near-term seepage management options below Sack Dam (*Section 5.6*);
- Considering near-term options to address Reach 2 levee stability concerns (*Section 5.7*);
- Revising and updating the *Floodplain Habitat Assessment* to identify floodplain habitat needs, habitat restoration opportunities for meeting those needs and linking the evaluation of the designs for Reach 2B and Reach 4B projects to determine the extent to which those alternatives contribute to the needed floodplain (*Section 5.8*); and
- Possible Additional Measures Pending Update of the *Floodplain Habitat Assessment* (*Section 5.9*).

The need for and objectives related to each of these recommendations are discussed below.

5.1 Update the 2007 PMP Management Approach

In my *2011 Report*, I recommended that the SJRRP review and update the current *PMP* management model to provide the Program Manager and other PMT agency representatives with the authority and responsibility to manage the implementation process in an orderly and timely manner envisioned by the Settlement. Experience during 2012 and previous years demonstrates that the PMT lacks the

management protocols that would enable the PMT to identify obstacles to timely and effective Settlement implementation early enough to avoid unnecessary delays and that the PMT also lacks the authority to identify and enforce measures capable of resolving the identified obstacles to progress in a timely manner.

Accordingly, I continue to recommend that the 2007 *PMP* management model be updated and that the following revisions be considered to provide for, at a minimum:

- Conflict resolution protocols and commitments by the Implementing Agencies to engage agency executives on the Agency Policy Team (APT) with authority to resolve agency conflicts or impasses by providing oversight of SJRRP implementation efforts;
- Clear designations of leadership and decision-making responsibilities for fishery management and reintroduction actions;
- Processes for early identification of implementation issues and obstacles, and protocols for elevating problem actions to the APT to obtain guidance in a timely manner; and
- An improved Program Action Tracking System, that could be updated annually, to enable early identification by the PMT of required improvements and actions where the SJRRP appears to be, or is in danger of, falling behind the updated SJRRP schedule contained in the *Draft Framework*.

The next several years of implementation are likely to be arduous and contentious. Implementation will require that Settlement activities related to achieving the Restoration Goal in Paragraph 11 (channel and facility improvements) and Paragraph 14 (reintroduction of Chinook salmon) be coordinated and decisions needed in a timely manner to assure continued progress. Moving forward, the SJRRP needs to initiate visible and substantive improvements to its program management capability to assure the Settling Parties, stakeholders, legislators, and the public that the it is capable of addressing past causes of implementation delays.

5.2 Engage the Directors of the Implementing Agencies More Directly in SJRRP Implementation Oversight and Direction

In *Section 3* and *Section 4* I discussed the lack of engagement by the Implementing Agency directors in SJRRP implementation and how that disengagement impeded implementation progress during 2012 and prior years. I also stated that future implementation progress necessary to achieve the Settlement Restoration Goal will require an increased commitment to program oversight and direction by the agency directors.

I recommend that the agency directors meet regularly with the PMT to provide regular opportunities for oversight. The changes in management approach recommended in *Section 5.1* would require consistent participation by the Implementing Agency directors to guide and support the PMT as it seeks to improve SJRRP management coordination and communication.

I also recommend that the directors schedule Executive Meetings on a quarterly basis beginning as soon as possible in 2013. These Executive Meetings would include the PMT, non-federal Settling Parties, and RA. The purposes of these Executive Meetings would be to enable the non-federal Settling Parties and RA to provide timely consultation regarding emerging SJRRP implementation challenges, and proposals for addressing those challenges.

5.3 Prepare a Fall run and Spring run Chinook Salmon Reintroduction Plan

The SJRRP must complete a plan for reintroducing Chinook salmon as soon as possible in 2013. I recommend that the SJRRP make a concerted effort to complete a reintroduction plan by July 2013 so that it is available in time to inform the 2014 MAP preparation process and enable desired spring run reintroduction actions in spring 2014. The reintroduction discussions that USFWS initiated in early in 2013 involving the SJRRP staff, the Settling Parties and the RA provided the initial approach and process for completing of a reintroduction plan and for identifying the priority decisions that need to be made precedent to reintroducing fall run and spring run Chinook salmon. Based on the discussions with the agencies that were initiated earlier in 2013 I recommend completing the reintroduction plan by July 2013.

