Appendix G

National Marine Fisheries Service Concurrence Memo

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814-4700

MAY 05 2015
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Refer to NMFS No: WCR-2015-2443

Mr. David Hyatt
Chief, Resources Management Division
Bureau of Reclamation – Mid Pacific Region
South-Central California Area Office
1243 N Street
Fresno, California 93721-1813

Re: Endangered Species Act Section 7(a)(2) Concurrence Letter and Fish and Wildlife Coordination Act Recommendations for the Millerton New Town Project.

Dear Mr. Hyatt:

On April 3, 2015, NOAA's National Marine Fisheries Service (NMFS) received your request for a written concurrence that the U.S. Bureau of Reclamation's (Reclamation) proposal to approve three water transfers to the County of Fresno for delivery to the Millerton New Town Development under Reclamation's Friant Project water right permit and license authority, is not likely to adversely affect species listed as threatened or endangered under the Endangered Species Act (ESA). This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA, implementing regulations at 50 CFR 402, and agency guidance for preparation of letters of concurrence.

NMFS also reviewed the proposed action for potential effects on essential fish habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), including conservation measures and any determination you made regarding the potential effects of the action. This review was pursuant to section 305(b) of the MSA, implementing regulations at 50 CFR 600.920, and agency guidance for use of the ESA consultation process to complete EFH consultation.

Because the proposed action will modify a stream or other body of water, NMFS also provides recommendations and comments for the purpose of conserving fish and wildlife resources under the Fish and Wildlife Coordination Act (16 U.S.C. 662(a)).

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The concurrence letter will be available through NMFS' Public Consultation Tracking System *https://pcts.nmfs.noaa.gov*. A complete record of this consultation is on file at the California Central Valley Office of NMFS.

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Proposed Action and Action Area

The proposed action involves transferring contract water stored in Millerton Reservoir for delivery to the Millerton New Town Development (Development). The entities that would transfer water are: Arvin-Edison Water Storage District (Arvin-Edison), Terra Bella River Irrigation District (Terra Bella) and Lower Tule River Irrigation District (Lower Tule). Pursuant to an agreement between Arvin-Edison and Fresno County, Arvin-Edison would annually transfer to Fresno County up to 1,520 acre-feet of its Friant Division Central Valley Project (CVP) water supply consistent with Arvin-Edison's 9(d) Repayment Contract. Pursuant to a separate agreement between Terra Bella and Fresno County, Terra Bella would transfer 770 acre foot per year (AFY) of Terra Bella's Friant Division CVP water supply to the County, consistent with the term of Terra Bella's 9(d) Repayment Contract. Should Arvin-Edison be unable to deliver its transferred water in any given year, Lower Tule would have the option to transfer 1,520 AFY of their Friant Division CVP water supply to Fresno County as a back-up supply. However, the cumulative total of transferred water to Fresno County would not exceed 2,290 AFY and would be drawn by Fresno County through existing infrastructure at Millerton Lake.

The approval of the proposed water transfers has a series of interrelated actions. These include the construction of the remainder of the Fresno County-approved Millerton New Town development, the implementation of avoidance and minimization measures for listed species and critical habitats under the jurisdiction of the U.S. Fish and Wildlife Service, implementation of the Millerton New Town Wetlands and Open Space Management Plan, contributions to the Millerton New Town Open Space Preserve, implementation of the Jamison Ranch Conservation Easement (JRCE), and enlargement of the Point Millerton Conservation Area (PMCA). The Millerton New Town Specific Plan involves the development of 820 acres of land on the north and south sides of Millerton Road, two miles east of the community of Friant. The project plans for 3,499 housing units and a variety of commercial uses including a golf course, public facilities and open space.

All tertiary treated effluent from the wastewater treatment plant would be used to irrigate agricultural fields/orchards/vineyards, campus landscaping, roadway plantings, common areas, commercial area landscaping, restoration plantings, and naturalistic spray areas within the Millerton New Town Specific Plan Area. Spray disposal will comply with all Federal, State, and Local laws, and will not result in discharge into any Waters of the United States. Spray disposal will allow water to evaporate, to be transpired by irrigated plants in the spray area, or to percolate into the soil. Any groundwater infiltration will not result in increased off-site flow of White Fox Creek.