The reintroduction plan should, at a minimum: (a) set a date and define actions necessary for completion in order to commence initial reintroduction measures; (b) incorporate the data provided by a revised and updated evaluation of floodplain habitat needs and opportunities for the overall Restoration Area; (c) be integrated into the evaluation of project alternatives and selection of the preferred project for the Reach 2B and Reach 4B improvements required by Paragraph 11 of the Settlement; and (d) provide for measures capable of achieving the Restoration Goal by providing for a naturally reproducing and self-sustaining population of spring run and fall run Chinook salmon.

Fall run Chinook Salmon: Fall run Chinook are not a listed species, and not burdened by the same ESA and NEPA hurdles that must be addressed as part of spring run Chinook reintroduction efforts. I recommend that the SJRRP take all necessary steps to reintroduce Chinook salmon as soon as practicable in 2013. Fall run reintroduction planning should include reducing the need for human intervention as soon as possible, including measures such as trap and haul operations.

I understand that the fisheries agencies have concerns about potential hybridization and redd superimposition impacts on spring run Chinook salmon reintroduction efforts, and that these concerns have influenced the FMWG approach to reintroducing fall run Chinook salmon. However, these concerns have been discussed for years without confirming that they constitute real impediments to spring run populations. Paragraph 14 states:

The Secretary, through the FWS, and in consultation with the Secretary of Commerce, DFG, and the Restoration Administrator, shall ensure that, fall run and spring run Chinook be reintroduced at the earliest practical date after commencement of sufficient flows and the issuance of all necessary permits.

Despite the passage issues and limited Friant Dam releases that could challenge fall run Chinook escapement, experimental trap, haul and releases of fall run Chinook salmon to Reach 1 of the river conducted during 2011 and 2012 already have demonstrated the resilience of the adult fall run Chinook and their ability to escape to the lower San Joaquin River. I am concerned that, contrary to the requirements of Paragraph 14, the fish agencies are being too conservative in their efforts to reintroduce fall run Chinook.

Therefore, after consulting with the TAC, I recommend that the FMWG reconsider the importance of these concerns and remain open to: (1) options for reintroducing fall run Chinook during 2013; and (2) conducting trap and haul exercises as necessary during the near-term to optimize fall run Chinook salmon reintroduction results.

Spring run Chinook Salmon: As discussed previously in *sections 3 and 4*, because NMFS did not achieve timely completion of its *4(d)* and *10(j)* rules, USFWS was not able to initiate spring run Chinook salmon releases prior to the river prior to December 31, 2012, as required by Settlement Paragraph 14. The *Draft Framework* and subsequent fishery action plan released by the SJRRP specified a spring 2013 target date of for commencing reintroduction of spring run Chinook; however, the September 2012 announcement by NMFS that the *4(d)* and *10(j)* rules would not be completed until late in 2013 appears to have precluded releases of spring run Chinook salmon to the river in 2013. Therefore, I recommend preparation and adoption of a specific action plan as part of the overall reintroduction plan that can achieve a spring 2014 target date for commencing releases of spring run Chinook salmon to the river.

5.4 Resolve Non-Federal Settling Party Concerns Relating to the Draft Framework Document

I recommend that the PMT, supported by the five agency directors, enter into negotiations with the non-federal Settling Parties to address and resolve the concerns regarding the *Draft Framework*. Failure to address these concerns will almost certainly lead to unnecessary implementation delays, and could impede implementation of the Settlement and efforts to achieve the Restoration Goal. Recognizing that the *Draft Framework* proposals raise issues involving Settlement interpretation and consistency, I recommend that these negotiations be initiated at the earliest feasible time, with a goal of resolving key concerns during 2013.