An erosion control plan shall be implemented as required by the Mitigation Measures and Monitoring Program Matrix for the Millerton Specific Plan Area. The revegetation of exposed slopes would be one component of the erosion control plan. Plant species appropriate for erosion control include both the non-native grasses that currently dominate the site as well as selected native species that quickly become established, and whose roots bind the soil. Filter fabric fences, heavy plastic earth covers, gravel berms, or lines of straw bales are a few of the techniques that may be used to control runoff from construction sites. Grading will be phased so that prompt revegetation can control erosion. Where possible, only those areas which will later be resurfaced, landscaped, or built on will be disturbed. Surfacing of parking lots and roadways will take place as soon as practicable.

Furthermore, the development of Millerton New Town Specific Plan Area provides for an open space corridor along White Fox Creek. Tributary wetland swales could be temporarily impacted as a result of installing infrastructure to connect the tract with the existing wastewater treatment plant. Drainage of the Millerton New Town Specific Plan Area will be designed to utilize natural drainage courses. Runoff will flow to surface collectors, storm drains, and onto a series of basins where sediment will settle-out and the flows entering the natural drainage system can be regulated. The project is designed to remove sediment from site run-

off and attenuate flows so that the natural drainage courses will not experience more run-off than pre-development levels.

The action area includes Millerton Reservoir, the contract water conveyance structures, the Development project footprint (including portions of White Fox Creek and Cottonwood Creek) and tributaries to the San Joaquin River downstream of Friant Dam (Millerton Reservoir). NMFS ESA listed fish do not currently occur within the action area or immediately downstream of the action area in the San Joaquin River. Fall-run and spring-run Chinook salmon are actively being reintroduced to the San Joaquin River below Friant Dam, occurring downstream of the action area. Efforts of the San Joaquin River Restoration Program to improve habitat conditions in the San Joaquin River below Friant Dam will create suitable habitat conditions for Central Valley spring-run Chinook salmon and California Central Valley steelhead in the future. Although these salmonids might enter these creeks during high rain events when the creeks are connected to the San Joaquin River, these species are unlikely to occupy White Creek or Cottonwood Creek due to the highly intermittent nature of these small creeks.

Action Agency's Effects Determination

Reclamation has determined that the proposed action may affect but is not likely to adversely affect threatened Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) or threatened California Central Valley steelhead (*Oncorhynchus mykiss*) because these species do not occur within the action area. Available information indicates the following listed species (Evolutionary Significant Units [ESU] of Distinct Population Segments [DPS] under the jurisdiction of NMFS may be affected by the proposed project (Table1). Critical habitat does not occur within the action area. Reclamation also determined that there are no project effects to protected fisheries resources under the Magnuson-Stevens Fisheries Conservation and Management Act because Essential Fish Habitat is not present within the action area and habitat conditions in San Joaquin River tributaries within the action area do not support Pacific salmon.

Table 1. ESA Listing History

Species	ESU/DPS	Original Final FR Listing	Listing Status Reaffirmed
Spring-run Chinook salmon	California Central Valley ESU	9/16/1999 64 FR 50394 Threatened	6/28/2005 70 FR 37160 Threatened
Spring-run Chinook salmon	California Central Valley ESU (San Joaquin River)	12/31/2013 78 FR 251 Nonessential Experimental Population	
Steelhead	California Central Valley DPS	3/19/1998 63 FR 13347 Threatened	1/5/2006 71 FR 834 Threatened

ENDANGERED SPECIES ACT

Effects of the Action

Under the ESA, "effects of the action" means the direct and indirect effects of an action on the listed species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR 402.02). The applicable standard to find that a proposed action is not likely to adversely affect listed species or critical habitat is that all of the effects of the action are

expected to be discountable, insignificant, or completely beneficial. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or critical habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur.

There will be no effects to listed species from the water transfer action itself. The water is already part of the baseline conditions for diversion from Millerton Lake and there would be no increase in diversions as a result of this transfer; therefore, the proposed transfer would not change Reclamation's ability to meet obligations to deliver water to other contractors, wetland habitat areas, or for other environmental purposes such as the San Joaquin River Restoration Program.

Activities that degrade water quality or reduce flows in Little Dry Creek have the potential to affect the San Joaquin River Restoration Program and listed fishes. White Fox Creek intermittently flows through the Millerton New Town Specific Plan Area for 1.8 miles, it converges with Little Dry Creek 4.3 mi downstream, and Little Dry Creek enters the San Joaquin River after flowing another 2.1 miles. Thus, 6.4 miles of intermittent creek channel separates the Development from the San Joaquin River. Although Little Dry Creek generally contributes little to the flow volume of the San Joaquin River, it can provide substantial flow during storm events. Construction within the Millerton New Town Specific Plan Area will result in considerable cut-and-fill grading, leaving exposed soils vulnerable to erosion. However, the proposed action includes measures to ensure that the development of the Millerton New Town Specific Plan Area will not adversely affect the flow volume, sediment discharge, or water quality of White Fox Creek. The proposed development activities in the Millerton New Town Specific Plan Area are therefore expected to have insignificant effects to listed fishes via degradation of water quality.