5.5 Continue Improving the Process for Preparing the Annual MAP Reports

Reclamation efforts to improve the annual *MAP* preparation process during 2012 were producing promising results. The interviews and organizational proposals that were prepared during the latter part of the 2012 should be continued and taken to a point where the improvements can be incorporated into the 2014 *MAP*. As part of the continuing SJRRP efforts to improve the Management and Analysis Plan (*MAP*) process, work with the principal investigators to improve study designs and reporting so that the monitoring and study data can provide measurable and practical information that is available to the SJRRP, RA/TAC and stakeholders in time to inform preparation of the 2014 *MAP* and enable the agencies and RA/TAC to collaboratively identify monitoring equipment that will need to be ordered and installed prior to commencement of the 2014 Spring Flow Period.

5.6 Pursue Near-Term Seepage Management Actions to Re-establish Continuous Interim Flows to the Confluence of the Merced River

Reclamation currently is pursuing options capable of enabling Interim Flows past Sack Dam in the near future. Reclamation has initiated appraisals on key properties located in Reach 3 and 4A to provide the basis for negotiations on easements or license agreements that could enable flows past Sack Dam. In addition, the Peer Review Panel that is assisting the Seepage and Conveyance Work Group has recommended changes to seepage management threshold parameters that could support the re-establishment of some level of flows past Sack Dam. These parameters include elimination of the irrigation buffer and use of effective rooting depths rather than maximum rooting depths that could contribute to allowing flows below Sack Dam. I also recommend considering the use of restricted rooting depth criteria that reflect site-specific conditions rather than using unrestricted rooting depths.

Finally, I recommend that Reclamation continue to expedite the appraisals and negotiations that have been initiated with key landowners, and with analysis of the Peer Review Panel recommendations so that Interim Flows past Sack Dam can be re-established as soon as possible.

5.7 Identify and Initiate Near-term Measures to Address Reach 2 Levee Stability Issues

Levee stability concerns in upper Reach 2B (Site 1) limit maximum sustained Interim Flow releases from Friant Dam to about 1,100 cfs because DWR has concluded that conveyance capacity is now 810 cfs. In addition, at a second levee location in lower Reach 2A, DWR has determined that flow conveyance capacity is 1,060 cfs.

Expediting strategic identification of flow restriction locations and correction of levee stability issues should be regarded with more urgency by DWR and Reclamation. Targeted levee assessments could enable temporary or long-term levee improvements to be implemented that would enable continuous Interim Flows to the confluence with the Merced River. Specifically, prioritization of limited near-term levee improvements in lower Reach 2A and upper Reach 2B or other locations, if needed repairs are simple (*e.g.*, capable of being addressed by simply adding gravel to a levee crown or outside slope) could enable significantly higher Interim Flow releases from Friant Dam. Near-term levee improvements levees in these two locations would significantly improve the ability of the SJRRP to gather data during implementation of Interim Flows in the upper reaches of the river and, in concert with seepage efforts in Reach 4A described above, contribute to re-establishing continuous flows to the Merced River confluence.

To avoid the need to wait for at least six years for the ability to increase Interim Flow releases and Restoration Flow releases from Friant Dam, I recommend that DWR and Reclamation reconsider potential opportunities to work together on possible near-term options for correcting levee stability conditions in Reach 2, even if those measures may be temporary pending permanent solutions, rather than continuing to delay repairs in Reach 2 for at least six more years while the overall levee stability study report is completed, or delaying the repairs until construction of Reach 2B floodplain improvements.

5.8 Refine and Enhance the November 2012 SJRRP Floodplain Habitat Assessment Report

I recommend updating and revising the *Floodplain Habitat Assessment* to enable the SJRRP to identify floodplain habitat needs and opportunities on a reach by reach basis for different flow levels, velocities, depths, flow durations, and different water year types. This enhanced analysis also should provide for agreed upon floodplain habitat terminology and definition(s) to facilitate discussions and decisions concerning achieving future floodplain habitat restoration goals for the entire Restoration Area.

I recommend using the revised and updated floodplain habitat need analysis discussed immediately above to identify and evaluate habitat restoration timing and funding needs, and to determine the optimum feasible locations for restoring and creating floodplain habitat necessary to support target long-term Chinook salmon populations identified in the *Fish Management Plan* (2010). If the analysis finds that additional floodplain rearing habitat is needed beyond what can be provided in Reach 2B, Reach 4B and/or the Eastside Bypass, then a plan should be developed to satisfy those floodplain rearing habitat needs in other reaches within the Study Area. This analysis could include direct SJRRP actions, or

SJRRP actions conducted in concert with non-governmental organizations, or separately by non-governmental organizations.

As a first step, to support the SJRRP in updating the *Floodplain Habitat Assessment*, I directed the TAC to conduct a focused analysis using available SJRRP Reach 2B data to address the cited objectives for the Reach 2B project area. This effort will allow me to test the efficacy of the analysis that I initiated recently. I expect the initial results of TAC floodplain analysis to be presented to me in March 2013, to be available for discussion with the SJRRP as part of the March 21 TAC meeting agenda, and to transmit a written report to the SJRRP in April 2013.

5.9 Additional Measures that Could Improve Prospects for Achieving the Restoration Goal

The Settlement states in Paragraph 12 that:

The Parties acknowledge that there are likely additional channel or structural improvements (including, for example, additional fish screening, restoration of side channel habitat and augmentation of spawning gravel) that may further enhance the success of achieving the Restoration Goal. The Restoration Administrator shall identify and recommend to the Secretary such additional improvements and potential measures.

At this time, I am not identifying and recommending such additional measures, other than those contained in *Section 5* above. However, the SJRRP is continuing to analyze the area of floodplain habitat that will be needed to support the long-term target populations of fall run and spring run Chinook salmon identified in the *Fish Management Plan*. This analysis also will consider the alternatives for providing the types and quantities of floodplain habitat on a reach basis for the overall Study Area. Therefore, depending on potential conclusions and recommendations that might be forthcoming as part of the continuing analyses of floodplain habitat area needs, I may consider recommending “additional measures” that could enhance the success of achieving the Restoration Goal, pursuant to language in Paragraph 12 of the Settlement.

6 Specific 2012 RA and TAC Activities Completed During 2012 and Recommended Priority Tasks for 2013

This section describes my roles and the TAC roles during implementation of the Settlement. It also describes the activities and work products undertaken by the TAC and me during 2012 and impediments that we encountered during 2012 to fulfilling our responsibilities and outlines my goals for 2013. Settlement Paragraphs 9 through 19 describe my responsibilities for supporting the Secretary (or designee) during Settlement implementation. Settlement Exhibit D identifies additional responsibilities that I must address, including preparation of a written report assessing progress achieved by the SJRRP in the previous year (*i.e.*, annual reports).

6.1 Settlement Provisions Relating to Required RA Recommendations to the Secretary

Recommendations that I am required to provide to the Secretary include (note referenced Settlement paragraphs):

1. **Paragraph 12:** Additional measures not provided for by the Settlement that may further enhance the prospects for success of achieving the Restoration Goal that are not addressed by the Settlement
 - **Paragraphs 13(a) and 18, Exhibit B:** The need to provide for Buffer Flows during a particular Restoration Year.
 - **Paragraphs 13(c)(1) and (c)(2);** Acquisition of additional water from willing sellers over and above Settlement Exhibit B water year allocations.
 - **Paragraph 13(i):** Establishing the date for commencement of Restoration Flows (no later than January 1, 2014).
 - **Paragraph 14(b) and Exhibit D:** Measures for reintroducing of spring run and fall run Chinook salmon to the Upper San Joaquin River.
 - **Paragraphs 15(a) through (d) and Exhibit B:** The Program of Interim Flows designed to collect relevant information concerning flow temperatures, fish needs, seepage losses, recirculation, re-capture and re-use of water.
 - **Paragraph 18:** The manner in which Restoration Flow schedule hydrographs shall be implemented and when Buffer Flows shall be needed.