The dynamics of surface water infiltration and groundwater recharge will change as a result of the introduction of impervious surfaces and nuisance flows, but impacts on flows and water quality into Little Dry Creek over 4 mi from the Millerton New Town Specific Plan Area are likely to be undetectable as surface water shall be collected in an on-site sedimentation basin, which will provide an alternative method for lateral underground flow to White Fox Creek. The basins will be designed to store stormwater to allow particles and associated pollutants to settle. Additionally, the fact that White Fox Creek connects to the San Joaquin River via surface flow only during extreme flow events means that in the rare case of pollutants from the Millerton New Town Specific Plan Area reaching the San Joaquin River, the pollutants would be highly diluted and would be expected to have an insignificant effect on listed salmonids and their habitats in the San Joaquin River.

The Proposed Action will result in the payment of additional funds into an account for use by the California Department of Fish and Wildlife (CDFW) to protect and enhance fish, wildlife, and native plant habitat in the San Joaquin River downstream of Friant Dam. Actions taken by CDFW using this settlement money will presumably improve habitat for listed fishes in the San Joaquin River below Friant Dam, but will not benefit non-native predatory or competitor species to the listed native species. Based on the minimization measures for pollutants and modification of flow regimes, the distance to the San Joaquin River and relative rarity of surface connections, the settlement funds to be used by CDFW for enhancement of the San Joaquin River below Friant, the inclusion of protection of Cottonwood Creek through the Jamison Ranch Conservation Easement, potential degradation of water quality and reduction in water delivery to the San Joaquin River and its tributaries from the proposed action are insignificant.

Conclusion

Based on this analysis, NMFS concurs with Reclamation's determination that the proposed action is not likely to adversely affect Central Valley spring-run Chinook salmon or California Central Valley steelhead.

Reinitiation of Consultation

Reinitiation of consultation is required and shall be requested by Reclamation or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (2) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this concurrence letter; or if (3) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA portion of this consultation.

MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

Under the MSA, this consultation is intended to promote the protection, conservation and enhancement of EFH as necessary to support sustainable fisheries and the managed species' contribution to a healthy ecosystem. For the purposes of the MSA, EFH means "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity", and includes the associated physical, chemical, and biological properties that are used by fish (50 CFR 600.10), and "adverse effect" means any impact which reduces either the quality or quantity of EFH (50 CFR 600.910(a)). Adverse effects may include direct, indirect, site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

NMFS determined the proposed action would adversely affect EFH as follows: water quality impacts. However, the proposed action includes adequate measures (described in the ESA section 7 consultation above) to avoid, minimize, or otherwise offset the adverse effects to EFH. Therefore, additional EFH conservation recommendations are not being provided at this time; and written response as required under section 305(b)(4)(B) of the MSA and Federal regulations (50 C.F.R. 600.920) will not be required. However, if there are substantial revisions to the proposed action that may adversely affect EFH, the lead Federal agency will need to re-initiate EFH consultation. This concludes the MSA portion of this consultation.

FISH AND WILDLIFE COORDINATION ACT

The purpose of the FWCA is to ensure that wildlife conservation receives equal consideration, and is coordinated with other aspects of water resources development (16 U.S.C. 661). The FWCA establishes a consultation requirement for Federal departments and agencies that undertake any action that proposes to modify any stream or other body of water for any purpose, include navigation and drainage (16 U.S.C. 662(a)). Consistent with this consultation requirement, NMFS provides recommendations and comments to Federal action agencies for the purpose of conserving fish and wildlife resources. The FWCA allows the opportunity to offer recommendations for the conservation of species and habitats beyond those currently managed under the ESA and MSA. NMFS has no additional FWCA comments to provide beyond the aquatic habitat impact avoidance and minimization measures incorporated into the proposed action. This concludes the FWCA portion of this consultation.

Please direct questions regarding this letter to Erin Strange, California Central Valley Area Office, at (916) 930-3653 or Erin.Strange@noaa.gov.

Sincerely,

William W. Stelle, Jr.
Regional Administrator

cc: Copy to file:151422WCR2015SA00111

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SCCAO, FRESNO, CA