6.1.1 Required RA Consultation with the TAC

As outlined above, I am required to submit recommendations to the Secretary and assist the Secretary by consulting on specified actions during Settlement implementation. Whether I am making recommendations to the Secretary or commenting to the Secretary as a part of required consultations, I am required to consult with the TAC if feasible before submitting recommendations or comments. I rely on the TAC to assure that comments/recommendations submitted to the Secretary have received appropriate technical review and discussion prior to submittal to the Secretary. The willingness of the

TAC state agency members and the federal TAC liaisons to participate fully in the TAC meetings and preparation of draft TAC reports and recommendations is essential to enabling the TAC to provide effective consultation to me.

6.1.2 Required Secretary Consultation with the RA

In addition to the recommendations identified in *Section 6.1*, the Settlement also requires that the Secretary consult with me prior to implementing the following actions concurrent with the Interim Flow Period as provided below:

1. Paragraphs 9 and 11: Completion of Phase 1 and Phase 2 project improvements specified in Paragraph 11.
 - Paragraph 13(c)(2): Transfer of water within an applicable hydrograph for that year.
 - Paragraph 13(e): Temporarily increasing, reducing or discontinuing release of water called for in the Exhibit B hydrographs, and resuming releases that would have occurred in the absence of such release modifications.
 - Paragraph 14(a): Assuring that the Secretary reintroduces Chinook salmon at the earliest possible date after commencement of sufficient flows and issuance of necessary permits.
 - Paragraph 14(b): Recommendation(s) relating to reintroduction of Chinook salmon where the Secretary decides not to follow the RA reintroduction recommendation(s).
 - Paragraph 15(e): Determination of existing channel capacity and impact of Interim Flows on channel construction work, for the purpose of implementing Interim Flows.
 - Paragraph 19(a): Development of procedures for coordinating technical assistance, regulatory compliance and sharing of information with other federal or state agencies as well as with the RA and TAC.

6.2 2012 RA Goals for 2013

I am responsible for managing the TAC and engaging in a wide range of activities consistent with the terms of the Settlement. In 2012, these activities included convening TAC meetings and managing preparation of TAC work products, preparing recommendations for submittal to and consulting with the SJRRP, local and state agencies and outside interests.

Consistent with the above discussion, my goals for 2013 focus on achieving the following:

1. Directing, managing and facilitating the activities of TAC consistent with the terms of the Settlement;
 - Preparing and submitting responses to consultation requested by the Secretary in implementing the Settlement;
 - Preparing overall Interim Flow Program recommendations for 2013 and updating Interim Flow Program recommendations as appropriate, consistent with the Draft RFG;
 - Preparing my *Mid-year 2013 Report* for submittal to the Resources Legacy Fund (RLF);

- Providing effective consultation to the SJRRP Program Manager, as the designated representative of the Secretary of the Interior;
- Providing continuing consultation and preparation of recommendations for consideration by to the SJRRP with respect to consideration of Reach 2B and Reach 4B flow routing and floodplain habitat restoration needs and options to address those needs;
- Consultation and preparation of comments on the Reach 2B Project Description TM;
- Consultation and recommendations to the Arroyo Canal/Sack Dam Project Team;
- Providing consultation to the SJRRP and FMWG on preparation of the reintroduction plan for fall run and spring run Chinook salmon;
- Participation in Restoration Flow Guidelines meetings;
- Completing a floodplain habitat need and availability technical update for Reach 2B as an illustrative update to the *Floodplain Habitat Assessment Report* completed last year by the SJRRP;
- Contributing to preparation of the 2014 *MAP* and Annual Technical Report (*ATR*), and reviewing and commenting on drafts of both reports; and
- Assisting during the transition to a successor RA that will be selected jointly by the non-federal Settling Parties and may be appointed to the RA position during the summer of 2013.

6.3 RA and TAC Activities During 2012

As the RA I am responsible for convening the TAC for regular meetings throughout the year and managing TAC activities consistent with the terms of the Settlement. Clearly, this role consumes the majority of my time. However, as explained in the following discussions, my responsibilities also involve a range of other activities and preparation of work products that are required by the Settlement.

6.3.1 RA Management of TAC Activities

During 2012, I convened a total of twelve (12) meetings of the full TAC, including one (1) conference call/GoToMeeting web event to replace an in-person meeting. In March I also initiated weekly TAC Coordination Conference Calls to provide more consistent interaction and planning opportunities for the RA, the FWA and NRDC members, and the other four TAC members appointed either individually or jointly by FWA and NRDC. The weekly coordination calls resulted in better communication among the TAC members and between me. It also improved my ability to anticipate and understand emerging SJRRP issues and needs, and improved planning for and execution of TAC meetings. The 12 formal TAC meetings and weekly TAC coordination calls focused on preparing me to accomplish the RA goals cited above in *Section 6.2* and facilitated completion of the following RA work products during 2012:

- RA Annual Interim Flow Recommendation that was due by January 31;
- RA Interim Flow Updates in response to updated Reclamation Allocations and Default Flow Schedule transmittals to the RA, prepared as needed;
- Updates to the TAC Work Program/Strategic Plan;

- RA and TAC comments to the 2013 Monitoring and Analysis Plan (the *2013 MAP*);
- RA comments relating to Paragraph 11 project improvements, SJRRP technical studies (*e.g., Floodplain Habitat Assessment*) as requested by the SJRRP; and
- RA recommendations and comments on other matters pursuant to the Settlement and requested by the SJRRP Program Manager.

I also convened frequent TAC conference calls, some involving the entire TAC, many others involving individual or smaller groups of TAC members. These conference calls included calls necessary to obtain TAC guidance on a variety of issues, including preparation of RA comments or recommendations.

6.3.2 RA Reports and Recommendations to the Secretary of the Interior

In accordance with the Settlement, I consulted with the TAC to prepare and submit the following recommendations to the Secretary/SJRRP:

1. 2012 Interim Flow Release Recommendations
 - 2012 Annual RA Interim Flow Program Recommendations (January 31)
 - RA 2012 Interim Flow Recommendation Update for Re-Scheduling Deficit Interim Flow Release Resulting from Friant Power Authority Outage (February 10)
 - RA 2012 Interim Flow Recommendation Update (April 4)
 - RA 2012 Interim Flow Recommendation Update (April 27)
 - RA 2012 Interim Flow Recommendation Update (May 2)
 - RA 2012 Interim Flow Recommendation Update (May 21)
 - RA 2012 Interim Flow Recommendation Update for Re-Scheduling Unreleased Interim Flows Resulting from Repairs to the Chowchilla Bifurcation Structure Flap Gates Update (November 9)
2. RA Transmittal Letter and Recommendation for 2012 Priority Monitoring and Assessment Actions (August 31, 2012)

In addition, I submitted the *2011 Report* to the Settling Parties in June and a *2011 Mid-year Report* to RLF in August.

6.3.3 RA Consultation Activities Outside the TAC

My consultation activities during 2012 included:

1. Participation in monthly Settling Party Consultation meetings;
2. Participation in weekly conference calls;
 - The SJRRP Program Manager (PM) to discuss Program progress, current activities and emerging or ongoing implementation issues;

- The Operations Group (including Reclamation, FWA, Water District staff) for updates on Friant releases and downstream operations issues and updates; and
 - Interim Flow Monitoring and Scheduling Update conference calls involving SJRRP staff, FWA, NRDC, TAC members and me to assist in communicating and coordinating Interim Flows and monitoring activities (these calls were weekly as necessary, but were not convened every week).
3. Ongoing participation, primarily via conference calls, in meetings that involved the Specific Project Teams;
 4. Participation in Restoration Flow Guidelines meetings;
 5. Other SJRRP meetings convened by Reclamation or other Implementing Agencies;
 6. Participation in Technical Group Workshops, including the Water Management Technical Feedback Group, Restoration Goal Technical Feedback Group, and Fish Management Technical Feedback Group, and the Seepage and Conveyance Technical Feedback Group;
 7. Attendance at Scoping Meetings hosted by NMFS as part of the Notice of Preparation process for its action on the 10(a)(1)(A) permit; and
 8. Other consultation and outreach to interests involved in or affected by implementation of the SJRRP.

6.3.4 Ongoing Consultation with Outside Organizations

During 2012 I consulted with the following groups/organizations that are either impacted by or interested in the implementation of the SJRRP:

Resource Management Coalition (RMC) – The RMC is a coalition of downstream landowners and water agencies that conduct their Board Meeting in Los Banos at the end of most months. I attended Board Meetings by phone or in person when events indicated a need to provide briefings on the status of RA recommendations that were being formulated but not yet transmitted to the Secretary.

San Joaquin River Partnership (River Partnership) – The River Partnership was created in 2010 by a coalition of non-profit organizations interested and involved in efforts to restore the San Joaquin River and to enhance public access to, use and enjoyment of the San Joaquin River. The River Partnership seeks to improve cooperation and coordination among its separate organizations and to identify ways that they can assist agency and other efforts to restore the San Joaquin River.

In addition, I chaired a panel for the Annual Conference hosted by the River Partnership in Fresno, and members of the TAC delivered presentations on three panels during that Annual Conference.

6.3.5 RA Goals Achieved During 2012

During 2012 I was able to accomplish all of the goals identified in *Section 6.2*, except as noted below in *Section 6.3.6*.

6.3.6 RA Goals that Were Not Fully Achieved During 2011

Specific areas where I either did not achieve a primary goal or where I was only partially successful in achieving a goal are discussed below.

6.3.6.1 FMWG Consultation with the RA

The ability of the RA/TAC to consult effectively with the FMWG on technical issues relating to the Fish Management Plan, Chinook salmon reintroduction and fisheries management issues continued to be a challenge during 2012 (see the discussion in *Section 4.4*).

6.4 Participating TAC Members and Federal Liaisons to the TAC During 2012

The 2012 appointed TAC members included:

- Bill Luce (appointed by FWA)
- Monty Schmitt (appointed by NRDC)
- Rene Henery (Fisheries – appointed by NRDC, September 2011)
- Chuck Hanson (Fisheries – appointed by FWA)
- Scott McBain (Hydrology/Fluvial Geomorphology – joint FWA/NRDC appointment)
- Mark Tompkins (Hydrology and Engineering – joint FWA/NRDC appointment)

The 2012 state agency TAC Members included:

- Kevin Faulkenberry – Representing the California Department of Water Resources
- Gerald Hatler – Representing the California Department of Fish and Wildlife (Note: Erica Myers also attended meeting)

The 2012 non-member “federal liaison” representatives on the TAC included:

- Alicia Forsythe and Michael Mitchener – SJRRP Program Manager and Deputy Program Manager, Bureau of Reclamation
- Rhonda Reed – National Marine Fisheries Service (NOAA)
- Robert Clarke – U. S. Fish and Wildlife Service

6.5 Priority RA and TAC Activities During 2013

In 2013 the RA intends to focus on the following priority issues and actions to assist the Secretary in implementing the Settlement.

High priority goals and tasks for 2013 include:

- Effectively managing TAC activities;
- Providing timely RA recommendations for implementing the Interim Flow releases during the remainder of the 2012 Water Year and for the 2013 Water Year, including:
 - Preparing RA recommendations for the 2013 Interim Flow releases in accordance with the Settlement and SJRRP needs for updated recommendations;

- Improving real-time 2013 Interim Flow management in a manner to assure the Gravelly Ford flow targets are achieved; and
- Working with the SJRRP and FWA/NRDC on the Restoration Flow Guidelines.
- Working with the Program Manager and, to the extent permitted, with the Implementing Agency directors to update the 2007 *PMP* and to increase the level of engagement of the directors in SJRRP implementation oversight;
- Providing consultation and recommendations to the PMT during preparation of a Chinook Salmon Reintroduction Plan;
- Completing the technical floodplain analysis for Reach 2B to supplement the data and information contained in the *Floodplain Habitat Assessment* completed in November by the SJRRP;
- Encouraging and assisting NMFS and the Implementing Agencies to take all actions necessary to commence reintroduction of fall run Chinook salmon during 2013; and
- Providing monitoring and study recommendations to Reclamation for use during preparation of the Draft ATR and 2013 MAP documents.

Other goals for 2013 include:

- Providing timely consultation and recommendations to the PMT and Secretary during implementation of the Settlement where my consultation is needed;
- Improving my ability to provide technical consultation and recommendations to the Secretary by continuing work with Reclamation and enhancing opportunities to consult with the fisheries management agencies and the FMWG;
- Continuing my participation in the SJRRP Project Team meetings to stay current with SJRRP activities/progress and, where feasible, provide early input to the SJRRP staff concerning emerging issues;
- Continuing TAC and my participation in SJRRP public Technical Feedback Group meetings and encourage SJRRP staff to provide more frequent technical feedback opportunities;
- Consulting with the SJRRP during completion of the viability study for reoperating the Chowchilla Bifurcation Structure; and
- Continuing my consultation, as appropriate and productive, with local agencies, state and federal agencies, downstream landowners and water managers, and public interest organizations to assist the SJRRP in facilitating stakeholder and public understanding of the SJRRP program.

7 2012 RA and TAC Expenditures

Settlement Exhibit D requires that my Annual Report include a summary of expenditures during the preceding year. The Resources Legacy Fund (RLF) oversees the activities of the RA and TAC continued to operate pursuant to the terms of a May 25, 2007, Grant Agreement (2007 Agreement) between the State (DWR and DFW) and RLF. A total of \$1,950,000 was provided for RA/TAC operations under the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act of 2000. The RLF administers funding for RA and TAC and contracts with the RA and TAC members. RA/TAC contracts were to expire June 30, 2010; however, RLF received a “time-only” extension from DWR/DFW that enables remaining funds to be used through December 31, 2010. As of December 31, 2011, all of the \$1,950,000 in funding provided for by the 2007 Grant Agreement had been transferred to RLF by DWR/DFW.

A new Grant Agreement between DWR and RLF was signed in late 2011 to continue funding RA/TAC activities through December 31, 2012 and a “time-only” extension was signed to provide for extend the date for eligible expenditures under the Grant Agreement to September 30, 2013. The DWR/RLF Agreement provides for \$1,000,000 to fund RA and TAC activities in five (5) installments of \$200,000 commencing in 2011. The first four DWR installment payments to RLF already have been received. The remaining \$200,000 is expected be paid in early in 2013.

For CY 2012, RA and TAC expenditures totaled \$455,044, with RA salary/expenses totaling \$194,535 and TAC salary/expenses totaling \$260,509 for salaries and expenses. As of December 31, 2012, the RA and TAC available balance was \$326,766 to cover expenses through September 30, 2013. The available balance is expected to be sufficient to fund RA and TAC activities through August 31, 2013. RLF has an available balance of \$25,120 to cover oversight expenses through September 30, 2013.

A new funding agreement between RLF and DWR/DFW will be needed by mid-2013 to be in place to support ongoing RA and TAC starting in August 2013. Discussions among RLF, DWR and DFW involving the ongoing funding needs and the term of a new funding agreement should start early in 2013 to assure that an Agreement will be in place in time to avoid a disruption of RA and TAC activities.